

THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE P.KESHA RAO

WRIT PETITION NOS.20439 AND 22613 OF 2017

COMMON ORDER
(Per Hon'ble Sri Justice Sanjay Kumar)

O.A.No.4604 of 2013 was filed before the Andhra Pradesh Administrative Tribunal, Hyderabad (*hereinafter*, 'the Tribunal'), by Mirza Hyder Baig (*hereinafter*, 'the applicant') assailing the order dated 03.09.2000 passed by the Commissioner of Police, Hyderabad City, holding him guilty on the charge of unauthorised absence from 12.02.1999 (wrongly mentioned as 10.02.1999) to 31.05.1999 (wrongly mentioned as 13.05.1999) and imposing upon him the punishment of postponement of his increment for one year with effect on future increments and pension, and the Memo dated 05.08.2011 issued by the Government of Andhra Pradesh dismissing his revision against imposition of the said penalty. He also sought a consequential direction to the authorities to treat the period from 12.02.1999 to 31.05.1999 as on duty for all purposes.

By order dated 24.08.2016, the Tribunal set aside the impugned proceedings and directed the authorities to impose any minor penalty as per Rule 9 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (for brevity, 'the Rules of 1991') and to treat the period of absence, i.e., from 12.02.1999 to 31.05.1999, as eligible leave. Orders were directed to be passed in this regard within three months.

Aggrieved by the non-implementation of these directions by the State of Telangana and its police officials, the applicant filed W.P.No.20439 of 2017 on 21.06.2017. Aggrieved by the aforesaid order and the directions therein, the State of Telangana and its officials in the police department filed W.P.No.22613 of 2017 on 05.07.2017.

By order dated 10.07.2017 passed in W.P.No.22613 of 2017, this Court directed that the order dated 24.08.2016 of the Tribunal in O.A.No.4604 of 2013 shall remain stayed. W.V.M.P.No.4993 of 2017 was filed by the applicant to vacate the said order.

Heard the learned Government Pleader for Services, State of Telangana, and Sri Mohammed Habeebuddin, learned counsel for the applicant. Comprehensive arguments having been advanced, the writ petitions are amenable to disposal at the interlocutory stage.

The applicant entered uniformed service as a Police Constable (Civil) on 23.08.1983. He was promoted as a Head Constable in 2011. He suffered injuries on 12.02.1999 due to an accident while he was on duty. He absented himself from duty from the said date without leave or intimation to the higher authorities. On 22.02.1999, he applied for a sick passport stating that he received injuries on the right hand and his back and could not attend duty. However, the Sub-Inspector of Police (Traffic), Mehdiapatnam, Hyderabad, endorsed thereon that the applicant had remained unauthorisedly absent since 12.02.1999 without any intimation and permission but he came on that day for issue of a sick passport and suggested that the applicant should report for duty and perform light duties, in view of shortage of manpower. Notwithstanding the same, the applicant did not report for duty. He was served with Charge Memo dated 05.07.1999, wherein the article of charge framed against him reads as under:

‘Sri Mirza Hyder Baig PC 6820 while working at Traffic PS Mehdiapatnam exhibited gross irresponsible attitude and dereliction of duties in remaining absent unauthorisedly from duties from 12-2-99 to 31-5-99 and was declared as deserter.

Sri Mirza Hyder Baig PC 6820 by his above acts exhibited lack of integrity and conduct unbecoming of a Government servant thereby, violating rule 3 or the APCS (Conduct) Rules 1964.’

After due enquiry, the charge against the applicant was held proved, *vide* report dated 10.04.2000. Thereupon, under Proceedings dated 03.09.2000 of the Commissioner of Police, Hyderabad City, the applicant was visited with the penalty of postponement of his increment for one year with effect on his future increments and pension and the period of his absence from 12.02.1999 to 31.05.1999 was treated as on leave without pay.

His appeal before the Director General of Police, Andhra Pradesh, was dismissed by order dated 21.03.2001. His revision to the Government resulted in the Memo dated 05.08.2011, confirming the punishment.

The Tribunal took note of the fact that the Sub-Inspector of Police (Traffic), Mehdiapatnam, who was examined as P.W.1 in the course of enquiry, and the Constable who served the documents on the applicant, who was examined as P.W.2, admitted that the applicant was unwell at the relevant point of time and that they had both noticed a bandage on one of his hands. The Tribunal was therefore inclined to believe that the applicant had reason to remain absent from duty. Relying on *KRUSHNAKANT B.PARMAR V/ s. UNION OF INDIA*¹, wherein the Supreme Court held that unauthorised absence from duty, by itself, would not amount to failure of devotion to duty or behaviour unbecoming of a Government servant, the Tribunal opined that the penalty imposed upon the applicant was excessive and accordingly set it aside. The matter was referred to the Commissioner of Police, Hyderabad City, for taking a liberal view in the matter and to impose upon the applicant a minor penalty as per Rule 9 of the Rules of 1991. He was further directed to treat the period of absence as eligible leave.

