

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION (TR) NOS.1 & 2 OF 2017

Date: 09.08.2017

WP (Tr) No.1 of 2017:

Between:

Syed Jahangir, S/o Syed Khasim,
Aged 43 years, Inspector of Police,
attached to Moghulpura Police Station,
Hyderabad.

..... Applicant / Petitioner

and

The Commissioner of Police, Hyderabad City,
Basheerbagh, Hyderabad and others.

.....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION (TR) NOS.1 AND 2 OF 2017

COMMON ORDER:

Petitioner was appointed as Sub-Inspector of Police in the year 1991. Petitioner was placed under suspension on 23.10.2004 on the allegation of misbehaving with the superior officer. The said suspension was revoked on 23.11.2004. On 11.03.2005, charge memo was drawn alleging that petitioner exhibited gross misconduct, dereliction of duty by not complying with the instructions of the superior officer and misbehaved with the Deputy Commissioner of Police (DCP) by talking to him in a high pitch voice, amounting to disruptive attitude. Not satisfied with the explanation filed by the petitioner, departmental enquiry was ordered. Enquiry Officer submitted his report holding the charge as not proved. Not agreeing with the findings recorded by the enquiry officer, the disciplinary authority recorded Dissent Note vide memo dated 01.06.2006 and called for the explanation of the petitioner. Holding that no explanation is filed within the time granted, final orders were passed on 19.06.2006, confirming the earlier view taken by the disciplinary authority, holding the charge as proved and imposed punishment of postponing of increment for one year with effect on future increments and pension. The period of suspension from 23.10.2004 to 23.11.2004 was treated as not on duty. Challenging the order imposing punishment O.A.No.5915 of 2006 is filed before the Andhra Pradesh Administrative Tribunal, transferred to this Court [WP(Tr) No.1 of 2017].

2. While disciplinary proceedings were pending, apprehending that he is likely to be denied promotion on the ground of pending disciplinary proceedings while considering the promotions of others, petitioner filed O.A.No.789 of 2006 before the Andhra Pradesh Administrative Tribunal praying to grant relief of consideration for promotion without reference to pending disciplinary proceedings. The Tribunal disposed of the said O.A. by order dated 07.02.2006, directing the disciplinary authority to complete the disciplinary proceedings within a period of four weeks from the date of receipt of copy of the order and if for any reason disciplinary proceedings are not concluded within the time granted, the respondents were directed to consider the case of the petitioner for promotion without reference to pending disciplinary proceedings. Only under threat of contempt, petitioner was granted promotion on 01.07.2006.

3. The next round of battle started from this stage onwards. The promotion granted to the petitioner described as temporary under Rule 10(a) of Andhra Pradesh State and Subordinate Rules, 1996, without conferring probationary rights. Though he was granted such promotion on 01.07.2006, the same was not implemented and petitioner continued as Sub-Inspector of Police for a long time. On 11.12.2006, Inspector General of Police, Hyderabad Region, temporarily attached petitioner to Mahabubnagar district until further orders. Accordingly, consequential proceedings were issued by the Superintendent of Police, Mahabubnagar district on 21.12.2006. Petitioner was compelled to join in the said post even though, according to the petitioner, such temporary attachment was illegal.

4. Petitioner thereafter claimed payment of salary in the cadre of Inspector of Police. By Memorandum dated 24.03.2007 of the Superintendent of Police, Mahabubnagar district, direction was issued to appropriate authority to pay advance from any non-Government funds @ 75% of the salary, for which petitioner would be eligible as Sub-Inspector of Police from 11.12.2006 onwards. Aggrieved thereby, petitioner filed O.A.No.2676 of 2007, transferred to this Court and numbered as W.P.(Tr).No.2 of 2017.

5. As the issue involved in these two writ petitions is interconnected and petitioner and the respondents in both the writ petitions are one and the same, both writ petitions are disposed of by this common order.

6. Heard Sri P.V. Krishnaiah, learned counsel for petitioner and Sri Bhaskar Reddy, learned Government Pleader for Services-II.

W.P. (TR) No.1 of 2017:

7. Learned counsel for the petitioner contended that the allegation against the petitioner was, using high pitch voice while interacting with the DCP. On thorough enquiry conducted after examining the witnesses, who were physically present when the alleged incident occurred, the enquiry officer held that charge of using high pitch voice as not proved. While, disagreeing with the said finding of the enquiry officer, the disciplinary authority placed reliance on the statement given by the concerned DCP, who complained of using impolite, indiscipline behaviour of the petitioner and talking to him in a very high pitch. The disciplinary authority observed in his Dissent Note that there was no other

evidence to discredit the statement of DCP and further observed that inquiring authority has chosen to elaborate on constitution and other provisions forgetting that police is a disciplined force and proper etiquettes are expected from its members and enquiry officer erred in ignoring the merits of evidence available on record. According to the learned counsel, this observation of the disciplinary authority in Dissent Note is contrary to the evidence on record, as assessed by the enquiry officer and, therefore, the very reason assigned to take dissenting view is erroneous and on that ground the entire action is liable to be set aside.

