

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION (TR) No.394 OF 2017

ORDER:

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

This writ petition is a transferred writ petition from the erstwhile Andhar Pradesh Administrative Tribunal, which was originally registered as O.A.No.2108 of 2013.

The petitioner belongs to BC 'D' Community (Uppari). In pursuance of the Notification issued by the State Level Recruitment Board, Hyderabad, he applied for the post of SCT PC (Civil/AR/APSP). He was qualified in the physical measurement test. After completion of the basic training, he was placed on probation on 24.12.2007 for a period of two years on duty within a continuous period of three years. During his tenure in First Battalion, APSP, Hyderabad, the petitioner was allowed to avail one casual leave from 24.04.2008 to 25.04.2008 to attend Civil PC selections at his native place. Though he was supposed to report to duty on 25.04.2008, he did not report for duty. He reported sick in Osmania University Hospital for three months. Even after completion of the sick period, he did not report for duty and remained absent unauthorisedly without any leave or permission from superiors. Since he completed 21 days of unauthorised absence, he was declared as deserter with effect from 23.07.2008 as per order 184 of A.P.Police Manual, by proceedings dated 21.08.2008. He appeared before the Commandant, First Battallion, on 13.11.2008 with a request to take him on duty and he was taken on duty pending disciplinary proceedings against him. A Memorandum of Charge was framed and issued to him. He submitted a written explanation and since it was found unconvincing, Assistant Commandant was appointed as Inquiry Officer and after enquiry, the Assistant Commandant

submitted a report holding that the charge was proved and the enquiry report was furnished to the petitioner on 14.06.2009. Disciplinary Authority awarded punishment of 'Discharge from Service' with immediate effect and the period of unauthorised absence from 25.04.2008 to 12.11.2008 was treated as leave without pay, duly mentioning that 'he joined the Department on 24.12.2007 and worked in the Battalion for just four months. The petitioner was still a probationer'. Challenging the said order, the petitioner preferred an Appeal before the Appellate Authority, who directed reinstatement by modifying the punishment of 'Discharge from Service' to that of 'PPI for two years without effect', while treating the absence period and out of employment period as 'not on duty', vide its order, dated 28.04.2010. Accordingly, he was taken on duty on 13.05.2010 and he was performing his duties at First Battalion, APSP, Hyderabad. Subsequently, his case for probation was processed duly calculating the duty period and 'not on duty' period. On calculation, he worked only one year six months and five days within two years and 512 days was found as leave period. In view of Rule 17(a)(ii) of the A.P.State and Subordinate Service Rules, 1996, the probation was terminated and he was discharged from service vide proceedings dated 24.11.2010 and was paid one month pay. When an Appeal was preferred to the third respondent, it was held that by order, dated 28.04.2011, that he is not entitled for Appeal. Challenging the said order, the Original Application was filed.

In the light of the above facts, when the matter is taken up for consideration, the learned counsel for the petitioner was asked to show the relevant rule providing for Appeal. The learned counsel failed to show any rule providing for Appeal.

This Court carefully perused the Original Order dated 24.11.2010, which gave rise to the proposed Appeal. A reading of the Order clearly

shows that he has not completed the two years probation within a period of three years and in those circumstances, in exercise of Rule 17(a)(ii) of the A.P.State and Subordinate Service Rules, his probation was terminated and discharged from service by giving one month pay. The said order passed by the Commandant of the First Battalion, APSP, Hyderabad, who is not a party to the writ petition, cannot be held to be illegal.

The writ petition is accordingly dismissed. Consequently, miscellaneous petitions, if any pending, in this writ petition, shall stand closed. There shall be no order as to costs.

23.11.2017
pln



A.RAMALINGESWARA RAO, J