

THE HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.1944 of 2011

ORDER :

Petitioner was the Secretary of the respondent-Society. Disciplinary proceedings were initiated against him on three allegations. He was placed under suspension by order dated 15.08.2009. On 20.11.2009 charge sheet was issued which contained three charges. The Enquiry Officer was appointed, enquired into the charges levelled against the petitioner and submitted his report on 07.12.2010 holding all the charges as proved. The Managing Committee accepted the report of the Enquiry Officer and called for explanation of the petitioner vide show cause notice dated 28.07.2010. A copy of the report of the Enquiry Officer was enclosed to the show cause notice. The show cause notice indicates that the disciplinary authority was, *prima facie*, convinced that the nature of charges proved against the petitioner would warrant removal from service and, therefore, called for the explanation of the petitioner. On 07.08.2010 the petitioner submitted his explanation. The disciplinary authority passed order of removal from service on 21.10.2011 which is assailed in this Writ Petition.

(2) Heard Sri P.Rajasekhar, learned counsel for the petitioner, and Smt.Bobba Vijayalakshmi, learned counsel for the respondent-Society.

(3) Learned counsel for the petitioner made the following submissions in support of the prayer sought for in the Writ Petition:

- 3.1 The petitioner was denied of prior opportunity before Board accepting the report of the Enquiry Officer and the same amounts to violation of principles of natural justice.
- 3.2 The Enquiry Officer grossly erred in not considering the relevant material in the resolution dated 21.08.2009 and, if only that resolution was considered, the Enquiry Officer would not have punished the petitioner against the charges levelled against him. Learned counsel contended that in the DCCB resolution dated 21.08.2009 the functioning of the Secretaries of various Societies, including the petitioner-Society was considered and that though DCCB found certain lapses has not held anything against the petitioner and if only this report was considered, the Enquiry Officer would not have taken the extreme view of holding the petitioner as being guilty.
- 3.3 Learned counsel further contended that the Enquiry Officer did not afford full opportunity of hearing and that the Enquiry Officer pre-determined to hold the petitioner as guilty.
- 3.4 Petitioner submitted explanation to the show cause notice dated 28.07.2010 but the same was not considered by the disciplinary authority. The show cause notice has not been reflected in the order impugned.
- 3.5 There was no independent application of mind of the disciplinary authority and all alone the disciplinary authority acted as per the directions of the District Level Committee who is in fact is the appellate authority as per the service byelaws.

(4) Learned counsel for the respondents supported the disciplinary action. She has highlighted the explanation submitted by the petitioner on 07.08.2010 to contend that the petitioner was only citing the Writ Petition filed by him against suspension and was asking for deferment of the conducting of enquiry and objecting to conduct of enquiry but has not placed any contention on the merits of the findings recorded by the Enquiry Officer. Since

the petitioner did not raise any objection on the manner in which enquiry was conducted or the findings recorded by the Enquiry Officer, the disciplinary authority, based on the material available on record, considered the findings of the Enquiry Officer and held that, in view of the allegations proved against the petitioner, punishment of removal was warranted and accordingly imposed the same.

(5) The byelaws envisage that the Managing Committee is the disciplinary authority and it has to impose major punishment only after consultation with the District Level Committee. All along the DCCB was consulted and only after consultation the order impugned was passed. I do not see any merit in the contention that consultation with the DCCB would vitiate the punishment imposed.

(6) Learned counsel for the petitioner contended that illegally the petitioner was denied the opportunity of being heard by the Enquiry Officer and that by denial of such opportunity grave prejudice is caused to the petitioner vitiating the entire disciplinary action. Unless it is specifically pointed out such denial of the opportunity, mere allegation, cannot be raised against the disciplinary action. Further even assuming of procedural defects in conducting enquiry, unless the employee specifically alleges and proves that grave prejudice is caused to him on account of procedural impropriety, disciplinary action cannot be nullified. In the instant case no objection is raised against the manner in which the disciplinary enquiry was conducted.

(7) I see no merit in the contention of the learned counsel that the Enquiry Officer was pre-determined. The Enquiry Officer acts as an agent to conduct enquiry on behalf of the disciplinary authority on the charges levelled against the employee. He has to conduct enquiry and furnish his findings based on the material available on record. In the instant case, the Enquiry Officer recorded his findings and forwarded the same to the disciplinary authority. It is ultimately for the disciplinary authority to accept the findings or take action as warranted by the disciplinary authority. Therefore, the question of Enquiry Officer pre-determining the issue would not arise. Even assuming that there is merit in the said contention, the same ought to have been agitated specifically before the disciplinary authority. Except for making vague statements in his explanation to the show cause notice dated 28.07.2010, nothing is highlighted as to how prejudice is caused to him and how the Enquiry Officer was pre-determined. A reading of the explanation would show that the petitioner seems to have been having grievance against the President of the Society and the petitioner sought to allege that the President appointed his own man as Enquiry Officer as the President is acting against the petitioner. It is to be noted that the President is not made a respondent and the allegations made were also vague. Furthermore he is not the disciplinary authority and it is the Managing Committee who is the disciplinary authority. I see no merit in the said contention to hold that the disciplinary action is vitiated on this ground also.

(8) The charges *per se* clearly allege that as a Secretary the petitioner misused his position and diverted funds which he was

not supposed to do and by misusing the amounts obtained towards crop loan, he cleared the loan standing to the account of his late father. The allegation levelled in the first charge is not disputed by the petitioner. The petitioner was only trying to justify his action. Further, the petitioner as Secretary, could not have taken the crop loan and diverted the money for settlement of his late father's loan account. Even the allegation levelled in the other charge also, based on the findings recorded by the Enquiry Officer, it cannot be said as minor. Thus, the allegations cannot be classified as trivial to hold the punishment of removal as excessive.

(9) Since the disciplinary proceedings are not vitiated on any of the grounds urged, as noted above, and, as the charges levelled against the petitioner are grave, it cannot be said that the punishment of removal is excessive in order to interfere on that ground also.

(10) No serious infirmities are noticed by the Court. In disciplinary matters the jurisdiction of the writ Court under Article 226 of the Constitution of India is very limited. This is not a case where this Court should interfere in exercise of power of judicial review and nullify the disciplinary action taken against petitioner. I, therefore, see no merit in the Writ Petition.

(11) Accordingly, the Writ Petition is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

P.NAVEEN RAO, J

05th June, 2017
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