

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN
AND
THE HON'BLE MS. JUSTICE J. UMA DEVI

WP NO. 33516 of 2016

ORDER: (Per Hon'ble Ms. Justice J. Uma Devi)

The present writ petition is filed assailing the order, dated 3.9.2016 passed by the appellate authority-1st respondent-Registrar (Administration), High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh whereby the penalty of *withholding of three increments with cumulative effect* imposed by the 2nd respondent-Prl. District Judge, Adilabad (Disciplinary Authority) was modified to that of *withholding of two increments with cumulative effect*, as arbitrary, unjustified and illegal.

The petitioner before us was given promotion as Senior Assistant and was posted in the Court of the Principal Junior Civil Judge, Mancherial, Adilabad district (3rd respondent) on deputation with a direction to perform the duties of Stenographer by the proceedings of 2nd respondent in Dis.No. 1931/2014/Admn., dt. 11.4.2014. While he was working so, it was reported by the 3rd respondent to the 2nd respondent that the petitioner applied for one day's casual leave on 1.7.2014 knowing fully well that judgments were to be dictated to him in several cases and under these circumstances, his request for grant of casual leave for one day was rejected. The petitioner, instead of reporting to duty, applied for commuted leave from 1.7.2014 to 21.7.2014 on medical ground on the pretext that he was suffering from severe back pain, by

enclosing a medical prescription issued by medical practitioner who advised him to take rest etc. He again applied for commuted leave from 22.7.2014 to 11.8.2014 and also from 11.8.2014 to 30.8.2014 on medical grounds and extended the said leave till 13.9.2014 by sending leave applications from time to time. After joining duty on expiry of commuted leave, he again made an application for grant of earned leave from 29.9.2014 to 7.11.2014. These were the circumstances which made the 2nd respondent to initiate disciplinary action against the petitioner based on the report sent by the third respondent-Prl. Junior Civil Judge, Mancherial, Adilabad district under whom the petitioner was working as a Stenographer. The 2nd respondent being the disciplinary authority initiated disciplinary action against the petitioner and framed articles of charges against the petitioner. The following are charges framed against the petitioner by the 2nd respondent,

“It is brought to the notice of the undersigned by the Prl. Junior Civil Judge, Mancherial, through Lr.Dis.No. 1529/2014, dt. 11.07.2014, that you Sri M. Rajanikanth Rao, Sr. Asst. who yourself guilty of misconduct in not attending court work and taking dictation by following the orders of District Court, Adilabad in Proc. Dis.No. 1931/2014/Admn, dt. 11.4.2014 to attend steno work. It is further submitted that you have applied (1) day casual leave on 01.07.2014 knowingly that there are judgments in O.S.Nos. 83/06, 692/08, 826/08, 234/13, 620/05, 575/05 and 416/07 to be dictated. The said leave application was rejected and an OM vide Dis.No. 1449/14, dt. 01.07.2014 was issued directing to submit your explanation, which was served by an Attender

and as per his statement you were normal. Subsequently you submitted commuted leave application for a period of (21) days from 01.07.2014 to 21.07.2014 with your explanation. On verification by office the commuted leave application consisting only medical prescription and the same was returned on the ground of medical certificate. The absence of you to attend the duty from 01.07.2014 to 11.07.2014 treated as dies non. It is also reported that you disinterest to attend the steno work and complaining regularly while taking dictation that you are a Senior Asst.

It is further submitted that you are in habit of applying CL and then applying commuted leave etc. on medical grounds without prior sanction amount to unbecoming conducting of individual is nothing but lack of devotion to duty which amount to dereliction of duties and misconduct under CCA Rules.

It is further submitted that another memo was issued vide No. 1500/14, dt. 0-8.07.2014 directing you to report duty forthwith which was served on your uncle viz., Shankar Rao, the statement of servicing memo discloses that you were out of station.

