HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITON No. 7174 of 2004

O R D E R:

It is stated that petitioner was initially appointed as Accountant in respondent Corporation and after rendering considerable length of service, he was promoted to various stages and finally he was promoted as Deputy Manager(Accounts). While petitioner was discharging duties as such, alleging that he allowed one V.Srinivas Reddy, Contractor to add certain interpolated words in M.Book No.134CTR relating to the work conducted by respondent authorities in extension and renovation of Area Hospital, Madanapalli, Chittor District. The same was ended in arbitration proceedings and finally no relief was granted to the contractor. However, respondent authorities subjected the petitioner under suspension vide proceedings dated 21.11.2000 for almost 9 to 10 months and thereafter, the authorities issued charge sheet dated 26.09.2001 framing four Articles of Charges against him. He submitted his explanation by denying all the charges levelled against him. The disciplinary authority had appointed an Enquiry Officer to enquire into the matter as to the correctness of the said charges. The Enquiry Officer submitted his report stating that Charge Nos.1 to 3 are not proved. However, charge No.4 had proved. Thereafter, the disciplinary authority directed the Enquiry Officer to re-enquire into the matter afresh in certain areas and accordingly, after re-conducting enquiry, submitted his report on 07.02.2003 by reiterating his earlier report to the effect that Charge Nos.1 to 3 were not proved and Charge No.4 was held to be proved. Based on the same, a show cause notice dated 27.08.2003 was issued to the petitioner and a detailed explanation was also submitted by him pointing out certain objections to the enquiry report. However, respondent authorities by impugned order dated 08.09.2003 imposed penalty of stoppage of one increment with cumulative effect and treated suspension period of 16 months from 27.06.2001 to 27.10.2002 as 'on duty' and the rest of the period from 23.11.2000 to 02.06.2001 as 'not on duty'. Being unsuccessful in the appeal by order dated 10.03.2004, petitioner filed the present writ petition.

Heard Sri Siva, learned counsel for petitioner and Smt.A.Jayanthi, learned Standing Counsel for respondents and perused the material available on record.

Learned counsel for petitioner would submit that out of the four charges, since three charges were not proved and the enquiry officer could not come to the conclusion that charge No.4 was held to be proved and without considering the said fact, the disciplinary authority in a mechanical way illegally and arbitrary, imposed punishment of stoppage of one increment with cumulative effect. When the disciplinary authority came to a conclusion, giving opportunity to the petitioner to submit his explanation is an empty formality. As far as the aspect of treating the period from 23.11.2000 to 26.6.2001 as a period 'not spent duty' is concerned, the petitioner cannot be found fault with for the reasons stated above and therefore, the period from 23.11.2000 to 26.6.2001 ought to have counted as 'on duty'. Further, petitioner retired from service during 2007 on attaining the age of superannuation.

On the other hand, learned Standing Counsel for respondent-Corporation would submit that the disciplinary authority has rightly passed the impugned order imposing penalty of stoppage of one with cumulative effect for the proven misconduct in the enquiry and no illegality or irregularity committed by the respondent authorities and during enquiry proceedings, every opportunity was given to the petitioner and at this point of time, petitioner cannot be allowed to raise all these contentions. Further, petitioner being a senior Officer ought to have informed Zonal Manager about the interpolation, which caused heavy loss to the Corporation and in the process the authorities spent valuable time to fight long legal battle against the said contractor and there are no merits in the writ petition and the same is liable to be dismissed.

The respondent-Corporation framed four charges against the petitioner which read thus:

> *Article -1: That the said Sri M.S.Gupta, Dy. Manager(Accounts) while functioning as Dy.Manager (Accounts) in Chittoor Zone later merged with Tirupati Zone during the period from 09.07.1997 to 26.11.2000handed over to an outside Agency the M.Book No.134-CTR wherein recorded the measurements of the construction of civil works for EXTENSION & RENNOVATION OF THE AREA HOSPITAL AT MADANAPALLY, CHITTOR DISTRICT.*
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> *Article -2: That during the aforesaid period and while functioning as Dy.Manager (A) in the aforesaid office, the said Sri M.S.GUPTA, Dy.Manager (A) at Zonal*

Office, Tirupati allowed an outside Agency to insert the words-UNDER PROTEST –at the page-93 of the M.Book No.134-CTR.

