

THE HON'BLE THE ACTING CHIEF JUSTICE
SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

WRIT PETITION No.9101 of 2019

ORDER :: (*per the Hon'ble Sri Justice A. Rajasheker Reddy*)

This writ petition is filed against the order dated 14-09-2018 passed in OA No.1337 of 2012 by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad, whereby and whereunder the punishment of removal from service imposed on the charged employee (since deceased) represented by his spouse-respondent herein (for short, "charged employee") modified to that of compulsory retirement enabling the spouse of the charged employee to draw family pension.

02. Heard learned counsel for the petitioners. perused the impugned order passed by the Tribunal and the record.

03. The charged employee was appointed as Helper-B in the department of Heavy Water Plant, Manuguru, Bhadradi-Kothagudem, in the category of land losers in the year 1988. It is stated that unfortunately the charged employee fell ill and could not attend to duty continuously from 20-12-2016 onwards. For his lapse to attend to duty, he was issued with a charge memo dated 05-04-2007, and as there was no response from the charged employee even after service of the charge memo, disciplinary proceedings were initiated and an inquiry officer was appointed. The charged employee appeared before the inquiry officer on 10-09-2007 and was permitted to submit his explanation and accordingly submitted his explanation on 19-09-2007. Thereafter, the

inquiry officer conducted inquiry, in which the charged employee did not participate, and the inquiry proceeded based on the material available and a report was submitted holding the charge as proved. Thereafter, disciplinary authority considering the inquiry report, imposed punishment vide order dated 11-12-2007 and the charged employee was removed from service of the department. The charged employee seems to have filed appeal before the appellate authority against the order of removal from service. But, during the pendency of the appeal, he died on 11-11-2011 and the appeal filed by him was rejected by the appellate authority by order dated 15-12-2011. The order of the appellant authority was assailed by way of OA before the Tribunal, and by the impugned order the Tribunal modified the order of removal from service to that of compulsory retirement only for the purpose of drawing family pension and nothing more. Aggrieved by the same this writ petition by the department.

04. The learned Assistant Solicitor General of India representing the petitioners submits that the Tribunal having observed that the inquiry officer was faced with a typical situation where the charged employee was not forthcoming with any supporting material of his ill-ness, ought not to have interfered with the punishment imposed by the appellate authority. It is also stated that the charged employee was a habitual absentee and punishments were imposed on him on earlier three occasions and therefore the punishment is commensurate with the charge framed and proved against the charged employee. It is also submitted that adequate

opportunity was given to the charged employee and on his own volition he has not availed the same.

05. It is to be seen that admittedly the charged employee served the department for two decades. During his total tenure of service he was imposed with minor penalty of two censures and reduction of pay by two states and those punishments had to be incurred by charged employee on account of his ill-health. No doubt, the charged employee was removed from service after a duly constituted and conducted departmental inquiry and he was duly intimated and he appeared before the inquiry officer and sought to submit explanation and in fact submitted his explanation, but could not participate in the inquiry proceedings which resulted in reaching an *ex-parte* conclusion that the charged employee failed attend his duties without just cause and prior permission of leave.

06. Vagaries of life are many. It haunts the weak and helpless persons more. In this matter, the case of the charged employee all through was that he has been suffering with ill-health and on account of his health, he had to taste the wrath of the department in receiving two censures and reduction of pay by two stages. As seen from the impugned order, as also the record, even according to the department there is no other complaint or blemish against the charged employee other than his absenteeism. The fact that the charged employee was referred to the corporate hospital for his treatment at the instance of the department and he died thereafter during the pendency of the appeal filed by him,

itself shows the plight and health condition of the charged employee and no further proof, in that given situation, can be insisted in support of the ill-health to which he succumbed.

07. In so far as the question of proportionately of the quantum of punishment imposed by the appellate authority and as modified by the Tribunal is concerned, the Supreme Court in a catena of decisions has time and again held that it is wholly within the domain of the disciplinary authority and there is no scope of interference in it unless the punishment imposed by the disciplinary authority or appellate authority shocks the conscience of the Court. In the case on hand, both the disciplinary authority and the appellate authority concurrently held against the charged employee. But, it is to be seen that the charge is proved *ex-parte*, it is not a serious charge touching moral turpitude or fraud and gross misconduct. In ***B.C. CHATURVEDI vs. UNION OF INDIA***,¹ the Supreme Court has held that the disciplinary authority and on appeal; appellate authority are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct and the High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/ Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty

¹ (1995) 6 SCC 749

imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

08. In this case the case of the charged employee was that he could not attend to his duties due to his illness. Having regard to the fact that the charged employee is no more alive, no purpose would be served by reverting the matter to the appellate authority to revisit the matter and impose appropriate punishment. In the facts and circumstances of the case, the decision of the Tribunal which modified the punishment from that of removal from service to that of compulsory retirement is in the fitness of things and warrants no interference. The writ petition is devoid of merits and is accordingly dismissed. As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed. There shall be no order as to costs.

