

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION (TR) No.417 OF 2017

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader appearing for the respondents.

This writ petition is a transferred O.A. No.2419 of 2013 from the erstwhile Andhra Pradesh Administrative Tribunal. The petitioner was initially appointed as Sub-Inspector of Police (Civil) with effect from 11.11.1996. He was placed under suspension *vide* proceedings dated 17.03.2005 on the ground that he was arrested in connection with a case registered by the Anti Corruption Bureau stating that he was caught red-handed when he demanded and accepted a bribe of Rs.10,000/- while working as Sub-Inspector of Police, Mudhole P.S., Adilabad district. The orders of suspension were issued in G.O.Rt. No.1253, dated 22.08.2005, placing the petitioner under suspension with effect from 04.03.2005 by the Government and the statement of article of charge framed against the petitioner reads as follows:

“That Sri Tota Venkateswar Rao, S/o. Venkat @ Venkataiah, joined Govt. Service on 11.11.1996 and while functioning as Sub-Inspector of Police, Mudhole, during the period between 16.01.05 to 04.03.05 committed grave misconduct in as much as he indulged in corrupt practice by demanding bribe of Rs.15,000/- from Sri D. Sainath on 02.03.2005 and in pursuance of earlier demand he accepted bribe of Rs.10,000/- as part payment from Sri D. Sainath at his residence bearing H.No.17-101 situated at Naya Abadi, Mudhole in Adilabad District for doing official favour in releasing crime vehicle bearing Jeep No.AP 25 U 3982 along with its documents and thereby failed to maintain absolute integrity in violations of A.P.C.S. (Conduct) Rules 1964.

Thus Sri Tota Venkateswar Rao, by his above-mentioned acts has exhibited lack of integrity, devotion to duty and conduct

unbecoming of a Govt. Servant and thereby contravened Rule 3(1) & (2) of the Andhra Pradesh Civil Services (Conduct) Rules, 1964.”

An enquiry officer was appointed for conducting enquiry against the petitioner and the above charge was enquired into. He has submitted his report stating that the charge of gross negligence towards legitimate duties, perfunctory investigation of case in Crime No.8 of 2005 under Sections 337 and 304-A I.P.C. by not sending the requisition to M.V.I. and failing to get the signatures of panch witnesses on inquest report was proved but the allegation of demand and acceptance of bribe from the petitioner for doing official favour was not fully substantiated. The enquiry report was submitted on 30.04.2010.

Agreeing with the findings of the enquiry officer a copy of the minute was supplied to the petitioner calling for his further report. Accordingly, he submitted his further report pleading not guilty. The enquiry report was referred to the Government seeking advice of A.P. Vigilance Commission. The Government after careful examination of the findings of the Enquiry Officer ordered to impose a punishment of postponement of increment by one year without effect on future increments and pension. His suspension period from 17.03.2005 to 14.02.2006 was treated as not on duty by order dated 07.02.2012. He preferred an Appeal to the competent authority and the same was rejected on 30.08.2012. Challenging the said order, the petitioner filed O.A. No.2419 of 2013, which is now taken up as W.P. (TR) No.417 of 2017.

Though a detailed counter-affidavit is filed, the above facts are not in dispute.

Learned counsel for the petitioner submits that the charge framed against the petitioner was as stated above; whereas the entire enquiry was conducted in respect of a different charge for which the petitioner was not given any memo. But it is an admitted case that the petitioner participated in the enquiry and when the order of punishment was imposed on the petitioner, he did not raise his point even in the Appeal, preferred before the competent authority, and in the Review also no such ground was taken.

It is not the case of the petitioner that the petitioner was not given a reasonable opportunity with regard to the enquiry conducted against him. Now the charge held proved against the petitioner is with regard to the allegation of gross negligence towards legitimate duties and the perfunctory investigation of a case in Crime No.8 of 2005 by not sending the requisition to M.V.I. and failure to get the signatures of panch witnesses on the enquiry report. With regard to the main charge, the enquiry officer held that it was not fully substantiated. When proper opportunity was given to the petitioner and evidence was let in with regard to the allegation of gross negligence, which is now held proved, no material was pointed to this Court with regard to the lack of opportunity to the petitioner but however the learned counsel for the petitioner submits that when the copy of enquiry report was furnished to him and he was given an opportunity to submit his objections, those objections were not considered by the 1st respondent while passing the order dated 13.01.2012. He further submits that as per the appellate order dated 30.08.2012, the Appeal was also summarily rejected, without assigning any reasons, he relied on a decision of the Apex Court in **Chairman,**

***Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank Vs. Jagdish Sharan Varshney and others*¹.**

This Court carefully perused the order of the disciplinary authority in G.O.Ms. No.74, dated 13.01.2012, and the order of the appellate authority in Memo No.281/SC.A./A3/2005-10, dated 30.08.2012 and in both the orders, the defence set-up by the petitioner was not considered. In the order dated 13.01.2012, the disciplinary authority has not even referred to the representation of the petitioner submitted on 06.07.2010. Similarly, the order of the appellate authority, dated 30.08.2012, is cryptic one and it does not contain any reason. In the circumstances, this Court is constrained to set-aside the order in G.O.Rt. No.74, Home (SC.A.) Department, dated 13.01.2012, and the subsequent order based on the said Government order, and remand the matter to the 1st respondent for consideration of the representation of the petitioner dated 06.07.2010 before passing the order of punishment pursuant to the enquiry report submitted against the petitioner.

Accordingly, the Writ Petition is allowed. In consequence, miscellaneous petitions, if any, pending in this writ petition shall stand closed. No order as to costs.

A.RAMALINGESWARA RAO, J

Date: 07-12-2017.
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¹ (2009) 4 SCC 240

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