

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

**THURSDAY, THE FIFTH DAY OF OCTOBER
TWO THOUSAND AND TWENTY THREE**

PRESENT

**THE HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI
AND
THE HONOURABLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

WRIT PETITION NO: 19614 OF 2021

Between:

1. The Union of India, represented by Director General, Posts, Department of Posts, Dak Bhavan, Sansad Marg, New Delhi-100 001
2. The Director of Postal Services, O/o The Postmaster General, Head Quarters Region, Hyderabad 500 001.
3. The Senior Superintendent of Post Offices, Secunderabad Postal Division, Department of Posts-India, Gandhinagar, Hyderabad 500080.

...PETITIONERS

AND

M.A. Jabbar, S/o. Md. Nizamuddin, Aged about 54 years, Postman (Removed from Service) Lallaguda SO, Secunderabad Division, R/o H.No.10-9-15/1 Indiragandhi Puram, Fatehnagar Railway Gate Sanathnagar, Hyderabad-500 018.

...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 an order or direction more particularly one in the nature of Writ of Certiorari calling for the records pertaining to the order dated 24-01-2020 passed in O.A. No. 598/2014 on the file of the Hon'ble Central Administrative Tribunal, Hyderabad Bench, Hyderabad and quash the same as illegal, arbitrary, contrary to law and unconstitutional.

IA NO: 1 OF 2021

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to

suspend the operation of the order dated 24-01-2020 passed in O.A. No. 598 of 2014 passed by the Hon'ble Central Administrative Tribunal, Hyderabad Bench, Hyderabad pending disposal of Writ petition.

**Counsel for the Petitioners: SRI GADI PRAVEEN KUMAR, DEPUTY SOLICITOR
GENERAL OF INDIA**

Counsel for the Respondent: SRI M. VENKANNA

The Court made the following: ORDER

**THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI
AND
THE HON'BLE SRI JUSTICE NAMAVARAPU RAJESHWAR RAO**

WRIT PETITION No.19614 OF 2021

ORDER: (Per AKS,J)

This Writ Petition is filed aggrieved by the order, dated 24.01.2020, passed in O.A.No.20/598/2014 by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad (for short, 'the Tribunal').

2. Heard the learned Deputy Solicitor General of India appearing for the petitioners and Sri M. Venkanna, learned counsel for the respondent.

3. Learned Deputy Solicitor General of India appearing for the petitioners had contended that the respondent was working as a Postman with the petitioners. He remained unauthorizedly absent to duties from 01.09.2008 to 30.11.2008, 01.03.2009 to 10.08.2009 and again from 15.09.2009 to 08.03.2013. The disciplinary authority, construing the same as misconduct, initiated disciplinary proceedings against the respondent by issuing a charge memo on 08.03.2013. The respondent has submitted explanation denying the charges levelled against him. Not satisfied with the explanation submitted by the respondent, the disciplinary authority has appointed an Enquiry Officer to conduct a

detailed enquiry and the Enquiry Officer conducted a detailed enquiry and submitted report, dated 06.07.2013, holding that the charges levelled against the respondent were proved. The respondent also admitted the charges before the Enquiry Officer. Based upon the proven misconduct in the enquiry, the disciplinary authority has imposed punishment of removal from service on the respondent *vide* proceedings, dated 21.10.2013. Aggrieved by the same, the respondent preferred an appeal before the appellate authority and the appellate authority was pleased to dismiss the appeal *vide* order, dated 24.03.2014. Aggrieved by the same, the respondent approached the Tribunal by filing the subject O.A.No.20/598/2014 and the Tribunal, *vide* impugned order, dated 24.01.2020, was pleased to allow the subject O.A. in favour of the respondent by following the law laid down by the Honourable Supreme Court in **Krushnakanth B Parmar and another v. Union of India**¹ and directed the petitioners to modify the punishment of removal from service to any other lesser punishment other than removal or dismissal from service, on the ground that the punishment of removal is shockingly disproportionate to the charges levelled against the respondent.

