

**(1975) 03 AP CK 0002**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 5175 of 1973**

G. Papaiah

APPELLANT

Vs

Assistant Director, Medical Services, Secunderabad

RESPONDENT

**Date of Decision : 19-03-1975**

**Acts Referred:**

Constitution of India, 1950 — Article 226, 311

**Citation : AIR 1976 AP 75**

**Hon'ble Judges : Kondaiah, J**

**Bench : Single Bench**

**Advocate : A.C. Lakshmanachar, for the Appellant; K. Subrahmanya Reddy, for the Respondent**

## **Judgement**

1. This application by the petitioner, a Chowkidar at Station Health Organisation, Golconda, under Art. 226 of the Constitution of India, is to quash the Order No. 4565/P/M-3 dated 3-8-1973 passed by the Assistant Director of Medical Services, Headquarters, Andhra (Indep) Sub-Area, Secunderabad, the respondent herein, withholding his increment for one year, on several grounds.

2. Mr. A. Lakshmanachar, the learned counsel for the petitioner, contends that the impugned order is not a speaking order and it is violative of principles of natural justice as his client was not supplied with a copy of the report of the Enquiry Officer and copies of some other material documents in spite of his requesting for the same. He further urges that charge No. 2 relating to the unauthorised absence of the petitioner from duty from 16th May to 25th May, 1973 is not sustainable in view of the fact that extraordinary leave has been granted by the concerned authority on 18-6-1973 itself and in any event, the first charge relating to misbehaviour of the petitioner on 16th May, 1973 is in conflict with charge No. 2 and therefore, the impugned order must be quashed.

3. The claim of the petitioner is resisted by the learned Standing Counsel for the Central Government contending inter alia that a copy of the report of the Enquiry Officer need not be given to the petitioner, as the respondent has followed the

procedure prescribed under Rule 15(3) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, and no second notice relating to the proposed punishment need be given. He states that the impugned order is not violative of principles of natural justice nor it is laconic and the respondent is empowered and also justified in passing the impugned order and there is no conflict between the two charges and the second charge also is maintainable as the granting of extraordinary leave for the period does not prevent the disciplinary authority from framing the charge No. 2 and passing the impugned order.

4. In order to appreciate the respective contents of the parties, it is not only profitable but necessary to notice the two main charges framed by the Enquiry Officer against the petitioner as indicted in page 4 of the counter-affidavit and they read thus :--

"ANNEXURE"

Statement of articles of Charge framed against Sri g. Papaiah, Chowkidar S.H.O. Golconda.

"That the said Shri G. Papaiah, Chowkidar while functioning as Chowkidar in S.H.O. Golconda, behaved in a manner prejudicial to the Government Servants Conduct Rules on 16th May, 1973 at 12-00 hours while reporting for duty.

"ANNEXURE-II" The individual in spite of his assurance that he was joining duty on 16-5-1973 and having been put on duty, did not come for duty."

The Enquiry Officer, after examining a number of witnesses and documents, submitted his findings, conclusions and recommendations in his report dated 21-7-1973. He gave salient findings and summary of his enquiry in the report and arrived at the following conclusion and made recommendations as follows:-

(1) No. MES 410323 Civ, Chowkidar Sri G. Papaiah of S.H.O. Golconda has been found guilty of all the charges framed against him.

(2) In addition, his character and personality (as pointed descriptively in summary) has taken a turn towards indiscipline, lacking devotion to duty, developing imaginary fear thus prejudicing himself to all his superiors and firmly believing in violence also.

(3) It is recommended that he be given some suitable documentary punishment for records and given a final warning to rectify himself of all the weak and bad points."

The respondent, who is the disciplinary authority has passed the impugned order on 3-8-1973 which reads thus :

"After a careful examination of the disciplinary case of Civilian Chowkidar of S.H.O. Golconda Shri G Papaiah, the undersigned is satisfied that the said Sr. G. Papaiah is guilty of the charges levelled against him vide charge-sheet dated

18th June, 1973.

2. Now, therefore, the undersigned being the appointing authority and authority empowered to award penalty do hereby order that the said Sri G. Papaiah is awarded the punishment of withholding his increment for one year. I, further direct that this withholding of increment will have the effect of postponing his future increments on expiry of the period for which his increment is withheld."

