

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

Writ Petition No.21488 of 2015

Order: (per V.Ramasubramanian, J.)

The State has come up with the above writ petition challenging an order of the Andhra Pradesh Administrative Tribunal, Hyderabad, setting aside an order of penalty.

2. Heard the learned Government Pleader for Services-I (Andhra Pradesh) and Mr. P.V. Krishnaiah, learned counsel for the 1st respondent.

3. When the 1st respondent herein was working as a Forest Range Officer, disciplinary proceedings were initiated with the issue of a charge memo dated 27-5-2002. The 1st respondent submitted an explanation denying all the 4 charges. An enquiry followed in which the Commissioner of Inquiries held the charges proved. The Government forwarded the copy of the enquiry report and called for further representation. In the meantime, the 1st respondent reached superannuation on 30-6-2005.

4. Thereafter, the Government issued a show cause notice dated 13-8-2010 calling upon the petitioner to show cause as to why a penalty of withholding of pension and gratuity permanently should not be imposed upon him, apart from ordering recovery of the loss sustained by the Government to the tune of Rs.1,84,088/-. The 1st respondent submitted his objections on 05-5-2011. Thereafter, the

Government passed an order dated 26-7-2011, imposing the penalty of withholding of pension and gratuity in full permanently, besides ordering recovery of a sum of Rs.1,84,088/-.

5. Aggrieved by the said order, the 1st respondent filed an application in O.A.No.3263 of 2012. The said application was allowed by the Tribunal, on the ground that 2 other persons against whom similar charges were framed, were let off either fully or with a lesser penalty. Aggrieved by the said order, the State is before us.

6. The main contentions of the learned Government Pleader for Services-I (A.P.) are (1) that in a matter of penalty, the application of the principle of equality enshrined in Article 14 of the Constitution of India has no application and (2) that in any case, the charges framed against the 1st respondent and the other 2 individuals were not comparable.

7. The 1st contention of the learned Government Pleader, cannot be easily discarded as unsustainable. Different roles are played by persons working in different posts in the hierarchy. Whenever disciplinary proceedings are initiated against a group of officers, the role played by each one of them may be different, depending upon the posts occupied by them. It is the role played by each one of them in the subject matter that forms the basis for the disciplinary

proceedings. Therefore, a blind application of Article 14 of the Constitution of India in such cases, is not permissible in law.

8. On the 2nd contention, the learned Government Pleader drew our attention to a chart which contains the details of the charges framed, the charges held proved and the penalties imposed. It will be useful to extract the chart as follows:

Name of the Individual	Charges in AOC	Charges in findings	Present stage of the case
Sarvasri			
C.Subramanyam, FRO (Retired)	I) That he had exhibited gross neglect of duty by committing serious irregularities by not depositing the funds into the joint accounts of V.S.S. in the concerned banks and submitted fraudulent and forged vouchers with V.S.S. Accounts. II) That he has not handed over the original bank counterfoils which are the basis for filing criminal case against the (2) Deputy Range Officers when he was placed under suspension, to the in-charge Forest Range Officer, Madanapalli Range while handing over the charge of Madanapalli Range. III) That he has committed irregularities in short execution/ non-execution of	I) V.S.S. Accounts to a tune of Rs.2,96,950/- is proved. II) Proved. III) Misappropriated the Government amount to a tune of	The penalty of “withholding of pension and gratuity in full permanently besides recovering the Government loss of Rs.1,84,088/-, against the applicant under Rule 9 of A.P. Revised Pension Rules, 1980 vide G.O.Ms.No.89 EFS&T Dept., Dt:26.07.11.

	forestry works in Madanapalli Range and thereby misappropriated the Government amount. IV) That he has un-authorizedly given felling permission to remove Eucalyptus and Tamarind trees against the rules in C. Park Nursery against the rules in vogue.	Rs.1,25,718/- is proved in respect of CCT works and Rs.58,370/- is proved in respect of RFD works. IV) Proved.	
A.Vijaya Kumar, Dy. R.O.	I) That he had exhibited gross neglect of duty by committing irregularities in handing the VSS accounts and depositing of loss VSS funds into concerned VSS joint Account. II) That he had forged by making false documents with an intension to support his claim for the AR advance taken and deceived the Govt. and suppressed the facts. III) That he had committed fraud and cheated the VSS president and the Govt. IV) That he had committed irregularities in short execution/non execution of forestry works in Madanapalli Range and thereby mis-appropriated the Govt. amount.	I) is proved. II) is proved. III) not proved. IV) Proved.	The individual dismissed from service vide Prl. CCF, AP, Hyd Rc No:19456/03/K1(1), Dt:06.02.06 besides to recovery of Rs.27,126/-. Subsequently the individual approached Hon'ble APAT and as per the directions of the Hon'ble APAT, Hyderabad the punishment modified as stoppage of two increments with cumulative effect and reinstated to duty vide Prl. CCF, AP, Hyderabad Rc No:17977/05/K1K3(1) Dt:08.07.10. Now, the individual is discharging his duties as Dy. R.O.
K.Narayanaswamy Naidu, Dy. RO	I) That he had exhibited gross neglect of duty	I) is proved.	The individual awarded with the punishment of

and the Govt.

