

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

WRIT PETITION No.12610 of 2003

Date:07.9.2017

Between:

The Additional Central Provident Fund
Commissioner, South Zone Employees'
Provident Fund Organisation, New Delhi
and two others.

..... Petitioners

And:

K.V.Naidu,
S/o Somulu

.....Respondent

Counsel for the petitioner: Mr. B.Narasimha Sharma
Standing Counsel for EPF

Counsel for the respondent: Mr. G.Chandra Sekhara Rao

The Court made the following:

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

This Writ Petition is filed by the Additional Central Provident Fund Commissioner and two others aggrieved by order, dated 23.4.2003, in Original Application No.43 of 2003 on the file of the Central Administrative Tribunal, Hyderabad Bench at Hyderabad (for short 'the Tribunal'), whereby it has set aside order, dated 13.6.2001, of petitioner No.2 imposing on the respondent a penalty of reduction of his pay by two stages for one year and the order, dated 02.02.2002 of petitioner No.1 confirming the said order of petitioner No.2.

The undisputed facts of the case are that the respondent at the relevant time was working as Messenger (Class-IV employee) under petitioner No.3. He was accused of slapping one M.Narayana Rao-Daftary, working in the office of petitioner No.3, on 18.4.2000. A preliminary enquiry was conducted on 20.4.2000, during which the statements of certain witnesses were recorded. Based on the preliminary enquiry report submitted by the preliminary inquiry officer, a charge memo was issued to the respondent on 26.5.2000. A single charge was framed as Article-1, which reads as under:-

"That the said Sri K.V.Naidu, while working as Messenger in SRO, Visakhapatnam in the Administration Section slapped Sri M.Narayana Rao, Daftary, SRO, Visakhapatnam in the office premises

while he was on duty on 19.01.2000 morning and abused him in filthy language.”

Following the said charge, an enquiry officer was appointed on 21.6.2000. Before the enquiry was commenced, the respondent has produced letter, dated 27.6.2000, purportedly addressed by the complainant to petitioner No.3, which reads as under:-

“On 18.4.2000, I had lodged a complaint against Sri K.V.Naidu, Messenger, alleging that Sri K.V.Naidu had slapped me in the Administration Section on 18.4.2000. I obediently submit that no such incident has happened on that day except hot exchange of words. I had given that complaint as a retaliation of his witness against me on the complaint of Sri A.Krishna Rao, Daftary, which led to my suspension. Actually the slapping incident has not occurred. Now, I realised that I have done wrong in giving complaint against my fellow staff member and my conscience is not permitting me to withstand with that complaint as it is false.”

I therefore request you to kindly excuse me for the false complaint and withdraw the complaint in the best interest of justice.”

Notwithstanding the said letter, the enquiry officer commenced the enquiry. During the course of enquiry, the complainant was examined as P.W-1 and one B.Rajendra Prasad-UDC(SG)/Care Taker as P.W-2. After completing the enquiry, the enquiry officer submitted his report. A perusal of

the enquiry report shows that on 13.11.2000, the enquiry officer recorded the evidence of the complainant as P.W-1, wherein he has admitted his giving both the complaint as well as letter, dated 27.6.2000, of withdrawal of complaint, produced by the respondent before the charged officer. Though P.W-1 was informed that his subsequent withdrawal of the complaint under letter, dated 27.6.2000, is in conflict with his complaint and that his giving false complaint will be prejudicial to him. P.W-1 stood by his letter of withdrawal. Evidently, not satisfied with the stand of P.W-1, the enquiry officer went on to record the statement of P.W-2, who stood by his statement recorded during the preliminary enquiry. The enquiry officer who gave precedence to P.W-2's version over the testimony of P.W-1 submitted his enquiry report concluding that the sole charge framed against the respondent was proved. Accepting the said enquiry report, petitioner No.2 has imposed on the respondent the penalty, as referred to above, vide his order, dated 13.6.2001, which was confirmed by petitioner No.1 by his order, dated 02.02.2002. Assailing both these orders, the respondent filed O.A.No.43 of 2003 before the Tribunal. By the impugned order, the Tribunal has allowed the said O.A. and set aside both the orders impugned before it.

We have heard the submissions of Mr. B.Narasimha Sharma, learned Standing Counsel for the petitioners and Mr. B.Chandra Sekhara Rao, learned counsel for the respondent.

It is evident from the undisputed facts, referred to above, that having given complaint, P.W-1 has submitted his letter of withdrawal of complaint on 27.6.2000 to the charged officer. During the enquiry, P.W-1 has stood by his letter of withdrawal in spite of being reminded by the enquiry officer that he may face serious consequences for coming out with contradictory stands.

Surprisingly, the enquiry officer instead of closing the enquiry, has proceeded with it further, and examined P.W-2 ignoring the evidence of P.W-1, who is the complainant himself. The same attitude which was displayed by the enquiry officer was shown by petitioner No.2 as well as petitioner No.1 in imposing the penalty on the respondent and confirming the same, respectively.

