

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)

MONDAY, THE EIGHTEENTH DAY OF JULY
TWO THOUSAND AND TWENTY TWO

PRESENT

THE HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI
AND
THE HONOURABLE SRI JUSTICE N.V.SHRAVAN KUMAR

WRIT PETITION Nos.26154 and 26155 of 2005

WRIT PETITION NO: 26154 OF 2005

Between:

Sattaiah, S/o. Balaiah, Occ: Technical Assistant 'A', Defence Metallurgical Research Laboratory, Kancharbagh, Hyderabad.

...PETITIONER

AND

1. Union of India rep by the Secretary to the Government, Ministry of Defence, New Delhi - 110 001.
2. The Director General, Research and Development Organisation, And the Appellate Authority, Defence, Research and Development Organisation, Ministry of Defence, Department of Defence, Research and Development, B Wing, Sena Bhavan, New Delhi - 110 011.
3. The Director, Defence Metallurgical Research Laboratory, and Disciplinary Authority, PO Kancharbagh, Hyderabad-500 058.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a direction, order or writ, more particularly one in the nature of certiorari:

a) calling for the records related to and connected with the order in original Application No. 545 of 2003 dated 23-8-2005 on the file of the Learned Central Administrative Tribunal, Hyderabad Bench, Hyderabad and set aside the same;

b) calling for the records related to and connected with the Office order No. CF/1/6/1(MC)78/1, dated 13-9-2001 of the 3rd Respondent and proceedings No. DOP/10/103075/DMRL dated 1-1-2003 of the 2nd respondent confirming the order of the 3rd Respondent and quash or set aside the same as arbitrary, illegal, unjust and violative of the principles of the natural justice and also violative of Articles 14 & 16 of the Constitution of India;

c) Further declare that the petitioner is entitled to be treated as to have been totally exonerated of the charges levelled against him by an order No. CF/1/6/1(MC)/1, dated 29-4-1977 and direct the Respondents to release all the benefits that would flow from out of declarations sought for above.

WRIT PETITION NO: 26155 OF 2005

Between:

Sattaiah, S/o. Balaiah, Occ: Technical Assistant "A", Defence Metallurgical Research laboratory, Kanchanbagh, Hyderabad.

...PETITIONER

AND

1. Union of India rep by the Secretary to the Government, Ministry of Defence, New Delhi - 110 001.
2. The Director General, Research and Development Organisation, And the Appellate Authority, Defence, Research and Development Organisation, Ministry of Defence, Department of Defence, Research and Development, B Wing, Sena Bhavan, New Delhi - 110 011.
3. The Director, Defence Metallurgical Research Laboratory, and Disciplinary Authority, PO Kanchanbagh, Hyderabad-500 058.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a direction, order or writ, more particularly one in the nature of Certiorari.

a) calling for the records related to and connected with the order in Original Application No. 542 of 2003 dt. 26.7.2005 on the file of the Learned Central Administrative Tribunal, Hyderabad Bench, Hyderabad and set aside the same.

b) Calling for the records related to and connected with the Office order No.CF/1/6/(MC)78/2, dt. 28.9.2001 of the 3rd respondent and proceedings No. DOP/10/103075/DMRL dt. 1.1.2003 of the 2nd respondent confirming the order of the 3rd respondent and quash or set aside the same as arbitrary, illegal, unjust and violative of the principles of natural justice and also violative of Articles 14 & 16 of the Constitution of India.

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c) Further declare that the Petitioner is entitled to be treated as to have been totally exonerated of the charges levelled against him by an order No.CF/1/6/1(MC)/2 dt. 29.4.1977 and direct the respondents to release all the benefits that would flow from out of declarations sought for above.

Counsel for the Petitioner in both W.Ps.: SRI. SIVA

Counsel for the Respondents in both W.Ps.:

THE ASSISTANT SOLICITOR GENERAL

The Court made the following: COMMON ORDER

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

AND

THE HON'BLE SRI JUSTICE N.V. SHRAVAN KUMAR

Writ Petition Nos.26154 and 26155 of 2005

ORDER : *(Per Hon'ble Justice Abhinand Kumar Shavili)*

Since the issue raised in both these writ petitions is one and the same, they are being disposed of by way of this common order.

2. For the sake of convenience, the facts in WP No.26154 of 2005 are hereunder discussed.

3. Heard Sri G.Siva, learned counsel for the petitioner and Learned Assistant Solicitor General appearing for the respondents.

