

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.19172 of 2010

DATE: 13.03.2018

Between:

N.Venkateswarlu, s/o. late Narayana (died)
per LRs N.Sarojana w/o. late N.Venkateswarlu,
Aged 38 years, R/o. F.No.114, Prudhvi Heights,
Feerajiguda, Ghetkesar Mandal, R.R. District
and others.

..... Petitioners

And

The Appointing Authority and Superintending
Engineer (Operation), A.P.Central Power
Distribution Co.Ltd., Ranga Reddy (South),
Mehdipatnam, Hyderabad and others.

..... Respondents



This Court made the following :

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ORDER:

The 1st petitioner was appointed as lineman on 15.10.1991. This writ petition is filed challenging punishment of removal from service affirmed by the appellate authority. During pendency of writ petition, 1st petitioner died, and his legal heirs came on record as petitioners 2 to 4 to prosecute the writ petition.

2. Disciplinary proceedings were initiated by appointing enquiry officer on 09.04.2007 on the allegation of unauthorized absence from 01.09.2005 onwards. Earlier *ex parte* enquiry was conducted, and enquiry officer submitted report holding the charge as proved. Based on the findings, show-cause notice dated 28.01.2008 was issued calling upon 1st petitioner to submit his explanation as to why he should not be removed from service. This was challenged by 1st petitioner in W.P.No.2361 of 2008. Writ petition was allowed by order dated 28.08.2008 and set aside the show-cause notice dated 28.01.2008. Petitioner was asked to submit his explanation to the charge memo on or before 08.09.2008. Further direction was issued to the enquiry officer to hold first hearing on 15.09.2008 and thereafter to proceed on day to day basis; to conclude the enquiry by 30.09.2008 and to submit his report. The Court further ordered that till the proceedings are concluded, petitioner would be entitled to subsistence allowance as directed by the Court in W.P.No.5967 of 2007. In terms of the said direction, petitioner filed his explanation, enquiry officer held enquiry and submitted his report. On 15.11.2008 show-cause notice was issued calling upon the petitioner to submit his

explanation as to why he should not be removed from service. Based on findings of the enquiry officer, 1st petitioner submitted his explanation on 29.11.2008. Not satisfied with explanation, by order dated 23.12.2009 punishment of removal from service was imposed. Appeal preferred by petitioner was rejected by order dated 30.06.2010.

3. In the affidavit filed in support of writ petition, 1st petitioner narrates history of litigation. Averments in the affidavit would disclose 1st petitioner filed W.P.Nos.20646/2004, 22142/2004, 10864/2004, 10855/2004, 5967/2007, 1191/2006 and W.P.No.2361/2008 on various aspects of his service grievance.

4. Heard Sri Bankatlal Mandhani, learned counsel for petitioners and Sri R.Vinod Reddy, learned standing counsel for respondents.

5.1. Learned counsel for petitioner contended that petitioner as Sub-Engineer was required to do field job separate attendance register was maintained exclusively for him. He was initially transferred and posted to Rajendra Nagar Division on 14.03.2005. Later he was deputed to work under the control of Divisional Engineer (Operations), Saroor Nagar, though the Divisional Engineer, Rajendra Nagar continued to be the drawing and disbursing officer. He continuously worked up to 18.10.2006. In the early hours of 19.10.2006, as the first petitioner father died, he could not attend duty till 09.11.2006 and on 10.11.2006, he reported to duty. But he was not allowed to discharge his duties. The allegation levelled against him was that he was unauthorisedly absent from 01.09.2005. Whereas, till the charge memo was served

on him, at no point of time, he was served with memo alleging unauthorised absence/warned to attend to duties. To take vengeance for filing C.C.No.883 of 2006 alleging non-compliance of the directions issued on 25.01.2006 in W.P.M.P.No.1410 of 2006 in W.P.No.1191 of 2006, seeking payment of salary, as a counter blast story of unauthorised absence was created and in the year 2007, disciplinary action was set in motion.

5.2. He would further assert that crucial document to prove allegation is attendance register. Separate attendance register was opened for the petitioner and despite requests made by 1st petitioner and despite directions issued by the enquiry officer, it was not produced for reasons best known to the authorities. In the absence of crucial document, it cannot be alleged that petitioner was unauthorisedly absent.

