

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.19561 of 2007

ORDER:

This writ petition is filed seeking the following relief:

“To issue a writ, order or directions one in the nature of writ of Mandamus by calling for the records relating to the issuance of Memo No.GM (Per)/AS(Per)/PO(DC-I)/388-c5/2007-1 dt.18.8.07 of the respondent and after perusing the records declare that the proposed enhancement of punishment from reduction in rank to lower post i.e.UDC to dismissal from service as well as the punishment of demotion as initial awarded to the petitioner as arbitrary, illegal, unjust, violative of principles of natural justice and consequently set aside the punishment of demotion and the proposed punishment of dismissal from service with all consequential benefits and pass such other order or orders may deem fit and proper in the interest of the justice.”

Heard Si C.M.R.Velu, learned counsel for the petitioner and
Si R.Vinod Reddy, learned standing counsel for the respondent.

It has been contended by the petitioner that he was initially appointed as L.D.C. on 8.11.1983 in the former Andhra Pradesh State Electricity Board on compassionate grounds and promoted as U.D.C. on 18.12.1993. He was further promoted as J.A.O. on 1.9.2003. While he was working as J.A.O., the respondent had issued charge sheet during the year 2005 framing the following two charges:

“(i) He failed to exercise efficient control and supervision over the subordinate staff i.e. high value billing clerk and failed to exercise reconciliation of credit JE's with reference to the JE's report of in-house computer every month.

(ii) Due to his failure some unauthorized credit JE's were posted to the consumer to the tune of Rs.22,20,673/-.”

The petitioner had submitted his explanation denying the charges. Not satisfied with the explanation submitted by the petitioner, Enquiry Officer was appointed to conduct a detailed enquiry. The Enquiry Officer conducted enquiry and submitted report on 17.3.2006 holding that the charges against the petitioner were proved. Based upon the enquiry report, the disciplinary authority had imposed a punishment of reduction in rank to lower post of U.D.C. from the post of J.A.O. vide proceedings dated 25.11.2006. Challenging the same, the petitioner had preferred appeal to the appellate authority on 28.2.2007 and the appellate authority vide proceedings dated 18.8.2007 while rejecting the appeal preferred by the petitioner directed him to show cause as to why the punishment of reduction in rank to lower post of U.D.C. be rejected and the punishment be modified as dismissal from service as per the orders of the Government in G.O.Ms.No.2 dated 4.1.1999. It has been further contended by the petitioner that the charges leveled against the petitioner are only dereliction of duty but not misappropriation of funds and that G.O.Ms.No.2 dated 4.1.199 has to be applied only in cases of bribery and corruption but not in a case where dereliction of duty and other charges are leveled and the appellate authority was not right in rejecting his

appeal and proposing to impose enhanced punishment of dismissal through impugned memo dated 18.8.2007 and, therefore the same is liable to be set aside. Hence, the writ petition.

Learned standing counsel appearing for the respondent would contend that the appellate authority had rightly rejected the appeal preferred by the petitioner and the appellate authority has power to enhance the punishment if the punishment imposed by the disciplinary authority is not commensurate to the charges. Since the disciplinary authority had imposed lesser punishment for the proven misconduct, the appellate authority had enhanced the punishment.

This Court having considered the submissions made by both the parties is of the considered view that the appellate authority ought not to have exercised the power of enhancing the punishment taking into account G.O.Ms.No.2 dated 4.1.1999. Para-2 of the impugned memo dated 18.8.2007 would disclose the finding of the enquiry officer, which reads as follows:

“2. The Enquiry Officer in his enquiry report had concluded that the following charges are established against Si Ch.Shankar Rap. JAO and held proved.

(i) He failed to exercise efficient control and supervision over the subordinate staff i.e.high value billing clerk and failed to exercise reconciliation of credit JE's with reference to the JE's report of in-house computer every month.

(ii) Due to his failure some unauthorized credit JE's were posted to the consumer to the tune of Rs.22,20,673/-.”

A perusal of the above finding of the enquiry officer would disclose that there is no proven misconduct of bribery or misappropriation and the appellate authority was not right in proposing to enhance the punishment in terms of G.O.Ms.No.2 dated 4.1.1999 and, therefore, the impugned memo dated 18.8.2007 is liable to be set aside. It is also brought to the notice of this Court that the petitioner is about to retire within one month.

Accordingly, the Writ Petition is allowed and the impugned Memo.No. GM (Per)/AS(Per)/PO(DC-I)/388-C5/2007-1 dt.18.8.07 of the respondent is set aside. No order as to costs.

Consequently, miscellaneous petitions pending, if any, shall stand closed.



ABHINAND KUMAR SHAVILI, J

Dated: 20/08/2018

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