

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION (TR) No.285 OF 2017

DATED : 25.07.2017

Between :

B.Sudhakar, S/o.Rajanna, Aged : 57 yrs, Occu : Retd. Employee,
R/o.H.No.1-8-19/2, New Dilsukhnagar,
Hyderabad (died) per L.Rs, petitioners 2 and 3 & others.

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Petitioners

And

Government of Andhra Pradesh,
Rep., by its Secretary to Government of A.P.,
Irrigation and Command Area Development,
Secretariat, Hyderabad 500 022 & another.

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Respondents



This court made the following :

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ORDER :

At the relevant point of time, the first petitioner was working as Deputy Executive Engineer. Disciplinary proceedings were initiated against him by drawing a charge memo dated 16.03.1999. The sum and substance of the allegations in the charge sheet are that the first petitioner misappropriated Government money by drawing an amount of Rs.79,000/- from Saraswathi Grameena Bank Branch, Kagaznagar, out of the amount kept at his disposal by D.R.D.A., Adilabad, towards executing Nazurulnagar Project under IRDAP 1992-93 without any voucher or recorded reason and not submitted accounts. The Enquiry was entrusted to the Member Commissionerate of Enquiries. The enquiry officer recorded finding of guilt. Accepting the finding of the enquiry officer, Government passed order imposing punishment of dismissal from service vide G.O.Rt.No.116 dated 16.07.2001. The review filed by the first petitioner was rejected. Aggrieved thereby first petitioner filed O.A.No.4367 of 2005 before Andhra Pradesh Administrative Tribunal (for short 'the Tribunal'). The said O.A, was allowed by order dated 08.12.2009, setting aside the punishment holding that the disciplinary authority has not followed the mandate of Rule 20 of the Andhra Pradesh Civil Services (CCA) Rules, 1991 before taking disciplinary action. Thus, while setting aside the punishment, the Tribunal granted liberty to the disciplinary authority to proceed further, if so warranted. While so, the first petitioner was also prosecuted in criminal case and he was accused in C.C.No.208 of 2003 on the

file of Judicial Magistrate of First Class, Sirpur. By judgment dated 04.07.2006, the trial Court convicted the first petitioner and sentenced him to under go simple imprisonment for a period of three months and to pay fine of Rs.300/-. Aggrieved by the said conviction and sentence, first petitioner preferred CrI.A.No.47 of 2006 on the file of III Additional Sessions Judge (FTC), Asifabad, and the said criminal appeal was allowed by judgment dated 08.01.2007, setting aside the conviction and sentence.

2. After the decision of the Tribunal, first petitioner submitted representation for settlement of retirement benefits in compliance of the orders of the Tribunal. On due consideration of the representation and the fact that first petitioner has already retired from service, by the time judgment was rendered by the Tribunal, Government decided to take a lenient view on humanitarian grounds and dropped further action and to release the pensionary benefits to the first petitioner. However, this order was silent on treatment of the period when first petitioner was out of employment i.e., from 16.07.2001 till he retired on 30.04.2006. Thereafter, first petitioner made a representation on 26.04.2010 for treatment of the period as on duty and to settle the retirement benefits accordingly. This request of the petitioner was rejected by the Government and the decision of the Government is communicated vide memo dated 20.05.2010. Aggrieved thereby petitioner filed O.A.No.1093 of 2013 before the Tribunal, since transferred to this Court.

3. Heard learned counsel for the petitioners and learned Government Pleader for the respondents.

4. Learned counsel for the petitioners contends that since the first petitioner was acquitted by the criminal Court, the allegation of mis-appropriation falls to ground and the disciplinary proceedings initiated on the very same set of facts and on the very same allegation, as he was acquitted in the criminal Court, no further disciplinary proceedings are maintainable. Thus, first petitioner was deemed to have been in service and he is entitled to all consequential benefits from 16.07.2001, till he attained the age of superannuation. He further submits that as the order of dismissal was set aside by the Tribunal and the Government has taken a decision not to take further disciplinary action, entire period has to be treated as on duty and not treating the first petitioner as on duty is erroneous and amounts to arbitrary exercise of power and authority.

5. Learned counsel has extensively taken through the judgment rendered in Crl.A.No.47 of 2006 in support of his contention that once the first petitioner was acquitted on the very same allegation, the finding recorded by the criminal Court is equally binding on the employer and therefore, first petitioner is entitled to all the benefits flowing out of the judgment rendered by the appellate Court in Crl.A.No.47 of 2006.

6. Learned Government Pleader submits that acquittal granted by the appellate Court is only on the ground that the ingredients of Section 409 of Indian Penal Code (for short 'IPC') were not satisfied. The appellate Court also took note of the fact that before crime was registered, the amount was already repaid with interest and therefore, Section 409 of IPC is not attracted and found fault with the findings recorded by the trial Court and sets aside the

conviction and sentence. He further submits that the reliance placed on the enquiry report by the trial Court was also found to be erroneous as the author of the report of enquiry was not examined as a witness before the trial Court. Learned Government Pleader therefore, supports the decision of the Government denying benefits for the said period.