A perusal of the order of the Tribunal shows that it has given the following reasons to reject the findings of the enquiry officer:-

“This applicant has been served with the charge memo alleging that while he was working as Messenger, he slapped one M.Narayan Rao and abused him in filthy language. The applicant has

filed his written explanation denying the allegations. It is seen from the report of the enquiring authority which is at page-30 in the present O.A. that the complainant denied in his evidence that the applicant had slapped him at the time of the alleged incident on the other hand he admitted that he has given a false complaint knowing fully well that making a false complaint against a public servant will go against him in service matters. Further, the complainant submitted a letter, dated 27.6.2000, stating that the applicant slapped him in Administration Section on 18.4.2001, but no such incident had happened on that day except some exchange of hot words between him and the applicant. He further explained in this letter that he had given that complaint against the applicant since the applicant gave evidence against him in disciplinary proceedings which resulted in keeping him under suspension. It is also mentioned in this letter that since he now realised that he has done wrong by giving complaint against the fellow staff member his conscience is not permitting him to withstand with that complaint as it is a false complaint. He therefore requested for excusing him for the false complaint given and to permit him to withdraw the complaint. Thus, the complainant has not only withdrawn the complaint given by him against the applicant but also gave a satisfactory reason as to why he gave the said false complaint against the applicant. In spite of the said clear and categorical statement made by the complainant in letter, dated 27.6.2000, it is surprising to note that the enquiring authority has not chosen to accept the said statement made by the complainant and also the evidence given by the complainant during enquiry, reiterating the same facts. Even in the evidence given by him, the complainant has admitted that he has

given false complaint against the applicant alleging that the applicant slapped him on 18.4.2003 in the Administration Section of the office. It is further significant to note that the complainant in his letter, dated 27.6.2000 stated that only some hot exchange of words took place between him and the applicant. Thus, the allegations made in the charge framed against the applicant clearly remained unestablished by the above said evidence and the statement in his letter dated 27.6.2000 given by the complainant. It is also found that in spite of the said fact, the enquiry authority has erroneously observed that the complainant could not explain the reasons for submitting a denial of his earlier complaint after about two months, overlooking the fact that the said reasons are found in the letter, dated 27.6.2000 submitted by the complainant to the Regional Commissioner of Provident Fund, Visakhapatnam. Further, merely because the said letter was given by the complainant two months after lodging his complaint. It cannot be presumed that the incident must have taken place in the manner alleged in the complaint given by the complainant and that the complaint has been withdrawn by him only with a view to help the applicant when the complainant has clearly explained in his letter, dated 27.6.2000 that he has lodged the said complaint as retaliation against the action of the applicant in giving evidence against him in the earlier departmental enquiry initiated against him which resulted in keeping him under suspension. In spite of the said evidence given by the complainant himself denying the incident, the enquiring authority has chosen to rely upon the evidence given by PW-II-Sri Rajendra Prasad, Care-taker who was said to be present at the time of incident. But this witness has admittedly not given his statement about the incident immediately after

the incident and doubtful whether really he was present at the time of the incident. When the complainant himself has admitted that the complaint given to him against the applicant is a false complaint and no such incident took place. In our view, the enquiring authority was not justified in holding that the charge is proved on the basis of the evidence given by PW-II who was said to be present at the time of alleged incident. Further, it is found from the report of the fact finding committee, copy of which is produced by respondents that one Sri A.Krishna Rao, Messenger stated that he had not seen the incident of applicant slapping the complainant-Sri N.Narayana Rao. Though P.W-II-Sri Rajendra Prasad, Care taker stated that he witnessed the slapping, it is clear from these facts that P.W-II-Rajendra Prasad is not a reliable witness. All these aspects of the matter have not been taken into consideration by the enquiring authority when the complainant himself admitted during the enquiry that no such incident took place, the evidence given by P.W-II who claimed to have witnessed could not be true and no reliance can be placed on the evidence given by P.W-II. Having regard to the above facts, we find that a clear case of "no evidence" is made out in the present case and the report of the enquiring authority that the charge is proved is not supported by any legally acceptable evidence. For the above reasons, we find that the disciplinary authority and the appellate authority were not justified in accepting the said finding of the enquiring authority and in imposing the impugned penalty of reduction of pay of the applicant by two stages for a period of one year."

After carefully considering the weighty reasons given by the Tribunal, we are in complete agreement with the same. When the disciplinary proceedings were initiated on the complaint of P.W-1, and when he has himself deposed before the enquiry officer that he has given a false complaint and also come out with the reason for giving such false complaint, we cannot justify the approach of the enquiry officer in suspecting the intention of P.W-1 in withdrawing his complaint and proceeding with further enquiry. Equally, we do not find any justification in his giving primacy to P.W-2's evidence, which, for the reasons recorded by the Tribunal, is wholly unreliable, and finding the respondent guilty of the charge framed against him. At least, petitioner No.2-disciplinary authority was expected to act in a rational manner. But, he has also committed the same error which the enquiry officer has committed and petitioner No.1-appellate authority is no exception to the same. As a result of the arbitrary approach of petitioner Nos.1 and 2, the respondent has not only suffered the penalty but also continuous trauma even after the Tribunal has allowed his O.A. Undeterred by the order of the Tribunal, the petitioners have prolonged the litigation by filing the present Writ Petition and secured an interim order on 01.7.2003, which is in force till today, *i.e.*, for a period of more than 14 years.

In the above facts and circumstances of the case, we feel that the conduct of the petitioners in imposing penalty on the respondent, ignoring the letter of withdrawal of the complaint against him by the complainant himself, is manifestly arbitrary and patently unreasonable. The Tribunal has rightly set aside the orders of the petitioner Nos.1 and 2. We, therefore, find no merit in this Writ Petition. For subjecting the respondent to needless agony and misery, the petitioners are saddled with costs of Rs.10,000/- (Rupees Ten thousand only).

The Writ Petition is, accordingly, dismissed with costs of Rs.10,000/-.

As a sequel, interim order, dated 01.7.2003, in WPMP.No.15681 of 2003 is vacated and the said application stands dismissed as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE GUDISEVA SHYAM PRASAD

07th September 2017

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