
(1998) 02 AP CK 0008

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1210 of 1998

K. Sukhender Reddy

APPELLANT

Vs

State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 10-02-1998

Acts Referred:

All India Services (Discipline and Appeal) Rules, 1969 — Rule 3(1), 3(3)
Penal Code, 1860 (IPC) — Section 120B, 406, 420, 469

Citation : (1998) 2 ALD 430 : (1998) 3 ALT 260

Hon'ble Judges : D. Reddeppa Reddy, J;A. Hanumanthu, J

Bench : Division Bench

Advocate : Mr. Noothy Rama Mohan Rao, for the Appellant; Advocate-General, for the Respondent

Judgement

A. Hanumanthu, J.—This writ petition has been filed by the petitioner K. Sukhender Reddy, a conferred Member of the I.A.S. in the State of Andhra Pradesh Cadre, questioning the order dated 23-6-1997 passed by the Central Administrative Tribunal, Hyderabad Branch in O. A.No.640/97 on its file.

2. Anakapalle Town Police Station registered a case in Cr.No.327/96 against an Advocate by name Pothi Naidu and others for the offences punishable under Sections 406, 469, 420 r/w. Section 120B IPC. This case is popularly known as "Yeleru Scam". The C.I.D. took up investigation in the said case. The offences mentioned in the said crime were committed prior to 1996 and the petitioner herein was working as the Joint. Secretary to the Government of A.P. at the relevant time., in Irrigation and Command Area Development Department. Secretariat, Hyderabad. The investigation by the C.I.D. revealed that the petitioner Sukhender Reddy played a crucial role through series of acts of commissions and omissions which resulted in funds being released on priority basis to the advantage of the main accused Pothi Naidu, thereby causing wrongful loss to the Government and wrongful gain to the accused involved in this case. Hence, a report was submitted to the Government of A.P. The 1st

respondent (State of A.P.) having found the petitioner, prima facie, involved in the said offences, placed the petitioner under suspension by the order, dated 6-2-1997 (G.O.Rt.No.700 GAD SC-D Department), by invoking Rule 3(1) of All India Services (Discipline and Appeal) Rules, 1969. (For short the Rules 1969). Thereafter, finding that the suspension of the petitioner under Rule 3(1) of the Rules 1969 was not proper, the 1st respondent by its order dated 12-3-1997 (G.O.Rt.No.1217 General Administration SC-D Department) placed the petitioner under suspension by invoking Rule 3(3) of the Rules, 1969. Challenging the said order dated 12-3-1997 suspension, the petitioner filed O.A.No.640/97 on the file of the Central Administrative Tribunal at Hyderabad alleging that the said order of suspension is illegal and contrary to law, that there is no criminal charge framed against him, that his name does not find place in the First Information Report in Cr.No.327/96 of Anakapalle Town Police Station and that unless the charges are framed and communicated to a Member of an All India Service, he cannot be placed under suspension under Rule 3(3) of the Rules, 1969. The 1st respondent resisted that application and filed a counter denying all the allegations made by the petitioner. The 1st respondent also pleaded that it was brought to its notice by the Investigating Agency that the petitioner had committed serious irregularities like release of funds for the land acquisition, suppressing the connected files, circulating altogether a different file showing selectivity in circulating the files without properly examining the files, processing the same for enhanced compensation amounts, showing extraordinary interest in the matters of the accused and that the petitioner was placed under suspension in the public interest. On a consideration of the submissions made by the Counsel on either side, and after perusing the necessary record submitted by the 1st respondent, the Central Administrative Tribunal, Hyderabad by its order dated 23-6-1997 dismissed that O.A. holding that the suspension of the petitioner is neither arbitrary nor unjustified. While dismissing that O.A., The Central Administrative Tribunal gave liberty to the petitioner herein to prefer an appeal to the Central Government against the impugned order, dated 12-3-1997. Accordingly, the petitioner preferred an appeal to the Government of India in the Department of Personnel and Training and the said appeal was dismissed by the Government of India by the order dated 23-9-1997. Thereafter, the petitioner has filed this writ petition on 19-1-1998 questioning the order dated 23-6-1997 of Hon''ble Central Administrative Tribunal Hyderabad Branch in O.A.No.640/97.

3. Heard the learned Counsel for the petitioner, Sri Noothi Rain Mohan Rao and the learned Advocate-General for the respondents.

4. Sri Noothi Ram Mohan Rao, the learned Counsel for the petitioner vehemently contended that there is no prima facie evidence against this petitioner for the commission of the alleged offences, that the 1 st respondent has not applied its mind while placing the petitioner under suspension, that the petitioner herein is not the concerned decision making authority for release of funds, that he was only an intermediary Officer, who had submitted the file to the higher ups for sanction and release of funds and that the 1st respondent has singled out the

petitioner and placed him under suspension and at that time of his suspension, he was not working in the Secretariat and that there are no justifiable reasons to continue the petitioner under suspension.

5. The learned Advocate-General submitted his arguments in support of the impugned order." Also, as per the direction of this Court, he made available the report of investigation in Cr.NO.327/96 of Anakapalle Town Police Station and also the photostat copy of the note file relating to the release of the amount in question.