8. He further contended that Rule 21 (2) of the Telangana Civil Services (Classification, Control and Appeal) Rules, 1991 (Rules) requires two weeks time to the delinquent employee to respond to the dissent note, whereas the notice only mentions ten days time to respond and, therefore, the same is *ex facie* illegal and amounts to denial of reasonable opportunity. He further submitted that on 10.06.2006, he requested for grant of one more week time for submission of his explanation. Though the request was received, there was no response and petitioner was waiting to get a response about the extension of time sought by him. Without informing the petitioner as to whether the time sought was granted or not, on the expiry of one week from 12.06.2006, the day on which request of the petitioner was received by the disciplinary authority, the order was passed imposing punishment. According to the learned counsel, petitioner was imposed with punishment deliberately and willfully and with an objective of denying him promotion on par with his juniors. The punishment is not imposed in a *bona fide* exercise of power of disciplinary control.

9. Learned counsel further contended that there was clear violation of procedural safeguards and violation of principle of natural justice; due opportunity was not afforded to the petitioner before imposing punishment, which had deleterious effect on his service; by virtue of this punishment, petitioner was denied promotion on par with his juniors. He further submitted that reading of the Dissent Note and the final order would disclose that disciplinary authority pre-determined to impose punishment. The entire exercise would amount to malice in law and, therefore, on that ground, it is liable to be set aside. He further submitted that Rule 21 (2) and (3) of the Rules mandate to assign due reasons in support of the final decision before imposing punishment, whereas no reasons are assigned and straight away punishment was imposed. Therefore, the said order vitiates the statutory mandate and on that ground also, the order is liable to be aside.

10. Learned Government Pleader justifies the punishment imposed against the petitioner. According to the learned Government Pleader, petitioner as Inspector of Police could not have used high pitch voice while responding to the superior authority and the same amounts to insubordination by an officer working in disciplined force. Such insubordination cannot be viewed as minor lapse. He further submitted that on due consideration of the findings of the enquiry officer and based on the material available on record, the disciplinary authority recorded the dissent note as to why findings of the enquiry officer are not acceptable and called upon the petitioner to submit his explanation. As petitioner did not choose to avail the opportunity

provided, disciplinary authority has no other option, but to confirm the earlier dissent note and in those circumstances, it cannot be said that the order imposing punishment is not valid in law and that the same is not in compliance of the mandate under Rule 21(3).

11. Facts on record disclose that at the relevant point of time, petitioner was working in Central Crime Station. On 15.10.2004, three suspects were brought by the West Zone Police to the CCS. They were initially handed over to Mr. Laxmanna, Inspector of Police. As Mr. Laxmanna was preoccupied with the investigation of another crime, DCP instructed the Inspector to hand over the suspects to the petitioner for interrogation and accordingly, the suspects were entrusted to the petitioner. Petitioner refused to take steps and informed the Inspector of Police that he wants specific orders from the DCP. The DCP questioned the petitioner why he did not start interrogation of suspects even though instructions were issued by the concerned Inspector of Police. It appears petitioner informed the DCP that he did not have clear instructions from him to undertake interrogation. The DCP violently reacted on the petitioner for not attending to the interrogation of suspects.

12. The DCP told the petitioner that instructions given by the Inspector was sufficient for him to comply. It was alleged that at that stage, petitioner in a loud voice replied that he was waiting for specific instructions; that when he was waiting for instructions, how the DCP would accuse him. It appears, on this, the DCP

complained against petitioner, which necessitated initiation of disciplinary proceedings.

13. During the course of the enquiry, five witnesses were examined on behalf of the prosecution including the complainant. The complainant-DCP has narrated his version of what happened on the fateful day. As analyzed by the enquiry officer, according to the deposition of Mr. Laxmanna, Inspector of Police, that he has never said about the dereliction of duty and indiscipline attitude of the petitioner. On enquiry from him, Inspector further deposed that his role was restricted only to that of handing over the suspects to the petitioner. In his deposition, DCP admitted that he has not mentioned of any dereliction of duty by the petitioner. According to the deposition of DCP, petitioner came to see him at about 1830/ 1845 hours, but he asked him to wait and summoned him at 2000 hours. Taking note of this statement of DCP, enquiry officer held that the charge of dereliction of duty is not established. Enquiry officer further noted that since the petitioner came to know from one of the suspects, by name, Vinod that they were in illegal custody for the last more than 24 days petitioner wanted to seek specific instructions from the DCP. Because the petitioner was made to wait for instructions of the DCP, there was no progress in interrogation. Enquiry officer also agreed with the contention of the petitioner that notice under Section 160 of Cr.P.C., is required to be issued to bring the suspect and the same were not issued. Therefore, he seeks clarification from the DCP and such stand of the petitioner cannot be found fault with. Enquiry Officer, therefore, observed that procedure, required to be followed in the case of suspects, was not observed and

