

THE HON'BLE SRI JUSTICE T.SUNIL CHOWDARY

WRIT PETITION No.4959 OF 2005

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ORDER:

This Writ Petition is filed under Article 226 of the Constitution of India seeking a Writ of Mandamus declaring all the proceedings leading and upto the proceeding dated 05.07.2004 of the first respondent are arbitrary, illegal and without jurisdiction and by nullifying the same direct the respondents to release the withheld amount together with interest besides ordering payment of interest at 18% on the delayed disbursement of the terminal benefits.

2. The contention of the learned counsel for the petitioner is two fold: (1) The respondents conducted an enquiry in violation of the principles of natural justice; therefore the enquiry report is not legally sustainable; (2) The respondents recovered an amount of Rs.36,110/- from the gratuity of the petitioner; (3) The findings recorded by the enquiry officer are perverse as the same are not based on any material.

3. Per contra, the learned Standing Counsel for the respondents submitted that the findings recorded by the enquiry officer are based on evidence much less legally admissible evidence. He further submitted that the petitioner committed financial irregularities while working as Controller of Stores.

4. The facts leading to filing of the writ petition are briefly as follows:

The petitioner joined the first respondent Corporation as Junior Clerk in Stores and Purchase Department on 22.04.1996 and he got promotions in a routine course. When the petitioner was working as Controller of Stores, Zonal Stores Ranga Reddy Region I, the second respondent served a charge memo on 18.10.2002 as if the petitioner committed financial irregularities. The

petitioner submitted his explanation on 31.10.2002. Being not satisfied with the explanation submitted by the petitioner, the second respondent initiated disciplinary proceedings by appointing the enquiry officer to enquire into the allegations levelled against the petitioner. After completion of the enquiry, the enquiry officer submitted a report stating that the charges levelled against the petitioner were proved. On 10.05.2004 the petitioner preferred an appeal and the same was rejected on 05.07.2004. The respondents recovered the amount from the gratuity of the petitioner, which is not permissible under law. Hence, the writ petition.

5. The respondents filed counter *inter alia* contending that the enquiry was conducted in accordance with law and the amount was not recovered from the gratuity of the petitioner as contended by the petitioner, and the amount was withheld out of settlement amount.

6. Now the crucial question that falls for consideration is whether the enquiry was conducted in violation of the principles of natural justice or not?

7. A perusal of the record clearly reveals that the respondents have given reasonable opportunity to the petitioner right from the date of issuance of charge memo till completion of the enquiry. The petitioner submitted his explanation on 17.02.2004. I have carefully perused the explanation of the petitioner dated 17.02.2004. It is not mentioned in the explanation that the respondents have conducted the enquiry in violation of the principles of natural justice. Taking into consideration the facts and circumstances of the case, I am of the considered view that the enquiry was conducted in accordance with law. The second respondent served the charge-memo on the petitioner with the following two charges:

Charge 1: "For having committed the irregularities as narrated
above in purchase of first aid kits at higher rates
by violating the laid down rules and procedures

and for placing the repeat order on the same firm viz., M/s Shobha Enterprises, Hyderabad for supply of First aid kits after two years causing pecuniary loss to a tune of Rs.1,67,443.64 to the Corporation which is a mis-conduct in terms of Reg.28(ix)(a) of A.P.S.R.T.C. Employees (Conduct) Regulations, 1963”.

Charge 2: “For your failure to take action to recover the transportation charges @ 2% from the bills payable to the firm viz., M/s. Shobha Enterprises : Hyderabad thus a total loss of Rs.5409.28 ps was occurred due to non recovery of transportation charges at 2% on the above two occasions since the material was transported through our DGT from Hyderabad to Cuddapah which constitutes mis-conduct in terms of Reg.28(ix)(a) of A.P.S.R.T.C. Employees (Conduct) Regulations, 1963”.

8. As per the charge memo, the petitioner committed financial irregularities to the tune of Rs.1,67,443.64 ps and Rs.5409.28 ps on two occasions. The petitioner submitted explanation to the show cause notice issued to him. It is not in dispute that the petitioner placed repeat order for 948 medical kits with M/s.Sobha Enterprises. The enquiry officer examined the relevant records and the explanation submitted by the petitioner and came to a conclusion that the petitioner committed financial irregularity to the tune of Rs.72,218.64 ps. The findings recorded by the enquiry officer are supported by the oral and documentary evidence much less legally admissible evidence. Viewed from any angle, I am unable to accede to the contention of the learned counsel for the petitioner that the findings recorded by the enquiry officer are perverse.

9. At the time of arguments, the learned counsel for the petitioner submitted that the respondents have not supplied the enquiry report to the petitioner so as to enable him to submit his explanation and therefore, the order passed on 05.07.2004 is not legally sustainable.

