

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATI
(Special Original Jurisdiction)

TUESDAY, THE TWENTY THIRD DAY OF JULY
TWO THOUSAND AND TWENTY FOUR



PRESENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI
AND
THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

WRIT PETITION NO: 16044 OF 2009

Between:

CH. Sundaraiah, S/o. Somulu, aged about 52 years, Occ; Helper R/o. H.No. 2-58, Kondi Singh bazar, Bogolu, Bitragunta, SPS Nellore District.

...PETITIONER

AND

1. The General Manager, South Central Railway, South Central Railway Rail Nilayam, Secunderabad.
2. The Chief Rolling and Stock Engineer, South Central Railway, Rail Nilayam, Secunderabad.
3. The Divisional Railway Manager, South Central Railway Rail Nilayam, Secunderabad.
4. The Additional Divisional Railway Manager, South Central Railway Vijayawada Division, Krishna District.
5. The Sr. Divisional Mechanical Engineer, South Central Railway Vijayawada Division, Krishna District.

...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 quash the Order dated 29-8-2008 passed in O.A.No. 678 of 2007 on the file of Hon'ble Central Administrative Tribunal as illegal, arbitrary and unjust by issuing appropriate writ or order or direction more particularly in the nature of writ of certiorary.

I.A. NO: 1 OF 2009(WPMP. NO: 21061 OF 2009)

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 direct the respondent to expedite the matter of hearing, pending disposal of the above writ petition.

Counsel for the Petitioner(s): SRI. M R S SRINIVAS

**Counsel for the Respondents 1 to 5 : SRI MALLAMPALLI SRINIVAS
(CENTRAL GOVT COUNSEL)**

The Court made the following: ORDER



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3470]

TUESDAY, THE TWENTY THIRD DAY OF JULY
TWO THOUSAND AND TWENTY FOUR

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THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

WRIT PETITION NO: 16044/2009

Between:

Ch. Sundaraiah, Bogolu, Bitragunta,
SPSR Nellore District.

... PETITIONER

AND

The General Manager South Central Railway,
Secunderabad & 4 others

...RESPONDENT(S)

Counsel for the Petitioner:

1.M R S SRINIVAS

Counsel for the Respondent(S):

1.MALLAMPALLI SRINIVAS(CENTRAL GOVT COUNSEL)

2.PUSHPINDER KAUR

The Court made the following:

HONOURABLE SRI JUSTICE RAVI NATH TILHARI

AND

HONOURABLE SRI JUSTICE NYAPATHY VIJAY

WRIT PETITION NO.16044 of 2009

ORDER: *(per Hon'ble Sri Justice Nyapathy Vijay)*

1. The present Writ Petition is filed to quash the Order dated 29.08.2008 dismissing O.A.No.678 of 2007 on the file of the Central Administrative Tribunal, Hyderabad Bench at Hyderabad.

2. The facts leading to filing of this Writ Petition are as under:-

The petitioner was appointed on compassionate grounds as Carriage and Wagon Khalasi on 07.08.1984 and was posted at Bitragunta. The applicant after working as Carriage and Wagon Khalasi from 07.08.1984 to 29.03.1993 was promoted as Khalasi Helper. While working as such, the petitioner was issued a Charge Memorandum on 03.10.2000 alleging that the petitioner committed serious misconduct as he did not carry out the instructions of the superiors and acted in the manner and becoming of a Railway Servant.

3. Pursuant to the enquiry, the petitioner was imposed a penalty of reduction with layer grade of Khalasi for a period of one year (non-recurring). Aggrieved thereby, the petitioner filed O.A.No.1530 of 2002 after confirmation of the orders of penalty in Departmental Appeal and Revision. The Tribunal *vide* Orders dated 29.04.2003 set aside the penalty orders and directed that the petitioner be continued as Basic Fitter i.e. the post he was holding at the time of issuance of Charge Memo with immediate effect. The order attained finality as the Department accepted the order of the Tribunal.



