

*** THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

+ WRIT PETITION No.12319 OF 1999

%28.06.2017

Between:

J. Mohana Rao

... Petitioner.

AND

Visakhapatnam Port Trust, rep. By its Chairman, VPT, Visakhapatnam and
another.

.... Respondents.

! Counsel for Petitioner

: Sri Dr. P.B. Vijay Kumar

^ Counsel for Respondent No.1

: Ms. V. Uma Devi

Counsel for Respondent No.2

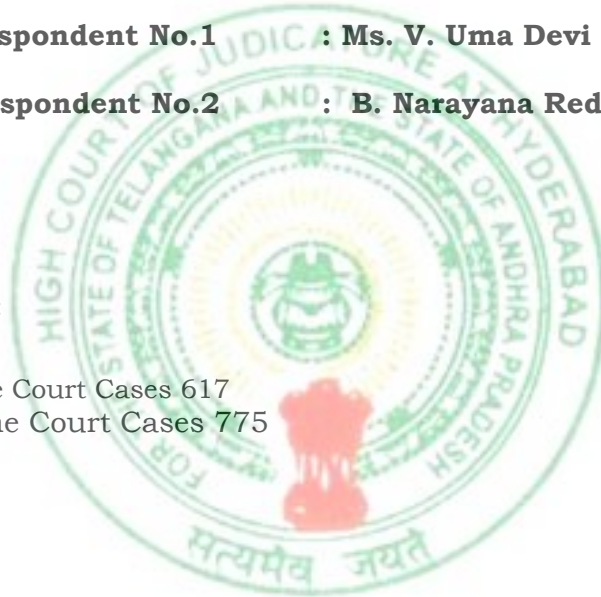
: B. Narayana Reddy.

< Gist:

> Head Note:

? Cases referred:

1. (1997)2 Supreme Court Cases 617
- 2.(2010)5 Supreme Court Cases 775



THE HONB'E SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.12319 OF 1999

ORDER:

The writ of 'Certiorari' is filed questioning the proceedings dated 11.05.1999 of the 2nd respondent confirming the proceedings dated 15.07.1998 of the 1st respondent.

The brief facts are that the petitioner at relevant point of time was the Chief Materials Manager of the 1st respondent at Visakhapatnam Port Trust, Visakhapatnam hereinafter referred to as "VPT" with effect from 01.04.1986. Petitioner was issued with a charge sheet on 03.02.1992 with two charges. Along with the petitioner two others were also issued with the charge sheets. The enquiry officer found only the second charge as sustainable. The disciplinary authority on reviewing of the enquiry report disagreed with the findings of the enquiry officer by invoking the power vested on him under the Visakhapatnam Port Employees' (Classification, Control and Appeal Regulations, 1968 (for short, "the Regulations"), found the petitioner guilty of the two charges. The disciplinary authority imposed the punishment of major penalty of reduction in rank i.e., "revision to the lower post of Materials Manager on scale Rs.4,800-200-6,000-225-8475 at the basic stage of pay of Rs.4,800/- per month with cumulative effective from the date of the proceedings." The appeal to the appellate authority the Central Government also resulted in dismissal. In those circumstances, the present writ petition was filed.

Dr. P.B. Vijaya Kumar, learned counsel for the petitioner in his usual persuasive manner diligently urges the following points:

- a) That both the disciplinary authority and the appellate authority have failed to consider and appreciate the facts on record particularly the goods which were ordered for procurement there was no ISI requirement and the risk purchase clause was not invokeable in the facts of the case. There was no valid

reason for the disciplinary authority to ignore and differ with the finding recorded by the enquiry officer with respect to the first charge.

- b) The disciplinary authority also failed to consider the explanation submitted by the petitioner to the notice of the disciplinary authority to disagree with the findings of the enquiry officer in proper perspective. The impugned order does not give any reasons as to why the explanation submitted by the petitioner is not acceptable and on that ground alone the order of the disciplinary authority is liable to be set aside and the matter to be remanded back for fresh consideration.
- c) The order of the disciplinary authority suffers from legal infirmity of imposing a punishment of reduction to the lower grade without specifying the period of punishment and thus the punishment imposed is in violation of Rule 8 of the Regulations under the caption major penalty.
- d) There is a hostile discrimination in treating the petitioner while two other charge sheeted employees who are part of the tender committee were imposed only with minor penalties and there are no discernable reasons for the hostile differential treatment against the petitioner.
- e) The punishment of reverting the petitioner to the lowest grade at the lowest scale is severe, harsh and unreasonable and depriving the petitioner all the service earned by him from the time of his appointment of Material Manager to the present scale and pay.

