

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SMT. JUSTICE ANIS**

WRIT PETITION NO.24034 OF 2016

O R D E R

(Per Hon'ble Sri Justice Sanjay Kumar)

The petitioner is the applicant in O.A.No.5002 of 2012 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (for brevity, 'the Tribunal'). He filed the said O.A. assailing the proceedings dated 11.08.2010, whereby the Transport Commissioner, Andhra Pradesh, Hyderabad, imposed upon him the penalty of stoppage of one annual grade increment with cumulative effect and the Memo dated 22.02.2013 issued by the Government of Andhra Pradesh, rejecting his appeal thereagainst. By order dated 03.06.2016, the Tribunal dismissed the O.A. Aggrieved thereby, he is before this Court.

The petitioner worked as a Regional Transport Officer at Mancherial, Adilabad District, during 2002-2003. Within his jurisdiction, but at a distance of 80 kilometres from Mancherial, there was a transport check-post at Wankidi. The in-charge of the said check-post was a Motor Vehicles Inspector assisted by three Assistant Motor Vehicles Inspectors. A surprise check was conducted at this check-post by the Anti-Corruption Bureau (ACB) officials on 17.09.2003 at 3.00 AM. Certain irregularities were said to have been detected during this check leading to issuance of a Charge Memo on 30.06.2005 to the petitioner. Along with him, a Motor Vehicles Inspector, an Assistant Motor Vehicles Inspector and an attender were also charged and a regular departmental enquiry was held. Under report dated 29.12.2008, the Enquiry Officer held

that the charges against all the charged employees were not proved. The Transport Commissioner of the erstwhile State of Andhra Pradesh however disagreed with these findings and, after giving due opportunity of hearing to the petitioner, imposed upon him the penalty of stoppage of one increment with cumulative effect under proceedings dated 11.08.2010. The petitioner emerged unsuccessful in his appeal against imposition of this punishment before the Government, as the same was dismissed under Memo dated 22.02.2013. Both the aforestated proceedings were subjected to challenge by the petitioner before the Tribunal but to no avail.

Perusal of the order under challenge reflects that the Tribunal took note of the fact that the petitioner was charged with failure to supervise and exercise proper control over his staff at the check-post at Wankidi and thereby violated Rule 3(1) & (2) of the Andhra Pradesh Civil Services (Conduct) Rules, 1964 (for brevity, 'the Rules of 1964'). As the petitioner's appeal was dismissed by the Government during the pendency of the O.A., the prayer in the O.A. was amended by the petitioner, assailing the Memo dated 22.02.2013. The Tribunal was however of the opinion that the petitioner's failure to amend his pleadings, incorporating grounds to impugn the dismissal of his appeal, was fatal. Further, the Tribunal observed that it was open to the disciplinary authority to differ with the findings of the Enquiry Officer and held that there were no grounds made out to interfere with the impugned penalty visited upon the petitioner. The Tribunal accordingly dismissed the O.A.

Heard Sri S.Satyam Reddy, learned senior counsel representing Smt.K.V.Rajasree, learned counsel for the petitioner, and the learned

Government Pleader for Services (Telangana) for the State and its transport authorities.

Sri S.Satyam Reddy, learned senior counsel, would point out that the entire record was before the Tribunal and therefore the Tribunal ought not to have held against the petitioner on the short ground that he did not amend his pleadings after dismissal of the appeal.

This Court finds merit in this submission. Once the prayer in the O.A. stood amended and the challenge laid was to the imposition of penalty upon the petitioner which was confirmed in appeal and the opposite side filed a counter-affidavit justifying the same, along with supporting material, the whole issue squarely fell for consideration before the Tribunal. The Tribunal therefore ought not to have adopted a hyper-technical approach in this regard.

Perusal of the material documents placed on record reflects that neither the authorities nor the Tribunal looked into the issue as to what was the charter of duties of the petitioner in the capacity of a Regional Transport Officer. In the absence of established failure on the part of the petitioner to discharge his functions as per his prescribed charter of duties, it is not open to the authorities to charge him with failure to supervise and exercise proper control over the staff employed at the subject check-post. According to Sri S.Satyam Reddy, learned senior counsel, he was only required to inspect the subject check-post at Wankidi once a month. This aspect of the matter is not denied by the learned Government Pleader. Learned senior counsel would further state that the petitioner did, in fact, inspect the subject check-post three days prior to the surprise check by the ACB officials on 17.09.2003.

