

* IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

* HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN
AND

* HONOURABLE MS. JUSTICE J.UMA DEVI

+ WRIT PETITION NO.34423 OF 2017

% Date: 31-12-2018

BETWEEN:

I. Srinivas, S/o. Rama Brahman,
R/o. Block No.9, Plot No.1,
Rajiv Gruha Kalpa, Kothlapur,
Hayathnagar, Ranga Reddy District.

... Petitioner

Vs.

1. High Court at Hyderabad for the State of Telangana and the State of Andhra Pradesh, rep. by the Registrar (Administration).
2. The Metropolitan Sessions Judge, City Criminal Courts, Hyderabad.
3. The I Additional Special Judge for CBI Cases, Hyderabad.

... Respondents

!Counsel for the Petitioner : Mr. S. Madhava Rao

^ Counsel for Respondent No.1 : Mr. Swaroop Oorilla

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? Cases referred

HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HONOURABLE Ms JUSTICE J.UMA DEVI

WRIT PETITION NO.34423 OF 2017

ORDER: (per VRS,J.)

Challenging a penalty of dismissal from service imposed upon him, a former Record Assistant of the Court of I Additional Special Judge for CBI Cases, has come up with the above writ petition.

2. Heard Mr. S. Madhava Rao, learned counsel for the petitioner and MR. Swaroop Oorilla, learned Standing Counsel for the Registry.

3. When the petitioner was working as Record Assistant in the Court of the I Additional Special Judge for CBI Cases, a report dated 06.03.2013 was sent by the Presiding Officer. On the basis of the said report, a charge memo was issued alleging – (1) that he un-authorisedly absented himself from 06.10.2012; (2) that he was implicated in a criminal case and remanded to judicial custody on 13.12.2012 in Crime No.1521 of 2012 for the alleged offences under Sections 420, 406 and 506 Part-II of IPC, and was in custody for more than 48 hours; and (3) that the petitioner was involved in a criminal case for demanding a sum of Rs.30,000/-, from one P. Anjaiah on the pretext of arranging a job of Junior Assistant to the son of Anjaiah.

4. On the above charges, an enquiry in DE.No.7/2014 followed. Three witnesses were examined on the side of the disciplinary authority and 10 documents were marked. The enquiry officer submitted a report on 22.09.2014. A copy of the enquiry report was forwarded to the petitioner and his further representation called for. But the petitioner failed to submit his written representation. Therefore, a final order was

passed on 17.01.2015, imposing upon the petitioner the penalty of dismissal from service.

5. While the enquiry in those proceedings were in progress, another charge memo was issued containing two articles of charges alleging – (1) that while the petitioner was working as Record Assistant, he collected a sum of Rs.6,600/- out of the demanded amount of Rs.20,000/- from one Shode Prem Kumar for offering a job to his son, in the first week of September, 2014; and (2) that he also received amounts from some third parties, who came to the Court and raised issues causing inconvenience to the office work. An enquiry followed, in which three witnesses were examined and eight documents were marked. Eventually, the enquiry officer, by a report dated 28.04.2015 in DE.No.16/2014, held the first charge as proved, but the second charge not proved.

6. The report of the second enquiry was also sent to the petitioner calling for his objections. But he did not submit any representation and hence another final order dated 08.01.2016 was passed again imposing the penalty of dismissal from service.

7. Actually the second order of penalty dated 08.12.2016 was invalid in view of the fact that on the date on which the second order of penalty was passed, the petitioner had already been dismissed from service by the first order dated 17.01.2015.

8. Be that as it may, the petitioner filed an appeal against both the orders of penalty. The appeal was dismissed by an order dated 31.03.2017. Aggrieved by the same, the petitioner is before this Court.

9. The contention of Mr. S. Madhava Rao, learned counsel for the petitioner is that in the criminal case C.C.No.613 of 2013, he was acquitted and the order of acquittal became final. Therefore, it is his

contention that the second and third charges in D.E.No.7/2014 cannot, any more, be held against the petitioner. Insofar as the first charge is concerned, it relates only to unauthorised absence from duty, which also happened only because of his arrest. Therefore, the contention of Mr. S. Madhava Rao, learned counsel for the petitioner is that the dismissal order passed pursuant to the first enquiry D.E.No.7/2014 is wholly unsustainable, in view of the order of acquittal.

