

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SRI JUSTICE G. SHYAM PRASAD

Writ Petition No.13802 of 2003

ORDER: *(per V. Ramasubramanian, J.)*

The writ petition arises out of the order passed by the Central Administrative Tribunal, dismissing an application filed by the petitioner challenging the penalty of removal from service.

2. Heard Mr. K.S. Murthy, learned counsel for the petitioner.

3. When the petitioner was working as Khalasi, entrusted with the duty of a Fuel Maistry, a charge memo was issued on 13-08-1994. An enquiry followed culminating in an order of penalty of removal from service, passed on 21-10-1998. An appeal filed by the petitioner was dismissed on 18-02-1999 and a revision filed by him was dismissed on 24-03-2000.

4. Challenging all the above orders, the petitioner filed O.A.No.286 of 2001 on the file of Central Administrative Tribunal, Hyderabad Bench. Finding that there was no infraction of the Rules or the principles of natural justice and also finding that there was no perversity in the findings recorded by the Enquiry Officer, the Tribunal dismissed the application forcing the petitioner to come up with the above writ petition.

5. In paragraph 9 of its order, the Tribunal has chosen to analyze the evidence that went before the Enquiry Officer and the Tribunal came to the conclusion that there was no perversity of

findings. Paragraph 9 of the order of the Tribunal reads as follows as it answers most of the contentions raised:

“Having regard to these facts, in our view, the contention of the learned counsel for the applicant that the applicant has been given discriminatory treatment in the matter of conducting separate inquiry against him and that the other two employees were given lenient punishment though they were equally responsible for the said loss, is without any merit. It is no doubt pointed out by the learned counsel for the applicant that in the statement given by Sri T. Venkateswar Rao, Crew Controller, in answer to question No.35 he stated that the applicant may have helped to cause the oil pilferage because he knows all valves operation in that installation. It is submitted that the applicant had no opportunity to cross-examine the said witnesses since separate inquiry was conducted against him and it is because of the said incriminating evidence given against him (the applicant), the inquiring authority must have been sufficiently prejudiced against him and he must have conducted the inquiry against him with a prejudiced mind. But we are unable to accept this contention since even the said employee Sri T. Venkateswar Rao has not categorically stated that the applicant was responsible for the said pilferage of the diesel oil and he only expressed that he has got suspicion against the applicant. Apart from this fact the inquiring authority has not made use of the said statement given by the Crew Controller Sri T. Venkateswara Rao in that separate inquiry and he has taken into consideration only the evidence adduced in the inquiry conducted against the applicant in arriving at the finding recorded that the Articles of charge are proved. In the inquiry conduct against the applicant, Sri T. Venkateswara Rao has been examined separately and in addition to him two other witnesses Sri S.A. Mazeed, Sr. Loco Inspector/GNT and P.V.S. Hanumantha Rao, Sr. Clerk/NLPD, were examined. The inquiring authority has discussed the evidence given by all the three witnesses and has also taken into consideration the statement given by the applicant and has given sufficient reason as to why he has come to the conclusion that the Articles of charge against the applicant are proved. The inquiring authority has taken into consideration the fact that the applicant was not available at the fuel installation or fuel office of RCD/NLPD after fuelling the last loco at about 23.00 hrs till 05.30hrs on 13.8.1994 and admittedly during that time on the intervening night

of 12/13.8.1994, even according to the applicant, he was sleeping in the II class passengers waiting room. The Inquiring Authority has also taken into consideration the fact that the applicant has admitted that he has taken dip readings at the time of taking over charge of the shift and also at the time of handing over the charge by him and it was noticed that there was shortage of 26,758 litres of HSD oil. The witness Sri P.V.S. Hanumantha Rao deposed in the inquiry that while handing over the charge at 4.30 PM on 12.8.1994 to the applicant, he has given dip measurement which is equivalent to 485888 litres of HSD oil and on 13.8.1994 morning at the time of taking over charge by him from the applicant the dip was observed as 698.0, which is equivalent to 446180 litres totalling to 11,700 litres difference and the said dip reading indicated a reduction of 39,708, which amounts to a shortage of 28,000 litres of HSD oil after giving reduction to the oil filled in locos during that time. The inquiring authority has also taken into consideration the fact that even the applicant has observed the electrical pump sequence valve for fuelling, which were in open condition and air release valve seal was found cut off and oil was flowing with force from the valve when he had gone back to the fuelling installation from the platform on the morning of 14.8.1994. The inquiring authority has also taken into consideration the evidence given by Sri T. Venkateswar Rao that the applicant has worked as Fuel Maistry for four years at RCD/NLPD on the intervening night of 12/13.8.1994 by verbal orders and that apart from him, Sri K. Yesupadam and Sri N. Subba Rao were also available on the platform on that night. He also admitted that he was informed by Sri Hanumantha Rao when the dip reading of HSD oil was taken on 13.8.1994 about the shortages of HSD oil. He also admitted that he was at ASM's office after fuelling the last loco at 23.10 hrs on 12.8.1994 and he noticed shortage of HSD oil at RCD/NLPD at 05.30 hrs on 13.8.1994 and he went back to RCD/NLPD from ASM's office at 05.30 hrs on 13.8.1994. The applicant has also admitted in his statement that he was satisfied with the manner in which the inquiry was conducted when a specific question (Question No.107) was asked in this regard. Thus it is clear from the above admission that the inquiry has been conducted in a proper manner giving full opportunity to the applicant to defend himself. Thus, the inquiring authority has been taken into consideration not only the evidence given by the other witnesses but also the above admissions of the applicant and on the basis of sufficient material available on record,