The learned Government Pleader would contend that the applicant, being a member of a uniformed service, had to abide by a high standard of

¹ (2012) 3 SCC 178

discipline and failure to obey the orders of his superiors necessarily entailed consequences. He would point out that no such circumstances were obtaining in KRUSHNAKANT B.PARMAR¹ and therefore, application of the *ratio* laid down in the said judgment to the case on hand was not warranted on facts.

Sri Mohammed Habeebuddin, learned counsel, does not dispute the fact that the applicant himself approached the Sub-Inspector of Police (Traffic) at Mehdipatnam on 22.09.1999 seeking issuance of a sick passport. He also does not dispute the fact that the Sub-Inspector endorsed on the said application that in view of shortage of manpower, the applicant should report and perform light duties. Despite the same, the applicant chose to remain absent from duty without even approaching a higher authority, if he felt aggrieved by denial of his request for a sick passport.

Perusal of the enquiry report dated 10.04.2000 reflects that the Sub-Inspector of Police, who spoke as P.W.1, deposed to the effect that when the Charge Memo dated 18.02.1999, with regard to the unauthorised absence from 12.02.1999, was sought to be served upon the applicant, the Police Constable (P.W.2) who went there did not even find him at his residence. It was only thereafter that the said Memo was served upon the applicant, but he did not choose to report for duty. He reported for duty only on 01.06.1999 and was allowed to join, subject to the enquiry proceedings. P.W.2, the Police Constable who went to the residence of the applicant to serve the said Charge Memo on 19.02.1999, stated that he did not find him available at the residence and his family members refused to receive the Memo but they could not give any information as to the whereabouts of the applicant. On 22.02.1999 and 03.03.1999 two other Memos were given to him to serve upon the applicant and he did so on the said dates itself.

The aforestated facts clearly demonstrate that despite being a Police Constable, the applicant did not choose to obey the standard procedure for availing sick leave. By the time he applied for a sick passport on 22.02.1999, he was already issued Charge Memo dated 18.02.1999 in relation to his unauthorised absence from 12.02.1999. The fact that he was able to move around is clear as he was not available at home on 19.02.1999, when the Police Constable (P.W.2) went to serve the Charge Memo dated 18.02.1999 upon him. Significantly, the Police Constable (P.W.2) stated that his family members were unable to even indicate his whereabouts. On 22.02.1999, the applicant himself went to the Sub-Inspector of Police (Traffic), Mehdipatnam, with his written representation requesting for issuance of a sick passport. Despite the endorsement made thereon by the Sub-Inspector that he should report for duty and perform light duties, the applicant chose to ignore the same. He neither approached any higher authority nor did he renew his request for leave till 01.06.1999, when he reported for duty. In a uniformed service, this kind of uncaring conduct and disregard to orders of superiors cannot be categorised as anything other than rank insubordination.

Be it noted that in KRUSHNAKANT B.PARMAR¹, the punishment imposed upon the Security Assistant in the office of the Deputy Central Intelligence Officer at Palanpur for his unauthorised absence was dismissal from service. In the present case, the Commissioner of Police, Hyderabad City, took a rather lenient view of the conduct of the applicant and visited him with the lesser major penalty of postponement of his increment with cumulative effect. In the circumstances, this Court finds that imposition of this penalty was itself evidence of the liberal attitude of the disciplinary authority towards the applicant. The further sympathy shown to the applicant by the Tribunal was therefore utterly misplaced, given the facts.

Discipline in a uniformed service necessarily has to be maintained at a high level and permitting acts of insubordination to be let off lightly would not set the right example. The order of the Tribunal directing so therefore cannot be sustained.

W.P.No.22613 of 2017 is accordingly allowed setting aside the order dated 24.08.2016 passed by the Tribunal in O.A.No.4604 of 2013. The penalty imposed upon the applicant shall stand confirmed. In consequence, W.P.No.20439 of 2017 seeking implementation of the order passed by the Tribunal is rendered infructuous and is accordingly dismissed.

Pending miscellaneous petitions in both the writ petitions shall stand closed in the light of this final order. No order as to costs.



SANJAY KUMAR, J

P.KESHAVA RAO, J

20th APRIL, 2018

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