

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION (TR) No.1574 OF 2017

ORDER:

Heard Sri Ch.Jagannatha Rao, learned counsel for the petitioner and the learned Government Pleader for Services-I.

This writ petition is filed seeking a direction to call for the records pertaining to the impugned G.O.Rt.No.177, Transport R & B department dated 08.02.2013 issued by the 1st respondent and quash the same and consequently direct the respondents to pay the full pension to the petitioner by holding the action of the respondents in imposing a major punishment of withholding 50% of pension permanently, even though the charge alleged against the petitioner was not proved and on some other charge which is not forming part of the charge memo.

It has been contended by the petitioner that he was appointed as Junior Assistant during the year 1968 and later he was promoted to various posts. Finally, when he was discharging his duties as Superintendent during the year 1996, a charge memo was issued against him alleging that he has fraudulently inserted unauthorised entries in the driving licence of one Sri B.Satyasai Ram vide proceedings dated 29.06.2006. He further contends that in pursuance to the said Memo, though he has submitted detailed explanation on 22.01.2007, the disciplinary authority not satisfied with the said explanation submitted by him, appointed Enquiry Officer and the Enquiry Officer after a detailed enquiry submitted a report to the 2nd respondent on 15.06.2007 and the 2nd respondent issued a Memo dated 20.08.2007 communicating the copy of the said report to him.

The petitioner further contends, in pursuance to the Memo dated 20.08.2007, he has submitted explanation on 25.09.2007 but the respondents have not passed any final orders and during the pendency of the writ petition, he has retired from service on attaining age of superannuation on 30.06.2006. He further contends that the disciplinary proceedings continued against him even after his retirement and after a long lapse of time, the 1st respondent had issued a show cause notice dated 02.07.2009 asking him to explain as to why the penalty of withholding 50% pension permanently should not be imposed on him. Accordingly, he had submitted explanation on 21.03.2011. The petitioner further contends that on the same set of allegations, two other employees i.e., Md.Rafiq and Papaiah were subjected to departmental enquiry and the disciplinary authority imposed lesser punishment of stoppage of (3) Annual Grade Increments with cumulative effect. Aggrieved by the said order, the two other employees filed O.A.No.679 of 2010 and 2071 of 2010 before the then Andhra Pradesh Administrative Tribunal and the Tribunal vide its order dated 23.06.2010 allowed the said O.As and the State Government has implemented the orders passed by the Tribunal by issuing G.O.Rt.No.15, dated 04.01.2013 and the punishment imposed on the above said individuals was dropped. The petitioner further contends that the respondents are not extending the similar treatment to him, though no specific charge has been proved.

Learned counsel for the petitioner contends that the respondents have issued Charge Memo on 29.06.2006 i.e., one

day before the retirement of the petitioner. The perusal of the said Charge Memo reads as under:

“That Sri C.Narsimha Reddy while working as Administrative Officer, Officer of the RTO, Uppal, R.R.District committed grave misconduct in as much as he approved fraudulently inserted unauthorized entries in the Driving Licence mentioned below thereby giving an impression that the holder of the said licence was authorized to drive classes of vehicles for which there is no authorisation to held the holder to apply for the post of the Assistant Motor Vehicles Inspectors in pursuance fo the notification issued by the APPSC in respect thereof and the change of address and renewal of the said licence was also approved by him.

Sl.No.	Driving Licence No.	Holder's Name	Fraudulent entries
1	937/N/1998	Sri B.Satyasai Ram	L.M.V. & H.T.V

and thereby failed to maintain absolute integrity in violation of Rule 3(1) of A.P.Civil Services (Conduct) Rules, 1964.

Thus Sri C.Narasimha Reddy, Administrative Officer by his above mentioned acts exhibited lack of integrity, devotion to duty and conduct becoming of Government Servant and there by contravened Rule 3(1) & (2) of A.P.Civil Service Rules (Conduct) Rules 1964.”

Whereas, the Enquiry Officer after conducting enquiry in respect of three delinquent employees, came to a different conclusion in respect of the petitioner which reads as under:

“Sri Narasimha Reddy, (Retd) Administrative Officer allowed D.B.A unauthorisedly to attend the licence work, which has resulted in fraudulent insertion of LMV and HTV endorsements on 11.11.2004 and hence, he is also responsible for the lapse and there is slack supervision on his part and charge is proved.”