4. Learned counsel for the petitioner contended that the petitioner was initially appointed as Machinist in the year 1964 and ever since he has been discharging his duties to the best satisfaction of his superiors and everyone concerned. During the year 1972 to 1975, the alleged medical scam has taken place in DMRL and other scientific institutions in Hyderabad City and the respondents have taken disciplinary action against persons who have claimed false medical bills. A Court of enquiry was constituted and some of the employees have even confessed

before the Court of enquiry about claiming false medical bills and large number of employees placed under suspension. The issue as to whether Director of the respective labs was competent to place the employees under suspension fell for consideration before the Court and finally the matter was adjudicated to the Hon'ble Supreme Court wherein it was held that the Director of respective labs has power to initiate disciplinary proceedings against the employees. Finally after nearly twenty years, the Disciplinary proceedings initiated and concluded and in the present case, charge memo, dated 29.04.1977 was issued by conducting a detailed enquiry.

5. The learned counsel for the petitioner contended that initially Enquiry Officer has submitted a report stating that the charges could not be proved with the material available on record. On that report, the Disciplinary Authority had redirected the Enquiry Officer to re-conduct the enquiry as per the material available on record and in pursuant to the direction given by the Disciplinary Authority, the Enquiry Officer has finally submitted an Enquiry Report and held that even though one set of documents sent to the CDA, Puna, is not available, the existing document is sufficient to indicate that there is possibility of petitioner's involvement.

6. The counsel for the petitioner contended that no original medical bills or invoices were made available before the Enquiry Officer and the Enquiry Officer just relied on the photocopies/xerox of medical bills and came to the erroneous conclusion, that too, without giving any specific finding whether the charge is proved or not. The Enquiry Officer has submitted a report that there is every possibility of petitioner being involved and based upon such an erroneous report, the Disciplinary Authority imposed a punishment of inflicting a penalty of reduction by one stage from Rs.5250/- to Rs.5125/- in the scale of 4500-125-7000 for a period of one year with effect from the date of the order and the said punishment was stated to have the effect of postponing the future increment as well and the period of suspension from 02.08.1976 to 31.05.1994 was directed not to be counted for seniority, increment but would count only for terminal benefits., vide order dated 13.09.2001.

7. In the connected case i.e., WP No.26155 of 2005, same punishment was imposed inflicting a penalty of reduction by one stage from 5125/- to Rs.5000/- in the scale of 4500-125-7000 for a period of one year with effect from the date of the order and the said punishment was stated to have the effect of postponing the future increment as well and the period of suspension from 02.08.1976 to 31.05.1994 was directed not to be counted for

seniority increment but would count only for terminal benefits. In addition to this, an amount of Rs.2451.20, drawn, be recovered in 12 monthly installments, vide order dated 13.09.2001. Aggrieved by the said orders passed by the Disciplinary Authority, the petitioner has preferred an appeal and the Disciplinary Authority has also rejected the appeal vide order 01.01.2003.

8. The counsel for the petitioner further contended that in the enquiry, which was initially conducted by the Enquiry Officer, the Enquiry Officer gave a specific finding that there are no original documents in the form of medical bills and he has categorically gave findings that the charges could be proved based upon material available on record. But the Disciplinary Authority has redirected the Enquiry Officer to re-conduct the Enquiry based on the material available on record and even in the second attempt also, the Enquiry Officer has not given a definite finding in respect of charge. But he has held that there is every possibility of petitioner being guilty of the charge.

9. The counsel for the petitioner had further contended that similar issue fell for consideration before this Hon'ble Court in WP No.12472 of 2004, this Hon'ble Court was pleased to observed that in para-6 & 7 as:

6. Ordinarily, this Court or the Tribunal would not interfere in the disciplinary proceedings matters unless it is a case of no evidence. The charge leveled against the petitioner is that he produced bogus and false medical bills so as to derive undue and wrongful gain and cause loss to the Government by fraudulent means. The burden is on the department to establish that the bills and the essential certificate produced by the petitioner are bogus or forged or fabricated. Unless the initial burden is discharged, the burden never shifts to the petitioner. The alleged medical bills and the essential certificates have not been produced before the enquiry officer. Except the oral statement of only one witness, there is absolutely no other evidence. Even the evidence of the solitary witness would clearly disclose that he was a member of enquiry committee on earlier occasion in respect of same incident wherein 130 employees said to have confessed their guilt about producing bogus and fabricated medical bills and essential certificates. In the words of the disciplinary authority,

"..Unless the charged Govt. servant produced evidence to establish that he had actually visited the Doctors and purchased medicines from the medical halls, the charge stands established since it had been conferred by other employees that the Doctors and medical halls issued false essentiality certificates and cash memos."

