

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION.(TR).No.2881 of 2017

ORDER:

Heard Sri S.Gopal Rao, learned counsel for the petitioner and the learned Government Pleader for Services-III.

With the consent of learned counsel for the respective parties, this Writ Petition is disposed of, at the admission stage.

This writ petition is filed seeking the following relief :-

“.....to all for the records relating to the proceedings of the 1st respondent bearing G.O.Rt.No.87, M.A.&U.D.(Vig.II(i)) Department dt.20.09.2014 and set aside the same by declaring the same as illegal, arbitrary and unconstitutional being violative of Articles 14, 16 & 21 of Constitution of India and consequently direct the respondents to release the entire pensionary benefits to the applicant, by according Special Grade Post Scale under Automatic Advancement Scheme in the category of Assistant City Planner, with interest and pass such other order.....”

It has been contended by the petitioner that initially he was appointed as Town Planning Supervisor in the year 1991 and after rendering considerable length of service he was promoted as Assistant City Planner in the year 1996. While he was discharging his duties, the 1st respondent issued a Charge Memo vide G.O.Rt.No.774, dated 28.06.2002 with two Articles of charge which read as follows:

“Article-I

That the said Sri Deepak Rao, the then ACP, Secunderabad failed to take action at the initial stage itself, in the following constructions of Secunderabad and allowed the builders to make several violations in the various constructions of Secunderabad, which denotes the negligence towards his duties clearly.

Article-II

That during the aforesaid period and while functioning as ACP, the said Sri Deepak Rao, failed to take timely action on the aforesaid constructions thereby caused huge violations, in respect of Coverage, FSI/FAR, Provision of less tot lot. Construction of more number of dwelling houses (Flats) deviating from sanctioned plan and Construction of pent houses without approval (un-authorizedly), which clearly denotes the connivance of the officer with the builders with ulterior motive.”

The petitioner further contends that pursuant to the above said charge memo, though he had submitted detailed explanation, the State Government, not satisfied with the said explanation has appointed Additional Chief City Planner as Enquiry Officer vide proceedings dated 24.06.2013. The petitioner further contends that pending the disciplinary proceedings initiated against him pursuant to Charge Memo dated 28.06.2002, he has retired from service on attaining the age of superannuation on 31.10.2008. He further contends that so far the respondents have not concluded the disciplinary proceedings said to have been initiated against him, way back in the year 2002. Aggrieved by the same, he filed O.A.No.4934 of 2013 before the then A.P. Administrative Tribunal seeking to declare the disciplinary proceedings issued vide Charge Memo dated 28.06.2002 and

its continuance as illegal and arbitrary and the Tribunal was pleased to dispose of the said O.A. vide order dated 05.11.2013 directing the respondents to complete the enquiry within a period of four weeks from the date of receipt of copy of the said order, failing which the impugned Charge Memo issued vide G.O.Rt.No.774, dated 28.06.2002 shall stand cancelled and all the pensionary benefits shall be released to the petitioner. In spite of the said order by the Tribunal, the respondents have not concluded the disciplinary proceedings initiated against the petitioner. In those set of circumstances, he has filed a Contempt Application No.339 of 2014 before the then Tribunal. The petitioner further contends that it was only after filing of the Contempt Application, the respondents have submitted a perverse enquiry report dated 09.01.2014 holding that the charges levelled against him are proved.

Learned counsel for the petitioner had contended that the Charges framed against the petitioner are that he has allowed the builders to make several violations and deviations while constructing the buildings and has failed to take timely action on the unauthorized constructions causing huge violations in respect of Coverage FSI/FAR etc., whereas the Enquiry Officer submitted a report stating that petitioner has filed irresponsible written statement before the Civil Court without dealing with the lapses committed by the builders. The Enquiry Officer specifically found that the

petitioner who is Charged Officer No.3 in the joint enquiry proceedings was held responsible for filing such irresponsible written statement before the Civil Court. Learned counsel for the petitioner further contends that though identical charges were framed against all the charged officers including the petitioner, the Enquiry Officer submitted a perverse and vindictive report holding that the charges levelled against the petitioner are 'proved' and that those charges are 'not proved' in case of other Charged Officers. He further contends, it is just because the petitioner has approached the Administrative Tribunal challenging the action of the respondents in not concluding the disciplinary proceedings initiated against the petitioner even after five years of his retirement, the petitioner was singled out and discriminated. He further contends that the charges levelled against the petitioner were never analysed or adjudicated the way it ought to have been done. Therefore, he contends that the findings of the Enquiry Officer are to be held as perverse and non-est in the eye of law. He further contends that basing on the Enquiry Officer's report, the 1st respondent issued a show cause notice on 14.07.2014 proposing to impose punishment of 20% cut in monthly pension permanently. Though petitioner had submitted explanation on 11.09.2014 requesting the respondents to drop the disciplinary proceedings initiated against him, the 1st respondent without