Therefore, learned counsel for the petitioner contends that slack of supervision was never formed part of the charge memo whereas the charge alleged against the petitioner is that he has approved the fraudulently inserted unauthorized entries in the

driving licence thereby giving an impression that the holder of the said licence was authorized to drive classes of vehicles for which there is no authorisation, to help the holder to apply for the post of the Assistant Motor Vehicles Inspector in pursuance of the notification issued by the APPSC and the change of address and renewal of the said licence was also approved by him. He further contends that the Enquiry Officer lost site of the charge levelled in the charge memo and held that petitioner has allowed DBA unauthorizedly to attend the licence work, which has resulted in fraudulent insertion of LMV and HTV endorsement on 11.11.2004 and is responsible for slack supervision on his part and held that the charge has been proved.

Learned counsel for the petitioner contends that the Enquiry Officer, without application of mind submitted his report holding that the charge which is not forming part of the original charge memo is proved against the petitioner. Therefore, he contends that punishment imposed by the 1st respondent withholding 50% of pension permanently vide impugned G.O.Rt.No.177, dated 08.02.2013 basing on the defective Enquiry Officer's report is liable to be set aside, as it is passed without application of mind and basing on the incorrect Enquiry Officer's report.

In support of his contentions, learned counsel for the petitioner relied on the judgment of the Hon'ble Supreme Court reported in ***Krushnakant B. Parmar versus Union of India & Anr*** in Civil Appeal No.2106 of 2016 wherein the Supreme Court at para 21 of the judgment held as under:

“The question relating to jurisdiction of the Court in judicial review in a Departmental proceeding fell for

consideration before this Court in ***M.N.Bijlani vs. Union of India and others*** reported in (2006) 5 SCC 88 wherein this Court 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 department proceedings are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose 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 into the allegations with which the delinquent officer had not been charged with.”

Learned counsel for the petitioner contends that in view of the law laid down by the Hon'ble Supreme Court stated supra, the Enquiry Officer cannot enquire into the allegations with which the delinquent officer has not been charged with. Admittedly in the present case, the petitioner was not charged with the charge of slack supervision, he has allowed the DBA to handle the licence work, but was charged that he had indulged in approving fraudulently inserted unauthorized entries in the licence. On this ground alone, the major punishment imposed by the 1st respondent is liable to be set aside.

Learned Government Pleader appearing for the respondents contends that every opportunity was given to the petitioner to defend his case in the enquiry and the Enquiry Officer has held that charge levelled against the petitioner is proved. Therefore, the 1st respondent rightly imposed punishment withholding 50%

of pension permanently vide impugned G.O.Rt.No.177, dated 08.02.2013 and hence, he contends that 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 the 1st respondents has imposed a major punishment of withholding 50% of pension permanently vide impugned G.O.Rt.No.177, dated 08.02.2013 basing upon the Enquiry Officer's report which is found to be defective and the Enquiry Officer has not even looked into as to what is charge against the petitioner and has crossed over the principle charge and gave a different finding. The Enquiry Officer has alleged that petitioner is responsible for slack supervision and allowed DBA unauthorisedly to attend the license work which resulted in fraudulent insertion of LMV and HTV endorsements on 11-11-2004 and held that charge is proved whereas the charge levelled against the petitioner is that he has approved fraudulently inserted unauthorized entries in the driving licence thereby giving an impression that the holder of the said license was authorized to drive classes of vehicles for which there is no authorisation to help the holder to apply for the post of the Assistant Motor Vehicle Inspectors. Therefore, the punishment imposed on the petitioner is based on the defective Enquiry Officer's report. Moreover, the other two employees on whom identical charges were framed were let off with a minor punishment with stoppage of (3) annual grade increments with cumulative effect. The said punishment imposed on the said employees were also set aside by the Tribunal in

O.A.No.679 of 2010 and 2071 of 2010 and the State Government implemented the orders passed by the Tribunal vide G.O.Rt.No.15, dated 04.01.2013 which would mean that the respondents have exonerated the co-delinquent employees who are facing identical charges and imposed major punishment of withholding 50% of pension permanently vide impugned G.O.Rt.No.177, dated 08.02.2013 against the petitioner.

Following the law laid down by Hon'ble Supreme Court stated supra, the report submitted by the Enquiry Officer which is defective in nature is *non-est* in the eye of law. Therefore, imposing major punishment withholding 50% of pension permanently vide impugned G.O.Rt.No.177, dated 08.02.2013 against the petitioner is liable to be set aside and accordingly it is 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: 07-01-2020
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