

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
AND
THE HON'BLE SMT. JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.4402 of 2003

DATED:02-11-2017

Between:

Garpati Subba Rao ... Petitioner

And

The South Central Railway
Government of India
Rep. by its General Manager
Rail Nilayam
Secunderabad
and another ... Respondents

COUNSEL FOR THE PETITIONER: Mr. Siva

COUNSEL FOR THE RESPONDENTS: Mr. R.S. Murthy,
Standing Counsel for
South Central Railway

THE COURT MADE THE FOLLOWING:

JUDGMENT: (per the Hon'ble Smt. Justice Kongara Vijaya Lakshmi)

This writ petition is filed for issue of *Certiorari* to quash the order dated 31.10.2002 in O.A No.1772 of 2000 on the file of the Central Administrative Tribunal, Hyderabad Bench at Hyderabad (for short, "the Tribunal").

We have heard Sri Siva, learned counsel for the petitioner, Mr. R.S. Murthy, learned standing counsel for the respondents, and perused the record.

The facts of the case in brief are as follows:

The petitioner was appointed as a Khalasi in Wagon Workshop, Guntupalli with effect from 21.04.1981 under a scheme formulated by the Railway Administration to provide employment to the family members whose lands were acquired for the purpose of wagon workshop. On 16.06.1987, he was served with a charge memo containing two charges, which reads as follows:

"ARTICLE-I:

That the said Sri Garapati Subba Rao, has committed serious misconduct and failed to maintain absolute integrity in that he sought employment in Wagon Workshop, Guntapalli as a Land Loser by fraudulent means in that by concealing the fact that a family member from the same family was already provided with job in connection with the acquisition of land of Sri Garapati Pakeeraiah. Thus he has contravened the provisions contained under Rule 3(1)(i) of Railway Services (Conduct) Rules, 1966.

ARTICLE-II:

That the said Sri Garapati Subba Rao has committed serious misconduct and failed to maintain absolute integrity in that he sought employment in Wagon Workshop, Guntupalli as a Land Loser by a fraudulent means by producing a bogus certificate relating to the land said to be acquired from him. Thus, he has

contravened the provisions contained under Rule 3(1)(i) of Railway Services (Conduct) Rules, 1966.”

Enquiry Officer was appointed in the matter, who submitted his report, holding that the first charge is proved and the second charge is not proved. According to the report of the Enquiry Officer, on 04.06.1980 petitioner submitted an application stating that his land in RS No.82/ 7 was acquired and he also produced a certificate issued by the Tahsildar. In reply to the said application, Railway Administration, vide letter dated 30.06.1980, asked the petitioner to submit (1) an application for appointment as Khalasi in the prescribed proforma, (2) Certificate regarding land owning, surrendered for construction of Wagon workshop, and balance of land now in possession after surrendering from Tahsildar (Land Acquisition); (3) Declaration stating that none of his relatives have been employed in this workshop and also state whether he has applied for the same previously, if so, the reasons for not considering his case. With regard to Point No.3 i.e., declaration, petitioner stated that ‘no application has been submitted for seeking appointment by him.’

The Enquiry Officer further observed as under:

“Vide letter dated 30.6.1980, a declaration was asked on two aspects, basically (1) stating that none of his relatives have already been employed in this workshop, and also, (2) say whether he has applied for the same previously. But, however, as seen by the declaration given by Shri G.Subba Rao, he only declared for the second aspect by stating that no application has been submitted for seeking appointment by him, and he stated that this is the first application which has been submitted by him. But, he has not replied to the first aspect of the declaration sought i.e., one of his relatives have already been employed in this workshop. Thus, he has not declared what has been asked for and misguided the Administration by concealing the fact that his own brother, Shri G. Ganapathi Rao, was appointed in Wagon

workshop under land loser's quota for surrendering the same land in R.S.No.82/7, which was in the name of Shri G. Pakeeraiah, his father as pattadar, to Rlys., for construction of Wagon workshop, and also by submitting a certificate, which stated that he himself owned a land of Ac.4.08 in R.S.No.82/7, which was surrendered to Railways. From the above discussion of the evidence, I hold that the Article-I of Charges leveled against Shri Garapati Subbarao, Khalasi Helper, T.No.31445 that 'he sought employment in wagon workshop, Guntupalli, as a land loser by fraudulent means in that by canceling the fact, that a family member from the same family was already provided with job in connection with acquisition of land of Shri G. Pakeeraiah as PROVED."