It is further submitted the following information, through

1. Vide Lr. Dis.No. 1529/2014, dt. 11.07.2014 submitted your commuted leave application for a period of (21) days from 1.7.2014 to 21.7.2014. It is also noted that the absence of the individual to attend the duty from 1.7.2014 to 11.7.2014 treated as Dias non.

2. Vide Lr. Dis.Nos. 1624/2014, dt. 24.7.2014 submitted your commuted leave application for a period of from 22.7.2014 to 11.8.2014. It is also mentioned that a

notice was issued to the concerned doctor to explain genuineness on the prescriptions and certificate.

3. Vide Lr. Dis.No. 1656/2014, dt. 28.7.2014 submitted that you joined duty on 25.7.2014 FN on the instructions of Prl. Dist. and Sessions Judge, Adilabad and was permitted to join duty subject to production of medical fitness certificate.

4. Vide Lr. Dis.No. 1778/2014, dt. 21.8.2014 submitted that you joined duty on 2.8.2014 FN and was permitted. You worked till 8.8.2014 and went on casual leave from 11.8.2014 to 13.8.2014 subsequently submitted commuted leave application from 10.8.2014 to 30.8.2014 which was sent to Junior Civil Judge, Sirpur.

5. Vide Lr. Dis.No. 1909/2014, dt. 9.9.2014 submitted your commuted leave applications from 1.9.2014 to 7.9.2014 and 7.9.2014 to 13.9.2014.

6. Vide Lr. Dis.No. 1978/2014, dt. 15.9.2014 submitted that he issued a notice to Dr. Vishal Pawar to submit explanation with regard to certificate issued by him dt. 1.9.2014.

7. Vide Lr. Dis.No. 1979/2014, dt. 15.9.2014 submitted that he issued a notice to Dr. Ch. Raj Kiran to submit explanation with regard to certificate issued by him, dt. 7.9.2014.

8. Vide Lr. Dis.No. 1980/2014, dt. 16.9.2014 submitted that you joined duty on 15.9.2014.

9. Vide Lr.Dis.No. 2177/2014, dt. 8.10.2014 submitted your earned leave application for (40) days from 29.9.2014 to 7.11.2014 along with the explanations of the doctors

i) Dr. Raghava Rao, submitted that the individual visited him and he gave prescriptions and advised for

clinical tests such as X-ray, MRI etc and advised rest for a period of 3 weeks. It is also stated that he do not have idea that he obtained two prescriptions for using the same for the purpose of producing before the authority.

ii) Dr. Vishal Pawar submitted that the individual visited him on 23.8.2014 and complained severe neck pain, he gave some treatment and asked to visit after one week. Then on 1.9.2014 he complained same pain then he advised one week rest and issued certificate on his request.

iii) Dr. Ch. Raj Kiran submitted that from 7.9.2014 the individual came to his hospital with complaint of severe neck pain and radiating pain both upper limbs. He did neck examination and asked to follow treatment for one week from 7.9.2014 to 19.9.2014 and advised one week rest and treatment. On his request he issued certificate.

And you are liable for disciplinary action, which would amount to grave misconduct, dereliction and negligence in duty and unbecoming a public servant within the mean of Rule-3 APCS (Conduct) Rules, 1964 and Rule-20 of APCS CCA Rules, 1991.”

The petitioner submitted a written statement stating that he applied for leave, as he was suffering from severe back pain and prayed to drop the proceedings initiated against him. Having not been satisfied with the written statement given by the petitioner, a regular departmental enquiry was ordered against him by the 2nd respondent, as envisaged under the provisions of Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (for short “CCA Rules”) and the Senior Civil Judge, Adilabad was appointed as Enquiry Officer to conduct enquiry and was