RAGHVENDRA SINGH CHAUHAN, ACJ

A.RAJASHEKER REDDY, J

Dated: 29-04-2019
NRG

THE HON'BLE THE ACTING CHIEF JUSTICE
SRI RAGHVENDRA SINGH CHAUHAN
AND
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//WEB//



Dated: 29-04-2019

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7. The decision of the appellate authority not advertng to any of the grounds of appeal raised by the respondent, and only reiteration of the order and reasons stated by the disciplinary authority, more particularly, as to the absence of the respondent to participate in the enquiry proceedings, not being a speaking order is in violation of principles of natural justice. Merely on the ground of absence of the respondent to participate in the enquiry, the enquiry officer cannot hold the charges proved, but the enquiry officer has to arrive at a finding based on material available. Relying on the decision of the Supreme Court in **ALLAHABAD BANK vs. KRISHNA NARAYAN TEWARI**², the learned single Judge in exercise of his discretion chose not to remand the matter for conducting proceedings afresh as the subject matter of enquiry pertains of the year 2000 and by now it is nearly 2 decades past. Such exercise of discretion by the learned single Judge not to remind the matter, at this length of time is also rational and traceable to formidable reason. In **ROMA SONKAR vs. MADHYA PRADESH STATE PUBLIC SERVCIE**

² 2017 (2) SCC 308

COMMISSION,³ expressing ‘serious reservation’ about a Division Bench of a High Court remitting a matter to single bench for moulding relief, the Supreme Court has observed that the single Judge is not subordinate to the Division Bench. The Supreme Court at para 3 of the judgment observed thus:-

“We have very serious reservations whether the Division Bench in an intra court appeal could have remitted a writ petition in the matter of moulding the relief. It is the exercise of jurisdiction of the High Court under Article 226 of the Constitution of India. The learned single Judge, as well as the Division Bench exercised the same jurisdiction. Only to avoid inconvenience to the litigants, another tier of screening by the Division Bench is provided in terms of the power of the High Court, but that does not mean that the single Judge is subordinate to the Division Bench.”

8. The discretion exercised by the learned single Judge in exercise of jurisdiction under Article 226 of the Constitution, cannot be interfered with except in compelling circumstances and there is no reason to take a view than the view taken by the learned single Judge in the facts and circumstances of the case, and therefore, the discretion exercised cannot be

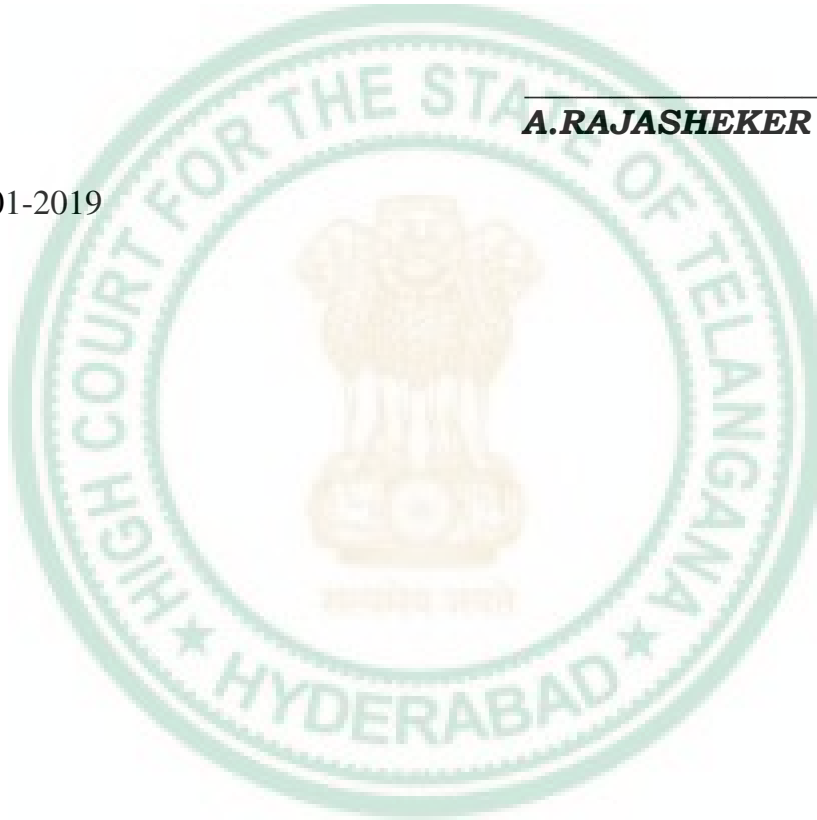
³ 2018 SCC OnLine SC 956

unfolded in intra-Court appeal filed under Clause 15 of the Letters Patent Act. In the result, the appeal is devoid of merits and it is accordingly dismissed. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed. There shall be no order as to costs.

THOTTATHIL B. RADHAKRISHNAN, CJ

A.RAJASHEKER REDDY, J

Dated: 30-01-2019
NRG



**THE HON'BLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN**

AND

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY



WRIT APPEAL No.45 of 2019

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30-01-2019

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