

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION.(TR) No.3066 of 2017

ORDER:

Heard Sri K.S.V.Subba Rao, learned counsel for the petitioner and the learned Government Pleader for Services-II.

This writ petition is filed seeking the following relief :-

“.....to call for the records relating to and connect with proceedings in G.O.Rt.No.314 IRRIGATION & CAD (Vig.II-A.1) department dt.21.11.2014 of the 1st respondent quash or set aside the same as being arbitrary, illegal and unsustainable in law and consequently direct the respondents to release the increments with all consequential benefits such as promotion to higher cadres Seniority & pay fixation etc., and pass such other order

It has been contended by the petitioner that he was initially appointed as Assistant Executive Engineer in the year 1988 and later he was posted to Tribal Welfare Department on deputation during 1999. While he was discharging his duties under the control of Deputy Executive Engineer, it was alleged that he has recorded and recommended for payment of 150 hand pump sets without insisting for test certificates and violated Rule 20(3) of Andhra Pradesh Civil Service (Conduct) Rules, 1991. The matter was enquired by the Vigilance & Enforcement Department, who have submitted a report dated 21.12.1999. Basing on the said report, the Chief Engineer, Tribal Welfare Engineering Department issued a Charge Memo

dt.04.05.2004. Pursuant to the said Charge Memo, petitioner had submitted explanation denying the said charge. Not satisfied with the explanation submitted by him, the Government has entrusted the matter to Commissioner of Enquiries and the Commissioner of Enquires, without properly analysing the matter, submitted a report dated 31.01.2007 holding that the charge against the petitioner is proved.

Learned counsel for the petitioner had contended that petitioner had specifically pleaded before the Commissioner of Enquiries that it was after receiving instructions from his superior officer i.e., Executive Engineer about the original test certificates of hand pump sets, he received the hand pump sets with Xerox copy of test certificates and recorded the same in M.Book and submitted to the Deputy Executive Engineer, who in turn, informed about the same to the Executive Engineer for arrangement of payment. He further contends that petitioner never recommended for payment of amount for 150 hand pump sets as he is not the competent authority to do so. He further contends that though there is no evidence on record to show that the petitioner has recommended for payment of 150 hand pump sets without insisting for test certificates, the Commissioner of Enquiries mechanically came to a conclusion and submitted a report stating that the charge levelled against the petitioner is proved, which is perverse and non-application of mind. He

further contends that after the Government initiated disciplinary proceedings against the petitioner vide Charge Memo dated 04.05.2004, it took four years for Commissioner of Enquiries to submit a report and inspite of Commissioner of Enquiries submitting the report on 06.05.2008, it took another 6 years for the Government to impose a punishment of stoppage of 2 annual grade increments with cumulative effect vide G.O.Rt.No.214, dated 21.11.2014. Thus, there is inordinate delay of 15 years in concluding the disciplinary proceedings initiated against the petitioner from the date of incident and on this ground itself the impugned order is liable to be set aside. In support of his contentions, learned counsel for the petitioner relied on the judgment of the Division Bench of this Court in W.P.No.2826 of 2013 dated 26.04.2013 wherein, it is held:

“.....it is to be noticed that the charge relates to the year 1998 and no steps were taken immediately on the subject-matter of the charge. Only pursuant to the complaint lodged against the Executive Engineer (Electrical) alone before the Upa-Lokayuktha, A.P., and basing the *ex parte* preliminary enquiry report, proceedings were initiated which were later dropped. Thereafter, regular department enquiry is conducted and on one ground or the other the enquiry officers were changed, which is admitted in the counter-affidavit, stating that delay is only on account of administrative reasons. Having regard to the nature of charge and the plea of delay, we are of the considered view that there is abnormal and unexplained delay on the part of the disciplinary authority in completing the enquiry and imposing punishment. Such an action is contrary to the judgments referred above apart from the executive instructions issued by the Government itself.

Even for the said reason, the impugned order is liable to be set aside.”

Therefore, he contends that appropriate orders be passed in the writ petition directing the respondents to release the increments in favour of the petitioner, which were stopped in pursuant to G.O.Rt.No.314 dated 21.11.2014, as the petitioner is going to retire in the month of December, 2019.

Learned Government Pleader appearing for the respondents contends that every opportunity was given to the petitioner during the course of enquiry and petitioner has not availed the said opportunity to project his case before the Commissioner of Enquiries. The Commissioner of Enquiries had submitted a report stating that the charge levelled against the petitioner is proved and when once the charge is proved, no further interference is called for. Therefore, he contends that there are no merits in the writ petition and the same is liable to be dismissed.

A perusal of the report of Commissioner of Enquiries dated 31.01.2007 discloses no evidence as to how he has come to such a conclusion that charge levelled against the petitioner is proved. The Commissioner of Enquiries has not even looked into the explanation submitted by the petitioner to prove the basic fact whether the petitioner has recommended for payment of 150 pump sets without insisting for test certificates and the presenting officer has also not produced any letter recommending for payment. In

the absence of the same, the Commissioner of Enquiries could not have come to a conclusion that the charge levelled against the petitioner is proved. The fact that the petitioner, after obtaining instructions from Executive Engineer about the original test certificates pertaining to 150 hand pump sets, has accepted the delivery of those hand pump sets, has not been not considered by the Commissioner of Enquiries and he has not enquired about the said fact either with the Executive Engineer or with the Deputy Executive Engineer who was also a delinquent officer before the Commissioner of Enquiries and also facing the same charges.

Having regard to the submissions made by the counsel appearing for the respective parties, this Court is of the considered view that the finding of the Commissioner of Enquires that the charge levelled against the petitioner is proved, without there being any material, is perverse. As far as the contention regarding inordinate delay in concluding the disciplinary proceedings is concerned, the said issue is squarely covered by the judgment of the Division Bench of this Court in W.P.No.2826 of 2013 dated 26.04.2013 and the Division Bench of this Court categorically stated therein that abnormal and unexplained delay on the part of the disciplinary authority in completing the enquiry and imposing punishment is contrary to the judgments referred therein and executive instructions issued by the Government itself. In the instant case, as the learned Government

Pleader has stated that there is an administrative delay in concluding the disciplinary proceedings, on that ground itself, the impugned punishment order imposed vide G.O.Rt.No.214, dated 21.11.2014 is liable to be set aside by following the law laid down by the Division Bench of this Court in W.P.No.2826 of 2013 dated 26.04.2013 and accordingly, it is set aside with all consequential benefits.

With the above observations, the writ petition is allowed. No costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

Date: 13-12-2019
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