

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.7868 of 2017

ORDER:

This Writ Petition has been filed to set aside charge memo issued vide proceedings in Rc.No.17837/E.2.II.C/2001 dt.06-09-2003 and direct the respondents to pay gratuity, pension and all other benefits to which the petitioner is entitled to with interest.

2. Petitioner was appointed as a Medical Officer on 15-12-1989 in the service of the then State of Andhra Pradesh. He was posted as Civil Assistant Surgeon, Primary Health Centre, Podur, Ranga Reddy District up to 2001 and later transferred and posted as Civil Assistant Surgeon in G.C.H., Pargi and worked up to 18-09-2003.

3. Alleging that he committed misappropriation of a sum of Rs.1,32,780/- under Family Planning Incentive and showed the same as unspent and that this was revealed during internal audit, he was placed under suspension pending enquiry on 04-09-2003 and on 06-09-2003 a charge memo was issued to him framing the charge on the above lines under Rule 20 of the A.P. Civil Services (CC & A) Rules, 1991.

4. He submitted the explanation to the charge memo. An enquiry was conducted by the Additional District Medical and Health Officer into the allegations leveled against the petitioner. He later submitted a report finding the petitioner guilty of the charge framed.

Consequently G.O.Ms.No.62 dt.09-03-2006 was issued dismissing the petitioner from service without prejudice to the recovery of the misappropriated amount from the petitioner.

5. Petitioner questioned the same in O.A.No.3755 of 2006 before the A.P. Administrative Tribunal, Hyderabad.

6. The said O.A. was allowed on 13-08-2009 on the ground that the enquiry officer incorrectly stated that the petitioner admitted his guilt when the petitioner has not admitted the same, and that there was no other evidence adduced in the enquiry about the guilt of the petitioner. The Tribunal held that no enquiry was conducted in accordance with the C.C.A. Rules. So the order of dismissal of the petitioner from service was set aside and the matter was remanded back for conduct of re-enquiry in accordance with the CCA Rules within six months. The Tribunal also directed the respondents to pay provisional pension to the petitioner till the conclusion of the disciplinary proceedings.

7. However, instead of commencing the enquiry and concluding it within six months as specified in the said order, the State Government issued a memo on 24-08-2010 appointing the District Medical and Health Officer, Ranga Reddy District, as enquiry officer to conduct *de novo* enquiry against the petitioner.

8. In the meantime vide G.O.Rt.No.398 dt.13-03-2013, provisional pension amounting to 75% of the eligible pension was

sanctioned to the petitioner pending finalization of the departmental proceedings.

9. The District Medical and Health Officer, Ranga Reddy District submitted an enquiry report dt.25.3.2013. In the said report, he stated that petitioner had discharged his services in a good manner. He did not specifically state that the petitioner misappropriated the amount alleged.

10. The Director of Public Health and Family Welfare who was the competent authority was not satisfied with this enquiry report and he ordered fresh enquiry on 26-10-2013 remitting the matter back to the District Medical and Health Officer, Ranga Reddy District to conduct enquiry as per Rule 20 of the A.P. Civil Services (CC & A) Rules, 1991 (for short "the Rules) and furnish enquiry report in one month.

11. Petitioner then filed the present Writ petition to quash the same and to give a direction to the respondents to pay him gratuity, pension and other benefits to which he is entitled to with interest. Petitioner contended that his suspension period was not regularized; salary for suspension period was not paid; Annual Grade Increments from January 2002 to January 2008 were not sanctioned; he is entitled to Special Grade Increments on completion of 16 years of service as on 18-02-2015 which were also not granted to him; and that he was also not paid benefit of Revision of Pay Scales, 2005 apart from non-sanction of pension under the AP Revision Pension Rules 1980. He

also contended that his case for promotion on the basis of seniority was not considered and leave encashment to which he was eligible apart from Group Insurance, Retirement Gratuity and CVP amount were not paid to him. He contended that once re-enquiry was ordered by the competent authority on 26-10-2013, the order of dismissal passed against him in G.O.Ms.No.62 dt.09-03-2006 stood cancelled automatically and that since then enquiry was not completed for 13 years after the charge memo was issued in 2003, the enquiry would be vitiated on account of the abnormal delay.

12. On 21-03-2017, this Court passed the following order:

“Learned Government Pleader for Services-I, on instructions, submits that active steps are now being taken to conduct enquiry and to complete the same as expeditiously as possible and requests four (4) weeks time to report to the Court with regard to the result of the enquiry conducted.

Having regard to the allegation made and the submission of learned Government Pleader, the Writ Petition is adjourned by four (4) weeks.

Learned Government Pleader shall ensure that the Competent Authority reports the result of the enquiry conducted and if charges are held proved, the action taken thereon. Competent Authority shall also ensure that if the charges held are not proved and proceedings are dropped, all the retirement benefits shall be released within a fixed time frame. The competent authority shall ensure that enquiry shall be conducted on day-to-day basis and complete the same within the time granted by this Court.

Post on 19.04.2017 in Motion List.”

