IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

Writ Appeal No.915 of 2017

Between:

Union of India, rep. by its Secretary
Ministry of Home Affairs, New Delhi & others

…. Appellants

And

Sunil S/o Dhan Singh

…. Respondent

DATE OF JUDGMENT PRONOUNCED: 10-10-2017

SUBMITTED FOR APPROVAL:

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

1. Whether Reporters of Local newspapers may be allowed to see the Judgment? Yes/No

2. Whether the copies of judgment may be marked to Law Reporters/Journals Yes/No

3. Whether Your Lordships wish to see the fair copy of the Judgment? Yes/No

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C.V. NAGARJUNA REDDY, J

____
KONGARA VIJAYA LAKSHMI, J

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

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!Counsel for petitioners : Sri K. Lakshman
Asst. Solicitor General of India

^Counsel for Respondent : Mr. P.S.P. Suresh Kumar

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> Head Note:

? Cases referred:

[1] (2006) 9 SCC 69
[1] (2013) 16 SCC 116
[1] (1996) 4 SCC 104
[1] (2008) 12 SCC 230)

HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY
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Counsel for Appellants: Sri K. Lakshman
Asst. Solicitor General of India

Counsel for Respondent : Sri P.S.P. Suresh Kumar

This court made the following:

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

WRIT APPEAL No.915 of 2017

JUDGMENT: (***per Hon'ble Sri Justice C.V. Nagarjuna Reddy***)

This writ appeal is filed against the order dated 01.12.2016 in W.P.No.15443 of 2014 by the respondent in the said writ petition.

2. We have heard Mr. K. Lakshman, learned Assistant Solicitor General for the appellants and Mr. P.S.P. Suresh Kumar, learned counsel for the respondent.

3. The respondent is working as Head Constable in the Ministry of CRPF, Service Record Section, G.C., CRPF, Hyderabad. He was being entrusted with the job of Assistant Cashier, whenever it was necessary. A charge memo was issued to him on 09.04.2014, framing a single charge to the effect that the respondent failed in preparation of remittance particulars to ensure proper and correct disbursement of the amount to the actual payee after issuing bank remittance particulars of each payee from records and that as a result of the same, one U. Durga Prasada Rao embezzled an amount of Rs.14,83,104/- by tampering the bank remittance particulars of 10 personnel and

deposited amounts in the account of his wife Smt. U. Sarada. The respondent has submitted his explanation to Appellant No.4, who is the Disciplinary Authority, on 19.04.2014. After considering the explanation of the respondent, Appellant No.4 has issued office order dated 08.05.2014 proposing to hold a departmental enquiry and appointed Appellant No.5, as Enquiry Officer, to enquire into the charge framed against the respondent. Feeling aggrieved by the same, the respondent filed WP No.15443 of 2014 seeking to quash the charge memo dated 09.04.2014 and the office order dated 08.05.2014 appointing Appellant No.5 as Enquiry Officer. The writ petition was allowed by the learned single Judge.

4. In the order under appeal, the learned single Judge has referred to two contentions (rather grounds) on which the respondent filed the writ petition as under:

> (a) The Commandant, Group Centre, CRPF, Chandrayanagutta, Hyderabad (4th respondent) is the Head of Institution and he signed all the documents and bank registers but he was not issued any charge memo by 3rd respondent.
>
> (b) As per Rule 127(d) (i) of CRPF Rules, if two or more employees are involved in any enquiry, then a joint enquiry has to be conducted and the petitioner had requested 5th respondent-Enquiry Officer to do so on 19.04.2014 itself but the latter has not taken any action."

5. A perusal of the order of the learned single Judge shows that he has not dealt with either of the above two re-produced

contentions. However, the learned Judge has allowed the writ petition on the sole ground of bias. While arriving at the finding on bias, the learned single Judge referred to certain averments in the counter-affidavit of Appellant No.3, who incidentally happens to be the Appellate Authority and concluded that being the Appellate Authority, Appellant No.3 has termed the respondent herein as guilty even while the enquiry is pending and that the same amounts to pre-judging the issue thereby vitiating the entire proceedings. Though the learned single Judge has not referred to any particular paragraph in the counter-affidavit in concluding that Appellant No.3 exhibited his biased mind, Mr. P.S.P. Suresh Kumar, learned counsel for the respondent, has invited our attention to paragraphs 12 and 13 of the counter-affidavit filed by Appellant No.3, which read as under:

