

THE HON'BLE SRI JUSTICE G.CHANDRAIAH
AND
THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

-
W.P.NOS.20416 AND 22451 OF 2014

-
COMMON ORDER (Per the Hon'ble Sri Justice G.Chandraiah)

Heard the learned Government Pleader for Services – I, Telangana for the writ petitioners and the learned counsel for the respondents – charged employees.

2. Since the issue involved in these two writ petitions is connected and arising out of the common order dated 18.3.2014 passed by the Andhra Pradesh Administrative Tribunal in O.A.Nos.6990 and 6991 of 2013, they are heard together and are being disposed of by this common order.

3. The respondents in both the writ petitions worked as constables in the Police Stations at Bollaram and Chilkalguda, Hyderabad, while so, on the ground that they were involved in criminal cases and made confessions, disciplinary proceedings were initiated by framing the following charges:

Charge-I Sri Ch.Sudhakar Reddy, P.C.7880 and K.Uday Shekar PC 3440, while working at Bollaram PS and Chilkalguda PS respectively were involved in Cr.No.288/01 u/s 419, 420, 359 IPC and Cr.No.440/2001 u/s 392 IPC of SR Nagar P.S. During the investigation they have confessed to have committed these offence. Being working in disciplined force involvement in grave criminal cases amounts to gross misconduct and moral turpitude on their part.

Charge-II: Being a uniformed force misused official position by colluding with others committed above criminal misconduct.

Sri Ch.Sudhakar Reddy, PC 7880 and K.Uday Shekar, POC 3440 by their above mentioned acts, have exhibited lack of integrity, devotion to duty and conduct unbecoming of a Member of Service and thereby contravened Rule 3(1) and (2) of the APCS (Conduct) Rules, 1964.”

4. Denying the charges, the petitioners submitted the explanations

and not being satisfied with the same, enquiry officer was appointed and he conducted enquiry and submitted report dated 13.4.2012 holding the respondents guilty and eventually they were imposed with punishment of removal from service vide proceedings of the Commissioner of Police, Hyderabad City – 3rd petitioner dated 10.9.2013 and in the appeal, the Director General of Police - 2nd petitioner, who is appellate authority, by proceedings dated 14.12.2013, rejected their appeals. Aggrieved by the same, the respondents filed O.A.Nos.6990 and 6991 of 2013. The Tribunal by common order dated 18.3.2014 set aside the orders of the respondents in removing the respondents from services and directed reinstatement into service with all consequential benefits. Aggrieved by the same, the Government filed the present appeals.

5. The learned Government Pleader for the petitioners submitted that the respondents were involved in criminal cases and made confessions before the criminal court and as the complainant and other witnesses turned hostile, the cases ended in acquittal. But the fact remains that the respondents were involved in criminal cases and made confessions and their conduct is unbecoming of a disciplined force. He submitted that the respondents were given sufficient opportunity and the enquiry officer based on evidence, found the respondents guilty. He stated that strict rules of evidence are not applicable to departmental enquiries and only preponderance of probabilities were to be weighed and sufficiency or otherwise of evidence cannot be gone into and it has to be seen whether there is some evidence pointing the guilt of delinquent employee. In support of this contention, the learned counsel relied on the decisions of the Apex Court reported in *STATE OF HARYANA V. RATTAN SINGH*^[1], and *NAND KISHORE PRASAD v. STATE OF BIHAR*^[2]. He stated that the Tribunal has not appreciated these principles and set aside the orders of termination. With these submissions, he sought to set aside the impugned common order of the Tribunal and to allow the writ petition.

6. On the other hand, the learned counsel appearing for the respondents submitted that the criminal case ended in acquittal and the fact on record remains that the respondents have not made any confessions and only based on the confessions of other accused, who were not cited as witnesses before the departmental enquiry, the enquiry officer found that the respondents made confessions. He stated that when there are no confessional statements of the respondents, the enquiry officer is not justified in holding that the respondents made confessions. To support this contention, the learned counsel has taken this court through the cross-examination of one Mr. K.Chakra Pani, Assistant Commissioner of Police, who was examined during the course of enquiry. He stated that the charge is that the respondents made confessions and when there is no evidence to show that they made any confessions, it is clear that the disciplinary proceedings have been initiated against the respondents on a non-existing ground and the findings thereof are not justified. The learned counsel relying on the judgment of the Apex Court in *M.V. BIJLANI v. UNION OF INDIA*^[3], submitted that the enquiry officer cannot take into consideration any irrelevant fact or refuse to consider the relevant facts and he cannot shift the burden of proof or reject the relevant testimony of the witnesses only on the basis of surmises and conjectures and he cannot enquiry into the allegations with which the delinquent officer had not been charged with. He stated that in the present case, the enquiry officer has not taken into consideration of the evidence of K.Chakra Pani, Assistant Commissioner of Police, who in his cross-examination categorically deposed that no confessions statements were recorded in Cr.No.288/2001 and 440/2001, as there was no recovery from the respondents. He stated that this relevant has not been considered. Relying on another judgment of the Apex Court in *ROOP SINGH NEGI v. PUNJAB NATIONAL BANK*^[4], he stated that mere confessions before the police is not sufficient and some other evidence is required and that if confession of the charged employee

before the police is taken into consideration, his subsequent acquittal by the criminal court on the self same evidence could not be ignored. He stated that in the present case, the enquiry proceeded without establishing the basic fact and hence the report of the enquiry officer cannot be sustained. In support of this contention he relied on a Division Bench Judgment of this court reported in K.BALA RAMA RAJU vs. HIGH COURT OF A.P.^[5] He contended that the misconduct alleged shall be linked to the charge and in the absence of the same, findings of the enquiry officer holding the delinquent employee guilty, cannot be sustained. In support of this contention, he relied on the judgment reported in SHER BAHADUR vs. UNION OF INDIA AND OTHERS^[6]. He stated that the Tribunal considering all these factors rightly set aside the orders of termination and directed for reinstatement with all consequential benefits, therefore, he sought to dismiss the writ petitions.

