

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILU

WRIT PETITION No.5839 of 2010

ORDER:

This writ petition is filed seeking the following relief :-

“....to issue an order, direction or a writ more particularly one in the nature of writ of Mandamus restraining the respondents from giving effect to the Memo No. CMD/ CGM(HRD)/ GM(S)/ AS-DC/ F.No.3004-E/ 05-16, dt 15.2.2010 and set aside the same....”.

Heard Mr.S.Ravindranath, learned counsel appearing for the petitioner and Sri P.R.Balarami Reddy, learned Standing Counsel for the respondents.

It has been contended by the petitioner that he was appointed as a Typist on 07.03.1991 and subsequently promoted as UDC on 30.03.2005. While discharging his duties as such, because of his negligence on 31.08.2005 while he was carrying an amount of Rs.4,21,714/-, some miscreants snatched the said cash and fled away and to that effect, a police complaint was lodged before II Town Police Station, Karimnagar. Thereafter, the respondents have initiated disciplinary proceedings against him and after conducting enquiry, the respondent authorities have provisionally come to a conclusion that a punishment of postponement of one increment without cumulative effect besides treating the suspension period as not spent on duty and to recover an amount of Rs.2,32,377/- be imposed against the petitioner and accordingly, issued a show-cause notice dated 10.09.2009, to which the petitioner has submitted an explanation and thereafter, the disciplinary authority had passed final order vide proceedings dated 15.02.2010, wherein the provisional punishment as proposed was confirmed and the

disciplinary authority had imposed punishment of postponement of one increment without cumulative effect besides treating the suspension period as not spent on duty and to recover an amount of Rs.2,32,377/- from the petitioner towards the lapses noticed against him. Challenging the said proceedings, the present writ petition is filed.

Learned counsel appearing for the petitioner submits that the disciplinary authority has imposed two punishments for the alleged misconduct committed by the petitioner viz., (i) postponement of one increment without cumulative effect; and (ii) treating the suspension period as not spent on duty and also recovering an amount of Rs.2,32,377/-. Therefore, the learned counsel submits that appropriate orders be passed in the writ petition setting aside the impugned order dated 15.02.2010 and contended that the disciplinary authority ought to have imposed only one punishment for the alleged misconduct i.e., either postponement of one increment without cumulative effect or to recover an amount of Rs.2,32,377/-. However, the disciplinary authority, without application of mind, has arbitrarily imposed two punishments for a single misconduct committed by the petitioner.

Learned Standing Counsel appearing for the respondents contended that the petitioner has approached this Court without exhausting alternative remedy of appeal as per the Regulations and, if the petitioner prefers an appeal, the appellate authority would consider the case of the petitioner and pass appropriate orders in accordance with law.

This Court, having considered the rival submissions made by the learned counsel for the respective parties, is of the considered

view that this writ petition can be disposed of directing the petitioner to prefer an appeal before the Board within a period of two weeks from the date of receipt of a copy of this order. Upon such appeal being filed, the appellate authority shall entertain the same without raising any objection with regard to the period of limitation and consider the case of the petitioner for imposing single punishment i.e., either postponement of one increment without cumulative effect or to recover an amount of Rs.2,32,377/- from the petitioner and pass appropriate orders in accordance with law within a period of four weeks thereafter.

During the course of arguments, the learned counsel for the petitioner submits that, originally the disciplinary authority intended to recover an amount of Rs.1,21,714/- only and later on, it added a further amount of Rs.1,10,663/- towards interest. Therefore, the learned counsel submits that ends of justice would be met, if at least the principal amount of Rs.1,21,714/- is recovered from the petitioner towards punishment for the alleged misconduct.

Having regard to the said submission, this Court is of the considered view that it is for the appellate authority to examine all the issues and pass appropriate orders in accordance with law.

With the above observations, the writ petition is disposed of. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVIL, J

17-09-2019
Prv