

THE HON'BLE SRI JUSTICE M.GANGA RAO

WRIT PETITION No.21803 OF 2001

ORDER:

Petitioner, who worked as a clerk (Trains) in the first respondent-Visakhapatnam Port Trust, filed this Writ Petition being aggrieved by the orders passed by the second respondent vide Proceedings No.B/Traffic/Appeal/2102/2001 dated 24.09.2001 confirming the order passed by the third respondent in proceedings No.TRE/PC/CMJP/VNR dated 21.08.2001 wherein the petitioner was imposed a punishment of 'reversion to the next lower post of clerk (T) for a period of two (2) years with cumulative effect w.e.f.20.08.2001' being illegal, arbitrary, discriminatory and contrary to Visakhapatnam Port Trust Employees Conduct (Regulations) 1964 (for short 'Regulations 1964) and the Visakhapatnam Employees (Classification, Control and Appeal) Regulations, 1968 (for short 'Regulations 1968).

Brief facts of the case are that in the year 1980, the petitioner was appointed in the first respondent-Port Trust. The Traffic Manager, Visakhapatnam Port Trust (Disciplinary Authority), Visakhapatnam, the third respondent herein, issued a charge sheet in Memorandum No.TRE/PC/CMJP/VNR dated 29.05.2000 against the petitioner framing the following Articles of Charge:

“That the said Sri V.N.Reddy, Clerk (Trains) has applied for 6 (six) weeks sick leave from 14.03.2000 to 24.04.2000 by producing a sick certificate issued by a private doctor as he is suffering with back ache which is against the procedure followed, causing much dislocation to day to day operational working.

He reported to duty on 2.4.2000 duly producing the fit certificate issued by the above Private Doctor.

That the said Sri V.N.Reddy, Clerk (Trains) was directed to CMO/GJH for second medical opinion on 25.4.2000. The CMO/GJH stated that Sri V.N.Reddy, clerk (Trains) has been examined and found fit for duty w.e.f. 25.4.2000. Further, as advised by the CMO he appeared before Medical board of V.P.T. on 10.5.2000. The Medical Board has examined Sri V.N.Reddy Clerk (T) and found that there was no evidence to substantiate his claim for back pain either clinically or investigative wise.

In this context, it is mentioned here that Sri V.N.Reddy has got habituated for applying sick leave for longer periods on private sick certificates causing much dislocation to the day to day operational work. Even though severe punishment i.e. 'Reversion to the lower post of clerk (Trains) from the post of Y.F. for a period of two years with cumulative effect w.e.f. 27.7.99 was imposed, he did not improve his attendance and not changed his habit of applying sick leave for longer periods on private sick certificates.

This clearly shows that Sri V.N.Reddy, Clerk (T) is careless and negligent in attending to his duties and thereby committed serious misconduct by violating VPE's (Conduct) Regulations, 1964.

He is, therefore, charged for his carelessness and negligence in attending to his duties and properly and for violation of Regulation 3 (i) of VPE (Conduct) Regulations, 1964".

Petitioner submitted his explanation on 13.06.2000 and having not satisfied with the same, the respondent-authorities appointed one Sri G.Ramasekhar, DTM (C) as Enquiry Officer. The Enquiry Officer conducted enquiry on 13.04.2001 and the said day being a public holiday on account of Good Friday, both the Presenting Officer and defence counsel could not be present and taking advantage of the same, the Enquiry Officer pressurized the petitioner to admit the charges, so that lenient action can be taken against the petitioner. Under those pressurized circumstances, the petitioner submitted a representation to the Enquiry Officer on 13.04.2001 accepting the charges. Based on the same, the

Enquiry Officer, without holding any further enquiry concluded the enquiry stating that the charges are proved. Consequently, the Disciplinary Authority passed orders in Proceedings No.TRE/PC/CMJP/VNR dated 21.08.2001 imposing punishment of 'reversion to the next lower post of Clerk (Trains) for a period of 2 (two) years with cumulative effect w.e.f.20.8.2001'. The petitioner preferred the appeal on 31.08.2001 against the punishment order dated 21.08.2001 under Regulation 20 of Regulations, 1968, to the second respondent. The second respondent passed orders in proceedings No.B/Traffic/Appeal/2012/2001 dated 24.09.2001 confirming the order of punishment passed by the third respondent on 21.08.2001. Being aggrieved by the same, the petitioner filed the present writ petition.