So far as the second charge is concerned, it was observed as under:

"The certificate produced by Shri G. Ganapathi Rao, issued by Spl. Tahsildar, Vijayawada certified that Garapati Pakeeraiah owned 4.08 acres of land in R.S.82/7 at Gudurupadu village and entire land of 4 Acres and 8 cents were acquired by Spl. Dy. Collector, Rly. Wagon workshop Vijayawada in Award No.5/75 dated 21.6.75. It is also certified by Tahsildar, Vijayawada that Shri Garapati Pakeeraiah owned 0.41 cents of land in R.S.No.284/9 of Guntupalli village and Shri G. Ganapathi Rao is the son of Garapati Pakeeraiah of Guntupalle village. The certificate produced by Shri G. Subba Rao, issued by Spl. Tahsildar (LA), Vijayawada Thermal power station, Vijayawada, in which it is stated that Garapati Subba Rao owned 4.08 Acres in R.S.No.82/7 of Gudurupadu village and entire land was acquired by Spl. Dy. Collector, Rly. Wagon workshop, Vijayawada in Award No.5/75 dt. 21.6.75. The particulars of the land furnished in both the certificates is one and the same, which was acquired by Railways for construction of Wagon workshop. It is true that it can not be in possession of two persons at the same time."

"But however, the charge levelled against the charged employee states that the certificate submitted by him is bogus. Since both the certificates were issued by two different Tahsildars, only the Office where the certificates were issued can state whether the certificate is bogus, or genuine or is a mistake of office, and hence, W.P.O. was asked to confirm the

same. WPO vide letter No.GR/ P.227/ Misc./ Vol.II dt. 3.9.1992 & 10.11.1992 stated that “Spl. Tahsildar/ LA/ Machilipatnam has advised that he was not in a position to clarify the genuineness of the certificate produced by the employee. Shri G.Subbarao.”

However, W.P.O. has not given that certificate of Tahsildar stating as above to me. Hence, DA may ensure that the same before taking decision. Hence, with the available information, I am not able to ascertain the genuineness of the certificate.

From the above discussion of evidence, I hold that the Article of the charges leveled against Shri Garapati Subba Rao, Khalasi Helper, T.No.31445 that ‘he sought employment in Wagon workshop, Guntupalli, as a land loser by a fraudulent means by producing bogus certificate relating to the land said to be acquired from him ‘as not PROVED’.”

The report of the Enquiry Officer was sent to the petitioner on 08.12.1992 and a reply dated 24.12.1992 was submitted by the petitioner against the enquiry report. Agreeing with the findings of the Enquiry Officer, the Disciplinary Authority imposed the punishment of removal from service with effect from 21.04.1993 on the petitioner. The appeal and revision filed by the petitioner were rejected on 15.12.1993 and 18.03.1994, respectively, confirming the order of the Disciplinary Authority. Thereafter, the petitioner filed O.A. No.745 of 1994 before the Tribunal challenging the orders of the Disciplinary, Appellate and the Revisional Authority. In the said O.A., the petitioner has taken a plea that he is similarly situated as that of the petitioner in OA No.453 of 1990, which was disposed of by the Tribunal by order dated 11.02.1993 and that similar relief has to be given to him. In the said order, it was observed:

“...In view of the fact that the lands of both the mother and the father were acquired and when the married sister to whom a job was given at the instance of the mother of the applicant, she cannot be considered as the member of the family

of the applicant, according to the applicant it cannot be stated that the applicant had suppressed the facts. The contention that he has sought for a job under the *bonafide* impression that under the circumstances stated above, he is also eligible to get a job from the Railways under the scheme referred to in the letter dated 1.1.83 on the basis of acquisition of the land of his father when earlier a job was given to his married sister on account of the acquisition of land of his mother, cannot be held as altogether untenable. In view of the above circumstances, we feel that the charge of concealment /suppression is not established and hence the impugned order of removal is liable to be set aside.”