> "12. I state that the above petitioner failed in preparation of disbursement sheet correctly and not ensured correct disbursement of amount to the actual payee. By taking advantage of negligence of the petitioner
> No.931130377 Constable/General Duty U.Durga Prasad Rao of this Group Centre, who was performing the duties in the cash section as helping hand to the cashier and Assistant Cashier, fraudulently tampered transaction of Government money to the tune of Rs.66,79,155/- (Rupees Sixty six lakhs seventy nine thousand one hundred fifty five) only depositing General provident Fund/Group Insurance Scheme/final payments/Death-cum-retirement gratuity, supplementary traveling allowance/daily allowance and other dues relating to

various retired personnel on different dates into the account of his wife Smt. U. Sarada, Account No.20030691322 at State Bank of India, Barkas (Hyderabad) between the period from 03/04/2012 to 13/06/2013. The Assistant Cashier and cashier had full faith/trust in No.931130377 Constable/General Duty U.Durga Prasad Rao and due to which he had complete access to computer/files of cash section and taking this as advantage, he himself fraudulently diverted the amounts of pensioners into his wife's account and other's account at his own by concealing his misdeeds from Assistant Cashier, cashier and other supervisory staff. If the petitioner, i.e. Head constable/Ministerial Sunil had shown devotion towards his job, the embezzlement of Govt. money could have been avoided. The contention of the petitioner in this para that there is no allegation in performing duties is untenable and is not correct.

13. In reply to para 4 of the affidavit filed by the petitioner, I state that the allegation made in this para by the petitioner is incorrect and false and hence denied. I state that the respondent 3 i.e. Deputy Inspector General of Police, Group Centre, Central Reserve Police, Hyderabad was not issued any charge memo the petitioner as contended by him. The Disciplinary Authority (Commandant) i.e. respondent No.4 issued charge memo on dated 09/04/2014 for his negligence and casual attitude towards his work. By taking advantage of negligence of the petitioner, No.931130377 constable/general duty U.Durga Prasad Rao of this Group Centre, who was performing the duties in the cash section as helping had to the cashier and Assistant Cashier, fraudulently tampered transaction of Government money to the tune of Rs.66,79,155/- (Rupees sixty six lakhs seventy nine thousand lone hundred fifty five) only by depositing General Provident Fund/Group Insurance Scheme final payments, death cum retirement gratuity, supplementary traveling allowance/daily

allowance and other dues relating to various retired personnel on different dates into the account of his wife Smt. U. Sarada, Account No.20030691322 at State Bank of India, Barkas (Hyderabad) between the period from 03/04/2012 to 13/06/2013. The offence committed by the petitioner is very grave in nature and has serious implications and adverse effect on the discipline of the Force. Considering the gravity of the offence committed by him, the disciplinary action was instituted against the petitioner by the disciplinary authority."

6. A perusal of the counter-affidavit shows that paras 12 and 13 are in continuation of paragraph 11, which reads as under:

"11. In reply to para 3 of the petition, I state that the petitioner himself admitted in this para that he was assigned the job of Assistant Cashier and he continued to assist the cashier Sub-Inspector (Ministerial) P.Amirthalingam who performing the job of Cashier whenever it is necessary. As per instructions he had to perform the following duties:

"i) Preparation of disbursement sheet, to ensure prompt and correct disbursement of amount to the actual payee.

ii) To assist the Cashier to issue regular reminders from where acknowledgment receipts are awaited."

7. From the sequence of averments in paras 11 to 13 in the counter affidavit, it is clear the said averments are made in reply to para 3 of the affidavit of the petitioner filed in support of the writ petition. The said para and also paragraphas 4 and 5, which are also relevant in the present context, are as follows:

"3. I submit that as a part of my duties, I was entrusted with the job of Assistant Cashier whenever it is necessary. I continued to assist the cashier viz P. Amritha Lingam. There is no allegation in my duties and I continued to assist the cashier. Apart from me one constable by name Mr. Durga Prasad Rao was also posted in our cash section to assist the main cashier.

4. I submit that the office of the Respondent No.3 herein was pleased to issue a Charge Memo to me on 09.04.2014 by framing a single charge that I failed in preparation of remittance particular to ensure proper and correct disbursement of amount to the actual payee after issuing the bank remittance particulars of each payee from records. As a result of which U.Durga Prasad Rao embezzled an amount of Rs.14,83,104/- by tampering the Bank remittance particulars of 10 personal and deposited amounts to that of account of Smt. U. Sarada W/o U. Durga Prasad Rao.