This Court on 18.10.2001 while admitting the Writ Petition, granted interim suspension in WPMP No.27460 of 2001. Seeking to vacate the same, respondent-Organization filed WVMP No.3384 of 2001 along with counter affidavit.

In counter, it is stated that the petitioner was absent from duties for longer period and could not improve his attendance *in spite* of imposing a major punishment on an earlier occasion, which shows that petitioner was negligent in discharging his duties in the Organization. Since the petitioner admitted his guilt during the course of enquiry, based on the same, the Disciplinary Authority imposed punishment on the petitioner and the same was confirmed by the Appellate Authority. There is no illegality or perversity in imposition of punishment against the petitioner for the proved misconduct.

Sri P.Durga Prasad, learned counsel for the petitioner, would contend that the petitioner was issued with a charge sheet dated

29.05.2000 alleging that he was careless and negligent in attending the duties and thereby violated Regulation 3 (i) of Regulations, 1964, which reads that “Every Employee shall, at all times, maintain absolute integrity and devotion to duty”. Petitioner submitted his explanation to the same. Having not satisfied with such explanation, an Enquiry Officer was appointed. The Enquiry Officer concluded enquiry on a single day i.e. on 13.04.2001, which is a Public Holiday being Good Friday, and taking advantage of absence of Presenting Officer and defence counsel, the Enquiry Officer pressurized the petitioner to accept the charges and based on the representation of the petitioner dated 13.04.2001 accepting the charges, the Enquiry Officer concluded the enquiry holding that the charges are proved, without conducting any further enquiry. But, the Enquiry Officer or the Disciplinary Authority failed to see that even in the representation dated 13.04.2001 the petitioner has asserted the factum of his felling sick. Learned counsel further submits that as per leave Rules of Visakhapatnam Port Trust Employees, the reference by the Medical Officer of the Port Trust is not necessary and certificate issued by a Registered Doctor is sufficient. Accordingly, the petitioner produced medical certificate issued by King George Hospital, which is a Government Hospital. It is further contended that the allegation that petitioner’s sick leave caused dislocation of work in the Organization is incorrect for the reason that the respondent-Organization has introduced ‘Excessive Staff Voluntary Retirement Scheme’, pursuant to the same as many as 2000 employees in the Organization have taken voluntary retirement and only in the Traffic Section where the petitioner was working nearly 10 people have taken voluntary retirement. In view of the

same, the alleged dislocation of work was happened. The third respondent without properly considering the petitioner's representation and leave Regulations of the Organization and without independent application of mind to the Enquiry Officer's report and the evidence available on record, without examining the evidence held the petitioner has violated Regulation 3 (i) of Regulations 1968 and came to an erroneous conclusion. Learned counsel also submits that based on the Enquiry Officer's report stating that the charges are proved, the third respondent mechanically passed the order of punishment dated 21.08.2001 inflicting the punishment of 'reversion to the next lower post of Clerk (Trains) for a period of 2 (two) years with cumulative effect w.e.f.20.01.2001', which is a major punishment and disproportionate to the proved misconduct. Even the second respondent-appellate authority, being a quasi judicial authority, without considering the grounds of appeal in proper perspective decided the appeal without assigning any reasons for dismissing the appeal. The second respondent, being a quasi judicial authority, has to pass a reasoned order to know whether the order passed is based on any evidence or Regulation for consideration of this Court under Article 226 of the Constitution of India. Learned counsel for the petitioner relied on ***Siemens Engineering & Manufacturing Co. of India Limited vs. Union of India***¹ in support of his contention that the appellate authority being a quasi judicial authority ought not have rejected the appeal without giving any reasons and as such the impugned orders are liable to be set aside.