careful perusal of the above chart furnished by the Government Pleader herself would show that the claims against all the 3 officers were based on gross neglect of duty in handling the funds by depositing the funds into the joint V

9. A careful perusal of the above chart furnished by the learned Government Pleader herself would show that the 1st charge framed against all the 3 officers were just the same, namely gross neglect of duty in handling VSS Accounts and not depositing the funds into the joint VSS Accounts. The 2nd charge against Mr. A.Vijaya Kumar and Mr. K.Narayanaswamy Naidu was that they forged and manipulated documents. This 2nd charge of forgery, making of false documents and manipulation, were held proved against Mr. A.Vijaya Kumar and Mr. K.Narayanaswamy Naidu. There was no such charge against the 1st respondent. The 2nd charge against the 1st respondent was that he had not handed over the original bank counter foils. The 3rd charge against the 1st respondent is that he committed irregularities in short execution and non-execution of forestry works and

thereby misappropriated Government amount. The 4th charge against Mr. A.Vijaya Kumar was also the same, namely short execution and non-execution of forestry works and misappropriation. Such a charge was held proved even as against Mr. A.Vijaya Kumar.

10. But eventually, Mr. K.Narayanaswamy Naidu was imposed only with a penalty of stoppage of one increment which was also set aside on appeal. Mr. A.Vijaya Kumar was imposed with a penalty of dismissal as well as recovery, but the same was later modified into one of stoppage of increment for 2 years with cumulative effect.

11. The Tribunal may be completely wrong in letting off the 1st respondent with no penalty, when all the 4 charges are held proved. The Tribunal may also be wrong in comparing the case of the 1st respondent with Mr. K.Narayanaswamy Naidu, against whom there was no allegation of misappropriation. But the Tribunal was entitled at least to compare the case of the 1st respondent with Mr. A.Vijaya Kumar. Therefore, the Tribunal was partly right in setting aside the penalty, but partly wrong in allowing the 1st respondent to go without any penalty. Hence, we are of the considered view that the order of the Tribunal requires modification.

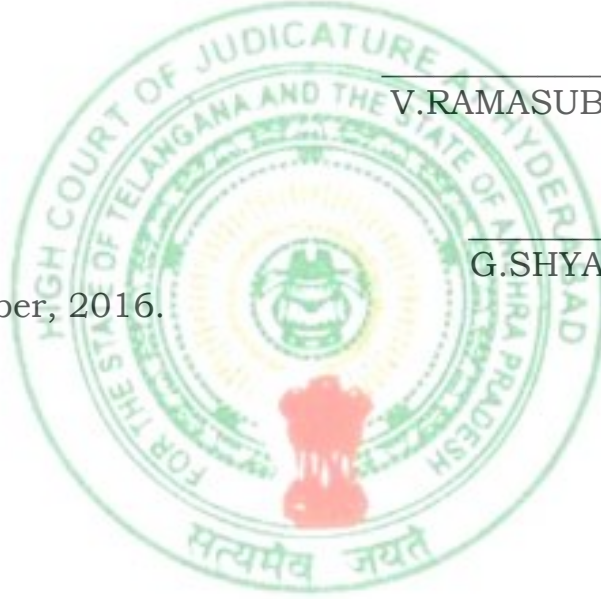
12. Therefore, the writ petition is allowed and the order of the Tribunal is modified. The original order and the penalty imposed under G.O.Ms.No.89, Environment, Forests, Science

& Technology (For.IV) Department, dated 26-7-2011, is set aside and the matter is remitted back to the Government for a fresh consideration. The Government may impose a lesser penalty taking into consideration the leniency shown in the case of Mr. A.Vijaya Kumar and pass appropriate orders in accordance with law, within a period of 8 (eight) weeks from the date of receipt of a copy of this order. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

G.SHYAM PRASAD, J.

02nd December, 2016.
Ak



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

Writ Petition No.21488 of 2015
(per VRS, J.)



02nd December, 2016.
(Ak)