Therefore, basing on the confessions said to have been given by some of the employees, the disciplinary

authority disagreed with the findings of the enquiry officer. None of the documents relating to the earlier enquiry is part of the record in the present enquiry. None of the persons who issued those bills is examined to speak about the falsity of the medical claim. Therefore, there is absolutely no evidence to show that the petitioner produced false or fabricated medical bills or essentiality certificates so as to gain wrongfully. Since it is a case of no evidence, the Tribunal ought to have interfered with the punishment imposed on the petitioner. Instead of doing so, the Tribunal also placed burden on the petitioner to establish his innocence. Therefore, the impugned order is liable to be set aside and is, accordingly, set aside. The punishment impugned on the petitioner by the disciplinary authority is set aside.

7. The Writ Petition is, accordingly, allowed. There shall be no order as to costs. Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed."

10. The facts in WP No.12472 of 2004 are identical with the facts on hand and this Hon'ble Court has categorically held that the burden is on the department to establish that the bills and the essential certificate produced by the petitioner are bogus or forged or fabricated before the Enquiry Officer and that charges leveled against the employee will be proved. But in the instant case, the burden is shifted on the delinquent employee to prove his innocence even without material available on record.

Therefore, appropriate orders be passed in the writ petition by setting aside the impugned punishment orders passed by the disciplinary order on 13.09.2001 and 28.09.2001 and also consequential appellate authority order dated 01.01.2003 and allow the writ petition.

11. Learned Assistant Solicitor General appearing for the respondents had contended that the Disciplinary Authority has given every opportunity to the petitioner and the Enquiry Officer after conducting detailed enquiry has come to a conclusion that the charge leveled against the petitioner is held to be proved and based upon the proven misconduct, the Disciplinary Authority has rightly imposed a punishment. Therefore there are no merits and writ petition is liable to be dismissed.

12. This Court having considered the rival submission made by the parties is of considered view that the original documents which were relied upon by the department were not produced before the Enquiry Officer. In the first instant, the Enquiry Officer has submitted a report that the charges cannot be proved in the absence of original documents but the Disciplinary Authority has redirected the Enquiry Officer to re-conduct the enquiry based upon the material available on record. Admittedly, in the instant case, no original documents were produced before the Enquiry

Officer, so the burden of proving the charges, which initially lies with the department, has not been discharged and the burden was put on employee to prove his innocence which is not permissible as per CCCA rules, as per the judgment in WP No.12472 of 2004. This Court has no other option except to set aside the punishment as imposed by the Disciplinary Authority vide proceedings dated 13.09.2001 and 28.09.2001 and also appellate authority order dated 01.01.2003.

13 Accordingly, Writ Petitions are allowed by setting aside the orders passed by the Tribunal in OA No.542 of 2003, dated 26.07.2005 and OA No.545 of 2003, dated 23.08.2005.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble the Chief Justice UJJAL BHUYAN, on this Monday, the Eighteenth day of July, Two Thousand and Twenty Two.

SD/- T. KRISHNA KUMAR
DEPUTY REGISTRAR
SECTION OFFICER

//TRUE COPY//

To,

1. The Secretary to the Government, Ministry of Defence, Union of India, New Delhi - 110 001.
2. The Director General, Research and Development Organisation, And the Appellate Authority, Defence, Research and Development Organisation, Ministry of Defence, Department of Defence, Research and
3. The Director, Defence Metallurgical Research Laboratory and Disciplinary Authority, PO Kanchanbagh, Hyderabad-500 058
4. One CC to Sri Siva, Advocate [OPUC]
5. One CC to Assistant Solicitor General, High Court Buildings, Hyderabad. [OPUC]
6. Two CD Copies
7. One Spare Copy

CHR
GJP

HIGH COURT

DATED:18/07/2022



COMMON ORDER

W.P.No.26154 and 26155 of 2005

ALLOWING THE WRIT PETITIONS
WITHOUT COSTS

⑧
MA
21/11/22