7. In view of the above rival contentions the issues that arises for our consideration is whether the impugned common order of the Tribunal warrants any interference?

8. The applicants were charged for involvement in the criminal cases and with regard to their alleged confession in the said cases.

9. There is no dispute as contended by the learned Government Pleader for the petitioners that in departmental enquiries strict rules of evidence are not applicable and only the preponderance of probabilities should weight and there should be some evidence to connect the delinquent. But it cannot be lost sight of that some evidence shall be legally admissible and if the findings of the enquiry officer are reached based on no evidence, then such findings require to be interfered with. In the present case, the charge is that the respondents were involved in criminal case and they made confessions. The contention of the respondents is that they never made any confession and no recoveries were made from them and that the criminal case which was falsely foisted

against them, ended in acquittal. Therefore, in my considered view, these facts are required to be examined before holding the respondents guilty. In similar facts and circumstances, where in a departmental proceedings, the alleged confession of the delinquent before the police authorities was sought to be used against him, the Apex Court held that so called confession itself is not sufficient and some other evidence ought to have been brought on record and that if confession of the charged employee before the police authorities was sought to be taken into consideration, his subsequent acquittal by the criminal court on the self same evidence could not be ignored. The relevant portion of the judgment of the Apex Court is extracted as under for better appreciation:

“23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record point out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceedings, but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well know, however high may be, can under no circumstances be held to be a substitute for legal proof.”

10. In the present case, the main contention of the learned counsel for the respondents is that they never made any confessions and based on the confessions of some other accused, the enquiry officer found them guilty. In this regard the relevant portion of the judgment of the Tribunal, which dealt with factual aspect, needs to be noted as under:

“19. A perusal of the enquiry report reveals that during the cross-examination of Sri K.Chakra Pani, Assistant Commissioner of Police, Special Branch, Central Zone, Hyderabad, who worked as Inspector of Police, S.R.Nagar, and investigated the cases registered against the applicants, stated that no confessional statements were recorded in Cr.No.288/2001 and 440/2001 of S.R.Nagar PS because there was no recovery from the applicants. It is thus evidence that the findings are based on the statements of the Accused No.1 and 2 and not the applicants. Findings cannot go beyond the scope of charge

framed against the applicants.. . .

21. In the present case, the charge is based on the alleged confessional statements of the applicants. But the enquiry officer endeavored to link the misconduct of the applicants with the confessional statements of the other Accused (A1 and 2) and not the applicants. The Accused 1 and 2 were not included in the list of witnesses also and thus there was no opportunity to the applicants to cross-examine them during the enquiry and thus the procedure adopted was not in accordance with the principles of natural justice. Thus, there is not an iota of doubt left that the finding of the applicant is beyond the scope of the charge and the alleged misconduct is not linked to the charge.”

11. The Tribunal based on evidence has categorically found that the findings of the enquiry officer that the respondents made confession is factually incorrect and he recorded his findings based on the confessional statements of other accused A-1 and A-2 in the criminal case. Therefore, as rightly found by the Tribunal, the respondents were found guilty on non-existing ground. A Division Bench of this court in K.BALRAM RAJU vs. HIGH COURT OF A.P. (5 supra), held as under:

“47. This court in the normal circumstances would not have interfered with the findings of the fact recorded at the domestic enquiry, even if there is some evidence on record which is acceptable and which could be relied, however compendious it may be. The findings would be of two kinds, basic and ultimate. The ultimate findings could be reached only on the basic facts. If the basic facts does not exist or is not accepted, there cannot be an ultimate finding.”

12. Therefore, without the respondents making confessions, holding them guilty, as held by this court in the above judgment, would amount to reaching ultimate findings without basic facts.

13. In view of the above facts and circumstances, the Tribunal rightly set aside the punishment of removal from service imposed on the respondents and directed for their reinstatement with all consequential benefits. We do not find any reason to interfere with the impugned common order of the Tribunal and the same is confirmed. The issue framed is accordingly answered. The writ petitions are devoid of any merit and the same are dismissed. No costs.

14. Miscellaneous petitions pending if any, shall stand closed.

-

G.CHANDRAIAH,J

A. SHANKAR NARAYANA,
J

DATE:07 —01—2016

AVS

[\[1\]](#) AIR 1977 SC 1512 (1)
[\[2\]](#) (1978)3 SCC 366
[\[3\]](#) (2006)5 SCC 88
[\[4\]](#) (2009)2 SCC 570
[\[5\]](#) 2009(5) ALD 1
[\[6\]](#) (2002)7 SCC 142