

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION (TR) NO.39 OF 2017

Date: 20.06.2017

Between:

A.S.A.Gandhi, S/o Suryanarayana,
Aged 60 years, Occu:Retired Employee,
R/o H.No.1-4-944, Azam Gunj,
Bodhan, Nizamabad District.

.....Petitioner

and

State of Telangana, Panchayat Raj and
Rural Development (Vig.I) Department,
Secretariat, Hyderabad, rep.by its
Principal Secretary and others.

.....Respondents



The Court made the following:

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ORDER:

Petitioner retired from service as Deputy Executive Engineer on attaining the age of superannuation on 31.07.2010. While he was in service, disciplinary proceedings were initiated against him by drawing charge memo dated 18.05.2006. Sum and substance of the allegation leveled against petitioner was that, he failed in discharging his legitimate duties in check measuring/ recommending work in execution of BT road work from PWD road to MSC Form (PWD road) via Ambam (V) in Nizamabad district. It is alleged that there was deficiency in bitumen content on a particular stretch of the road and even though quality of the road laid was not upto the mark, he undertook check measurements and recommended payment on substandard work, causing loss to the Government.

2. Joint enquiry was conducted against several engineers by the Commissioner of Enquiries (CoE) and CoE submitted his report. The CoE held charge as not proved. Reading of the enquiry report would disclose that the respondent Government relied on the report of the Vigilance Officer dated 30.06.2003 to level the allegation and to prove the charge. On going through the record, the report of the Vigilance Officer and other material, enquiry officer accepted the stand of the employees on tests conducted in their absence and that the road was damaged due to Tractors going on the road and due to rains. Enquiry Officer also referred to reports of the Superintending Engineer and Chief

Engineer not to take any further action on the delinquent employee.

3. Government disagreed with the findings of the enquiry officer, issued show-cause notice calling upon the petitioner to submit his explanation vide Memo dated 31.07.2009. Petitioner submitted his explanation opposing the dissent note. No further orders were passed before his retirement. Petitioner retired from service on attaining the age of superannuation on 31.07.2010. After his retirement, show-cause notice was issued on 28.12.2011 proposing to impose 5% cut in pension for a period of five years. Challenging the said show-cause notice, O.A.No.3150 of 2012 was filed before the Andhra Pradesh Administrative Tribunal (APAT)/transferred to this Court. At the time of admission, Tribunal suspended the show-cause notice and directed the respondents to release pension and gratuity to the applicant forthwith. Complying with the said direction, pension and gratuity payable to the petitioner were released and petitioner is now drawing monthly pension.

4. Learned counsel submits that the show-cause notice was issued on 31.07.2009 disagreeing with the findings recorded by the enquiry officer and by relying on material, which was not part of the enquiry proceedings. Petitioner submitted detailed explanation to the said show-cause notice. Government kept quiet till petitioner retired from service on attaining the age of superannuation. Learned counsel submits that no further action could have been taken without examining the explanation offered by petitioner to the dissenting memo dated 31.07.2009. That there is no

discussion on the explanation submitted by the petitioner. Further, though memo dated 28.12.2011 calls upon petitioner to submit explanation, a reading of it would show that already final decision was taken proposing to impose 5% cut in pension. Once decision was taken, question of petitioner submitting his explanation would not arise and what was sought be done is post decisional hearing and it would be an empty formality for the petitioner to subject himself to such procedure.

5. Learned counsel for petitioner made elaborate submissions on tenability and maintainability of show-cause notice. Learned counsel contends that disagreement note is contrary to the record. Disciplinary authority can disagree with the findings recorded by the enquiry officer and record his own findings only based on material on record before the enquiry officer and cannot refer to any other material, which was not the subject matter of the enquiry. According to the learned counsel, a reading of the show-cause notice would show that Government was referring to some other documents, which were never communicated to the petitioner and was never part of record before the enquiry officer.

6. He, therefore, submits that the entire procedure followed is contrary to the mandate of A.P.Civil Services (Classification, Control and Appeal) Rules, 1991 and A.P.Revised Pension Rules, 1980 and, therefore, proceeding under challenge is liable to be set aside on that ground alone.