O.A. No.745 of 1994 was disposed of on 07.05.1997 setting aside the order of the Appellate Authority dated 15.12.1993 and the Revisional Authority dated 18.3.1994, permitting the petitioner to file a fresh appeal to the Appellate Authority and that the Appellate Authority was directed to dispose of the same.

On the fresh appeal, the Appellate Authority vide order dated 8.9.1997 modified the order of removal to that of reduction in pay from Rs.935/- to Rs.800/- in the scale of Rs.800-1150/- for a period of six years with cumulative effect, duly treating the intervening period from the date of removal from service to the date he reports to duty as *dies-non*.

The petitioner preferred a revision against the said order. The Revisional Authority discussed the case of the petitioner and also of the applicant in O.A.No.453 of 1990. It was observed that Appellate Authority has shown sufficient leniency and that there is no reason to show further leniency and confirmed the order of the Appellate Authority vide order dated 21.01.1998. Aggrieved by the same, the petitioner filed O.A.No.254 of 1998 before the Tribunal.

The Tribunal by its order dt.27.8.1999 has set aside the order of the Revisional Authority dated 21.01.1998 and directed the latter to consider the revision petition dated 28.10.1997 in the light of the observations made therein.

In the said order, the Tribunal observed that 'the fact that the two sons of late Pakeeraiah have secured appointment under the LDP quota is not in dispute. This is in contravention of the instructions of the Railway Board'. It was further observed as under:

"..If the interpretation of the applicant is accepted that the land devolves in different units on different unit holders then the railway administration may have to provide appointment to all the three sons of Pakeeraiah. Provisions of the Hindu Succession Act is applicable only for the purpose of distributing compensations awarded for the land acquired and it cannot be made applicable to the service rules."

"In fact, the respondent authorities by their letter bearing No.GR/ P 564/ SPL.dt.30.06.1980 sought for a declaration from the applicant as to any of the relatives had already been employed in the workshop and also to state whether he had applied for the post previously under the LDP quota. From the observations made by the Inquiry Officer it appears that applicant did not answer the question whether any of the relatives had already been employed in the workshop. He only submitted that he had not submitted any application earlier and his application dt.04.06.80 was the first application.

The respondent authorities have failed to verify this declaration whether it was in order or not. They were fully aware that two members of a family could not be provided with appointment under the LDP quota. Hence they sought for the declaration. When the declaration furnished by the applicant in reply to the letter dt.30.6.80 was incomplete, the respondent authorities should have sought necessary clarification from the applicant before processing his application. The respondents have not done so.

It is stated that the same Chief Personnel Officer who had verified the application submitted by the mother of the applicant on 01.12.78 praying for an appointment of her son Ganapathi Rao and also verified the application submitted by the applicant on 4.6.80. If that is correct, then the CPO has not performed his duty with all diligence, and he has to explain his conduct.

As contended by the applicant the observation made by the Appellate Authority in the impugned order (extracted above) is not borne out from the inquiry records. His contention is correct. The Appellate Authority should have indicated the name of the official or officials who connived with the applicant in providing the appointment.”

It was also observed in the said order that the applicant has raised certain contentions in paras 8 to 12 in his appeal dated 9.5.1997 and that the Appellate Authority has not discussed any thing with regard to those paras. It was further observed that the observations made by the Appellate Authority are not supported by the report of the Enquiry Officer.

After remand, the Revisional Authority by order dated 24.8.2000 rejected the revision petition of the petitioner, confirming the order dt.8.9.1997 of the Appellate Authority. While dismissing the revision, the Revisional Authority observed as under:

“A perusal of the judgment delivered by the Hon’ble CAT/ Hyderabad on 11.02.1993 in OA No.453/ 90 reveals that Sri K.Svasankar Rao applied for an appointment on the railways based on the acquisition of land belonging to his father and prior to his appointment, his married sister was appointed in the railways on the basis of acquisition of another piece of land measuring 3.55 cents belonging to his mother. In the case of the petitioner, appointments of the petitioner and his younger brother Sri G.Ganapathi Rao were made on the Railways against Land Losers quota on the basis of acquisition of the land in R.S.No.82/ 7 measuring 4 acres and 8 cents.”