interrogating the suspects without following the procedure could have been illegal. The report of the enquiry officer would therefore disclose that there was sufficient justification for the petitioner not to undertake interrogation and that the petitioner was made to wait for more than 1½ hours before the DCP summoned him. It appears, the suspects were never examined and were ultimately let off, which would strengthen the stand of the petitioner that suspects were in illegal custody and the procedure required by law was not followed, which was the specific objection of the petitioner.

14. With reference to the specific allegation about petitioner using high pitch voice, the enquiry officer analyzed the evidence of eye witnesses i.e., Mohd. Amjad, Sub-Inspector of Police and Riyaz Khan, Home Guard. According to the deposition of Mohd. Amjad, in fact DCP shouted angrily and there was no statement by him that petitioner talked in high pitch voice with the DCP. According to this witness, petitioner spoke in natural voice and did not misbehave with the officer. Though he was initially present, later he was sent out and what conversation took place between the petitioner and the DCP was not known to him. According to the deposition of DCP, petitioner talked in high pitch voice in the presence of Mohd.Amjad. Enquiry Officer noticed contradiction in the statement by Mr. Mohd. Amjad, vis-à-vis, the DCP. Enquiry Officer gave credence to the statement of this witness with reference to the attitude of the petitioner. According to this witness, he knew petitioner since 1998 and he was never in the habit of raising his voice. According to the Riyaz Khan, Home Guard, who was orderly to the DCP, he was at the door of the officer. He stated that he did not know what happened inside the

chamber. Even according to him, he knew the petitioner for the last 2½ years, but he never saw misbehaving with his superior officers. Basing on the evidence available on record and also on consideration of the deposition of preliminary enquiry officer that he did not examine the DCP as he was the interested witness, the enquiry officer came to the firm conclusion that charge of gross misconduct, dereliction of duty and misbehavior was not proved. He has observed that in order to allow civil servants to function without fear and favour, it is necessary to instill in their minds a sense of security.

15. It is thus seen the finding recorded by the enquiry officer is based on thorough analysis of the evidence available on record and has assigned due reasons as to why he is not accepting the version of the DCP. It is also appropriate to note from the reading of the report of the enquiry officer that except for the deposition of DCP and that too only with reference to use of high pitch voice, the other ingredients of the charge i.e., committing dereliction of duty was not proved. Enquiry officer justified the action of the petitioner in not undertaking interrogation and waiting for instructions and the record would disclose that petitioner was made to wait for more than 1½ hours before the DCP summoned him.

16. In the dissent note, the reason for not agreeing with the finding recorded by the enquiry officer is only on the ground that when DCP stated in his deposition that petitioner was impolite, indiscipline and talked to him in a very high pitch there was no reason for the enquiry officer to discredit the statement of the DCP.

17. The facts on record would disclose that the DCP was the complainant. He alleged that petitioner talked to him using high pitch voice in his chambers. Only three persons were physically present at that time, i.e., Inspector of Police, Sub-Inspector and Home Guard. None of them have stated that petitioner had used high pitch voice. They have stated that petitioner was not in the habit of using high pitch voice in his service. Thus, the version of DCP was not supported by any other evidence. Further more, preliminary enquiry officer did not examine the then DCP on the ground that he is the interested witness. There was no further material available on record to discredit the findings arrived at by the enquiry officer and the said findings are based on the material available on record. Thus, if the disciplinary authority was not agreeing with the conclusion arrived at by the enquiry officer, it was a case of reopening of the enquiry and conducting the enquiry *de nova*. The dissent note is not supported by the material on record. A reading of the dissent note would only disclose that the disciplinary authority intended to assign weight to the complaint of the DCP only because he is superior officer.

18. Rule 21 (2) of the Rules vests power in the disciplinary authority to disagree with the findings arrived at by the enquiry officer. If the disciplinary authority does not agree with the enquiry officer, he should record dissent note and call for the explanation from the employee. This rule mandates grant of minimum of two weeks time to submit explanation of the delinquent employee. Admittedly, only ten days time was granted. Thus, the very show-cause notice was vitiated. Further no material is placed on record to show that petitioner was informed of

extension of time and was granted liberty to submit his explanation within the time sought by him. It is also strange to note that on the date of expiry of time sought by petitioner, order imposing punishment was passed. The narration of events would strengthen the contention of the counsel for petitioner that entire issue was pre-determined only to deprive the promotion when it was due to the petitioner.

