
(2008) 03 AP CK 0038
In the Andhra Pradesh High Court
Case No : Writ Petition No. 3766 of 2007

S.A. Basha

APPELLANT

Vs

The Divisional Security Commissioner, Railway Protection
Force, S.C. Railway, Guntakal Divn and Another

RESPONDENT

Date of Decision : 10-03-2008

Acts Referred:

Railway Protection Force Rules, 1987 — Rule 146.1, 146.4, 147.1
Railway Services (Conduct) Rules, 1966 — Rule 3

Citation : (2008) 4 ALD 700 : (2008) 4 ALT 422 : (2008) 119 FLR 844

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : J.M. Naidu, for the Appellant; A. Krishnam Raju, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioner is working as Inspector in the Railway Protection Force. On 14.6.2006, he was arrested in Crime No. 7 of 2006, on the file of P.S. Yadgir of Karnataka State. On the same day, he was placed under suspension. Subsequently, the petitioner was reinstated into service on 28.7.2007. The 1st respondent issued charge sheet, dated 21.11.2006, stating that the petitioner is guilty of serious misconduct in discharging his duties, inasmuch as he has been arrested on 14.6.2006, on account of his involvement in Crime No. 7 of 2006, and that he was in judicial custody from 14th to 19th June 2006. The petitioner challenges the charge sheet. He contends that when the sole basis for the departmental proceedings is a case registered in a criminal court, he cannot be expected to reveal his defence in the departmental proceedings, and that such a course would offend his fundamental rights, guaranteed under the Constitution of India.

2. On behalf of the respondents, a counter affidavit is filed, denying the allegation of the petitioner. It is stated that apart from registration of a crime, certain acts and omissions, on the part of the petitioner, were noticed in relation

to recovery of some stolen articles. It is urged that there is no overlapping between the departmental proceedings and those, in Crime No. 7 of 2006.

3. Heard Sri J.M. Naidu, learned Counsel for the petitioner. Sri A. Krishnam Raju, learned Counsel for the respondents, submits that the enquiry officer has since submitted the report and that the proceedings are at the final stage.

4. The only charge framed against the petitioner reads as under:

Sri S.A. Basha, Inspector/CIB/GTL (under suspension) is hereby charged with for violation of duty as a Railway servant and conducted serious misconduct in discharging of duty as Inspector/RPF/RC Post in that he has been arrested on 14.6.2006 for having involved in RC Post RP (UP) Act Crime No. 07/2006 and was in judicial custody at Yadgir from 14.6.2006 to 19.6.2006. Thus he has acted in a manner pre-judicial to discipline and conducted himself in a manner, which is reasonably likely to bring discredit to the reputation of the Force.

Being a senior most member of the Force and Railway servant he has violated his duty and acted in a manner most irresponsibly and failed to maintain absolute integrity and violated the Rule No. 146.1, 146.4, 147.1 of RPF Rules, 1987 and Rule No. 3(i) of Railway Services (Conduct) Rule, 1966.

5. From this, it is evident that the arrest of the petitioner, for his involvement in Crime No. 7 of 2006, constitutes the sole basis for framing a charge. Though in the statement of allegations, certain facts leading to registration of Crime No. 7 of 2006 are mentioned, the fact remains that the same did not constitute the basis for the charge.

6. It is true that depending on the content of the charge, it is permissible for an employer to proceed with the departmental proceedings, even while trial into the related charges in a criminal court is pending. Where, however the sole basis of a charge in the departmental proceedings is the pendency of criminal case, or the charge made therein, the disciplinary authority cannot proceed with the further steps. The reason is that such a course would compel the employee, to reveal his stand in the departmental proceedings, even while the trial against him in the criminal court is pending. Identical issue arose before this Court in W.P. No. 26530 of 2005. In the judgment, dated 30.1.2006, this Court held as under:

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. 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.

7. The present case stands on the same footing. The respondents can resume the further steps, in the present set of proceedings, depending on the outcome of the Crime No. 7 of 2006, on the file of P.S. Yadgir.

8. Hence, the writ petition is allowed, directing that the further steps, in pursuance of the impugned charge sheet, shall be deferred by the respondents, till the disposal of the matter in relation to Crime No. 7 of 2006 of P.S. Yadgir, and the nature of steps to be taken by the respondents, would depend on the outcome of the said case. There shall be no order as to costs.