“...The petitioner had given a declaration that in reference to the letter No.GR/ PP.564/ Spl. Dt. 30.6/ 1.7.1980 that the application submitted by him was the first application. This aspect has been discussed by the Inquiry Officer in his report under “Discussion of Evidence and Reasons for findings” (Page No.6 of the report). When the petitioner was asked to submit a declaration that none of his relatives was employed in the Workshop and whether he had applied for employment previously, the petitioner had chosen not to give the declaration on the aspect of employment of his relatives in the Workshops. The failure to give the said declaration is concealment of the fact. Had he given the declaration, his request for provision of the appointment to him on Land Losers Quota would have been rejected. No doubt, the administration should insisted for the declaration from the petitioner but failure on the part of the administration in having verified the fact would lot, in any way, condone the charge of concealment of the fact of employment of his brother in railways.”

Aggrieved by the order of the Revisional Authority, the petitioner filed O.A.No.1772 of 2000 before the Tribunal. The Tribunal by order dated 31.10.2002 dismissed the said O.A observing that the Revisional Authority correctly came to the conclusion that the conduct of concealment of fact of employment of his brother by the petitioner cannot be condoned. It has further observed that the punishment imposed cannot be said to be excessive in the facts and circumstances narrated therein. The Tribunal summoned the records pertaining to the petitioner, also the file of G. Ganapathi Rao and came to the conclusion that the punishment imposed cannot be said to be excessive. It was further observed that on 30.6.1980, the petitioner was called upon to furnish a declaration that none of his relatives were already appointed in the workshop. That to the said question, the petitioner submitted a reply on 14.7.1980. In the proforma, there was no mention of his relatives having been already employed and that the petitioner submitted the same proforma on 10.11.1980, which does not contain

information pertaining to any of his relatives having been employed. It was also observed that the younger brother of the petitioner Sri Garapati Ganapathi Rao submitted an application on 1.12.1978 and that the same has been signed by his mother and that the said application was submitted along with the original copy of the land loser's certificate issued by the Tahsildar, Vijayawada.

The learned counsel for the petitioner contended that the Tribunal recorded clear findings holding that both the charges are not proved in O.A.No.254 of 1998 and that the said order has become final. It is also contended that in O.A. No.453 of 1990, the Tribunal held that there was no requirement in the application form to indicate provision of employment to a family member. It is further contended that at the time of seeking employment by the petitioner there was no bar to a second member of land displaced family to seek employment and that the petitioner was under the *bonafide* impression that after demise of his father both the brothers became independent and each one of them is a separate land loser and can claim for separate employment. Lastly it is contended that differential treatment is meted out between the applicant in O.A.No.453 of 1990 and this petitioner.

So far as the first OA i.e., O.A.No.745 of 1994 is concerned, the petitioner was permitted to file a fresh appeal to raise the plea of discrimination. The Appellate Authority considered the issue on 8.9.1997 and observed as follows:

“It has been established beyond doubt that the employee was not entitled to a job under land loser's quota. He has not given any false information about earlier employment to his family but has obviously connived with some officials and willfully suppressed information leading undue benefit having been granted to him. The action taken and punishment meted

out has to be viewed in this context. However, the undersigned would like to recognize the fact of his employment in Railways for so many years. As a matter of compassion, he is reinstated as a Khalasi Helper at the bottom of the grade.

Accordingly, the penalty of removal from service with effect from 21.4.1993 imposed on Sri G. Subba Rao, Ex. Khalasi Helper, Guntupalli by Deputy Chief Mechanical Engineer, Guntupalli, vide Memorandum dt. 17.04.1993 stands modified to that of reduction in pay from Rs.935/- to Rs.800/- in scale of Rs.800-1150 for a period of six years with cumulative effect. The interim period i.e., from the date of removal from service (21.04.1993) to the date he reports to duty as a consequence to this order, is treated as *dies-non* .

It is clear from the above observations that the appellate authority has categorically stated that the petitioner was not entitled to a job under the land loser's quota, that though he has not given any false information about the earlier employment to his family but conniving with some officials, he willfully suppressed the information leading to an undue benefit having been granted to him. It was clearly stated that as the petitioner was already employed in the Railways for many years, and as a matter of compassion, he was reinstated as a Khalasi.