7. Learned Government Pleader submits that Government is competent to differ with the findings recorded by the enquiry officer. Having found that enquiry officer erroneously held

petitioner as not guilty, recorded the findings against petitioner based on the material on record and called for his explanation. Therefore, no illegality was committed by the Government while issuing show-cause notice on 31.07.2009. Government is competent to issue said show-cause notice and was validly issued. He further submits that though explanation was submitted to the said show-cause notice, before consideration of explanation as petitioner retired from service, Government felt it necessary to give one more opportunity before imposing cut in pension and, therefore, present show-cause notice was issued. Since already show-cause notice was issued disagreeing with the findings of the enquiry officer, Government felt it necessary to indicate the quantum of punishment proposed to be imposed to enable the petitioner to submit his explanation on quantum of punishment. Learned Government Pleader, therefore, supports the decision of the Government, impugned in the writ petition.

8. The basic facts are not in dispute. The enquiry officer held the charge as not proved. Government disagreed with the findings of the enquiry officer. While recording disagreement to the findings of the enquiry officer, Government also took into consideration some of the documents, which were not part of the enquiry record. As seen from the report of the enquiry officer, only document placed on record by the Government was the report of the Vigilance Officer. Further, in response to the show-cause notice, dated 31.07.2009, petitioner submitted detailed explanation, whereas that explanation was not even considered, no decision was made and there is no discussion on said explanation before issuing further notice on 28.12.2011. It may be true that in the mean

while petitioner retired from service. However, Government ought to have taken a decision on the tenability of the objections filed by the petitioner to the show-cause notice dated 31.07.2009 before resorting to invoke the Revised Pension Rules to impose punishment of cut in pension by calling upon the petitioner to submit his explanation. Strangely, this was not observed. Furthermore, there is merit in the contention of the learned counsel for petitioner that show-cause notice could not have indicated the quantum of punishment that was proposed to be imposed as a final decision. Certain correspondence referred to by the Government in the deferment note was not part of the enquiry record. At the stage of deferment note Government could not have relied on material which was not forming part of enquiry.

9. However, fact remains that the Government is competent to differ with the findings recorded by the enquiry officer, record its deferment note and communicate to the petitioner. Government found fault with the reasoning assigned by the enquiry officer in holding petitioner as not guilty and some of the observations of the Government are based on record. It is also appropriate to notice at this stage that notice under challenge is a show-cause notice. It is not in dispute that the Government is competent to issue such show cause notice for imposing punishment of cut in pension. One other issue requires to be noticed at this stage is contractor undertook repair to the road. This would show that quality of road work undertaken at the particular place was not upto the mark. Thus, it cannot be said that conduct of petitioner was not blameworthy.

10. Having regard to the infirmities noticed by the Court on either side, in order to give quietus to the litigation, learned counsel for petitioner on earlier occasion sought for adjournment to seek instructions from his client.

11. Petitioner filed affidavit offering to receive punishment of 2% cut in pension for a period of two years instead of punishment as originally proposed by the Government, i.e., 5% cut in pension for five years.

12. The issue concerns the year 2003. Petitioner retired from service in the year 2010. Show-cause notice was issued in the year 2011 and this writ petition is now taken up for disposal. Having regard to the above time line, this Court is of the opinion that in stead of remitting the matter to the Government to the stage of consideration of explanation to show-cause notice dated 31.07.2009, it is just and equitable to dispose of the writ petition by accepting the prayer of the petitioner to impose punishment of 2% cut in pension for a period of two years and to close the litigation.

13. Having regard to the above observations, writ petition is disposed of granting liberty to the respondent Government to impose punishment of 2% cut in pension, operative for a period of two years. Such punishment shall be prospective and operative from the date of taking such a decision.

14. Learned counsel for petitioner submits that in addition to the challenge to the show cause notice issued, petitioner has also sought for some other reliefs. Since direction in the writ petition is

confined to the imposing of appropriate punishment of cut in pension, all other issues are left open to the petitioner to work out his remedies appropriately. It is also open to the petitioner to make a representation to the competent authority for settlement of other benefits and as and when such request is made, the same shall be considered and appropriate decision be taken without delay.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

Date: 20.06.2017
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JUSTICE P.NAVEEN RAO



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