5. I submit that the Charge Memo issued to me and the imputation of charges leveled against me are not sustainable either in law and facts of the case. As per the said charge memo and imputation of charges, the department is having full information that the said Mr. U. Durga Prasad Rao is the person who tampered the Bank remittance slips and embezzled huge amounts. Hence, accusing me for his tampering is not sustainable and I cannot be faulted. Apart from that the Respondent No.4 who is issuing the charge memo and other office orders on behalf of Respondent No.3 is the Head of our Department. The Respondent No.4 has signed all the Bank Registers and put his signatures on all documents certifying that they are correct and genuine. But the Respondent No.4 was not issued with any charge memo and he himself is issuing charge memo to us and the same is highly objectionable and the same is violation of principles of natural justice."

8. The doctrine of bias is a part of natural justice emanating from the maxim *nemo debet esse judex in propria sua causa*. It is the settled legal position that when an allegation of bias is made against an individual or a body, what is to be seen is whether there is a reasonable ground for believing that he/it was likely to have been biased. In other words, where there is an allegation of substantial possibility of bias animating the mind of the person/body, such reasonable apprehension must be based on cogent material. While dealing with the plea of bias the Court or Tribunal is required to take a rational approach keeping in view the basic concept of legitimacy of interdiction in such matters, for, the challenge of bias, when sustained, makes the whole proceeding or order a nullity, the same being *coram non judice*. One has to keep oneself alive to the relevant aspect while accepting the plea of bias. To adjudge the tenability of the plea of bias, the Tribunal or Court is required to adopt a deliberative or logical thinking based on the acceptable touchstone and parameters for testing such a plea and not to be guided or moved by emotions or for that matter by one's individual perception or misguided intuition. The plea of bias has to be scrutinized on the basis of the material brought on record and the principle cannot be applied in vacuum. (See: ***Satya Narain Shukla vs. Union of India &***

***others*'[1];*Union of India vs. Sanjay Jethi*'[2]; *lection Commission of India Vs. Dr. subramaniam Swamy*[3]'** and **C*antonment Executive Officer and another vs. Vijay D. Wani & others*'[4]**.

9. In our opinion, the averments made by Appellant No.3 in his counter-affidavit as reproduced supra cannot be read in isolation without considering the context in which they were made. When the respondent has asserted that he has not faced any allegations while discharging his duties that there was no justification in accusing him of tampering of record and that he cannot be faulted, Appellant No.3 has obviously felt compelled to make those averments, which the learned single Judge has taken exception to. Indeed, the scope of the writ petition was not whether the petitioner, was guilty of charges or not. He sought for the relief of quashing of the charge memo on the various grounds including the two grounds referred in the order of the learned Judge. Even if Appellant No.3 has expressed his opinion, it is implied that the same was in the context of the issues raised by the respondent in the writ petition. In our opinion, the respondent having himself impleaded Appellant No.3 in the writ petition cannot blame the latter for filing the counter-affidavit

[1] (2006) 9 SCC 69
[2] (2013) 16 SCC 116
[3] (1996) 4 SCC 104
[4] (2008) 12 SCC 230)

justifying the issue of charge memo. Further more, no where in the affidavit filed in support of the writ petition, the respondent has raised the plea of bias against any of the appellants. It is worthy to note that after Appellant No.3 has filed his counter-affidavit, the respondent has not even filed a reply affidavit, raising the plea of bias. When the party has not pleaded bias, with due respect, it is not for the court to infer bias, as bias reflects the state of mind of a person and unless the person apprehensive of such bias raises specific pleadings in that regard, such inference cannot be drawn by the court.

10. The various judgments referred to by the learned single Judge, apply to a case where the party pleads bias. If the averments in the counter-affidavit filed by Appellant No.3 are taken in the context in which they are made, we are of the opinion that there is no scope for inferring any bias, as the counter-affidavit only reflects the stand of the Department and there is no reason to believe that either the Enquiry Officer or the Disciplinary Authority, would get carried away by the opinion expressed by Appellant No.3.

11. For the afore mentioned reasons, we are of the opinion that quashing of the charge memo on a ground of bias cannot be

sustained. Accordingly, the order of the learned single Judge under appeal is set aside and the writ petition is restored to file for disposal on merits.

12. The writ appeal is, accordingly, allowed. No order as to costs.

13. As a sequel to allowing of the writ appeal, WA MP No.1787 of 2017 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

KONGARA VIJAYA LAKSHMI, J

Date: 10.10.2017
Note:
L.R. copy to be marked.
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Bss/Gk.

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

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WRIT APPEAL No.915 of 2017

(per Hon'ble Sri Justice C.V. Nagarjuna Reddy)

Date: 10.10.2017

Bss/Gk.