

HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
&
HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.20481 OF 2007

ORDER: (per Hon'ble Sri Justice Abhinand Kumar Shavili)

1. This writ petition is filed seeking to issue a writ of Certiorari calling for the records relating to and connected with the order dated 12.9.2006 in O.A.No.8248 of 2003 on the file of the A.P. Administrative Tribunal, Hyderabad, and to quash the same.

2. Heard Sri Ravinder Alkuchi, learned Counsel for the petitioner and the learned Government Pleader for Services I for the respondents.

3. Brief facts of the case are as follows:

(i) While the petitioner was working as Police Constable in Governorpet Police Station in the year 1992, enquiry was initiated against him on the allegation of grave misconduct in enticing two women viz., (1) Smt. Kesari Siva W/o Kondareddy, aged 21 years and (2) Vare Siva Kumari W/o Murali, aged 20 years, Marsipet, Tenali, on the night of 21.11.1992 from RTC Bus Stand, Vijayawada, taking them to the house of Akula Suramma, a brothel house keeper in Krishnalanka, promising to secure jobs for them, having sexual intercourse with them and using them for prostitution in the brothel house of Suramma and Thota Dhanalakshmi and living on their earnings. After conducting enquiry, the punishment of reduction in the time scale of pay by two stages for a period of two years was imposed on him. Aggrieved by the same, the petitioner preferred an appeal before the Appellate Authority and that the Appellate Authority set aside the punishment order while ordering de novo enquiry on the ground

that the procedure laid down in APCS (CC&A) Rules, 1991 was not followed.

(ii) The 1st respondent initiated de novo enquiry by issuing a fresh charge memo, for which the petitioner submitted his explanation. Having not satisfied with the explanation of the petitioner, the 1st respondent appointed the Enquiry Officer. The Enquiry Officer conducted oral enquiry and submitted a report holding that the charge against the petitioner was not proved. However, the disciplinary authority disagreed with the findings of the Enquiry Officer and issued a show cause notice to the petitioner, for which, he submitted his explanation. The 1st respondent issued proceedings dated 22.11.2001 dismissing the petitioner from service. The appeal preferred by the petitioner thereon before the 2nd respondent was rejected vide proceedings dated 15.7.2002. Aggrieved by the same, the petitioner filed O.A.No.8248 of 2003 before the Administrative Tribunal, Hyderabad. The learned Tribunal dismissed the O.A. Hence, the present writ petition is filed.

(iii) It is the case of the petitioner that it is the obligation on the part of the Disciplinary Authority to issue notice and give an opportunity of personal hearing to the delinquent officer before differing with enquiry officer's report. But the 1st respondent did not give any such opportunity to the petitioner before differing with the enquiry officer's report and coming to final conclusion and that the order of the 1st respondent is in violation of the principles of natural justice. Further, it is the case of the petitioner that the learned Tribunal has not considered any of the contentions raised in the O.A. including judicial pronouncements of the Hon'ble Supreme Court and that the said O.A. was not disposed of in a judicial manner.

4. The respondents filed counter-affidavit stating that the 1st respondent issued a dissent notice to the petitioner, for which he submitted his explanation, and after considering the explanation of the petitioner, the 1st respondent passed the order of dismissal and that a reasonable opportunity was given to the petitioner. The learned Tribunal examined all the aspects and observed that the disciplinary authority is entitled to differ with the findings of the Enquiry Officer. In view of the moral turpitude exhibited by the petitioner being a member of the Law Enforcing Agency, the punishment of dismissal was imposed. The Tribunal has rightly dismissed the O.A. and therefore, the order of the Tribunal does not warrant any interference.

5. It has been contended by the learned Counsel appearing on behalf of the petitioner that the disciplinary authority while disagreeing with the findings of the enquiry officer though issued a dissent notice, but it has not given an opportunity of personal hearing. In support of this contention, the learned Counsel for the petitioner relied upon the judgment of the Apex Court reported in **Yoginath D. Bagde Vs. State of Maharashtra and another¹**.

6. Yet another contention raised by the learned Counsel for the petitioner is that the since the petitioner was acquitted in criminal case punishment of dismissal on the very same set of facts ought not to have been given. In support of his contention, he relied upon the judgment of the Apex Court in **G.M. Tank Vs. State of Gujarat and others²**.

¹ (1999) 7 SCC 739

² (2006) 5 SCC 446

7. We have considered the rival submissions made by the parties and perused the material available on record. We considered each of the contentions raised by the learned Counsel for the petitioner.

8. Coming to the first contention of the petitioner that an opportunity of personal hearing should be given whenever disciplinary authority disagreed with the findings of the enquiry officer, and no such opportunity was given to the petitioner, in the judgment relied upon by the learned Counsel for the petitioner (1st cited supra), no where it is stated that an opportunity of personal hearing should be given. It only deals with an opportunity of hearing. In the present case, admittedly, show cause notice was issued to the petitioner with the reasons for disagreeing with the findings of the Enquiry Officer as contemplated under the rules. Therefore, it cannot be said that no reasonable opportunity was given to the petitioner. The judgment relied upon by the learned Counsel for the petitioner, based upon which, it is contended that no opportunity of personal hearing was given to him before issuing dissent note on the report of the enquiry officer, would not be of any help to the petitioner.

9. Coming to the second contention that major penalty of dismissal cannot be imposed on the petitioner on the very same set of facts, upon which the criminal case against the petitioner was ended in acquittal vide judgment dated 15.4.2000 by the IV Metropolitan Magistrate, Vijayawada in C.C.No.690 of 1998, the perusal of the judgment in the above C.C. goes to show that the victims in the criminal case have turned hostile and they have not supported the case of the prosecution and therefore, the petitioner was acquitted of the criminal charges on the ground that P.Ws.1 to 4 have turned hostile. The same is reflected at paragraph No.8 of the judgment rendered by the IV Metropolitan Magistrate, Vijayawada. Even

though the facts in disciplinary proceedings and criminal case are one and the same, the rule relating to appreciation of evidence in two proceedings is not similar.

10. It is the contention of the learned Counsel for the petitioner that the principle laid down in **G.M. Tank Vs. State of Gujarat and others** (2nd cited supra) should be applied in the instant case. We are unable to agree with the said contention of the learned Counsel for the petitioner. In **G.M. Tank** case referred to supra, the employee was acquitted honourably whereas in the instant case, the petitioner was acquitted in criminal case because the victims and P.Ws 1 to 4 have turned hostile. Further, the proceedings in service matters and criminal case are based on two different set of jurisprudences. In criminal jurisprudence, the burden is on the prosecution to prove the guilt of the accused that in all probability the accused alone is responsible for commission of the offence, and if the prosecution fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent, whereas in departmental proceedings, penalty can be imposed on the charged officer on the basis of 'preponderance of probability'. The acquittal by a Criminal Court neither debar the employer from exercising power in accordance with rules and regulations in force, nor absolve the employee from the liability under the service jurisprudence. Therefore, we are unable to accept the contention of the learned Counsel for the petitioner that since the petitioner was acquitted by a criminal court, the order dismissing him from service deserves to be quashed and set aside.

11. In view of the facts recorded above, we feel that the order dated 12.9.2006 passed by the Tribunal in O.A.No.8248 of 2003 does not suffer from any illegality and irregularity warranting interference by this Court.

12. Accordingly, the Writ Petition is dismissed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

JUSTICE SURESH KUMAR KAIT

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 23rd March, 2018.
Nn.



HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
&
HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.20481 OF 2007

(Oral order delivered by AKS,J)



23/03/2018

Nn.