19. Sub-rule (3) of Rule 21 of the Rules requires disciplinary authority to assign due reasons in support of its decision after dissent note is communicated to the employee and only thereafter an order of punishment should be made. In the instant case, it was a cumulative order imposing punishment and the order is silent as to the reasons in support of the decision to hold petitioner guilty contrary to the findings recorded by the enquiry officer. The order is thus vitiated on this ground also.

20. On analysis of the material on record, I am of the considered opinion that the finding arrived at by the enquiry officer is based on material available on record and on proper assessment of the evidence of the witnesses. Such finding cannot be called as perverse to enable the disciplinary authority to exercise the power under Rule 21 (2) of the Rules to dissent only on the ground that superior officer complained of using high pitch voice ignoring the circumstances and ultimately to impose punishment. Thus, the punishment is not sustainable and liable to be set aside.

W.P. (TR) No.2 of 2017:

21. Learned counsel for petitioner contended that once promotion is granted to the petitioner, he is entitled to pay and allowances attached to the post. On their own omission, petitioner was not given posting orders and he was asked to continue in the lower post. Further, even after posting was given to him as Inspector of Police, he was not paid pay and allowances, whereas by order impugned, he was asked to draw only 75% of the salary of Sub-Inspector of Police from 11.12.2006 and that action of the respondents is illegal, arbitrary and amounts to abusing the power and authority vested in them. According to the learned counsel, once an employee is promoted, pay and allowances attached to the higher post have to be paid.

22. Learned Government Pleader justifies the action of the respondents in denying him the pay and allowances attached to the post of Inspector of Police on the ground that by the time promotion was granted, petitioner was already visited with the punishment of withholding of one increment with cumulative effect and therefore, petitioner was not entitled to be promoted. He was granted promotion only in compliance of the directions issued by the Tribunal in earlier O.A. and in view of the initiation of the contempt proceedings.

23. As noted above, petitioner was apprehending denial of promotion and, therefore, he filed O.A.No.789 of 2006. Tribunal directed consideration of his case for promotion without reference to the pending disciplinary proceedings, if those proceedings were not concluded within four weeks from the date of communication

of the order. Admittedly, disciplinary proceedings were not concluded within the time granted by the Tribunal. Thus, petitioner was entitled to be considered for promotion. Such promotion was granted on 01.07.2006. The promotion was given to him only by referring to the order of Tribunal and the contempt notice. Though promotion was granted, whatever may be the circumstances, the employee is entitled to the benefits flowing out of the said promotion. There was absolutely no justification to continue the petitioner in the lower post after promotion was granted and thus such continuation can at the most be described as compulsory wait. Thus, petitioner is entitled to the pay and allowances attached to the post of Inspector of Police from the date when he was promoted. Further, in the order under challenge, what was ordered was the payment of 75% salary to the post of Sub-Inspector of Police and that too from 11.12.2006. An employee can be denied full pay and allowance only if he is under suspension. It is also appropriate to note that the order of punishment was suspended by the Tribunal in OA No.5915 of 2006. Thus by the time the order fixing the pay directing payment of 75% of the pay of Sub Inspector of Police from non-governmental source, even that order of punishment was not in force. This order of the Superintendent of Police is clearly illegal. No explanation is forthcoming in the counter affidavit as to how such order can be passed denying even the salary of Sub-Inspector of Police and how salary of an employee can be drawn from non-government funds. Thus the order under challenge is not sustainable and is liable to be set aside.

24. As the salary and allowance of the post of Inspector of Police were illegally denied to the petitioner, petitioner required to be compensated for such illegal action. I deem it proper, in the facts of this case, that awarding interest at the rate of 12% per annum on the delayed payments would meet the ends of justice.

25. W.P.(TR).No.1 of 2017 is allowed. Consequent to the setting aside the punishment, petitioner is entitled to all the benefits flowing out of allowing of writ petition as if there was never such punishment imposed against him.

26. W.P.(TR).No.2 of 2017 is allowed. Respondents are directed to release full pay and allowances payable to the petitioner in the post of Inspector of Police from 01.07.2006 till the regular pay and allowances were paid to him. The arrears of amount shall be drawn and paid within a period of two months from the date of receipt of a copy of this order. Petitioner is also entitled to interest @ 12% per annum from the date salary was due till it is paid.

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

JUSTICE P.NAVEEN RAO

Date: 09.08.2017
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HON'BLE SRI JUSTICE P.NAVEEN RAO



WRIT PETITION (TR) NOS.1 & 2 of 2017

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