THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.30960 OF 2017

DATED : 06.07.2018

Between :

Mir Rifaquat Ali S/o.Mir Rafath Ali,
Aged 49 yrs, Junior Assistant (on leave),
O/o.the Commercial Tax Officer, Narayanaguda Circle,
Abids Division, Hyderabad.

.. Petitioner

And

The State of Telangana,
Rep., by its Principal Secretary,
Revenue (Commercial Taxes) Department,
Telangana Secretariat, Hyderabad & others.

.. Respondents

This court made the following :

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.30960 of 2017

ORDER :

Heard. With consent of learned counsel for petitioner and the learned Government Pleader writ petition is finally disposed of.

2. Petitioner is working as Junior Assistant in Commercial Tax Department. He applied for leave on medical grounds on 01.03.2012 and continued to be on leave. According to petitioner, he reported to duty on 14.06.2015 but was not admitted to duty. On 02.12.2012 a charge memo was drawn. The charge memo contained two charges. The sum and substance of the allegation in the first charge is that even though petitioner was asked to appear before the Superintendent, Medical Board, Osmania General Hospital for verification of the medical reports, he failed to attend. The sum and substance of the allegation in the second charge is that petitioner was frequently absenting from duties and that he was unauthorisedly absent without applying leave with effect from 01.08.2012. Enquiry officer was appointed. Petitioner did not participate in the enquiry. All along petitioner was taking the plea that he is unwell and therefore, cannot even participate in the enquiry. Not accepting the plea of petitioner, ex-parte enquiry was conducted and enquiry officer submitted report.

3. Based on the enquiry report, by order dated 10.2.2017 the disciplinary authority invoked FR.18A and Rule 5B of the Leave Rules to hold that petitioner is deemed to have been resigned from government service with effect from 01.08.2012.

4. A reading of the order in appeal would show that, the appellate authority confirmed the decision of disciplinary authority and rejected the appeal by order dated 31.08.2017. The appellate authority concurred with the view taken by the disciplinary authority applying F.R.18A and Rule 5B of the Leave Rules.

5. It is not in dispute that the disciplinary proceedings were initiated on 02.12.2012 by which date petitioner did not complete one year of absence. It is not in dispute that the order of the disciplinary authority is consequent to initiation of disciplinary proceedings. Disciplinary authority has not abandoned the disciplinary action but invoked FR.18A r/w. Rule 5B of the Leave Rules, to hold that petitioner is deemed to have been resigned from service. The order of disciplinary authority dated 10.02.2017 is result of the disciplinary action initiated. Once the disciplinary proceedings are set in motion, the disciplinary authority can impose punishment as prescribed in Telangana Civil Services (CCA) Rules, 1991 (for short 'the CCA Rules'). Rule 9 of the CCA Rules, prescribes various kinds of punishments that can be imposed. Rule 9 does not prescribe imposing punishment of 'deemed to have been resigned from service'. No such punishment which is not prescribed in CCA Rules can be imposed.

6. It is also appropriate to notice that FR.18-A would show that if an employee is unauthorisedly absent for a period exceeding one year, he should be deemed to have been resigned from service. The proviso appended to the Rules, mandate giving of opportunity to employee to explain reasons for such absence. The same provision is incorporated by way of amendment in Rule 5-B of the Leave Rules.

7. As noted above, in the instant case much prior to completion of one-year period of absence, disciplinary action was set in motion alleging non-cooperation to attend before the medical board for verification of medical certificates and the second charge relating to frequent absence from duty. Thus, in the facts and circumstances of this case, F.R.18-A and Rule 5-B of the Leave Rules, could not have been invoked and therefore the order impugned is not sustainable.

8. For the aforestated reasons, the order of the disciplinary authority is not sustainable in law. Accordingly, the order impugned is set aside and the Writ Petition is allowed.

9. However, it is made clear that it is open to the disciplinary authority to act as warranted by law, from the stage of receiving of report of enquiry officer and by observing the procedure contemplated by the CCA Rules. This order shall be complied, and appropriate action shall be taken within a period of six (6) weeks from the date of receipt of copy of this order. Pending miscellaneous petitions in this writ petition shall stand closed.

P.NAVEEN RAO,J

6th July, 2018
Rds