

HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

AND

HON'BLE SRI JUSTICE U.DURGA PRASAD RAO

Writ Petition No.9979 of 2010

ORDER: *(Per Hon'ble Sri Justice V.Ramasubramanian)*

The State has come up with the present writ petition challenging the order of the Andhra Pradesh Administrative Tribunal setting aside the orders of penalty passed against the respondents 1 and 2 herein.

2) Heard learned Government Pleader for Services-I (Telangana) and Mr. K.Anantha Rao, learned counsel appearing for the unofficial respondents.

3) When the respondents 1 and 2 were working as Police Constables, disciplinary proceedings were initiated against them. The proceedings culminated in a penalty of dismissal passed on 23.01.1992.

4) However, the orders of dismissal from service were set aside by the A.P. Administrative Tribunal in O.A.No.5132 of 1995, by an order dated 25.07.2002. The matter was actually remitted back to the Government.

5) Pursuant to the orders of the Tribunal, the respondents 1 and 2 were reinstated and fresh proceedings were initiated on 23.08.2002. In those proceedings, a final order was passed on 06.12.2005 imposing the penalty of reduction in the scale of pay by two stages for a period of two years with cumulative effect and also treating the period out of employment as not on duty.

6) Aggrieved by the said order, the respondents 1 and 2 filed O.A.No.6381 of 2006 on the file of A.P. Administrative Tribunal. The Tribunal allowed the application by an order dated 29.01.2010 on the short ground that the evidence let in before the Enquiry Officer, was not placed before the Tribunal and that even according to the Enquiry Report, the Medical Officer did not support the case of the prosecution.

7) The grievance of the State is that once the charges were held proved in the domestic enquiry, there was no scope for the Tribunal to independently appraise the evidence. The Enquiry Officer found all the three charges proved against the respondents 1 and 2 and hence it is contended by the learned Government Pleader that the Tribunal should not have interfered with the order.

8) We have carefully considered the above submissions.

9) The charge framed against the respondents 1 and 2, comprised of three components namely: a) that they consumed alcohol while on duty; b) that they refused to obey the orders of the superiors and c) that they abused the ARSI in a filthy language.

10) In order to prove the above three components, the Department examined three witnesses and marked five documents in the oral enquiry. It is true that the Medical Officer examined as PW.1 stated that the Medical Certificate was issued by him based upon the smell, speech and walking gait. But that does not make the evidence of the Medical Officer wholly unreliable. It must be remembered that the Medical Officer examined the respondents 1 and 2 on 15.03.1991 and issued a certificate which was a contemporaneous document.

The Medical Officer also pointed out that the particulars were entered in the Hospital Register. Once this is clear, it was not open to the Tribunal to discard his evidence.

11) Similarly PW.2 was the Circle Inspector at the time when the event happened. His evidence before the Enquiry Officer was as follows:

“PW-2 Sri S.Mothi Singh, DSP (Rtd.) formerly of CI of Police, Venkatapuram Circle deposed that he has been worked in the year 1991 as CI Venkatapuram. On 16.03.1991, he had sent a report against the charged officers Sri B.Nageshwar Rao, PC 2300 (Old No.1263), Sri D.Sarveshwar Rao, PC 2301 (Old No.620) of DAR Khammam vide C.No.59/ci-el/91, Dt.16.03.1991 stating that the above two PCs were at Peruru PS along with others in connection with the anti extremist activities. On 13.03.1991, SI of Police informed all the AR men who are at Peruru PS about the visit of Deputy Inspector General of Police, Warangal Range, Warangal to Peruru PS on 15.03.1991 and also asked them to be present in the Police Station in Uniform at 0800 hours on 15.03.1991. At about 0800 hours on 15.03.1991, the above charged officer PCs went out of the Police Station consumed liquor and sat in a hotel and when the ARSI Nambaiah asked the charged officers came to the PS only after arrival of the D.I.G. W/R Warangal and the Superintendent of Police, Khammam and started abusing the ARSI in drunken condition. Both the charged officers were sent to the Government Hospital, Venkatapuram for medical examination and the medical officer examined them and issued certificate stating that PC 2301 and PC 2300 were under influence of alcohol. Finally, he requested the Superintendent of Police, Khammam to take necessary and disciplinary action against the charged officers PCs duly sending the medical certificates and report of ARSI Nambaiah. The report sent by the deponent in C.No.59/CI-E/1991 dt.16.03.1991 is marked as Ex.P.3.”

12) Interestingly, the 1st respondent did not choose to cross-examine PW.2. The cross-examination of PW.2 by the 2nd respondent

did not make any inroads into the credibility of the witness. Therefore, the evidence of PW.2 was also not liable for total rejection.

13) PW.3 was the ARSI. Unfortunately he stated as PW.3 that he did remember what happened in the year 1991. The enquiry took place in the year 2002 and PW.3 had attained 64 years of age. But the fact that he had made a compliant and the fact that statements were recorded on 15.03.1991 were confirmed even by PW.3. The extract of the evidence of PW.3 given in the Enquiry Report is as follows:

“PW-3 Sri P.Nambaiah, RSI (Rtd.,) formerly of ARSI DAR Khammam has deposed his evidence that he is presently residing at Karimnagar District. He has worked as ARSI DAR Khammam in the year 1991. He stated that he is aged about 64 years and does not remember any thing that was occurred in the year 1991. Also stated that he is suffering with high BP and Diabetes and the matter was written in the statements that was read over by the Enquiry Officer in two statements was not in his memory. The statements dated 15.03.1991 are marked as Exs.P.4 and P.5.”

14) Therefore, the Enquiry Report holding the charges proved, cannot be rejected outright as perverse in nature. If the report of the Enquiry Officer cannot be rejected as perverse, there is no scope of any interference by the A.P. Administrative Tribunal. But unfortunately, the Tribunal has set aside the findings of the Enquiry Officer, not on the ground that they were perverse, but on independent appreciation of the evidence of PW.1. This in our considered view, is contrary to the law laid down by the Supreme Court. Hence, the order of the Tribunal deserves to be set aside.

15) Accordingly, the Writ Petition is allowed and the order of the Tribunal is set aside.

16) However, there is one small mistake committed by the disciplinary authority and the Tribunal. The original order of dismissal from service was set aside by the Tribunal in the first instance. This order was accepted by the Government and the respondents 1 and 2 were reinstated. Fresh proceedings were initiated thereafter which resulted in the penalty stated above. In such cases, the entire period when the respondents 1 and 2 remained out of employment, should be treated under the fundamental rules as a period of suspension. If it is so treated, it will qualify for counting as the period of service for the purpose of pension. The respondents 1 and 2 may not be entitled to any other benefit for the said period. But it is nevertheless to be treated as one spent on suspension which will count for the purpose of pension.

17) With the above clarification, the Writ Petition is allowed.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

V.RAMASUBRAMANIAN, J

U.DURGA PRASAD RAO, J

Date: 06.12.2016
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