
(2006) 01 AP CK 0064
In the Andhra Pradesh High Court
Case No : Writ Petition No. 26530 of 2005

A. Peddanna

APPELLANT

Vs

Divisional Security Commissioner, Railway Protection Force

RESPONDENT

Date of Decision : 30-01-2006

Acts Referred:

Railway Protection Force Rules, 1987 — Rule 146.4
Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 —
Section 3(1)

Citation : (2006) 2 ALD 560 : (2006) 4 ALT 631 : (2006) 109 FLR 784

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : D. Linga Rao, for the Appellant; Ashok Kumar, SC, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioner is working as Head Constable in the Railway Protection Force (RPF), in the Guntakal Division. He filed this writ petition for issuance of writ of mandamus declaring the initiation of disciplinary proceedings against him, vide Memo dated 21.9.2005, issued by the respondent herein, as arbitrary and illegal. The facts that gave raise to the filing of this writ petition, are as under:

2. The Station House Officer, Narpala Police Station of Anantapur District, registered Crime No. 44 of 2001 against the petitioner, alleging that he has abused the Daliths, named in the First Information Report, with reference to their caste, and thereby committed an offence punishable u/s 3(1)(x) of the Scheduled Caste/Scheduled Tribe (Prevention of Atrocities) Act, 1989 (for short "the Act"). The same has been taken up as P.R.C. No. 154 of 2001 on the file of the Additional Judicial Magistrate of First Class, Anantapur.

3. Alleging that the petitioner did not attend the Court on the due date, the trial Court is said to have issued a non-bailable warrant against the petitioner on 21.1.2005. The Station House Officer addressed a letter, narrating the said facts,

to the respondent herein, and it was received by the respondent on 7.1.2005. Thereafter, the petitioner was taken into judicial custody on 22.1.2005 and was released on bail on 3.2.2005.

4. In view of the above, the respondent placed the petitioner under suspension on 24.1.2005. Three months thereafter, the respondent reviewed the matter and passed an order dated 27.4.2005 reinstating the petitioner into service. The impugned charge memo is issued, proposing to conduct departmental proceedings, on a charge that the petitioner had acted in a manner that has resulted in disrepute to the R.P.F.

5. The petitioner contends that the criminal case filed against him is still pending trial, and if he is required to defend himself in the departmental proceedings, it would result in prejudice to him.

6. In the counter-affidavit filed by the respondent, the circumstances that led to the initiation of disciplinary proceedings are narrated. It is stated that Rule 146.4 of Railway Protection Force Rules, 1987 (for short "RPF Rules") is attracted, inasmuch as the petitioner has brought disrepute to the RPF, by having been subjected to judicial custody for a period of eleven days. It is further contended that there is no bar for the administration to initiate disciplinary proceedings even while the criminal case is pending. The very involvement of the petitioner in a criminal case for the offence punishable u/s 3(1)(x) of the Act is said to have resulted in discredit to the reputation of the RPF.

7. Sri D. Linga Rao, learned Counsel for the petitioner submits that there is absolutely no basis for the respondent to initiate disciplinary proceedings against the petitioner, particularly when the criminal case is pending. He contends that the petitioner was taken into judicial custody only after obtaining permission from the respondent, and in fact, an order of suspension was passed against the petitioner. He contends that when the respondent was very much convinced that the petitioner deserves to be reinstated, it cannot be said that the petitioner has brought disrepute to the RPF, at a time when the criminal case is pending.

8. Sri J. Ashok Kumar, learned Standing Counsel for the respondent, on the other hand, submits that the purport of disciplinary proceedings initiated through the impugned Memo is different from the one in the criminal case. According to the learned Standing Counsel, the respondent is not required to await the outcome of the criminal case, and the facts, which are on record, as of now, are sufficient to proceed with the departmental enquiry.

9. The charge levelled against the petitioner through the impugned Memo reads as under:

Head Constable A. Peddanna, No. 454 working in Divisional Reserve/Guntakal was arrested by local police/Narpala on 21.1.2005 at Guntakal. A case in Crime No. 44/2001 u/s 3(1)(x) of SC/ST Prevention of Atrocities Act 1989 was registered against him at Narpala Local Police Station of Anantapur District on

26.4.2001 since he had abused daliths at SC, ST Colony, Narpala Village. He was in judicial custody from 22.1.2005 and was released on bail on 3.2.2005.

Being a member of the Armed Force, he has not conducted properly and brought discredit to the reputation of the Force by violating Rule No. 146.4 of PRF Rules, 1987.

Hence the charge.

10. The petitioner was alleged to have abused certain daliths in the name of their caste. The criminal proceedings initiated against the petitioner on that allegation are pending adjudication before the trial Court.

11. It is true that in the charge levelled against the petitioner in the departmental proceedings, emphasis is upon the disrepute caused to the RPF on account of the nature of allegations being faced by the petitioner in the criminal proceedings. However, the basis for such an allegation is ultimately, the very involvement of the petitioner in a crime punishable u/s 3(1)(x) of the Act, which in turn was specifically mentioned in the charge framed in the departmental proceedings. The petitioner can be said to have resorted to the misconduct as indicated in the charge, if only a finding is recorded to the effect that he has abused certain individuals in the name of their caste. Without such a finding, the charge against the petitioner cannot at all be sustained.

12. In the departmental proceedings, it is but natural that the petitioner has to plead certain facts, touching upon the truth or otherwise of the allegation that he has abused certain individuals in the name of their caste. This exactly is the subject-matter of the criminal proceedings pending against him. Any stand taken by the petitioner in the departmental proceedings touching on this aspect, would have a direct bearing on the criminal proceedings pending against him.

13. There is a predominant legal authority in the form of precedents, both for and against the continuance of the departmental proceedings, where the purport of the charge is almost akin to the one in the criminal proceedings. The underlying principle of such precedents is that irrespective of the similarity or identity of the charge in both sets of proceedings, the requirement of law is that the delinquent-employee must not be required to reveal the defence, available to him in the criminal proceedings, in the departmental proceedings. Viewed from that angle, it becomes evident that requiring the petitioner to respond to the charge contained in the impugned memo would invariably require him to reveal his defence, which he may take in the criminal proceedings. This naturally would result in prejudice to him.

14. The matter can be examined from another angle also. If the charge levelled against an employee, be it in criminal or departmental proceedings, is so serious, the department cannot be burdened with having the employee on its rolls, till the criminal proceedings are concluded. In such a case, suspension pending enquiry is resorted to. There may be instances, where continuance of an employee under

suspension would result in financial burden, and the gravity of the charges does not enable the appointing authority to reinstate such an employee into service, before the criminal proceedings are concluded. In the instant case, the petitioner was placed under suspension, the moment he was taken into judicial custody. The respondent reviewed the case within three months thereafter and has chosen to reinstate the petitioner, obviously on being satisfied that it is not in the interest of the RPF to continue the petitioner under suspension. Therefore, it cannot be said that there is any imminent necessity for the RPF to initiate departmental proceedings against the petitioner on the allegation that he has committed a crime punishable u/s 3(1)(x) of the Act.

15. For the foregoing reasons, this Court is of the view that the respondent cannot proceed with the disciplinary proceedings, at this stage. The writ petition is accordingly allowed directing that the respondent shall defer further steps in pursuance of the impugned Memo dated 21.9.2005 till the criminal case filed against the petitioner is decided. There shall be no order as to costs.