5.3. It is further contended that proposal to impose punishment of removal is because Government issued instructions on 03.01.2007 directing to take disciplinary action and to impose punishment of removal, if any employee is unauthorisedly absent from duty for a continuous period of more than one year. It is therefore, contended that there was no independent application of mind; action was initiated, and punishment of removal was imposed only on the premise that petitioner was unauthorisedly absent for more than one year. According to learned counsel, the disciplinary authority being quasi-judicial authority must independently exercise his mind and consider material on record to impose appropriate punishment and no outside agency or higher authority can influence the decision of the disciplinary authority in the matter of imposing appropriate punishment. Direction issued

by the Government on 03.01.2007 would amount to influencing decision of the disciplinary authority and on that ground the disciplinary action is vitiated.

5.4. According to learned counsel, 1st petitioner was complaining of non-payment of salary from 01.09.2005. He made several representations. But the same were not acted upon. Therefore, he was compelled to file W.P.No.1191 of 2006 and this Court by order dated 25.01.2006 directed payment of salary, if 1st petitioner was in service and was not placed under suspension. This order was complied only after 1st petitioner filed contempt case and as a counter blast disciplinary action was set in motion.

6.1. Learned standing counsel would submit that petitioner was absent for long time without intimation and without sanction of leave. Only to cover up his unauthorized absence, he created a false story of transfer and separate attendance register. All Controlling Officers have consistently asserted that no separate attendance register was maintained for petitioner.

6.2. He would submit that due opportunity was afforded and on thorough analysis of evidence on record, Enquiry Officer held charge as proved and on due consideration of explanation, Disciplinary Authority imposed punishment. By referring to paragraph (v) of explanation dated 06.09.2008, he would submit that petitioner admitted his absence from duty prior to 10.11.2006. He would submit that as petitioner was absent for long time, punishment of removal is justified.

6.3. There is no illegality or irregularity in the procedure followed. As per Regulation 28 and Government Orders, if an employee remains absent from service for more than one year, he should be removed from service. In the case on hand, petitioner absented for more than one year without prior permission and, therefore, punishment of removal was validly imposed.

7. Charge contains two components, (1) abstaining from duty w.e.f. 01.09.2005 unauthorisedly; and (2) not collecting salary and subsistence allowance. Charge is formulated based on complaint of Divisional Engineer (Operations), Saroornagar dated 25.11.2006 and letter of Divisional Engineer (Operations), Rajendra Nagar. Divisional Engineer (Operations), Saroornagar, reported that petitioner was not attending to duties from 01.09.2005. Divisional Engineer (Operations), Rajendranagar reported that after order of this Court in WP No.1191 of 2006, dated 25.01.2006, though payment was claimed, petitioner was reluctant to receive the salary and all efforts made by his Office ended futile. He further reported that petitioner was absconding from duty for more than one year from 01.09.2005.

8. Two things are noticed from these letters. The two controlling officers allege in their letters dated 25.11.2006 and 13.12.2006 respectively that 1st petitioner was absconding from duties for more than one year. However, they are silent on what steps were taken between 01.09.2005 to November/December, 2006. Secondly, D.E.(Operations), Rajendranagar reports that though salary was drawn to pay to 1st petitioner, *'he was reluctant to receive the salary'*. If that being so, it cannot be said that petitioner was

unauthorisedly absent and his whereabouts are not known. Earlier to this period and during this period, he was also prosecuting litigation before this court. Thus, in the facts of this case, it cannot be said that petitioner was continuously absent from duty for more than one year. It is also relevant to note that till petitioner submitted leave application dated 06.11.2006 to grant leave from 19.10.2006 to 09.11.2006, no steps were taken on the allegation of unauthorized absence. He was not even served memo of absence from duty.

9. According to report of Deputy Engineer (Operations), Saroornagar, first petitioner while on deputation to Operation Section Pahadisharief did not attend to work. First petitioner was asked to work in Pahadisherif section for about 15 to 20 days between 22.2.2005 and 31.8.2005 and for the rest of the period he was working under Deputy Engineer (Operations), Saroornagar. He would thus contend that he was absents from duties in September in Pahadisherif section.

10. Though several grounds were urged by the 1st petitioner and all those contentions were recorded by the disciplinary authority, the disciplinary authority assessed allegation against petitioner by holding that he has not furnished any supporting proof of his attending duties, such as work entrusted and work he attended. The disciplinary authority further observed that if 1st petitioner was continuously attending to duties in Divisional Office, the Divisional Engineer (Operations), Saroor Nagar could not have reported to the Divisional Engineer (Operations), Rajendra Nagar about unauthorised absence with effect from 01.09.2005 to 29.09.2005. Disciplinary authority further observed that DEE,

intimated to the 1st petitioner about his absence. He also pointed out certain lapses on the part of 1st petitioner with reference to submission of application for salary etc., to hold that the stand of the 1st petitioner that he was attending to duty was not valid.