asked to submit his report. Accordingly a regular departmental enquiry was held in terms of the CCA Rules by the Senior Civil Judge, Adilabad and a report, dated 28.9.2015 was submitted holding that all the charges leveled against the petitioner were proved. The petitioner was served with a copy of the enquiry report, and he submitted his explanation reiterating the same plea of sickness. The disciplinary authority-2nd respondent disbelieved the explanation of the petitioner and imposed a major penalty of *withholding of three increments with cumulative effect* under Rule 9 (vi) of APCS & CCA Rules on the petitioner. Feeling aggrieved by the by the order passed by the 2nd respondent-disciplinary authority, the petitioner filed an administrative appeal before the High Court of Judicature at Hyderabad for the State of Telangana and for State of Andhra Pradesh under Rule 33 of the CCA Rules. The 1st respondent, on appreciation of the entire material available in the case record, passed the impugned order, dated 3.9.2016 modifying the penalty of *withholding of three increments with cumulative effect* to that of “two increments with cumulative effect”. Against the said orders, the petitioner has filed present writ petition.

1st respondent filed a counter-affidavit denying the allegations made by the petitioner and stated that on careful perusal of the administrative appeal filed by the petitioner vis-à-vis the enquiry report, the remarks of the 2nd respondent and on due consideration of long length of service rendered by the petitioner, and other circumstances, the appeal filed by the petitioner was partly allowed modifying the penalty to that of

withholding of two increments with cumulative effect. It is contended in the counter-affidavit of the 1st respondent that in order to avoid stenographer duties, the petitioner applied for 'commuted leave' frequently on the pretext that he was suffering from severe back pain and such plea of the petitioner was not proved substantially. The petitioner obtained medical certificates subsequently in order to justify his absence on medical grounds. The enquiry officer recorded the findings based on the oral and documentary evidence available on record. The petitioner was provided with reasonable opportunity of defending himself from the charges leveled against him. Ample opportunities were given to him to prove his case as per the procedure prescribed under law and in the process of decision making, no irregularities or illegalities were committed. By saying so, the 1st respondent pleaded that the writ petition filed by the petitioner deserves to be dismissed holding that there are no merits in it.

A reply affidavit is filed by the petitioner after filing of the counter-affidavit by the 1st respondent. In the reply affidavit a specific contention is raised by the petitioner that a bare perusal of para-9 of the enquiry report it would clearly indicate that the enquiry officer has prejudged the issue as to the alleged misconduct of the charged employee, the petitioner herein and that he acted in a biased manner and that the 1st respondent, without appreciation of the evidence afresh, passed the impugned order, dated 3.9.2016 in a mechanical way.

While the case is being argued, it is contended specifically by the learned counsel for the petitioner that the charges mentioned in the enquiry report are vague and ambiguous and they are different and distinct from the charges framed against him in the articles of charges. In the articles of charges there is no specific allegation that the conduct of the charged employee in applying for commuted leave on medical grounds in different spells amounts to insubordination and misconduct, calling for disciplinary action. In this connection, the learned counsel for the petitioner seeks to rely upon a decision of the Apex Court reported in *Sawai Singh Vs. State of Rajasthan*¹ and contended that the findings of the enquiry officer that the petitioner is guilty of the charges framed against him, cannot sustain, as the charges are vague. It is further contended that by the learned counsel for the petitioner that though no acceptable evidence is there in the case record to hold that the charges framed against the petitioner are proved, a finding is recorded to the effect that the charges are proved. The enquiry officer has prejudged the issue as to the alleged misconduct and it is evident from the report that even before starting discussion on the points framed by him, he seems to have made certain comments, and thus there may not be any hesitation for this Court to say that the enquiry report is free from any bias. It is further contended that the disciplinary authority has not referred the petitioner to medical board, for examination and though 18 grounds are urged in the administrative appeal, no single ground is dealt or answered

¹ AIR 1986 SUPREME COURT 995 (1)

by the appellate authority/1st respondent in the order impugned in this writ petition.

