

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY  
AND  
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No.27565 of 2017

Date:18.8.2017

**Between:**

The State of Telangana, reple by its  
Principal Secretary, Home  
Department, Hyderabad  
and three others.

..... Petitioners

**And:**

A.Srinivas,  
S/o Rajaiah

.....Respondent

Counsel for the petitioners: GP for Services-I (TG)

Counsel for the respondent: P.Nagendra Reddy

The Court made the following:

ORDER: *(per Hon'ble Sri Justice C.V.Nagarjuna Reddy)*

This Writ Petition is filed by the State and its functionaries feeling aggrieved by order, dated 11.3.2016 in O.A.No.8984 of 2013 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal').

The respondent, working as Armed Reserved Police Constable, faced the departmental proceedings, wherein the following charge was framed:

"That Shri Akula Srinivas, ARPC 2876(U/S) while on PSO duty to Podem Veeraiah, MLA, Mulug, residence of Advocates Colony, Hanamkonda, left the protectee stealthily at about 23 hours on the night of 31.12.2007, went to Prakashreddypet, Subedari to celebrate New Year day, consumed liquor along with his friends i.e., Urati Swamy, Ch.Ramesh, L.Murali and Urati Ramesh in one of the barracks of house No.24-3-07, picked up quarrel with one Syam Sunder Reddy when he asked him to reduce the volume of tape recorder, abused and beat him along with his friends and also beat one Gugloth Srinu, who intervened. When one Hanuman Singh, neighbour and friend of Syam Sunder Reddy intervened to rescue Gugloth Srinu, ARPC 2876 along with his friends in inebriated condition, beat him severely causing bleeding head injury. The injured while undergoing treatment at MGM Hospital died on 01.01.2008 at 6.30 am, thereby, ARPC 2876 A.Srinivas being a member of disciplined force exhibited gross neglect of duty, reprehensible

conduct by involving himself in criminal case, vide Cr.No.2 of 2008 under Section-302 read with 34 IPC of P.S. Subedari and violated the provisions of APCS (Conduct) Rules, 1964.”

Simultaneously, he was also prosecuted along with other accused in Sessions Case No.433 of 2008 on the file the VII Additional District Judge, Warangal. The said Sessions Case ended in acquittal of the respondent, vide judgment, dated 22.10.2010. However, the departmental proceedings were continued against the respondent and by final order, dated 03.10.2012, passed by petitioner No.4, he was dismissed from service besides the period of suspension of four years ten months not being treated as “On duty”. Feeling aggrieved by this order, the respondent filed the said O.A. By the impugned order, the Tribunal has allowed the said O.A., setting aside the dismissal order and remitted the matter to petitioner No.4, with a direction to impose lesser penalty than that of dismissal or removal from service or compulsory retirement for being unauthorisedly absent from guard duty for 1 hour 15 minutes on 31.12.2007 at the residence of Podem Veeraiah, M.L.A., Mulug. A further direction was also given to the petitioners to regulate the period of suspension of the respondent in accordance with the Rules. Assailing the said order of the

Tribunal, the Writ Petition is filed by the State and its functionaries.

The learned Government Pleader for Services (Telangana) has argued with conviction that the Tribunal ought not to have been guided by the judgment of the District Court in the said Sessions Case, which was based on the prosecution witnesses turning hostile, and that, relevant evidence was placed in the departmental proceedings to hold that the respondent not only unauthorizedly absented himself from guard duty for 1 hour 15 minutes on 31.12.2007, but also attacked one Shyam Sunder Reddy, Gugloth Srinu and Hanuman Singh, resulting in the death of Hanuman Singh and causing injuries to the other two persons.

Mr. P.Nagendra Reddy, the learned counsel for the respondent, sought to defend the impugned order of the Tribunal.

We have carefully considered the respective submissions of the learned counsel for the parties with reference to the impugned order of the Tribunal and perused the record.

No doubt, as observed by the Tribunal, the said Sessions Case ended in acquittal mainly because the prosecution witnesses have turned hostile. However, in the departmental proceedings all the witnesses, including Shyam Sunder Reddy,

who was allegedly injured in the alleged attack by the respondent, have not stated before the enquiry officer that the respondent has assaulted them and also the deceased on that day, or that he was responsible for the death of Hanuman Singh. It appears that the enquiry officer had placed heavy reliance on Section-161/164 Cr.P.C statements of the witnesses. As rightly observed by the Tribunal, the said statements do not constitute conclusive evidence, based on which the guilt or otherwise of a person can be adjudicated, in the absence of any other substantive piece of evidence.

On a correct appreciation of the facts and the position in law, the Tribunal has held that the finding of the enquiry officer that the charge against the respondent to the extent of his involvement in the commission of the offence has been proved is erroneous and not based on any legal evidence. On a careful consideration of the reasons assigned by the Tribunal in the impugned order, we have no reason to differ with its findings on this aspect.

Having held that the part of the charge which pertains to the alleged attack of the deceased and the injured by the respondent along with others has not been proved, the Tribunal, however, upheld the finding of the enquiry officer to the extent of his unauthorised absence from the guard duty for 1 hour 15

minutes on 31.12.2007, without leave, and that, as noted herein before, the Tribunal has directed the petitioners to impose lesser penalty than that of dismissal or removal from service or compulsory retirement for being unauthorisedly absent.

In our opinion, the Tribunal has taken a correct view. When the charge is segregated into two parts, and the former part relating to the alleged attack of three persons by the respondent along with his friends was held not proved, imposition of extreme punishment of dismissal, removal or compulsory retirement from service is wholly disproportionate to the proven misconduct of the respondent and such punishment shocks the conscience of the Courts.

In this view of the matter, we do not find any reason to interfere with the impugned order of the Tribunal. The Writ Petition is, accordingly, dismissed.

Learned Government Pleader for Services (Telangana) has submitted that as the petitioners were contemplating to file the Writ Petition, they could not comply with the impugned order of the Tribunal and that, reasonable time may be granted to them to implement the impugned order of the Tribunal.

Accordingly, the petitioners are permitted to pass a fresh order, as directed by the Tribunal, within one month from the date of receipt of a copy of this order.

As a sequel to disposal of the Writ Petition,  
WPMP.No.34249 of 2017 is disposed of as infructuous.

---

*JUSTICE C.V.NAGARJUNA REDDY*

---

*JUSTICE GUDISEVA SHYAM PRASAD*

*18<sup>th</sup> August 2017*

*DR*