Ms. Uma Devi, learned counsel appearing for respondent-Port Trust urges the following points:

- i) The scope of interference by this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India in respect of the disciplinary proceedings is limited and in the case on hand there being no violation of the process of conducting the disciplinary proceedings and there being no allegation of violation of principles of natural justice.
- ii) This Court not being an appellate authority and in the absence of any compelling reasons would not interfere with the finding of fact and substitute with the opinion of the disciplinary authority or the appellate authority especially in the absence of any procedural irregularity or violation of rule or regulation.
- iii) The petitioner is the Chief Materials Manager and the Chairman of the tender/procurement committee and it is his responsibility to ensure the goods are procured at the most competitive prices and also ensure laying down procedures and methodology to

achieve the object at the least cost and also remedial measures in case of defaults by the suppliers and in the present case on hand petitioner has failed to discharge his duty diligently. As a matter of fact the finding of the disciplinary authority is that an irrelevant certification from the Andhra University has been accepted to qualify an otherwise unqualified/disqualified vendor which resulted in procurement of goods which are inferior and causing financial loss to the organization.

- iv) There is no discrimination in imposing punishment and at any rate the Supreme Court in the judgments reported in **State Bank of Indore vs. Govindrao**¹ and **Administrator, Union Territory of Dadra and Nagar Haveli vs. Gulabhaia M. Lad**², it is not necessary that all the charged officers in a given case need to be imposed similar or identical punishments. In the present case on hand petitioner being the Chief Materials Manager and the Chief Stores Officer as greater role and fiduciary duty to ensure the functions of procurement of goods are done to the best advantage of the organization and is required to lead the team with vision and anticipation which had failed in the present case. Taking into consideration of the position, complacency involved and the responsibility each of the charged officer, appropriate punishments commensurate to their involvement have been imposed by the disciplinary authority which cannot be found fault.
- v) The disciplinary authority is not bound to accept the findings of the enquiry officer and is entitled to differ with the same by duly following the procedure prescribed. The reasons for not accepting the enquiry report with respect to first charge from which the petitioner was exonerated by the enquiry officer were set out in the findings recorded by the disciplinary authority on 26.4.1996 and the notice of which has admittedly been given. After considering the explanation submitted by the petitioner and there being no reasons to differ with the findings recorded in the notice, the impugned order came to be passed by the disciplinary authority and in that view of the matter, the allegation that the impugned order is non speaking order is factually in correct. Further the appellate authority had once again considered the matter in all respects and in fact had adverted to this specific issue in its order dated 11.5.1999.
- vi) The reversion to the lowest rank and pay is permissible in terms of Rule 8 of the Regulations and there is no embargo on the

¹ (1997)2 Supreme Court Cases 617

² (2010)5 Supreme Court Cases 775

disciplinary authority to impose such punishment and further there is no requirement of limiting the same for a specified period.

In the light of the respective contentions at the out set this Court is in agreement with the contention of the learned counsel for the respondent that the scope of interference being limited, this Court cannot substitute its opinion in the absence of the conditions for interference under Article 227 of the Constitution of India substituting the punishment. In view of the law laid down by the Supreme Court in the judgments cited by the learned counsel for the petitioner, it cannot be said that the differential punishment cannot be awarded.

A close scrutiny of the judgments cited by the learned counsel for the petitioner i.e.,

- 1) **Director General of Police and others vs. G. Dasayan,**
- 2) **Anand Regional Coop. Oil Seeds Growers' Union Limited vs. Shaileshkumar Harshadbhai Shah,**
- 3) **Rajendra Yadav vs. State of Madhya Pradesh and others**
- 4) **Life Insurance Corporation of India and others vs. Triveni Sharan Mishra**
- 5) **Unreported judgment of Madhra High Court dated 11.03.2015 in W.P.No.28462 of 2013** (between R. Dhakshinamurthy vs The Desk Officer, New Delhi and others), disclose that those are all the judgments in which the Supreme court found fit to interfere in the peculiar facts of each case and the same cannot be treated as a clear law laying down. The orders made therein are at best orders made under Article 142 of the Constitution of the India.