recorded his finding that the articles of charge are proved against the applicant. It cannot therefore be said that the finding recorded by the inquiring authority is not supported by the evidence placed on record. When once this fact is established, it is not open to this Tribunal to go into the question of sufficiency or otherwise of the evidence available on record in support of the findings recorded by the inquiring authority. The inquiring authority has considered all the contentions raised by the applicant and by giving sufficient reasons, has rejected the said contentions. Even the disciplinary authority in the impugned order dated 21.10.1998 has given reasons for accepting the findings recorded by the inquiring authority. By referring to the evidence on record and the defence statement of the applicant, the disciplinary authority held that when the applicant was working as Fuel Maistry it was his responsibility to arrange for fuelling of locomotives and also to look after the fuel installation for reporting any untoward incidents, being in charge of fuel installation. As per the evidences in the inquiry, it is noticed that Sri P. Chennaiah (the applicant) was available in ASM office during 23.30 hrs to 05.30 hrs, where as he as supposed to be available at his work place i.e., either fuelling the locos or at the fuel installation. This shows that the applicant lacks devotion to duty. The disciplinary authority also held that the defence of the applicant that he has not been assigned the job of safeguarding the installation even if it is considered to be logical for a moment, then also he cannot deny his duty of availability at the installation so that in the event of any attempt from any out side agency for pilferage of oil, he can complain to the competent authority for looking after or the safeguarding activity as such. So when he was not available at the fuel installation for which he was in charge during the night he is definitely responsible for the incident which has happened resulting in loss of costly diesel oil. It is further held by the disciplinary authority that several attempts made by the applicant to explain about the pilferage as to whether it has actually taken place or not since there is no FIR to GRP or RPR have not concluded to any logical reasoning since the applicant himself has verified the stock and agreed with the shortage, which by no standard can happen without pilferage. Thus all the contentions raised by the applicant have been carefully considered by the disciplinary authority and by passing a well reasoned order, the disciplinary authority agreed with the findings recorded by the inquiring authority and passed the impugned order dated 2.10.1998. The appellate authority and the

revising authority have also carefully considered the material on record and passed the impugned orders giving sufficient reasons for holding that the articles of charge are proved and have imposed the above said penalty. Thus we find that the inquiring authority, disciplinary authority and other authorities have strictly confined themselves to the evidence placed on record in the inquiry conducted against the applicant in deciding the question as to whether the articles of charge are established against the applicant. In the circumstances, it cannot be said that the above authorities have taken into consideration any extraneous material other than the material placed on record in coming to the above said conclusions. In this view of the matter, we are not satisfied that any serious prejudice has been caused to the applicant in not conducting a common inquiry or on account of any of the above mentioned irregularities pointed out by the applicant in the manner of conducting the inquiry against him.”

6. Mr. K.S. Murthy, learned counsel for the petitioner raised two submissions primarily. They are,-

- (1) that 4 other persons who were superiors to him, were let off with minor penalties and the petitioner who is a Khalasi has been made a Scape goat;
- (2) that the same has been done, without even finding out the role played by each employee.

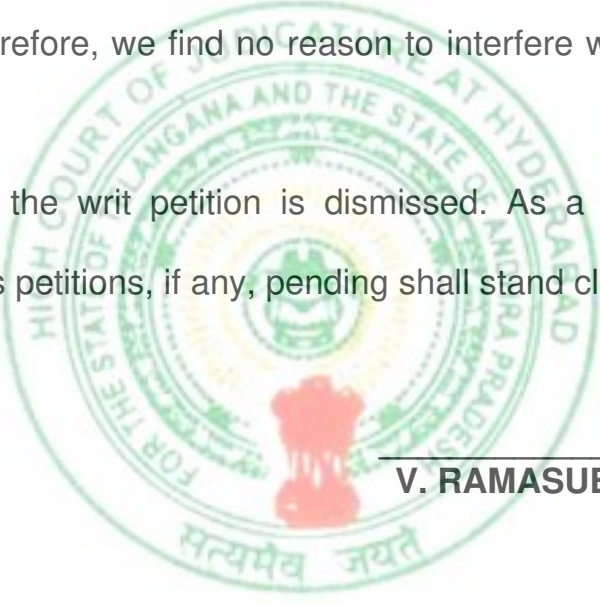
7. But it is well settled that in the matter of disciplinary proceedings, the punishment imposed upon every one of the employees, would depend upon the role played by each one. Therefore, the rule of equality cannot be simply applied.

8. On the second contention, it is to be pointed out that the petitioner himself had admitted that he was doing the job of a Fuel Maistry. He claimed that he was at the discharge point and that

therefore his role was limited. Therefore, the question of analyzing of each one of them may not arise.

9. The witness examined, as seen from the discussion of the Tribunal in paragraph 9 of its order, indicated that there was pilferage to the extent of nearly 29,000 litres of HSD oil. If the disciplinary authority has come to the conclusion on the basis of the preponderance of probabilities of the evidence, the same cannot be interfered with. The Tribunal has independently looked into the evidence to come to a conclusion that there was no perversity of findings. Therefore, we find no reason to interfere with the order of the Tribunal.

Hence, the writ petition is dismissed. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.



V. RAMASUBRAMANIAN, J

G. SHYAM PRASAD, J

Date: 21-12-2016

Ksn