

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M. GANGA RAO

WRIT PETITION NO.3916 OF 2018

ORDER

(Per Hon'ble Sri Justice Sanjay Kumar)

The writ petitioner is the unsuccessful applicant in O.A.No.2256 of 2017 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad (*hereinafter*, 'the Tribunal'), which was dismissed on 31.07.2017. Therein, he had assailed the proceedings dated 16.11.2011 of the Superintendent of Police, Urban Police District, Tirupathi, imposing upon him the punishment of postponement of his increment for one year with effect on future increments and pension; the appellate proceedings dated 01.10.2012 of the Deputy Inspector General of Police, Ananthapuramu Range, Ananthapuramu District, confirming the said punishment; and the proceedings dated 06.04.2013 of the Inspector General of Police, South Zone, Rayalaseema Region, dismissing his revision.

The petitioner entered uniformed service as a Police Constable. He was thereafter promoted as a Head Constable. Disciplinary proceedings were initiated against him in relation to his stint as a Police Constable at Srikalahasthi Rural, *vide* Memorandum of Charge dated 16.11.2011. The charge against him reads as under:

'Exhibited gross reprehensible misconduct and neglect of duty by attending A.P. C.M. Bandobust duty on 28.6.2010 at Sankarambadi Circle with a delay of 1 ½ hour by consuming alcohol. Thus violated the provisions of Rule 3 of APCS(Conduct) Rules 1964.'

The disciplinary proceedings culminated in the penalty of postponement of one increment with effect on future increments and pension. This penalty was confirmed in appeal and thereafter, in revision. Assailing these orders, the petitioner approached the Tribunal by way of the

subject O.A. The Tribunal however held against him on the merits of the matter. His contention that the authorities had acted with discrimination and arbitrariness inasmuch as another co-accused Head Constable was let off with a minor penalty, though the charges against them were identical, did not weigh with the Tribunal on the ground that the said Head Constable was about to retire and the same was a mitigating factor in his case.

Heard Sri V.Maheswar Reddy, learned counsel for the petitioner, and the learned Government Pleader for Services, Andhra Pradesh, for the respondents.

Sri V.Maheswar Reddy, learned counsel, would contend that there was patent discrimination on the part of the authorities while dealing with cases of identically situated constables. He would draw our attention to the proceedings dated 16-11-2011 of the Superintendent of Police, Urban Police District, Tirupathi, in relation to K.Raja Reddy, the other Head Constable who was involved in the act of misconduct along with the petitioner. Significantly, these proceedings indicate that the charge against K.Raja Reddy, Head Constable, was identical in terms to that levelled against the petitioner. This charge reads as under:

‘Exhibited gross reprehensible misconduct and neglect of duty by attending A.P. C.M. bandobust duty on 28-06-2010 at Sankarambadi Circle with a delay of 1 ½ hour by consuming alcohol. Thus violated the provisions of Rule 3 of A.P.C.S. (Conduct) Rules 1964.’

It is also clear from a comparison of the proceedings dated 16.11.2011 passed against the petitioner and the undated proceedings passed against K.Raja Reddy, Head Constable, that the enquiry against both of them was a common one held by the Deputy Superintendent of Police, East-Division, Tirupathi. The enquiry report was also common, being the

report dated 02.08.2011. However, when it came to the petitioner, the Superintendent ultimately stated as follows:

'I have gone through entire PR file along with connected records and further representation of the Charged Officer i.e., PC 471/TU (2066/CT) Sri A.Devadas.

1. I agree with the findings of the E.O. in holding the article of charge as proved against the charged officer that he has attended the C.M BB Duty with a delay of 1 ½ hour and also by consuming alcohol.
2. Hence, he is awarded with the punishment of Postponement of Increment for one year with effect on Future Increments and Pension. The Suspension period spent by him from 25-07-2010 to 30-08-2010 is treated as not on duty.'

But, when it came to K.Raja Reddy, Head Constable, the Superintendent stated as under:

'I have gone through entire PR file along with connected records and further representation of the Charged Officer i.e., HC 240/TU (1544/CT) Sri K.Raja Reddy of Yerpedu PS.

1. I agree with the findings of the E.O. in holding the article of charge as proved against the charged officer that he has attended the C.M BB Duty with a delay of 1 ½ hour and also by consuming alcohol.
2. Hence, keeping in view of his short service for retirement, he is awarded with the punishment of Postponement of Increment for one year without effect on Future Increments and Pension. The Suspension period spent by him from 25-07-2010 to 30-08-2010 is treated as not on duty. '

It is therefore clear that though the petitioner and K.Raja Reddy, Head Constable, stood identically situated, the Superintendent imposed upon the latter a minor penalty, only because his service was short due to his impending retirement.

Sri V.Maheswar Reddy, learned counsel, would place reliance on RAJENDRA YADAV V/ s. STATE OF MADHYA PRADESH¹ and more particularly, the observations made in Para 9 thereof, which are as under:

'9. The doctrine of equality applies to all who are equally placed; even among persons who are found guilty. 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. Parity among co-delinquents has also been maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The disciplinary authority cannot impose punishment which is disproportionate i.e. lesser punishment for serious offences and stringent punishment for lesser offences.'

Learned counsel would assert that when there was no possibility of drawing any distinction in the misconduct held proved against the petitioner and K.Raja Reddy, Head Constable, the authorities were not correct in discriminating between them when it came to imposition of punishment.

Per contra, the learned Government Pleader would contend that as there was a distinguishing factor, inasmuch as K.Raja Reddy, Head Constable, was about to retire shortly, the imposition of a lesser punishment upon him cannot be said to be invalid. She would further state that due to the impending retirement, the Superintendent could not have imposed upon him the very same punishment visited upon the petitioner, as there was no possibility of postponing an increment with effect on future increments. She however has no answer as to why the major penalty of punishment of one increment with effect on pension could not have been passed against K.Raja Reddy, when a major penalty on such lines was imposed upon the petitioner.

¹ (2013) 1 SCC (L&S) 476 : (2013) 3 SCC 73

It may also be noted that K.Raja Reddy was older than the petitioner and should have had a greater degree of responsibility as a member of a uniformed service. In fact, his seniority and longer service should have weighed against him while determining the penalty rather than in his favour. However, the Superintendent failed to note this aspect and adopted a liberal view only due to the fact that he was about to retire from service shortly. Having adopted this approach, the Superintendent ought not to have discriminated against the identically situated petitioner and visited him with a major penalty. Therefore, the law laid down by the Supreme Court in RAJENDRA YADAV¹ squarely applies to the case on hand.

The writ petition is accordingly allowed setting aside the order dated 31.07.2017 passed by the Tribunal in O.A.No.2256 of 2017. The punishment imposed upon the petitioner shall stand modified to that of postponement of his increment for one year without effect on future increments and pension, on par with the punishment imposed on K.Raja Reddy, Head Constable. The suspension period shall however be treated as not on duty.

Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

M. GANGA RAO, J

30th APRIL, 2018

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