10. Insofar as the second enquiry is concerned, the contention of the learned counsel for the petitioner is that a person, who lent money to the petitioner, made a false complaint as though money was received for providing employment to his son, and that therefore, a simple money transaction could not have been projected as a serious act of misconduct for throwing the petitioner out. In any case, the learned counsel contended that there cannot be two orders of dismissal from service, especially passed one after another.

11. We have carefully considered the above submissions.

12. It is true that the first charge in the first enquiry D.E.No.7/2014 related only to unauthorised absence. It is also true that the second charge related to the involvement of the petitioner in a criminal case. If the mere involvement of a person in a criminal case is taken to be an act of misconduct, the outcome of the enquiry into the said charge should follow the outcome of the criminal case. Therefore, the learned counsel for the petitioner is correct to a limited extent, insofar as charge No.2 is concerned.

13. But unfortunately for him, charge No.3 related to the receipt of money from one Mr.P. Anjaiah on the promise of arranging a job of a Junior Assistant to his son. Three witnesses including Anjaiah were

examined and 10 documents were marked. On the basis of the material, the enquiry officer came to the conclusion that charge No.3 stood proved. The law is well settled that even if the charges framed in a departmental enquiry are identical to the charge framed in the criminal case, the departmental enquiry officer can come to an independent conclusion. It is not the case of the petitioner that the third charge in D.E.No.7/2014 was exactly the same as the charge in the criminal case and that both of them were based upon the same set of evidence. Therefore, the contention with regard to the outcome of the first enquiry cannot be upheld.

14. In any case, the petitioner cannot escape from the outcome of the second enquiry. The person, from whom the petitioner took Rs.6,600/-, was examined as PW.2. He deposed that the petitioner took money for arranging a job for his son. It was his positive case that after PW.2 made a complaint to the Presiding Officer the petitioner returned back the money. The defence set up by the petitioner that it was a loan transaction, was disbelieved by the enquiry officer. We find no perversity in the findings of the enquiry officer and hence the petitioner cannot escape at least from the findings in the second enquiry report.

15. Placing reliance upon the judgment of a Division Bench of this Court in K. Bala Rama Raju v. High court of Andhra Pradesh, Hyderabad¹, it was contended by Mr. S. Madhava Rao, learned counsel for the petitioner that the final orders passed by the disciplinary authority were clearly in violation of Rule 21 of the A.P. Civil Services (CCCA) Rules, which require the disciplinary authority to record its own findings. Our attention is drawn to Para-54 of the said decision, which reads as follows:

“That apart, Rule 21 of the CCCA Rules specifies that the Disciplinary authority should give its own findings

¹ 2009 (4) ALT 322

on the basis of the evidence adduced during the enquiry and then should come to a conclusion that a major penalty should be imposed on the basis of its findings. If it disagrees with the Enquiry Officer's findings, notice should be given to the Government Servant. If it does not disagree, no further explanation need be called from the Government Servant. Since the Disciplinary Authority did not give any findings on the basis of the evidence adduced before the Enquiry Officer, the impugned order is liable to be struck down on this count also."

16. It is seen from the final order dated 17.01.2015 passed in D.E.No.7/2014 that the petitioner did not even submit his written representation to the show cause notice enclosing the copy of the enquiry report. When the petitioner has not chosen to point out as to how the findings of the enquiry officer are erroneous, we do not know what kind of consideration could have been made by the disciplinary authority in terms of Rule 21. The same is the case with the second enquiry also. The petitioner failed to furnish any representation as against the findings of the enquiry officer even in the second enquiry. Therefore, we do not think that there is any infraction of the rules.

17. The enquiry officer in both the departmental enquiries has followed the procedure prescribed by law. There was no infraction of the principles of natural justice. The penalty cannot be said to be disproportionate to the gravity of the misconduct. Therefore, there are no merits in the writ petition. Hence it is dismissed. There will be no order as to costs.

18. As a sequel, miscellaneous petitions pending in this writ petition, if any, shall stand closed.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

31st December, 2018
Js

HONOURABLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HONOURABLE Ms JUSTICE J.UMA DEVI

WRIT PETITION NO.34423 OF 2017
(per VRS, J.)



31st December, 2017

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