Article-3: That during the aforesaid period and while functioning in the aforesaid office the said Sri M.S.GUPTA, Dy.Manager (A0, the official letter No.EW/CE/APIIC/VVP-MPL/96-97, dt.14.09.1999 addressed to the Zonal Manager, APIIC, CHITTOOR, received in zonal office for the purpose of internal circulation. Sri B.Ravikumar Reddy an outside Agency, who having made frequent visits to the Zonal Office with easy accessibility to the said Sri M.S.GUPTA, Dy.Manager (A) had got the copy of the said letter dt.14.09.1999 which ultimately led to be a prime document to claim damages from the Corporation in huge sums by the Contractor, Sri V.SRINIVASULU REDDY, ADONI, before the Adjudicator and also in the Court.

Article-4: That during the aforesaid period and while functioning as Dy.Manager (A) in the aforesaid office, the said Sri M.S.GUPTA, Dy.Manager (A) at Zonal Office, Tirupati, the matter relating to the insertionof the words –UNDER PROTEST – at page-93 of M.Book No.134-CTR was brought to his notice by the concerned Sr.Assistant (Sri K.RUPANANDAM) Zonal Office during the 2nd fortnight of September – 2000 in the presence Sri B.RAVI KUMAR REDDY an outside Agency (who was authorized to collect the payment by cheque earlier by the Contractor – Sri V.SRINIVASULU REDDY) with a clear indication to inquire with the Agency. The Dy.Manager(A) had voluntarily signed off the presence of the Sr.Assistant to wait outside his room in Zonal office. Though the said matter was known to him in and out the interpolation of the words-UNDER PROTEST – at page-93 of M.BOOK No.134-CTR during the 2nd fortnight of September, 2000, he did not bring it to the notice of the Zonal Manager and also the facts of the frequent visits made by the outside Agency – Sri B.RAVI KUMAR REDDY to the Zonal Office. There is no justifiable reason on the part of Sri M.S.GUPTA, Dy.Manager (A) in concealing the matter without being *brought to the knowledge of the Zonal Manager. Such an important matter ought to have been brought to the notice/knowledge of the Zonal Manager, who is the superior Officer by Sri M.S.GUPTA, Dy.Manager (A) which he failed to do so. THUS, the above acts of the said official who is a subordinate to the Zonal Manager which is an omission on the part of Sri M.S.GUPTA, Dy.Manager (A) tatamount to violation of Rule-26(D), CDA, RULES, 1974.*

Admittedly, Charge Nos.1 to 3 are not held to be proved. Charge No.4 is interconnected to Charge Nos.1 to 3 and the Enquiry Officer could not be held that Charge No.4 is held to be proved. Be that as it may, during pendency of the writ petition, petitioner retired from service on attaining the age of superannuation. Admittedly, there is a delay on the part of the disciplinary authority in issuing charge sheet which cannot be put against the petitioner. Strangely, the disciplinary authority has treated the period from 27.06.2001 to 27.10.2002 i.e., from the date of issuance of charge sheet, as spent 'on duty'.

This Court, having considered the rival submissions of the parties, is of the considered view that ends of justice would be met if the punishment of stoppage of one increment with cumulative effect is modified to that of without cumulative effect. The respondent authorities are directed to treat the period of suspension from 23.11.2002 to 26.6.2001 as 'spent on duty'.

With the above observations, the writ petition is disposed of. No costs.

Miscellaneous Petitions, if any, pending in this writ Petition shall stand closed.

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ABHINAND KUMAR SHAVILI, J

05.12.2018
*Mjl/ **