To substantiate the same, the learned counsel for the petitioner has drawn my attention to the decision in **Managing Director, ECIL, Hyderabad v. B.Karunakar**^[1], wherein the Hon'ble Apex Court held as follows:

“Since it is the right of the employee to have the report to defend himself effectively, and he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, as the waiver of his right. Whether, therefore, the employee asks for the report or not, the report has to be furnished to him.

A denial of the Inquiry Officer's report before the disciplinary authority takes its decision on the charges, is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.”

10. The petitioner submitted his explanation on 17.02.2004 to the show-cause notice dated 04.02.2004 vide No.PA/114(33)/2002 ED (C&N). I have carefully perused the explanation dated 17.02.2004 submitted by the petitioner. The petitioner has not taken a specific plea in the explanation that the enquiry report was not supplied to him. But, in grounds of affidavit in para (b), the petitioner has taken a specific plea that the enquiry report was not supplied to him and therefore, the order passed on 05.07.2004 is not legally sustainable. If really enquiry report was not supplied to the petitioner, what prevented him to take such a plea at the earliest point of time i.e., in the explanation dated 17.02.2004. The possibility of taking such a plea afterthought, in order to gain the sympathy of the Court, cannot be ruled out completely.

11. Having regard to the facts and circumstances of the case, I am unable to accede to the contention of the learned counsel for the petitioner that the respondents have not supplied the copy of the enquiry report to the petitioner before issuance of final show-cause notice.

12. The next question that falls for consideration is whether the punishment imposed against the petitioner is shockingly disproportionate to the gravity of mis-conduct or not. In order to resolve this issue, I am placing reliance on the following decisions:

In **Municipal Committee, Bahadurgarh v. Krishnan Bihari**^[2], this Court held as follows:

“It is obvious that the respondent has been convicted of a serious crime and it is a clear case attracting proviso (a) to Article 311(2) of the Constitution. In a case of such nature—indeed, in cases involving corruption there cannot be any other punishment than dismissal. Any sympathy shown in such cases is totally uncalled for and opposed to public interest. The amount misappropriated may be small or large; it is the act of misappropriation that is relevant.”

Similar view has been expressed by the Hon’ble Apex Court in **Ruston & Hornsby (I) Ltd. v. T.B.Kadam**^[3]; **U.P. State Road Transport Corporation v. Basudeo Chaudhary and Anr.**^[4]; **Janatha Bazar (South Kanara Central Cooperative Wholesale Stores Ltd.) v. Secretary, Sahakari Nourara Sangha and Ors.**^[5]; **Karnataka State Road Transport Corporation v. B.S.Hullikatti**^[6]; and **Regional Manager, R.S.R.T.C. v. Ghanshyam Sharma**^[7].

In **Divisional Controller N.E.K.R.T.C. v. H.Amaresh**^[8]; and **U.P.S.R.T.C. v. Vinod Kumar**^[9], the Hon’ble Apex Court held that the punishment should always be proportionate to the gravity of the misconduct. However, in a case of corruption/ misappropriation, the only punishment is dismissal.

13. As per the findings of the enquiry officer, the acts of the petitioner caused financial loss to the Corporation to the tune of Rs.72,218.64 ps. Taking into consideration the length of service rendered by the petitioner, the respondents have recovered the amount only. A perusal

of the record clearly reveals that the respondents have not imposed any punishment except recovery of the amount.

14. The other contention of the learned counsel for the petitioner is that the respondents have withheld the gratuity amount of the petitioner to the extent of Rs.36,110/-. In the counter, the respondents have taken a specific stand that the amount of Rs.36,110/- was recovered out of the settlement amount but not from the gratuity of the petitioner. If really the respondents have recovered the amount of Rs.36,110/- from the gratuity of the petitioner, what prevented him to file a reply or rejoinder to the counter. The possibility of taking such type of pleas cannot be ruled out completely. The material available on record clinchingly establishes that the above said amount was recovered out of the settlement amount and not from gratuity as contended by the petitioner. There are no grounds much less valid grounds to interfere with the orders of the enquiry officer.

15. Hence, the Writ Petition is dismissed. No costs.

16. Consequently, Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

T.SUNIL CHOWDARY, J

Date: 22.04.2016
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[\[1\]](#) AIR 1994 SC 1074

[\[2\]](#) AIR 1996 SC 1249

[\[3\]](#) AIR 1975 SC 2025

[\[4\]](#) (1997) 11 SCC 370

[\[5\]](#) (2000) 7 SCC 517

[\[6\]](#) AIR 2001 SC 930

[\[7\]](#) (2002) 10 SCC 330

[\[8\]](#) AIR 2006 SC 2730

[\[9\]](#) (2008) 1 SCC 115