Significantly, the surprise check at the check-post was conducted by the ACB officials at 3.00 AM on 17.09.2003. As to whether the petitioner could have been expected to be present at this unearthly hour at the check-post was neither looked into by the authorities nor by the Tribunal. It is highly farfetched to expect a Regional Transport Officer, who has jurisdiction over several check-posts in the area, to be personally present at such an early hour at the subject check-post, which is at a distance of 80 kilometres from Mancherla, where he was stationed.

Sri S.Satyam Reddy, learned senior counsel, would further contend that except for the petitioner, none of the others charged with irregularities in relation to the surprise check, were imposed with any punishment. This is also not disputed by the learned Government Pleader.

The irregularities in question were that an Assistant Motor Vehicle Inspector, along with a car driver, were collecting bribes from the drivers of the vehicles passing through the check-post. Sri Satyam Reddy, learned senior counsel, would assert that this kind of irregularity takes place at a given moment and it is for the Motor Vehicles Inspector, who is in-charge of the check-post, to prevent the same. He would submit that the Regional Transport Officer who is to supervise and exercise control over the check-post cannot be expected to be present at every given moment to prevent such irregularities from taking place. Learned senior counsel would contend that had there been any irregularities in relation to maintenance of records or remittal of amounts collected which would be supervised and controlled by the petitioner, he could have been charged with the same but the alleged irregularity would squarely fall

within the scope and ambit of the control of the Motor Vehicles Inspector, the in-charge of the check-post.

This Court finds merit in this submission as the charter of duties relating to the petitioner was not produced even before this Court. Logically, a Regional Transport Officer who has over-all supervisory control over several check-posts cannot be expected to be present at each and every one of them at each and every given moment of the day to prevent irregularities, which are occasioned by a chance moment.

Further, perusal of the Memo dated 27.11.2009, whereby the Transport Commissioner differed with the findings of the Enquiry Officer reflects that the only grounds for him to do so were as under:

- (1) that the evidence of the witnesses did not corroborate the charge did not hold water as the main discrepancies in the evidence were only technical.
- (2) that it could not be accepted that the petitioner was away from the check-post as he was in-charge of the said check-post and should have had control and supervision.
- (3) that the petitioner may have visited the check-post for inspection and found it to be in order but the surprise check conducted by ACB at odd hours exposed the irregularities of malpractice which showed the slack supervision by the petitioner.

Prima facie, this Court finds no merit in the aforestated reasons assigned by the disciplinary authority to disagree with the findings of the Enquiry Officer. The evidence of the witnesses could, at best, have served to hold good the charges against those actually present and involved in the alleged irregularities. Their evidence could not have indicted the petitioner who was even not present at the scene.

As regards the failure of the petitioner to be present at the check-post on the ground that he was in-charge thereof and should

have had control and supervision, as already pointed out *supra*, the job charter of the petitioner was not even looked into by the disciplinary authority to ascertain as to whether he was required to be present at every check-post within his jurisdiction at every given moment of the day, which is practically impossible. That apart, the disciplinary authority does not explain as to how the petitioner could be expected to be at the check post at 3.00 AM in the morning. The surprise check was conducted by ACB officials, when he was stationed at Mancherla 80 kilometres away.

Above all, without first examining what were the chartered duties of the petitioner in his capacity as a Regional Transport Officer, the disciplinary authority could not have charged him with failure to supervise and exercise proper control over the subject check-post. Unless the petitioner fell short of what was required of him under the charter of duties, he would not fall foul, whereby Rules 3(1) & (2) of the Rules of 1964 could have been pressed into service against him.

Significantly, the appellate authority merely parroted the same reasons quoted by the disciplinary authority, as set out *supra*, and dismissed the petitioner's appeal under Memo dated 22.02.2013.

On the above analysis, this Court finds that there was total non-application of mind by the disciplinary authority and the appellate authority while dealing with the charge framed against the petitioner. The findings recorded by them against the petitioner had no foundation worth the name to support them. The Tribunal unfortunately failed to note the same and dealt with the matter on purely technical grounds.

The proceedings dated 11.08.2010 passed by the Transport Commissioner, Andhra Pradesh, imposing the penalty of stoppage of one increment with cumulative effect visited upon the petitioner and the Memo dated 22.02.2013 passed by the Government, the appellate authority, confirming the same, are accordingly set aside.

The writ petition is allowed. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

ANIS, J

22nd FEBRUARY, 2017

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