properly appreciating the explanation submitted by the petitioner, mechanically imposed punishment of 20% cut in monthly pension permanently vide G.O.Rt.No.87, dated 20.09.2014. Challenging the same, the petitioner filed the present case before the then Tribunal which was later transferred to this Court vide WP(TR).No.2881 of 2017. He further contends that the impugned order issued by the 1st respondent vide G.O.Rt.No.87, dated 20.09.2014 imposing a punishment of 20% cut in monthly pension permanently, basing on the perverse findings in the Enquiry Officer's report, is liable to be set aside with all consequential benefits. In support of his contentions, learned counsel for the petitioner has relied on the judgment of the Hon'ble Supreme Court reported in ***M.V.Bijlani versus Union of India And Others***¹ wherein it is held:

"It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e beyond all reasonable doubt, we cannot lost sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire

¹ (2006) 5 SCC 88

into the allegations with the delinquent officer had not been charged with.”

Learned Government Pleader appearing for the respondents had contended that it took considerable length of time for the Enquiry Officer to conclude the enquiry, as he has to conduct the disciplinary proceedings initiated against 12 such officers including the petitioner on the same set of allegations. He further contends that the Enquiry Officer had concluded the enquiry within the time stipulated by the Tribunal vide its order dated 05.11.2013 in O.A.No.4934 of 2013. He further contends that the Enquiry Officer gave a specific finding that the petitioner is responsible for filing irresponsible written statement before the Civil Court, which shall be understood that because of such irresponsible affidavit filed by the petitioner without specifying violations and deviations committed by the builders while constructing the buildings, the charge levelled against the petitioner is held as proved. Therefore he contends that the findings of the Enquiry Officer are perfect and valid and the 1st respondent has rightly imposed the punishment of 20% cut in monthly pension permanently vide G.O.Rt.No.87, dated 20.09.2014. Therefore, there are no merits in the writ petition and the same is liable to be dismissed.

This Court, having considered the rival submissions of the learned counsel appearing for the respective parties, is of the considered view that admittedly, two charges were framed against the petitioner vide G.O.Rt.No.774 dated

28.06.2002 and the incidents pertain to the years 1991-1994. It is not only against the petitioner but against 12 such officers, identical charges were framed. A perusal of the charges disclose that vide the 1st charge, the petitioner has been alleged of failing to take action at the initial stage itself and had allowed the builders to make several violations and deviations in the sanctioned plan, denoting negligence towards his duties and the 2nd charge is that the petitioner has failed to take timely action on the unauthorised constructions and thereby allowed huge violations in respect of Coverage, FSI/FAR, Provisions of less tot lot. Construction of more number of dwelling houses deviating from sanctioned plan and construction of pent houses without approval, clearly denotes the connivance of the officers with the builders for ulterior motives. The Enquiry Officer ought to have dealt with each charge framed against the petitioner and have given finding whether the said charge is proved or not. The findings of the Enquiry Officer in respect of the petitioner read as under:

“But it is a duty of the concerned Town Planning official for providing required information & factual position for vacation of the Interim orders passed by the Hon’ble Court. On perusal of the Written Statements filed by Sri P.Deepak Rao it is observed that the Written Statement is lacking with the level of lapses committed by the Builder i.e., the set-back violations, height violations, coverage violations, totlot violations, FSI violations etc., but in the Written Statement a generalized statement was made that the Builders/Owners have carried out the construction in violation of the sanctioned plan and Zonal

Regulations and not spelt what exactly the violations are committed, hence Sri P.Deepak Rao, CO-III is held responsible for filing such irresponsible Written Statement before the Hon'ble Court."

Enquiry officer before giving a finding ought to have looked into the charges and discussed on the said charges, basing on the material available on record. But the Enquiry Officer's report is silent with regard to charges framed against the petitioner. However, Enquiry Officer gave a finding stating that petitioner is held responsible for filing irresponsible written statement before the Civil Court. The charges levelled against the petitioner are that he has allowed the deviations to take place in the buildings constructed by the builders and has not taken action at the initial stage, but the enquiry officer gave irrelevant and baseless findings against the petitioner stating that petitioner is responsible for filing irresponsible written statement before the Civil Court and held that the charges levelled against the petitioner are proved. Therefore, the findings of the Enquiry Officer are perverse and contrary to the law laid down by the Hon'ble Supreme Court stated supra. When the Enquiry Officer's report is bad in law because of its perversity and non-application of mind, imposing punishment of 20% cut in monthly pension permanently vide G.O.Rt.No.87 dated 20.09.2014 is liable to be set aside and it is accordingly set aside with all consequential benefits.

With the above observations, the writ petition is allowed. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

Date: 18-12-2019
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