However, the question of severity of punishment is one aspect which is required to be considered in the case on hand. In the case of V. Krishna Murthy, Materials Manager the findings of the disciplinary authority was that it is only on account of the notings of the charged

officer the order for procurement of batteries was placed on a local firm which resulted in the loss to the organization. Though it can be said in the ultimate analysis, the head of the department has a overall responsibility, it is well neigh impossible for the head of the department to minutely verify and ensure every transaction and every order. In the case on hand, the committee headed by the petitioner had taken a decision to order for procurement of batteries from a local unit based on the notings of the said charged officer V. Krishna Murthy. In other words, V. Krishna Murthy who is a responsible for the note is also a Materials Manager albeit lower in the rank and pay scale. It may also be noted that he was also member of the tender committee. While so, the punishment imposed on the said charged officer was only a penalty of reduction of pay by two stages for a period of one year without cumulative effect. Whereas in the case of the petitioner the penalty of reduction of rank to the lowest grade with the corresponding pay scale and in the process depriving the petitioner all the services earned by him over the years. In that view of the matter, it cannot be said that there is no discrimination meted out to the petitioner.

Further the contention of the learned counsel for the petitioner that there is violation of Rule 8 of the Regulations in not specifying the period of punishment also deserves acceptance. Rule 8 of Rules reads as under (so far as relevant):

“PART - V – DISCIPLINE

(8) PENALTIES: The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on an employee, namely:-

MINOR PENALTIES:

- i) Censure
- ii) Withholding of his promotion;
- iii) Recovery from his pay of the whole or part of an pecuniary loss caused by him to the Board by negligence or beach of orders.
- iv) Reduction to lower stage in the time scale of pay by one stage for a period not exceeding 3 years, without cumulative effect and not adversely effecting his pension;

v) withholding of increments of pay;

MAJOR PENALTIES:

vi) Save as provided in clause (iv) reduction to lower stage in a time-scale of pay for a specific period, with further directions as to whether or not the employee will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

vii) reduction to a lower time-scale of pay; grade, post or service which shall ordinarily be a bar to the promotion of the employee to the time-scale of pay, grade, post or service from which he was reduced, with or without further directions regarding conditions of restoration to that grade, post or service; from which the employee was reduced and his seniority and pay on such restoration to that grade post or service; from which the employee was reduced and his seniority and pay on such restoration to that grade post or service;

viii) compulsory retirement;.

ix) removal from service which shall not be a dis-qualification for future employment;

x) Dismissal from service which shall ordinarily be a disqualification for future employment;

"Provided that, in every case in which he is charged of acceptance from any person of any gratification, other than legal remuneration, as a motive or reward for doing of forbearing to do any official act is established, the penalty mentioned in Clause (ix) or Clause (x) shall be imposed;

Provided further that in any exceptional case and for special reasons recorded in writing, any other penalty may be imposed."

From Rule 8(4) of the Regulations, it is clear that reduction to the lower scale in a time scale is permissible only for a specific period and the same cannot be for an indefinite period. Various factors are required to be taken into consideration for imposing a major penalty of this nature particularly the length of service and the scale in the lower cadre which was the foundation for the present cadre and scale. In this context it may be noted that the respondent Port Trust in its order dated 5.2.2008 had applied the rational in F.R. 29 (2)(a) of the Government of India's Orders, which reads as under:

“(2) If a Government servant is reduced as a measure of penalty to a lower service, grade or post or to a lower time scale, the authority ordering the reduction shall specify:-

(a) The period for which the reduction shall be effective;”

Reference also may be made to the unreported judgment dated 11.03.2015 of the Division Bench of the Madras High Court cited by the learned counsel for the petitioner in W.P.No.28462 of 2013 (between R. Dhakshinamurthy vs The Desk Officer, New Delhi and others), wherein the Madras High Court had held that the method and manner in which the reduction to a lower scale can be effected. In the said judgment, the Division Bench had held that a fair interpretation of the regulation requires specifying the period of punishment as mandatory. For the reasons stated herein the matter requires reconsideration by the appellate authority limited to so far as the quantum of punishment.

Accordingly, the writ petition is allowed setting aside the order of punishment to the extent of the quantum by remanding the matter to the disciplinary authority Chairman, Visakhapatnam Port Trust, Visakhapatnam, for passing a fresh order after giving an opportunity to the petitioner. Considering the advanced age of the petitioner and considering the narrow scope of review which is required to be carried out by the disciplinary authority, the entire exercise shall be completed by the disciplinary authority within a period of two months from the date of receipt of copy of the order. No order as to costs.

Miscellaneous Petitions, if any, pending in this writ petition, shall stand closed.

CHALLA KODANDA RAM,J

Date:28.06.2017,
Note: issue CC in one week.
 L.R copy to be marked.
 B/o.
 Gk.

THE HONB'E SRI JUSTICE CHALLA KONDANDA RAM



WRIT PETITION No.12319 OF 1999

Date:28.06.2017.

Gk.