The learned standing counsel appearing for the respondents, on the other hand, contends that neither any deviation of the rules nor violation of principles of natural justice is occasioned in the instant case, and that the enquiry officer, by strictly adhering to the procedure laid down under the CCA Rules, has held the enquiry, and there is no ambiguity as such in the charges framed against the petitioner and the disciplinary authority, upon providing reasonable opportunities of hearing to the petitioner to explain why a major penalty cannot be imposed against him, inflicted the penalty which is proportionate to the misconduct proved against him. The disciplinary authority before issuing show-cause notice served a copy of the enquiry report on the petitioner and that the petitioner in his explanation did not even choose to express any repentance except reiterating the pleas which he urged earlier. The High Court, on appreciation of the entire material available in the case record, though rightly found that there was no factual or legal flaw in the order passed by the disciplinary, inflicted a lesser punishment of *withholding of two increments with cumulative effect* upon consideration of the case of the petitioner sympathetically.

The order impugned in the present case is perused. We have also gone through the entire material available in the case record viz., enquiry report submitted by the enquiry officer, order passed by the disciplinary authority-2nd respondent herein. It is manifestly evident from the

material available in case record that the petitioner was applying for casual leave initially, for one or two days, and was later requesting to convert such leave to 'commuted leave' by sending another application and thus for most of the period from 1.7.2014 to 13.9.2014 he was on commuted leave and again from 29.9.2014 to 7.11.2014 he was on earned leave and such conduct of him hampered the court work.

When the petitioner applied for causal leave on 1.7.2014, he was orally informed that his request for causal leave was rejected as judgments were to be dictated to him in several cases. In spite of having knowledge that the request he made for causal leave was rejected, he sent an application on the next day and thereafter continued to remain on 'leave' by making successive applications for commuted leave, earned leave etc. The enquiry officer, on thorough appreciation of the oral and documentary evidence available in case record, had rightly found that the petitioner intentionally evaded to perform the duties of 'stenographer' and applied for leave very frequently on the pretext of suffering from back pain regarding which he enclosed medical prescriptions alone at the initial point of time initially which were issued by the medical practitioners on his request. The plea of the petitioner that he could not be able to enclose a medical certificate to the leave application at the initial point of time was rightly disbelieved by the appellate authority. The petitioner is working as an employee in the judicial department for the past 16 years and is well aware about the procedure for applying leave etc., and has got knowledge about the circumstances under which he can

apply for 'commuted leave' and the documents to be appended to such application. We have gone through the articles of charges which are definite and there is no ambiguity as such in the charges framed against the petitioner. It is not established by the petitioner that the sum and substance of the charges mentioned by the enquiry officer in his report are different and distinct from the charges framed against him. The decision of the Apex Court reported in *Sawai Singh Vs. State of Rajasthan* (1st supra) wherein charges are vague, relied upon by the learned counsel for the petitioner, cannot be applied to the case on hand.

In the aforesaid case, *the delinquent officer, the appellant therein, was the Government employee and he was appointed at the relevant time as returning officer to conduct Panchayat elections in Panchayat Samiti. He was terminated from service on the grounds that (i) he had showed undue favour to one of the candidates "P"; (ii) he manipulated the withdrawal of "J", the dummy candidate of "C" who was the contesting candidate against "P" and (iii) he had committed forgery by effecting erasion of the word "Panch" on the nomination paper of "C" and mala fide rejected his nomination paper. The conflicting nature of evidence of "C" and nature of evidence given by "J" was not considered by the enquiry officer in the said case. The handwriting expert, on the basis of whose evidence the charge of committing forgery by effecting erasion of the word "Panch" on the nomination paper of "C" was sought to be proved, was not available for cross-examination. In the above mentioned circumstances, the Apex Court held that the report of the enquiry officer finding the*

delinquent officer guilty could not be sustained as the charges were vague and it was difficult to meet the charges fairly by the delinquent officer.

In the case on hand, all the witnesses were cross-examined by the delinquent officer except P.W.5 whose cross-examination was reported as –Nil- by the delinquent officer. The evidence adduced during the course of enquiry is found to be not tainted, and if such is the circumstance, we are not inclined to dissent from the view expressed by the enquiry officer who held that the guilt of the delinquent officer is proved. While exercising the writ jurisdiction under Article 226 of the Constitution of India, this Court is not supposed to go into the findings given on factual aspects. It is only when it is found that there is jurisdictional error apparent on the face of the order or that the principles of natural justice are violated, the Court may exercise the extraordinary jurisdiction under Article 226 of the Constitution of India. But no such circumstances exist in the present case.

