

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

AND

THE HON'BLE SRI JUSTICE PULLA KARTHIK

Writ Petition No.16018 of 2015

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

This Writ Petition is filed by the petitioner under Article-226 of the Constitution of India seeking a 'Writ of Certiorari by calling for records relating to the order passed by the Andhra Pradesh Administrative Tribunal (for short, 'the Tribunal'), Hyderabad in O.A.No.3346 of 2009, dated 14.08.2014 and to quash the same.

2. Heard the learned Special Government Pleader for Andhra Pradesh appearing for the petitioners and the 1st respondent, as party-in-person has appeared.

3. Learned counsel for the petitioners contended that the 1st respondent was working as Assistant Director and the disciplinary authority has initiated the disciplinary proceedings alleging that he was harassing the ladies who were subordinate to him and after proven misconduct in the enquiry, the

disciplinary authority has imposed a punishment of stoppage of one annual grade increment without cumulative effect and further, considered the suspension period as 'not spent on duty'. The 1st respondent was also tried by the Competent Criminal Court in SC.No.12 of 2005 and was acquitted by the said charge vide judgment, dated 27.12.2007. Aggrieved by the charge framed for suspension period as 'not spent on duty', the 1st respondent has approached the Tribunal by filing O.A.No.3346 of 2009 and the Tribunal vide orders dated 14.08.2014 was pleased to allow the O.A in favour of the 1st respondent without appreciating any of the contentions raised by the petitioners.

4. Learned counsel for the petitioners had further contended that the disciplinary authority has imposed a punishment of stoppage of one annual grade increment without cumulative effect for the proven misconduct in the enquiry. Therefore, the petitioners were justified in treating the suspension period as 'not

spent on duty', but this fact was not appropriately considered by the Tribunal and the Tribunal has mechanically allowed the O.A in favour of the 1st respondent. Therefore, appropriate orders be passed in the writ petition by setting aside the orders passed by the Tribunal in O.A.No.3346 of 2009 and allow the writ petition.

5. This Court, having considered the submissions is of the considered view that the Tribunal was justified in allowing the O.A by following the observations:-

5. While finding the applicant guilty of second part of charge No.3, the Enquiry Officer made analysis and assessment of evidence in the following manner:

"The charged officer himself has admitted that in the interest of work and administration he would have scolded the subordinates. Sri. T. Venkatramaiah, (Attender) who is totally neutral person in this case has also stated that sometimes the behaviour of the Assistant Director was painful, it was also stated (E-X) that, there was no stability in the instructions given to them because of which they used to forgo their timely food. Sri. B.Ratna Raju also stated (E-VI) that the charged officer used to schold him in front of others which has made him (Sri.B.Ratna Raju) feels insulted. He was also made to stand for long durations in the Assistant Director's room, while seat is offered to persons who are lower than him in cadre.

The charged officer calling employees by caste is not established. But, the charge is established to the extent of scolding the subordinates in front of others which made them feel degraded".

On perusal of the above observations of the enquiry Officer with reference to the charge No.3 framed, it is evident that the said charge relating to this part is vague and evidence of T. Venkat Ramaiah and B. Ratna Raju, Attenders is equally vague. It resulted in the Enquiry Officer giving a vague finding to the above effect. The applicant himself has stated before the Enquiry Officer that in the interest of work and administration he might have scolded the subordinates. it is not evidence of T. Venkat Ramaiah or B. Ratna Raju that on any particular day in a particular context the applicant scolded them unreasonably and without any provocation on their part or with motive. There is no allegation that the applicant was scolding them in abusive or offensive language. It is not their evidence that the applicant was scolding them without any context and without there being any provocation from those individuals. This Tribunal is of the opinion that not only charge No.3 relating to this part but also evidence of T. Venkat Ramaiah and B. Ratna Raju and also finding of the Enquiry Officer on this part of the charge No.3 relating to this part but also evidence of T. Venkat Ramaiah and B. Ratna Raju and also finding of the Enquiry Officer on this part of the Charge No.3 are vague and therefore not sustainable in law.

6. *In so far as charge No.5 is concerned, the applicant is stated to have signed one statement during preliminary enquiry and did not sign other statements. It is not contention of the department that the applicant did not give any statement at all. There is no need for conducting of preliminary enquiry in the presence of charged Officer and taking his signatures on the statements recorded during preliminary enquiry. Such contingency arises only during the stage of regular departmental enquiry under Rule-20 of Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991. During preliminary enquiry, even the witnesses need not append their signatures on their statements. Finding fault with the applicant for not signing in four out of five statements recorded during preliminary enquiry cannot be basis of Charge No.5. when there is no basis for charge No.5, finding of the Enquiry Officer on the said charge cannot stand. In any event, the applicant gave immediate defence statement to the effect that he was in office on that date upto 9.20 or 9.30 p.m., during preliminary enquiry and that he had reason for leaving the enquiry abruptly as he was afraid that Police were coming to arrest him. By then, the applicant was facing criminal charge under the provisions of the Scheduled Caste and Scheduled Tribes (Provinces of Atrocities) Act. In those circumstances, the applicant had every reason for not signing the statements and leaving the preliminary enquiry abruptly to save himself from arrest by the Police. Thus, even otherwise, the applicant has valid defence which the Enquiry Officer totally neglected to take note of and*

failure of not taking a defence statement vitiates finding on that charge.

7. *In view of foregoing reasons, this Tribunal is of the opinion that charge Nos. 3 and 5 of the Charge Memo are devoid of substance and findings of the Enquiry Officer on those charges are not sustainable in law and are vitiated. Consequently the impugned order of the 1st respondent in proceedings Roc.No.34564/ Vigilance Cell/G1/03, dated 20.04.2005 is not sustainable.*

8. *When the applicant approached the 1st respondent for treating the suspension period from 12.12.2003 to 20.12.2004 as duty, the 1st respondent passed proceedings in Roc.No.10893/VC/G1/2006, dated 31.05.2009 treating the said period as 'not on duty'. When this Court finds that charges framed against the applicant, findings of the Enquiry Officer thereon and penalty imposed on the applicant are unsustainable in law, the period of suspension cannot be treated as 'not on duty'. The respondents are bound to regularize the said period as per rules. Treating the suspension period as 'not on duty' may amount to giving dual punishment to the applicant, which is not permissible in law.*

9. *In the result, this Original Application is allowed setting aside penalty of stoppage of one annual grade increment without cumulative effect imposed on the applicant and directing the respondents to regularize the suspension period from 12.12.2003 to 20.12.2004 as 'on duty'.*

6. As admittedly, the penalty imposed on the 1st respondent is a minor penalty, whenever a minor penalty is imposed, the suspension period cannot be treated as 'not spent on duty'. A perusal of the record further discloses that the 1st respondent has retired from service because the 1st respondent was aged about 57 years and on this ground also, this Court is

not inclined to interfere with the orders passed by the Tribunal.

7. With these observations, the Writ Petition is dismissed. No costs.

8. As a sequel, miscellaneous applications pending if any in this Writ Petition, shall stand closed.

ABHINAND KUMAR SHAVILI, J

PULLA KARTHIK, J

Date : 10.02.2023
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