4. Learned Deputy Solicitor General of India further contended that the respondent had remained unauthorizedly absent on

¹ (2012) 3 SCC 178

various spells and because of the absence of the respondent, the petitioners were put to severe inconvenience. As admittedly the respondent has remained absent himself from duties, without applying leave, it is a grave misconduct and the Tribunal ought not to have interfered with the punishment of removal and directed the petitioners to modify the punishment to some other lesser punishment other than removal or dismissal from service. Therefore, appropriate orders be passed in the Writ Petition by setting aside the impugned order, dated 24.01.2020, and allow the Writ Petition.

5. On the other hand, learned counsel for the respondent had contended that the respondent had to remain absent owing to his ill-health. As admittedly the absence of the respondent was not willful, but owing to his ill-health, the Tribunal was justified in allowing the subject O.A. in favour of the respondent, by following the law laid down by the Honourable Supreme Court in **Krushnakanth B Parmar's** case (supra). The Tribunal has also considered the case of the respondent on the ground of proportionality and the Tribunal felt that the punishment of removal is shockingly disproportionate to the charges levelled against the respondent. The absence of the respondent cannot be treated as willful, as admittedly, he was having health issues.

Therefore, there are no merits in the Writ Petition and the same is liable to be dismissed.

6. This Court, having considered the rival submissions made by the learned counsel for the parties, is of the view that the Tribunal was justified in allowing the subject O.A. in favour of the respondent by following the law laid down by the Honourable Supreme Court in **Krushnakanth B Parmar's** case (supra). The Tribunal rightly observed that the absence of the respondent is not willful, but owing to his ill-health and that the punishment of removal from service imposed on the respondent is shockingly disproportionate to the charges levelled against him. However, the Tribunal ought not to have awarded consequential benefits, as admittedly, the respondent had remained absent himself from duties. Therefore, such portion of the impugned order, dated 24.01.2020, where the Tribunal has extended the consequential benefits to the respondent is set aside and the petitioners shall consider the case of the respondent in terms of the order, dated 24.01.2020, passed by the Tribunal, however, without consequential benefits. It is made clear that the out of employment period should be counted for the purpose of pension and pensionary benefits only, but not for arrears of salary.

7. At this stage, we were informed by the learned counsel for the respondent that the respondent has already attained the age of superannuation. In view of the same, the only punishment which can be imposed on the respondent is compulsory retirement. Therefore, the respondents are directed to explore the possibility of imposing the punishment of compulsory retirement on the respondent, in view of the fact that the respondent has already attained the age of superannuation.

8. With the above observations/directions, the Writ Petition is disposed of. There shall be no order as to costs.

Miscellaneous Applications, if any, pending in this Writ Petition, shall stand closed.

SD/-K.SREERAMA MURTHY
ASSISTANT REGISTRAR

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SECTION OFFICER

- To,
1. One CC to Sri Gadi Praveen Kumar, Deputy Solicitor General of India [OPUC]
 2. One CC to Sri M. Venkanna, Advocate [OPUC]
 3. Two CD Copies

T J
BS

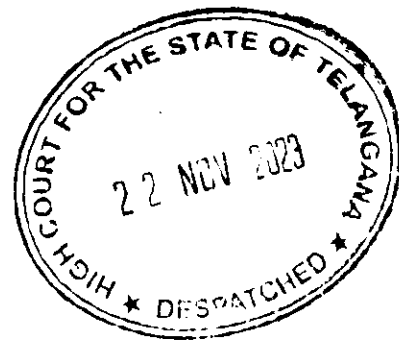
[Signature]

HIGH COURT

DATED:05/10/2023

ORDER

WP.No.19614 of 2021



**DISPOSING OF THE WRIT PETITION
WITHOUT COSTS.**

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17/11/23*