In so far as the contention raised by the petitioner that he has not been referred to medical board is concerned, we are of the view that there is no need for the disciplinary authority to refer him to medical board because it is for the petitioner to prove that he has got substantial grounds to make an application to apply for commuted leave on medical grounds and that it is for him to prove the circumstances which prevented him from attending to his duties.

The witnesses examined before the enquiry officer were cross-examined by the petitioner except one witness whose cross-examination was reported –Nil- and thus the delinquent officer was provided with reasonable opportunity of defending him from the charges framed against him. The undisputed fact is that the petitioner has not examined any witness to prove his case. The petitioner has not even taken steps to get himself examined as a witness at least to speak about his case, despite providing of ample opportunities to defend him.

So far as the contention raised by the learned counsel for the petitioner that he raised 18 grounds in the administrative appeal, but no single ground was dealt or answered is concerned, the appellate authority, upon appreciation of the entire material available in case record, seems to have passed the following order, dated 3.9.2016 taking into consideration all the grounds urged by the petitioner in the appeal grounds, though not answered each and every ground urged by the petitioner.

“A perusal of the record reveals that the District Judge, Adilabad, gave promotion to the appellant directing him to attend the duties of Stenographer in the Court of Prl. Junior Civil Judge, Mancherial. As per the findings recorded by the Enquiry Officer, the appellant, in order to avoid stenographer duties, applied for medical leave though his request for casual leave on 1.7.2014 was rejected. The plea of the appellant that he could not annex medical certificate to the leave application due to inexperience is not believable under any circumstances. The record further reveals that the appellant obtained medical certificate subsequently in order to justify his absence on medical

grounds. The appellant also filed W.P.No. 39290 of 2014 before this Court challenging the orders of the District Judge, Adilabad, directing the appellant to perform the duties of stenographer.

The material available on record clearly reveals that in order to avoid the duties of stenographer, the appellant applied for leave as if he was suffering from back pain, which, in fact, is not correct. The enquiry officer has recorded the findings basing on the oral and documentary evidence available on record. There are no grounds much less valid grounds to interfere with the findings recorded by the enquiry officer.

The Disciplinary Authority, by taking into consideration the proved misconduct of the appellant, imposed punishment of withholding of three increments with cumulative effect. Taking into consideration the service of the appellant and other attending circumstances, the High Court is inclined to reduce the punishment to withholding of two increments with cumulative effect.

With the reduction of punishment as above, the appeal is allowed in part.”

On perusal of the material available, we do not find that the order under challenge is vitiated by any violation of procedure or violation of principles of natural justice. Therefore, that leaves us only with the question of proportionality of penalty.

As we have stated earlier, the petitioner was originally imposed with a penalty of withholding of three increments with cumulative effect.

It was modified by the Appellate Authority into one of withholding of two increments with cumulative effect.

On records it is seen that the petitioner actually served without any blemish as a Stenographer for 15 years. It was only after his promotion to the post of Senior Assistant and his deputation to work once again as Stenographer that the problem appears to have cropped up. The fact that he submitted medical certificates is borne out by record. These medical records are not suspected. Therefore, we are of the considered view that the *major penalty* imposed upon the petitioner could be modified into a *minor penalty*.

Accordingly the writ petition is disposed of modifying the order dated 3.9.2016 passed by the 1st respondent to the extent that penalty of *withholding of two increments* '**without**' *cumulative effect* is imposed on the petitioner. Miscellaneous applications, if any, shall stand closed. No orders as to costs.

JUSTICE V. RAMASUBRAMANIAN

Dt. 13.3.2017
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JUSTICE J. UMA DEVI