11. It is not alleged that petitioner was in the habit of absenting from duty. It is also not placed on record that he was indulging in misconduct earlier and was imposed punishments. There is no finding of wilful and deliberate absence without just cause. It is relevant to note except for the letter of the Divisional Engineer (Operations), Saroor Nagar to the Divisional Engineer (Operations), Rajendra Nagar reporting about unauthorised absence, that too with effect from 01.09.2005 to 29.09.2005 there was no further action initiated. Petitioner was not served with memo alleging absence from duty. Respondents kept quiet for almost two years on the alleged absence from duty.

12. The show cause notice and the discussion by the disciplinary authority would show that disciplinary authority was swayed by the provision in Regulation 28 (3) of APSEB Service Regulations and Government orders dated 03.01.2007 regarding taking disciplinary action and imposing punishment of removal. A reading of the operative portion of the order would also show that the disciplinary authority has weighed heavily on alleged absence for more than one year.

13. There is no discussion in the order of punishment as to the conduct of petitioner prior to initiation of disciplinary proceedings resulting in imposing punishment of removal, nor there is any discussion of endeavour made to secure the presence of employee

and despite repeated instructions to attend to duty, the employee refused to resume his work.

14. No employee can remain absent from duty without permission. He can absent from duty only by submitting leave application and only after leave is sanctioned. Without prior intimation and sanction of leave, if employee does not attend to duties, such absence would be treated as unauthorised, amounts to misconduct and warrant disciplinary action. However, gravity of misconduct depends on period of absence and conduct of employee. Mere absence from duty does not automatically amount to grave mis-conduct. Only if absence is wilful, deliberate and without any justification, it would be a grave mis-conduct. Thus, it is necessary for the disciplinary authority, first to consider whether the employee was absent from duty, if so, whether such absence was deliberate and wilful and if the absence was deliberate and wilful, what is the punishment that can be imposed commensurate with the delinquency alleged in the facts of the case. No such exercise was undertaken.

15. Though petitioner was pleading all along that a separate attendance register was maintained for him exclusively the evidence on record do not support such assertion. First petitioner claimed that he was in Pahadisherif for brief period and came back to Saroornagar, but no material is brought on record to show that he was relieved in Pahadisherif and joined in Saroornagar. It is relevant to note that on his request, he was posted to Pahadisherif Section. No proof is shown of his attending to duties. Thus, the

contention of respondents that 1st petitioner was unauthorisedly absent cannot be faulted.

16. The only issue is for how long 1st petitioner was absent and in the facts of this case, whether such absence would warrant removal from service.

17. In the facts, as assessed, it cannot be said that 1st petitioner was absent for long period. As noted earlier, the two limbs of charge memo are self contradictory. Further, such absence, having regard to litigation history of 1st petitioner, vis-à-vis the conduct of respondent authorities, cannot be viewed as grave misconduct, to result in removal from service. In the facts of this case, Court is persuaded to hold that punishment of removal from service is excessive and disproportionate to the delinquency alleged.

18. In the normal course, whenever the Court comes to conclusion that punishment imposed is disproportionate, Court remits the matter for consideration by the disciplinary authority to impose appropriate punishment. In this case, during the pendency of writ petition, 1st petitioner died and his legal heirs came on record. In the absence of employee, disciplinary authority cannot take a decision with reference to quantum of punishment. Further, issue relates to period of absence of 1st petitioner during the years 2005-06 and disciplinary proceedings culminated in imposing punishment on 23.12.2009 i.e., more than eight years ago. Thus, in the peculiar facts of this case, Court is not inclined to remit the matter to the disciplinary authority and to put quietus to the litigation, Court is inclined to substitute the punishment of

removal from service, with that of reduction to the minimum of time scale attached to the post of sub-engineer, which shall operate from the date of removal from service. Based on the said substituted punishment, further service conditions of first petitioner shall be regulated till his death and for computation of terminal benefits. However petitioners are not entitled to arrears of amounts for the period of out of employment.

The writ petition is ordered accordingly. No costs.
Miscellaneous petitions if any pending shall stand closed.

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