4. On 07.11.2003 the petitioner was again issued another Charge Memorandum under Railway Servants (Discipline and Appeal) Rules, 1968 framing a solitary Article of Charge. The Article of Charge is extracted below:-

"Article-I

That the said Sri Ch.Sundaraiah, while functioning as Kha. Helper, SSE/C&W/O/BTTR committed serious misconduct and failed to maintain devotion to duty and behaved in a manner unbecoming of a Railway servant in that on 7/8.10.2003 he refused to attend the dry cleaning and obstructed the other Khalasi Helpers also from attending dry cleaning of 478/438 passenger.

Thus, he has violated rule No.3(1)(ii)(iii) of Railway Services (Conduct) Rules, 1966."

5. On the basis of the enquiry, the petitioner was imposed a penalty of compulsory retirement *vide* Orders dated 27.06.2006. The appeal and revision filed thereon met with the same result. The petitioner thereupon filed O.A.No.678 of 2007 before the Central Administrative Tribunal, Hyderabad and the same was dismissed on 29.08.2008. Hence, the present Writ Petition is filed.

6. Heard Sri M.R.S. Srinivas, learned counsel for the petitioner and Sri Mallampalli Srinivas, learned counsel for the respondent-Department.

7. The learned counsel for the petitioner contended that no proper reasons were assigned by the disciplinary authority and that the imposition of compulsory retirement is excessive even if the allegation is said to be established. It is also the case of the learned

counsel that the petitioner was not provided with a defence counsel and therefore the entire enquiry conducted without there being any assistance to the petitioner is liable to be set aside. It was also contended that the petitioner was issued a Charge Memorandum for not doing dry cleaning job, which does not form part of his duties.

8. In response, the learned counsel for the respondents contended that the petitioner was given full opportunity to defend in the enquiry and the procedure of enquiry cannot be faulted with. It is also contended that the orders of punishment do provide for requisite reasons and that the punishment imposed on the petitioner is just and proportionate to the misconduct.

9. On the basis of the respective arguments, the following points fall for consideration:-

a) Whether the enquiry was conducted adhering to the principles of fairness?

b) Whether the punishment of compulsory retirement is excessive to the alleged misconduct?

10. **Point (a)**: The enquiry report is an ex-parte report as it is alleged that the petitioner was not given sufficient opportunity to defend his case. The respondent department in order to substantiate the plea of dilatory tactics adopted by the petitioner explained at paragraph 6 of the counter affidavit that the petitioner was afforded reasonable opportunity at every stage. It was pleaded that the petitioner was given the opportunity to appoint his defence counsel to defend his case. Initially, the date of regular enquiry was fixed on 15.02.2005. Subsequently, the Petitioner requested two months time



to nominate his defence counsel as he was suffering from paralysis. Accepting to the request of the petitioner, the enquiry date was re-fixed to 25.04.2005. The petitioner attended the enquiry with defence counsel on 25.04.200, but sought for time. The enquiry was again re-scheduled to 06.05.2005. On the said day, the petitioner again sought time stating that he was sick. The enquiry was re-scheduled to 17.06.2005. Again, on 17.06.2005 sought time stating that the defence counsel was not well. In was in that context, the enquiry was proceeded ex-parte. The narration shows sufficiency of opportunity. There is no rebuttal of these pleas by the petitioner. Therefore, this Court does not merit in the submission of the counsel for the petitioner that reasonable opportunity was not given in the enquiry. The Point(a) is accordingly answered.

11. **Point (b):** The charge against the petitioner pertains to refusing to do a dry cleaning job on a particular day i.e. 7 /8.10/2003. Even assuming that the charge is true and correct, the question would be whether the punishment of compulsory retirement be justified. It is not the case of the Department that the petitioner's refusal to do dry cleaning job is of any emergent nature. The orders of the disciplinary authority do not reflect any pressing reasons for imposing the penalty of compulsory retirement. In normal course, the petitioner would have continued to work till the age of superannuation and the penalty had cut short his employment and source of livelihood.

12. Before imposing major punishment, it would be prudent for the disciplinary authority to examine if any other punishment is possible. Unless, the disciplinary authority comes to a conclusion that no other punishment is possible, only then a major penalty like

termination/dismissal/compulsory retirement could be imposed. This is required, as the purpose of punishment is not discipline alone but one of reformation. In the present case, none of these aspects were considered and punishment of compulsory retirement was imposed straightaway for disobedience to do dry cleaning work on a solitary day i.e. 7/8.10.2003. In the opinion of this Court, the punishment is way too excessive and disproportionate.

