

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE GUDISEVA SHYAM PRASAD

WRIT PETITION No.29700 2017

Date:01.9.2017

Between:

Budigi Sridharpani,
S/o B.C.Ramanna

..... Petitioner

And:

Govt. of A.P., repto by its
Principal Secretary, Home
Department, Hyderabad and three others.

.....Respondents

Counsel for the petitioner: Mr. V.Maheswar Reddy

Counsel for the respondents: GP for Services (TS)

The Court made the following:

ORDER: *(per Hon'ble Sri Justice Gudiseva Shyam Prasad)*

This Writ Petition is filed assailing the order, dated 27.9.2016, of the Andhra Pradesh Administrative Tribunal, Hyderabad (for short 'the Tribunal') in Original Application No.8024 of 2012.

The brief facts of the case are that while the petitioner was working as Police Constable in II Town Police Station, Anantapur, a departmental enquiry was conducted against him on the allegations of misconduct and misbehaviour. The charge against the petitioner was that while he was working as Police Constable in II Town Police Station, Anantapur, he along with the accused by name Ramanjaneyulu consumed alcohol and had non-veg food during night times in the Police Station; that even though he was warned not to collect Dasara Mamools, as per the instructions of the Superintendent of Police, Anantapur, vide RMS.No.1106/SB-IV/02, dated 04.10.2002, the petitioner disobeyed the instructions and collected dasara mamools within the Police Station limits where he was working. It is also alleged that he encouraged the organisation of anti-social events like matka, gambling and prostitution by collecting mamools from them, without any fear of Police officers.

In the affidavit, filed in support of the Writ Petition, the petitioner stated that while he was working as Police Constable

in II Town Police Station, Anantapur, respondent No.4– Superintendent of Police initiated disciplinary proceedings against him by issuing a memorandum of charge, vide proceedings C.No.20/PR/A6/2003, dated 27.12.2003, framing the following charge:–

“Exhibited grave reprehensible conduct in violating the instructions of superior officers by collecting dasara mamools from the public and by indulging in certain indisciplinary activities of encouraging all types of anti-social elements to carry out their illegal activities without any fear of Police by collecting amount from them and thereby creating bad image in the minds of public among the Police.”

The petitioner further stated that similar accusation was made against two other constables working in the same Police Station by issuing memorandum of charges on the same day and a common enquiry was conducted against him and another constable–B.Venkateswarlu and that in respect of another Police Constable–I.Chandrasekhar, a separate enquiry was conducted. It is further stated that the enquiry was conducted without following the due procedure under the A.P.C.C.A. Rules; that though there is no evidence against him and the two other constables, respondent No.4 has chosen to impose major punishment against the petitioner, vide proceedings, dated 20.11.2012, i.e., reduction in the scale of pay by two stages for a period of two years with effect on his future increments and

pension. It is further stated that respondent No.4 has imposed the same punishment against the other two constables; that against those orders, the said two constables have preferred separate appeals to respondent No.3 and that the said appeals were allowed, vide orders, dated 04.6.2004 and 18.6.2004, setting aside the orders of respondent No.4.

It is further stated that the appeal filed by the petitioner has been dismissed; that the petitioner feeling aggrieved by the orders in the appeal, has preferred a Revision Petition before respondent No.2-Inspector General of Police, Rayalaseema Range, who without considering the matter in the correct perspective dismissed the same; that as the order passed by respondent No.2 is contrary to law, the petitioner filed Mercy Petition before the Government; that the Government without taking into consideration the contentions raised by him, has rejected his Mercy Petition; that aggrieved by the orders passed by respondent Nos.1 to 4, the petitioner has filed O.A.No.8024 of 2012 before the Tribunal, which was dismissed by order, dated 27.9.2016. Aggrieved by the order passed by the Tribunal in the said O.A., the petitioner has filed the present Writ Petition.

Heard Mr. V.Maheswar Reddy, learned counsel for the petitioner and learned Government Pleader for Services (Telangana) appearing for the respondents.

Learned counsel for the petitioner mainly submitted that the enquiry officer has not appreciated the oral and documentary evidence properly and that basing on the statement of the Inspector of Police, examined on behalf of the department, the enquiry officer had come to a conclusion and found the petitioner guilty. It is further submitted that there is no direct evidence to prove the fact that the petitioner collected dasara mamools and therefore, there is no proof for the misconduct alleged against the petitioner. Learned counsel further submitted that the Tribunal has not considered the contention of the petitioner with regard to the discriminatory treatment shown in the departmental enquiry conducted against him. He further submitted that while respondent No.3 has allowed the appeals filed by the other two constables, who are the co-delinquents to the petitioner, he has dismissed the appeal filed by the petitioner.

Learned Government Pleader for Services (Telangana) has submitted that the Tribunal has properly appreciated the evidence on record and arrived at a just conclusion and dismissed the said O.A. He has further submitted that the enquiries against the three constables are of different nature based on the individual charges framed against each of them; that the penalty order passed against each of them is also

different and therefore, the impugned order passed by the Tribunal is based on facts and appreciation of evidence on record.