6. It is not disputed that the petitioner was working as the Joint Secretary in the Irrigation and Command Area Development Department, Secretariat, Hyderabad at the time of the commission of the alleged offences. It is also not disputed that he also recommended for the release of the additional funds to meet the decrees passed in the land acquisition cases relating to Yeleru Project. During the course of investigation, the complicity of the petitioner in those cases has come to light and therefore, the 1 st respondent placed him under suspensioa Normally, when an appointing authority or the disciplinary authority seeks to suspend an employee, pending enquiry or contemplating enquiry or pending investigation into grave charge of misconduct or defalcation of funds or serious acts of commissions or omissions," the order of suspension would be passed after taking into consideration the gravity of the misconduct sought to be enquired into or investigated and the nature of evidence placed before the appointing authority and on application of mind by the disciplinary authority. Appointing authority or disciplinary authority should consider the above aspects and decide whether it is expedient to keep an employee under suspension pending afore-said action. It should not be as an administrative routine or an automatic order to suspend an employee. It should be on consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The Court or the Tribunal must consider each case on its own facts. Suspension is not a punishment but is only one of forbidding or disabling an employee to discharge the duties of an office or post held by him. In other words, it is to refrain him to avail further opportunity to perpetrate the alleged misconduct or to remove the impression among the members of service that dereliction of duty would pay fruits and the offending employee could get away even pending enquiry. It is also to prevent an opportunity to the delinquent officer to scuttle the inquiry or investigation or to win over the witness or to cause impediment to the progress of the investigation or inquiry. (Vide: State of Orissa Vs. Bimal Kumar Mohanty, . It is also well settled that whether the employees should or should not continue in their office during the period if inquiry, is a matter to be assessed by the authority concerned and ordinarily, the Court should not interfere with the orders of suspension unless they are passed mala fide and without there being even aprima facie evidence on record connecting the employees with misconduct in question. (Vide U.P. Raj''ya Krishi Utpada! Mandi Parishad v. Sanjeev Rajan 1993Suppl.(3)SCC483).

7. In the instant case, on perusal of the investigation report of the Additional Director General of Police, C.I.D., A.P. it cannot be said that there is no prima facie evidence against the petitioner.

In Para 3 of that report, it is observed thus :

"Our enquiries revealed that SriK. Sukhender Reddy played a crucial role through series of acts of commissions and omissions which resulted in funds being released on priority basis to the advantage of the main accused. P. Pothi Naidu, thereby causing wrongful loss to the Government and wrongful gain to the accused involved in this case.""

8. On a consideration of the report of investigation, the 1 st respondent came to the conclusion that the petitioner by his acts of omissions and commissions facilitated huge funds being released on priority basis to the advantage of the main accused in this case, it cannot, therefore, be said that the 1st respondent has not applied its mind while placing the petitioner under suspension. There is also nothing on record to infer that the order of suspension has been passed mala fide. No conclusions to the contrary to be drawn by this Court at this stage.

9. As regards the contention raised by the learned Counsel for the petitioner that the petitioner is only an intermediary officer in processing the file to the higher ups and that he is not the decision taking authority in the release of funds and that he had simply approved the file as it was circulated to him by the Assistant Secretary, it is no doubt true that as per the procedure contained in A.P. Secretariat Manual, the file will be processed and passed through many hands. But, it does not mean the petitioner who was a responsible officer working in the cadre of Joint Secretary should mechanically approve the office notes submitted by his subordinates, more so, when it involves the release of huge funds. He must use his discretion particularly where the financial interests of the State are involved.

10. There is no substance in the contention of the learned Counsel for the petitioner that the petitioner's name does not find place in the First Information Report issued in this case. It is common knowledge that in cases of this type, the names of all the culprits involved in the commission of the offences do not find place in the F.I.R It is only during the course of investigation, the complicity of this petitioner has to come to light. Whether the petitioner was involved or not in the commission of the offence has to be decided after taking into consideration the entire evidence and documentary proof during the trial only. The charges levelled against the petitioner are that he wilfully suppressed the files, withheld the relevant files and released the funds, etc. The truth or otherwise of these charges will be known only after completion of the trial. On a consideration of the material on record, we find no basis to hold that there is no prima facie material against the petitioner. Thus, we do not find any reason to interfere with the impugned order.

11. In the result, we do not find any" merits in the petition. Hence, the petition is

dismissed.

12. However, before parting with the case, we cannot but express our anguish over the indecision of the top bureaucrats leading to the release of a huge sum of five crores from the State Exchequer, the sequence of which is as follows:

A representation by a group of ML. As. addressed to the Hon''ble Chief Minister of Andhra Pradesh making serious allegations against many highly placed officials and others in connection with the payment of exorbitant compensation for the lands acquired for Yeleru Reservoir Project was received in the Chief Minister's Peshi on 29-2-1996. It was merely circulated to the Chief Secretary on 29-2-1996 for his perusal. It does not appear that it was even placed before the Hon''ble Chief Minister. The Chief Secretary having seen the representation, made an endorsement on the same day to examine the matter. But there appears to be no examination or enquiry as to the truth or otherwise of the allegations made in the representation. Also no action seems to have been taken to file appeals or pursue the appeals already filed in the High Court and seek stay of decrees or execution petitions. Instead, relevant files started flying from Section to Section or from one Secretary to another, with a query to find out whether the sanctioned amount of Rupees five crores under G.O.Ms.No.66, dated 1-2-1996 has been released or not. In this process, apart from petitioner, senior officers like Principal Secretary, Irrigation and Command Area Development, Principal Secretary (Works and Projects-Wing), Principal Secretary (Finance) and Secretary (Projects) had an occasion to deal with the matter more than once during the period from 4-3-1996 to 9-4-1996. It is clearly borne out by the file that LOC of Rs.5 crores was released only on 12-4-1996. Thus, there was enough time and opportunity to the above referred senior officers to order stoppage of the release of funds. Yet, nobody ever thought of issuing instructions to do the same. The result was, the amount was released without taking any decision on the allegations made in the representation submitted by a group of ML. As. It is, thus, prima facie, evident that some senior officers failed to do what they ought to have done to safeguard the interest of the State. We are sure, they owe an obligation to explain their lapses to the Government, which we hope and trust would take appropriate action against all the erring officials.

13. Registry is directed to send a copy of this order to the Chief Secretary to initiate necessary action in the matter.