13. The Tribunal did not examine the case from this viewpoint, but curiously takes into consideration the earlier penalty orders which were set aside by the very same Tribunal in O.A.No.1530 of 2002 to justify the penalty imposed. This in our view is perverse and warrants interference by this Court. It is informed to the Court that the petitioner would have retired on 31.03.2015 in the normal course.

14. It is too well known that in appropriate cases, this Court can modify the punishment considering the lapse of time and to avoid duplication of litigation. The Hon'ble Supreme Court in ***B.C. Chaturvedi vs. Union of India and Ors***¹ at Paragraph 18 held as under:-

"18..... The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. *If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to*

¹ (1995) 6 SCC 749



shorten litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof."

15. A similar view was also taken by larger bench of Hon'ble Supreme Court in ***Union of India Vs Tulsi Ram Patel 1985 (3) SCC 398*** while considering penalty imposed on a government servant under Art.311 of the constitution held at paragraph 127 as under:

"127.Where the court finds that the penalty imposed by the impugned order is arbitrary or grossly excessive or out of all proportion to the offence committed or not warranted by the facts and circumstances of the case or the requirements of that particular government service the court will also strike down the impugned order. Thus, in *Shankar Dass v. Union of India and another*, [1985] 2 S.C.C. 358, this Court set aside the impugned order of penalty on the ground that the penalty of dismissal from service imposed upon the appellant was whimsical and ordered his reinstatement in service with full back wages. *It is, however, not necessary that the Court should always order reinstatement. The Court can instead substitute a penalty which in its opinion would be just and proper in the circumstances of the case.*

16. In the light of discussion made above, the order of the Central Administrative Tribunal, Hyderabad dated 29.8.2008 in O.A.No.678 of 2007 is set-aside. The penalty of compulsory retirement imposed on the petitioner is also set aside.

17. In the opinion of this Court, this is a case for imposition of a minor penalty, however, since the petitioner had retired from service on 31.03.2015, no minor penalty could be imposed on the petitioner.

Therefore, this Court while balancing the interests of the Respondent/ Department as well is of the opinion that the petitioner be granted notional pay from the date of order of compulsory retirement and consequently re-fix the pension and pay the revised pension amount w.e.f 31.03.2015 to the petitioner.

18. The Writ Petition is accordingly allowed.

There shall be no order as to costs. As a sequel, pending applications, if any, shall stand closed.

//TRUE COPY//

Sd/- M. SRINIVAS
ASSISTANT REGISTRAR
SECTION OFFICER

One Fair Copy to the Hon'ble SRI JUSTICE RAVI NATH TILHARI
(For His Lordship's kind perusal)

One Fair Copy to the Hon'ble SRI JUSTICE NYAPATHY VIJAY
(For His Lordship's kind perusal)

To,

1. The General Manager, South Central Railway, Rail Nilayam, Secunderabad.
2. The Chief Rolling and Stock Engineer, South Central Railway Rail Nilayam, Secunderabad.
3. The Divisional Railway Manager, South Central Railway Rail Nilayam, Secunderabad.
4. The Additional Divisional Railway Manager, South Central Railway Vijayawada Division, Krishna District.
5. The Sr. Divisional Mechanical Engineer, South Central Railway Vijayawada Division, Krishna District.
6. One CC to SRI M R S SRINIVAS Advocate [OPUC]
7. One CC to SRI MALLAMPALLI SRINIVAS (CENTRAL GOVT COUNSEL) [OPUC]
8. 9 L.R. Copies.
9. The Under Secretary, Union of India, Ministry of Law, Justice & Company Affairs, New Delhi.
10. The Secretary, A.P. High Court Advocates Association, High Court of A.P. at Amaravati, Guntur District.
11. Three CD Copies

Madhu

HIGH COURT

DATED:23/07/2024

ORDER

WP.No.16044 of 2009



**ALLOWING THE WP
WITHOUT COSTS**