13. Thereafter W.P.M.P.No.19735 of 2017 is filed stating that after the said order was passed, the District Medical and Health Officer, Ranga Reddy appointed an Enquiry Officer on 23-02-2017 with a direction to complete the enquiry and furnish the report on 31-03-2017; that enquiry was conducted through Dr.B.Veeranjaneyulu, PODTT and Dr.D.Upender Reddy, Incharge DPMO Ranga Reddy District and that the report was submitted on 31-03-2017. It is stated that the Enquiry Officer has not conducted the enquiry properly and it was found that the enquiry was not found in accordance with Rule 20 of the Rules, and on 18-04-2017, the District Medical and Health Officer was further directed to conduct and complete the enquiry immediately on day to day basis and send report. The respondents therefore stated that there is a delay in completing the enquiry and that they would require another eight (08) weeks to complete the enquiry in accordance with the procedure contained in the Rules and time be extended.

14. A counter affidavit was filed in June, 2017 by the respondents stating that the District Medical and Health Officer, Ranga Reddy District was asked by proceedings dt.21-04-2017 of 2nd respondent to again re-conduct the enquiry as per Rule 20 of the Rules and furnish enquiry report immediately and that the enquiry officer gave an enquiry report on 22-04-2017 holding the petitioner guilty of the charges framed against him.

15. Copy of the enquiry report is filed along with counter affidavit.

16. Reading of the enquiry report prepared on 21-04-2017 by the enquiry officer shows that he was appointed to conduct enquiry on 21-04-2017, that he completed the enquiry on 22-04-2017 itself (the very next day) without even appointing a presenting officer and findings about the guilt of the petitioner are recorded on the basis of the material before the enquiry officer. No witnesses are examined in the enquiry.

17. These facts speaks volumes about the manner in which the enquiry into the allegations against petitioner was conducted and shows the anxiety of respondents to somehow find the petitioner guilty of the misconduct by conducting a farce of enquiry without examining any witnesses and without giving a proper opportunity to petitioner to defend himself therein. The said enquiry report therefore does not inspire any confidence and deserves to be summarily rejected and it is accordingly rejected.

18. The question arises now whether it is desirable to grant any further time to respondents to conduct enquiry or not.

19. In **State of A.P. Vs. N.Radhakishan**¹, the Supreme Court held that the Court should consider, if it is in the interest of clean and honest administration, that the disciplinary proceedings should be allowed to terminate after delay, particularly when the delay

¹ (1998) 4 SCC 154

is abnormal and there is no explanation for the delay. It observed that the delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when they are unnecessarily prolonged without any fault on his part in delaying the proceedings. It observed that the Court should consider the nature and charge, its complexity and on what account the delay has occurred and *if delay is unexplained, prejudice to the delinquent employee is writ large on the face of it* and that the delay would show how much the disciplinary authority was serious in pursuing the charges against its employee.

20. This judgment was followed in **P.V.Mahadevan Vs. Md.T.N.Housing Board**² where inordinate delay of 10 years in initiating departmental disciplinary proceedings against appellant without any convincing explanation being given by respondent-employer was held by the Supreme Court as entitling the employee to seek quashing of the charge memo.

21. Again in **M.V.Bijlani Vs. Union of India and others**³, the Supreme Court reiterated that initiation of disciplinary proceedings 6 years after the alleged misconduct and continuing the same for a period of 7 years has caused serious prejudice to the delinquent officer and the enquiry proceedings were liable to be quashed on that ground.

² (2005) 6 SCC 636

³ (2006) 5 SCC 88

22. It is not in dispute that in the present case, the disciplinary action was initiated through the charge memo dt.04-09-2003 and the petitioner was kept under suspension on the same day; that enquiry was conducted and a punishment of dismissal was imposed on 09-03-2006, which was set aside in O.A.No.3755 of 2006 on 13-08-2009; that thereafter nothing happened till 24.8.2010 when another enquiry was directed by respondents, but the said enquiry report dt.25.3.2013 also was not accepted by respondents on 26.10.2013 and again an enquiry was directed ; thereafter in March,2017 the petitioner filed this Writ Petition, when hurriedly another enquiry report dt.31.3.2017 was given without conducting enquiry as per Rule 20 of the CCA Rules; so another enquiry was directed on 21.4.2017 and a report dt.22.4.2017 was furnished without properly conducting the enquiry.

23. I have already expressed my view about the enquiry report dt.22-04-2017. Till now 14 years have been elapsed since issuance of charge memo, and the respondents have not explained the delay of 8 years in completing the enquiry proceedings after the Tribunal allowed O.A. on 13-08-2009. So this is a fit case where the petitioner should be spared further mental agony and suffering by directing again another enquiry.

24. Therefore the Writ Petition is allowed and the charge memo dt.04-09-2003 issued to the petitioner is quashed; respondents are directed to treat the petitioner as having retired on attaining the

age of superannuation; and release him pension and all other retirement benefits, which he is entitled to as per law without reference to the said charge memo. The respondents shall also pay costs of Rs.5,000/- (Rupees Five Thousand only) to the petitioner.

25. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 18-07-2017

Kvr/Vsv