7. The basic facts are not in dispute. The record discloses that first petitioner was entrusted with an amount of Rs.6 lakhs, public funds for proper utilization. It appears, first petitioner has not accounted for an amount of Rs.79,000/- and according to the estimation of competent authority, he has used the said amount for his personal gain, which is not permissible, therefore, committed grave mis-conduct. Though enquiry was conducted and imposed punishment of dismissal from service, the same was set aside by the Tribunal on the ground that before imposing such grave punishment, due procedure as required was not followed and granted liberty to the competent authority to initiate further proceedings, if so warranted.

8. It is also appropriate to note that the acquittal granted by the appellate Court in CrI.A.No.47 of 2006 was on the ground that alleged mis-appropriated amount was already paid by the first petitioner much before commencement of investigation and therefore, the ingredients of Section 409 of IPC were not satisfied and thus it cannot be said that the appellant committed crime warranting conviction and sentence. A reading of the judgment in CrI.A.No.47 of 2006 would also disclose that there was categorical statement of PW.2 holding that an amount of Rs.75,000/- was deposited by the first petitioner with interest on 10.09.1993. This

would show that the amount was re-credited to the Government account with interest. *Prima-facie*, first petitioner would not have re-credited the amount more so, with interest, if there was no mis-utilization of funds, as sought to be alleged by the disciplinary authority. Further first petitioner earlier invoked the jurisdiction of the Tribunal challenging the punishment imposed. By the time, the Tribunal considered the O.A., finally, first petitioner was already acquitted by the appellant Court. However, the Tribunal has not set aside the punishment on merits, but the O.A., was allowed on the ground that procedural requirements were not complied, before imposing such punishment and granted liberty to conduct fresh enquiry.

9. In other words, the Tribunal has not interfered with the disciplinary action taken against the first petitioner *per se* and left it open, to the competent authority to take a decision. This decision of the Tribunal has become final. In due consideration of the decision of the Tribunal and duly taking note of the fact that first petitioner already retired from service, Government in their orders in G.O.Ms.No.34 dated 19.04.2010 stated that it is taking a lenient view, on humanitarian grounds, to drop further action and to grant pensionary benefits. Thus, dropping further action was not on merits but on humanitarian grounds, having regard to the fact that first petitioner had retired from service. This order of the Government in G.O.Ms.No.34 has become final.

10. The claim of the first petitioner, that he is entitled to treatment of the entire period out of service, till he retired, as on duty, with all consequential benefits merits no consideration.

11. F.R.54-A deals with the situation arising in this case. According to Sub-Rule (2) if the dismissal of Government servant is set aside by the Court solely on the ground of non-compliance with the requirements of clause (1) or clause (2) of article 311 of the Constitution, and not exonerated on merits, the pay and allowances payable to the Government servant for the period of dismissal should be limited to the subsistence allowance, the employee is entitled to under FR-53 during the entire period when the Government servant was not on duty.

12. It is appropriate to note that consequent to the judgment rendered by the Tribunal setting aside the punishment of dismissal and granting liberty to conduct fresh proceedings, it would amount to employee as deemed to be under suspension from the date of original dismissal from service till he retired. Thus, FR 54-B is also attracted. According to FR 54-B except for the exemptions provided in sub-rules 2 and 3, which are not attracted to the case on hand, the suspension period cannot be treated as period spent on duty and that employee is not entitled to claim pay and allowances for the said period.

13. These provisions are not under challenge. In the order impugned the competent authority refused to treat the period from the date of dismissal to the date of superannuation as regular service and treated the period as not on duty under FR 54-B. Thus, on a cumulative reading of FR 54-A and 54-B, I do not see any illegality in rejecting the claim of the first petitioner, in the two memos impugned in this writ petition, and the writ petition deserves to be dismissed.

14. It is also relevant to note at this stage that first petitioner was dismissed from service as a consequent to the disciplinary proceedings initiated against him. By the time, first petitioner was dismissed from service, the charge sheet was not filed in the criminal case. On the issue of committing crime which is punishable under Section 409 of IPC, in C.C.No.208 of 2003 the trial Court held him guilty in the judgment dated 04.07.2006. It is also relevant to note that first petitioner was convicted by the trial Court and the acquittal granted by the appellate Court was on the ground that the amount was deposited, even before commencement of investigation. Thus, having regard to the peculiar facts as noted above, the claim of the first petitioner for treatment of the entire period of out of service as on duty cannot be granted and no direction as sought for by the petitioners can be issued to the respondents to treat the period from 25.07.2001 to 30.04.2006 as regular service.

15. Accordingly, the writ petition (Tr) is dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition (Tr) shall stand closed.

25th July, 2017
Rds

P.NAVEEN RAO,J