At the outset, it is obvious from the impugned order passed by the Tribunal that the departmental enquiry was conducted against three constables and that though almost similar charges were framed against each of them, based on the evidence, the enquiry officer has found them guilty and imposed punishments.

A perusal of the impugned order would reveal that the Tribunal observed that the sole testimony of the Inspector of Police is sufficient for the enquiry officer to come to the conclusion about the guilt of the petitioner. The Tribunal has rightly pointed out that the testimony of the Inspector of Police cannot be considered as that of an interested witness merely because he is working in the same department. Though no independent witness was examined to prove the charge framed against the petitioner, the testimony of the Inspector of Police was considered as sufficient evidence by the Tribunal. The Tribunal also observed that no rivalry between the Inspector of Police and the petitioner is established nor any other reasons are brought on record to discredit the evidence of the Inspector of Police as an interested witness. It is also pertinent to note that

the Inspector of Police has deposed as per the information he has received through the informers and the public and such evidence can be considered as sufficient evidence in a departmental enquiry.

It is a settled principle of law that the standard of proof in a departmental enquiry is not that of proof beyond reasonable doubt as in criminal cases. Preponderance of probabilities coupled with some material on record suggesting the alleged misconduct is enough to hold the employee guilty of such misconduct. The technical rules of evidence under the Evidence Act have no application to departmental enquiries. The Tribunal has properly appreciated the said aspect and arrived at a just conclusion that no interference is required in the orders passed by respondent Nos.2 to 4. The Tribunal has clearly observed that all the three enquiries including that of the petitioner were different enquiries based on individual charges framed against each of them and the penalty orders passed against each of them were also different.

It is pertinent to note that each case has to be considered based on the facts and circumstances appearing in that case. Though the enquiry was initiated against three constables, considering the evidence of the Inspector of Police, the petitioner was found guilty and therefore, the orders passed in

the petitioner's case cannot be compared with the orders passed in the cases of other two constables. It is also observed by the Tribunal that the Deputy General of Police has taken an erroneous view in case of other two constables and the same cannot be adopted in the case of the petitioner also and therefore, the petitioner cannot claim the benefit of the said erroneous findings.

Learned counsel for the petitioner placed reliance on the decision of the Supreme Court in *Rajendra Yadav Vs. State of Madhya Pradesh*¹, wherein it was observed that the persons who have been found guilty can also claim equality of treatment if they can establish discrimination while imposing punishment when all of them are involved in the same incident; that parity among co-delinquents has also to be maintained when punishment is being imposed; that punishment should not be disproportionate while comparing the involvement of co-delinquents, who are parties to the same transaction or incident; and that the disciplinary authority cannot impose punishment which is disproportionate i.e., lesser punishment for serious offences and stringent punishment for lesser offences.

Learned counsel for the petitioner placing reliance on the aforesaid judgment submitted that the doctrine of equality is

¹ (2013) 3 SCC 73

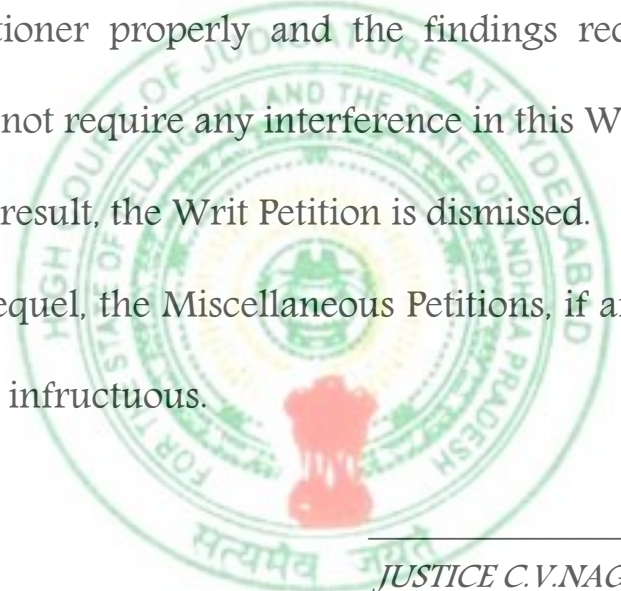
applicable even in the cases of imposing punishment to all of them who are involved in the same incident.

The above decision is not applicable to the facts of the present case as neither the charge memos nor the punishment proceedings are common to the petitioner and the two other constables.

In view of the foregoing reasons, we are of the considered opinion that the Tribunal has considered all the grounds raised by the petitioner properly and the findings recorded by the Tribunal do not require any interference in this Writ Petition.

In the result, the Writ Petition is dismissed.

As a sequel, the Miscellaneous Petitions, if any, shall stand dismissed as infructuous.



JUSTICE C.V.NAGARJUNA REDDY

JUSTICE GUDISEVA SHYAM PRASAD

01st September 2017

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