

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION Nos. 13068 & 13070 of 2011

Date : 28.2.2017

Between :

Sudhakar Phani Raj S/o B Yesudas
SCR R/o H NO. 94,
Badam Apartments,
Vijayapuri colony, Tarnaka
Secunderabad

Petitioner

And

The Chief Security Commissioner,
Railway Protection Force,
SCR, Rail Nilayam, Secunderabad and others

Respondents

The Court made the following:



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COMMON ORDER:

Petitioner in W P No. 13068 of 2011 was working as Head Constable and petitioner in W P No. 13070 of 2011 was working as Constable in Railway Protection Force (RPF). Disciplinary proceedings were initiated against them on the allegation that they were involved in illegal possession and selling of two Red Sand Boa Snakes (Buradha Pamulu); for unauthorized absence from 16.7.09 to 18.7.09; indulging in illegal possession; selling of two Red Sand Boa Snakes (Buradha Pamulu) and that their action was widely published in the daily newspapers causing disrepute to the organization. Disciplinary proceedings were ended in imposition of punishment of removal from service by the order of disciplinary authority dated 19.10.2010. Aggrieved by the said orders, both petitioners, preferred individual appeals before the Appellate Authority raising several grounds in support of their prayer for setting aside the order of punishment. The Appellate Authority passed orders dated 30.3.2011 rejecting the appeals. These writ petitions are instituted challenging the order of removal as affirmed by the Appellate Authority.

2. Heard Smt M Shalini, learned counsel for petitioner, Sri E.V. Venugopal, learned standing counsel for Railways and learned Government Pleader for Home for respondents 4 and 5.

3. Extensive submissions are made by learned counsel for petitioners dwelling into the incident leading to their implication under the Wild Life Protection Act, 1972 (for short the Act, 1972) by the competent authority; compounding of the offence under Act, 1972; justification and reasons behind compounding; the manner in which the

enquiry officer conducted the enquiry; conclusions of the enquiry officer; order of Disciplinary Authority; and order of Appellate Authority. However, it is primarily contended by learned counsel for petitioner that the order of the appellate authority is liable to be set aside on the sole ground that it is bereft of reasons. Though exhaustive appeals were preferred by both petitioners raising several contentions in the manner in which enquiry was conducted; alleging denial of reasonable opportunity, disputing the evidence adduced and findings arrived at; and also contended that in the background of the case, the punishment itself was excessive and disproportionate.

4. Learned standing counsel raised several contentions on merits. It is his primary contention that petitioners have compounded their offence under the Act, 1972, therefore nothing else was required to be done and all the defenses raised by them in these writ petitions are only an afterthought. He submits that due procedure was followed before disciplinary proceedings were concluded and in imposing the punishment of removal. There was no illegality in the manner in which disciplinary action was conducted and punishment was imposed.

5. However, on the question posed, with reference to order passed by the Appellate Authority and that the order does not contain the reasons to reject the grounds urged by the petitioners/appellants were not dealt with, learned standing counsel could not give an effective reply. However, he sought to justify the action of the Appellate Authority by contending that Appellate Authority was only confirming the order of removal passed by the disciplinary authority and therefore on the ground of not assigning the reasons, the order cannot said as vitiated.

6. I have given my anxious consideration to rival contentions, prima facie, I am in agreement with the contentions of the learned

counsel for the petitioners that the order of the Appellate Authority does not contain reasons in support of the decision. I have gone through the grounds urged by the petitioners in their appeals preferred against the orders of removal. Petitioners have submitted exhaustive appeals raising several contentions in the manner in which disciplinary proceedings were conducted, on the allegation of indulging in sale of snakes, denial of reasonable opportunity, reasons for compounding and that punishment is excessive. Some of the grounds urged were not raised before the Disciplinary Authority. None of those contentions were reflected in the order passed by the Appellate Authority.

7. It is useful to extract the relevant portion of the order of the Appellate Authority.

“After going through the entire case DSC/HYB imposed the penalty of removal from service with immediate effect vide D.O. No. 94/2010 dated 19.11.2010 treating the suspension period as suspension and absent period as absent.

I have gone through the entire DAR case file of the appellant and do not find any illegality or lacuna in the DAR proceedings which has been fully in accordance with the provisions laid down under Rule 153 of RPF Rules, 1987.”

8. It is settled law that the decision of the Appellate Authority shall contain reasons in support of the decision. In **Chairman, Disciplinary Authority, Rani Lakshmi Bai Kshetriya Gramin Bank v. Jagdish Sharan Varshney**¹, on review of law on the subject, Supreme Court held as under:

“5. In our opinion, an order of affirmation need not contain as elaborate reasons as an order of reversal, but that does not mean that the order of affirmation need not contain any reasons whatsoever. In fact, the said decision in *Prabhu Dayal Grover case* [(1995) 6 SCC 279 : 1995 SCC (L&S) 1376 : (1995) 31 ATC 492] has itself stated that the appellate order should disclose application of mind. Whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. Hence, we cannot accept the proposition that an order of affirmation need not contain any reasons at all. That order must contain some reasons, at least in brief, so that one can

¹ (2009) 4 SCC 240

know whether the appellate authority has applied its mind while affirming the order of the disciplinary authority.

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8. The purpose of disclosure of reasons, as held by a Constitution Bench of this Court in *S.N. Mukherjee v. Union of India* [(1990) 4 SCC 594 : 1990 SCC (Cri) 669] , is that people must have confidence in the judicial or quasi-judicial authorities. Unless reasons are disclosed, how can a person know whether the authority has applied its mind or not? Also, giving of reasons minimises the chances of arbitrariness. Hence, it is an essential requirement of the rule of law that some reasons, at least in brief, must be disclosed in a judicial or quasi-judicial order, even if it is an order of affirmation.”

9. A bare perusal of the extracted portion of the order would show that there was no discussion as to why the grounds raised by the petitioners were not tenable. The decision of the Appellate Authority affects the right of the employee against his employment and when employee has a serious grievance in the manner in which the disciplinary proceedings were conducted leading to order of dismissal by the disciplinary authority, the Appellate Authority being a quasi judicial authority should assign reasons why those grounds are not tenable. As seen from the grounds urged and as noted above, these grounds raised various issues on the manner in which disciplinary proceedings were conducted and therefore they go to the root of the matter. I am therefore of the opinion that the order of the Appellate Authority is not sustainable on this ground and is liable to be set aside.

10. Accordingly, the orders of the Appellate Authority in both the writ petitions are set aside and matters are remitted to the Appellate Authority. The Appellate Authority shall consider the grounds urged by the petitioners against the orders of removal passed against the petitioners and pass reasoned orders dealing with the contentions urged by the petitioners. In the facts of the case and having regard to the fact that the petitioners were removed in the year 2010, I deem it appropriate to direct the Appellate Authority to afford personal hearing to the

petitioners duly informing them the date of hearing in advance. After hearing the petitioners and after considering the grounds already urged by them, he shall pass order by assigning reasons in support of his decision. This exercise shall be completed within a period of four weeks from the date of receipt of copy of this order.

Accordingly, the writ petitions are allowed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

DATE: 28.2.2017
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P NAVEEN RAO,J



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