In the second O.A., i.e., O.A. No.1772 of 2000, basing on the material on record, the Tribunal observed as under:

“From the foregoing it is evident that under the same award, for the same land on the strength of the same certificate issued by the Special Tahsildar, the younger brother of the petitioner Garapati Ganapathi Rao had been appointed by the Railways on 5.12.1979 and the petitioner was appointed on 3.4.1981; that the petitioner should have mentioned about the employment of his younger brother and it is the said charge which has been proved by the Enquiry Officer in his enquiry conducted on 23.11.1992 and that the petitioner's contention that the case of the petitioner is similarly situated to that of Sva Shankara Rao

cannot be accepted for the reason that the said Shiva Sankara Rao and his sister both of them have got employment from the Railways as against two pieces of land acquired by the Railways.”

While examining the orders passed by the departmental authorities in matters concerning the disciplinary proceedings, the Courts/ Tribunals do not act as appellate bodies. The Courts/ Tribunals will not re-appreciate the evidence and interfere with the orders of the departmental authorities merely because there is another view possible. When there is some legally admissible evidence in support of the finding, the Courts generally will not set aside the penalty imposed. On the facts and circumstances stated above, we are of the opinion that the punishment given to the petitioner is appropriate. The Disciplinary Authority and the Appellate Authority being fact finding authorities have the exclusive power to consider the evidence. They have the discretion to impose appropriate punishment keeping in view of the gravity of the misconduct. The High Court or the Tribunal while exercising the powers of judicial review will not normally substitute its own conclusion on penalty except in cases where the punishment imposed by the Disciplinary Authority or the Appellate Authority shocks the conscience of the Court.

In *Deputy Inspector General of Police v. K.Ravinder*¹, a Division Bench of this Court, speaking through one of us (CVNR, J), has elaborately discussed the scope of interference of the High Court with the orders passed by the Disciplinary Authority, and held as follows:

“It is a settled position of law that the scope of interference with the orders passed by the Disciplinary Authority by the High Court under Article-226 of the Constitution of India is limited to examining whether the decision suffers from any patent illegalities, proven *mala fides* or findings not being based

¹ 2016 (6) ALT 799

on any evidence. While exercising the writ jurisdiction, this Court will not sit in appeal and act as an appellate body. Even where two views are possible, the Court will not interfere with the decision of the Disciplinary Authority merely because it prefers to follow another view. (See *Union of India Vs. Tulsiram Patel*; [(1985)3 SCC 398]

As regards the plea taken by the respondent that the punishment imposed on him being disproportionate to the proven misconduct, the Courts cannot lightly interfere with the quantum of punishment unless it shocks the judicial conscience.

In *DG, RPF Et & others Vs. Ch. Sai Babu* [(2003) 4 SCC 331], the Supreme Court held that the High Courts shall not interfere with the punishment imposed by the Disciplinary Authority unless the same is shockingly disproportionate to the gravity of proven misconduct.

In *B.C. Chaturvedi Vs. Union of India & Others* [(1995) 6 SCC 749], the Supreme Court held that while exercising the power under Article-226 of the Constitution of India, the High Courts have to bear in mind the restraints inherent in exercising the power of judicial review and the substitution of the High Court's view regarding appropriate punishment is not permissible.

Similar view was taken in *UOI Vs. Mohd. Rafia Ali Ahmed* [1999 SCC (L&S) 634].

In *UOI & Ors Vs. G. Ganayutham* [1997(7) SCC 463], the Supreme Court held that the Courts would not interfere with the administrator's decision unless it was illegal or suffered from procedural impropriety or was irrational, in the sense, that it was an outrageous defiance of logic or moral standards."

Having regard to the facts and circumstances stated above and applying the settled legal position as noted above, there are no grounds to interfere with the order of the Tribunal dated 31.10.2002 in O.A No.1772 of 2000.

Accordingly, the writ petition is dismissed. No order as to costs.

As sequel to the dismissal of the writ petition, W.P.M.P.No.5804 of 2003 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

KONGARA VIJAYA LAKSHMI, J

02-11-2017

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Note: LR copies to be marked.

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