¹ AIR 1976 SC 1785

Sri P.Sri Raghu Ram, learned counsel for the respondents, would contend that the petitioner, who was working in the respondent-Organization, was not regular in attending his duties. Petitioner was habituated in applying sick leave for a longer period and thereby caused serious dislocation of work for which he was issued with a Memorandum of Charge dated 29.05.2000 and having not satisfied with the explanation dated 13.06.2000 submitted by the petitioner, the respondent-Organization appointed one G.Ramasekhar, DTM (c) as Enquiry Officer. The Enquiry Officer conducted enquiry as per the Regulations of the first respondent-Organization wherein the petitioner has admitted the charges framed against him. Hence, the Enquiry Officer held that the charges are proved against the petitioner. Considering the same, the third respondent-Disciplinary Authority vide proceedings dated 21.08.2001 imposed the punishment of 'reversion to the next lower post of Clerk (Trains) for a period of two (2) years with cumulative effect w.e.f.20.08.2001', as per the Regulations of the Organization. On petitioner's appeal, the appellate authority considered the appeal and rejected the same confirming the order of the third respondent-Disciplinary Authority. The said order is passed as per the Regulations of the respondent-Organization. He would further contend that the petitioner has not produced the medical certificate issued by the Registered Doctor. Petitioner is habituated to apply for sick leave frequently as mentioned in the charge sheet. Petitioner's absence and sick leave caused dislocation of work of the first respondent-Organization. Based on the proved misconduct, he was imposed punishment of 'reversion to the next lower post of Clerk (Trains) for a period of two (2) years with cumulative effect w.e.f.20.08.2001', which commensurate

with the proved misconduct. Hence, there is no illegality or irregularity in the impugned orders.

In the facts and circumstances of the case and in considered view of this Court, the petitioner while working in the first respondent-Organization was issued with a charge memo dated 29.05.2000 on the ground that the petitioner was habituated to take sick leave for longer periods, frequently, causing dislocation to the operations of the Port Trust by producing private medical certificates. The Enquiry Officer after concluding the enquiry held that the charges are proved for the reason that the petitioner has admitted his guilt. But, the Enquiry Officer failed to appreciate that the petitioner has clearly stated in his representation submitted on the date of enquiry that his sickness was genuine, however, only with a view to not to resist the contents of the charge sheet, framed by the Enquiry Officer, he was admitting the charges so that a lenient view would be taken against him in imposition of punishment by the Disciplinary Authority. *In spite* of the same, a major punishment was imposed on the petitioner, which is disproportionate to the prove misconduct. Further, the petitioner submitted sick certificate from one Dr.Adinarayana of King George Hospital, which is a Government Hospital. However, as per the leave Rules of the Visakhapatnam Port Trust Employees, the reference by Medical Officer of the Port Trust is not necessary and the certificate issued by the Medical Practitioner is sufficient. In the instant case, the Sick Certificate was issued by a Government Doctor, which is relevant for consideration of his sick leave application. The petitioner, because of sickness, had applied for sick leave and availed the same as per Regulations. It is not the case of the respondents that the petitioner was unauthorizedly

absent from duties causing dislocation of the work. The petitioner has availed sick leave frequently due to his sickness and the same is not disputed by the first respondent authorities. It is not the case of the respondent that the sick certificate produced by the petitioner is not genuine one. Their only contention was that the petitioner was not referred by the Chief Medical Officer of Visakhapatnam Port Trust, for which the petitioner cannot be charged for carelessness and negligence in attending the duties. Even, the punishment of 'reversion to the next lower post of clerk (Trains) for a period of two (2) years with cumulative effect' is a major punishment and disproportionate to the proved misconduct. As seen from the Memorandum of Charge dated 29.05.2000, petitioner was charge sheeted for violation Regulation 3 (i) of VPE (Conduct) Regulations, 1964, which states that 'every employee, shall, at all times, maintain absolute integrity and devotion to duty'. But, the charge framed against the petitioner is only with regard to habitual application for sick leave only. That be so, it cannot be stated that by applying sick leave the petitioner has not maintained integrity and devotion to duty, which arise only when the petitioner shows any carelessness in discharging his duties, but that is not the case of the respondent to come to the conclusion that the charges are proved against the petitioner. The finding of the Enquiry Officer that the charges are proved is not supported by any reasonable conclusions. However, disciplinary authority as well as the appellate authority had not given any reasons for imposing the major punishment on the petitioner. The appellate authority being a quasi judicial authority cannot reject the appeal without passing a reasoned order. Hence, on that

ground also the order of the disciplinary authority and the order of the appellate authority is liable to be set aside.

For the reasons stated above, the order of disciplinary authority dated 21.08.2001 and order of the appellate authority dated 24.09.2001 are set aside and the matter is remanded back to the disciplinary authority-third respondent to consider imposition of lesser punishment to the petitioner than that of the reversion and proportionate to the proved misconduct.

Accordingly, the writ petition is allowed and remanded back to the disciplinary authority, for imposing a lesser punishment.

Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

20.07.2018
sur



(M.GANGA RAO, J)