From a perusal of the impugned order, it is clear that the disciplinary authority did not accept the recommendation of the Enquiry Officer to award "suitable documentary punishment for records" and give "a final warning to rectify himself of all the weak and bad points". But instead, the disciplinary authority has withheld the increment of the petitioner for one year and such withholding of the increment will have the effect of postponing his future increments on expiry of the period for which his increment is withheld. The disciplinary authority, while passing an order imposing a penalty on a Government servant, is exercising quasi-judicial powers. The quasi-judicial orders must be speaking orders. The disciplinary authority must apply its mind to the entire facts and circumstances and record valid and justifiable reasons or grounds in support of its conclusion. See *The State of Punjab and Others Vs. Bakhtawar Singh and Others*, . The impugned order imposing the penalty of withholding the increment of the petitioner for one year and also directing the postponement of his future increments is not an administrative or executive order but it is a quasi-judicial order and therefore, must be a speaking one. On a perusal of the impugned order it does not appear to be a speaking one. The contention of the respondent's counsel that the respondent has accepted the report of the Enquiry Officer in tot and, therefore, he did not give any reasons cannot be acceded to. As pointed out earlier, the Enquiry Officer had recommended the awarding of only documentary punishment for records and a final warning but the respondent has awarded the punishment of withholding the petitioner's increment for one year and also directed that this withholding of increment should have the effect of postponing his future increments on expiry of the period for which his increment is withheld. He did not give any reasons why he did not accept the recommendations of the Enquiry Officer or in support of his decision to award the aforesaid punishment. The submission of the learned Standing Counsel for the Central Government that the disciplinary authority has satisfied itself that the petitioner was guilty of the charges levelled against him and, therefore, there is no illegality or want of jurisdiction justifying the interference of this Court, is also, devoid of any merit. The satisfaction of the disciplinary authority about the guilt or otherwise of the Government servant for the charges levelled against him must be an objective but not subjective satisfaction. On a reading of the impugned order, I am satisfied that the respondent has not applied his mind to the entire material facts and circumstances of the case in arriving at a conclusion about the truth or otherwise of the charges levelled against the petitioner. I do not also find any force in the further submission of the respondent's counsel that the impugned order has been passed by a Military Officer and the punishment is

not severe. In fact, the impugned order has been passed by the Assistant Director of Medical Services, Headquarters, Andhra (Indep) Sub-Area, Secunderabad. Irrespective of the fact whether the order has been passed by a Military Officer or a civilian authority, it must be in accordance with law as it affects the rights of a citizen.

5. I shall now advert to the question relating to the violation of principles of natural justice. In paragraph 9 of the Writ petition, the petitioner has stated that he was not given an opportunity to engage a counsel and submit his case properly and when he asked for copies of the proceedings they were refused. In the counter filed on behalf of the respondent this averment in paragraph 9 of the writ petition has not been controverted. On a consideration of the facts and circumstances, I am satisfied that this is a fit case where a copy of the Enquiry Officer's report must have been supplied to the petitioner in the interest of justice. The petitioner must be given a reasonable opportunity to meet the case of the department relating to the charges levelled against him and in the circumstances of the case, the report of the Enquiry Officer is really essential for the petitioner to establish his defence version. See *State of Maharashtra Vs. Bhaishankar Avalram Joshi and Another*, . From the averment in paragraph No. 9 of the writ petition and in view of the fact that there is no counter of the respondent, I must conclude that a copy of the Enquiry Officer's report though requested for, was not supplied to the petitioner. Hence, I hold that the impugned order is also violative of principles of natural justice.

6. This brings me to examine the question whether charge No. 2 relating to the absence of the petitioner from duty for the period commencing from 16th May, 1973 and ending with 29th May, 1973 is maintainable. Admittedly the Major Officer, Commanding, by his Order No. SHO/125/A/93 dated 18-6-1973, granted ten days' E.O.L from 16th May, 1973 to 25th May, 1973 (both days inclusive) to the petitioner to regularise his intentional absence for the period. I am unable to agree with the learned counsel for the respondent that notwithstanding the grant of the extraordinary leave to the petitioner, he can be proceeded against for his absence from duty for that period. Whether it is an extraordinary leave, ordinary leave, leave on pay, leave on half pay, medical leave or casual leave, nonetheless it is a leave. The kind or nature of leave is not material but the substance of the matter is that the petitioner was granted leave. When once leave is granted to a public servant, in respect of a particular period, it must be considered that he is permitted to absent himself from duty for that period. In such a case, it is not permissible or open to the employer or any other authority to proceed against the public servant for absentsing from duty for the same period and punish him. The employer, either private or public cannot blow hot and cold. The authorities should have refused to grant leave of any kind to the petitioner and then proceeded to punish him after due and proper enquiry and after affording reasonable opportunity to him. When once leave has been granted, it cannot be said that the petitioner has absented himself from duty and thereby made himself liable to be punished. Hence, the second charge relating to the absence

of the petitioner from duty from 16th May, 1973 to 25th May, 1973, both days inclusive, is not sustainable. I may add that the very order granting extraordinary leave states that such leave has been granted to regularise the petitioner's intentional absence for the period. The very purpose of granting the leave being to regularise the petitioner's intentional absence, it is not open to the respondent to initiate any proceedings against the petitioner for his absence from duty for that period. Judged from any angle, the second charge must be quashed as it is not sustainable.

7. The further submission of the petitioner's counsel that charge No. 1 is in conflict with charge No. 2 and it must also fall to the ground, need not be gone into, although I feel that there is considerable force in that submission.

8. For all the reasons stated above, the impugned order must be and is hereby quashed in respect of stoppage of increment only. The other part of the order relating to his transfer shall stand. The Writ Petition is allowed with costs. Advocate's fee Rs. 100.

9. Petition partly allowed.