

(2015) 06 KAR CK 0113

In the Karnataka High Court

Case No : Writ Petition No. 203142/2015 (S-KAT)

Sangappa P. Hosamani

APPELLANT

Vs

The State of Karnataka and Others

RESPONDENT

Date of Decision : 24-06-2015

Acts Referred:

Citation : (2015) 06 KAR CK 0113

Hon'ble Judges : H. Billappa, J;K.N. Phaneendra, J

Bench : Division Bench

Advocate : Mahesh Patil, for the Appellant

Final Decision : Allowed

Judgement

H. Billappa, J.

1. The petitioner has called in question the order dated 27.01.2015 passed by the Karnataka Administrative Tribunal, Bangalore, in Application No. 3408/2011.

2. By the impugned order, the Karnataka Administrative Tribunal, Bangalore, has dismissed the application filed by the petitioner challenging the order dated 19.11.2010 passed by the 4th respondent imposing punishment of compulsory retirement from service.

3. Aggrieved by that, the petitioner has filed this writ petition.

4. Briefly stated the facts are; The petitioner was working Head Constable in Gulbarga District Unit. The disciplinary proceedings were initiated against the petitioner by issuing charge memo dated 11.03.2010 alleging unauthorised absence for duty from 29.11.2009 to 29.01.2010. The petitioner denied the charge. Inquiry was held and the Inquiry Officer concluded that the charge is proved. Thereafter, the disciplinary authority by order dated 19.11.2010 has imposed punishment of compulsory retirement from service. Aggrieved by that, the petitioner approached the Karnataka Administrative Tribunal in Application No. 3408/2011. The Karnataka Administrative Tribunal, Bangalore, by its order

dated 27.01.2015 has dismissed the application. Therefore, this writ petition.

5. The respondent No. 4 has filed statement of objections contending that the petitioner remained absent for duty unauthorisedly from 29.11.2009 to 29.01.2010 and previous conduct was also taken into consideration. The punishment imposed is reasonable and therefore, it does not call for interference.

6. The learned counsel for the petitioner contended that the impugned order cannot be sustained in law. He also submitted that the petitioner remained absent for duty from 29.11.2009 to 29.01.2010 due to his ill health. The petitioner has produced medical certificate. The doctor was examined in the inquiry. Neither the inquiry officer nor the disciplinary authority have considered it properly. The disciplinary authority has imposed punishment of compulsory retirement which is totally incorrect. He placed reliance on the decisions of the Hon''ble Supreme Court in the case of KRUSHNAKANT B. PARMAR v. UNION OF INDIA and ANR in CIVIL APPEAL NO.2106 OF 2012 and SHRI BHAGWAN LAL ARYA v. COMMISSIONER OF POLICE DELHI and ORS in APPEAL (CIVIL) NO. 1625 OF 2004.

7. As against this, the learned Government Advocate submitted that the petitioner was working as Head Constable and he remained absent for duty unauthorisedly from 29.11.2009 to 29.01.2010. The petitioner was required to adhere to discipline being a Head Constable. He remained absent for duty unauthorisedly. Therefore, the punishment imposed by the disciplinary authority is justified in law and it does not call for interference.

8. We have carefully considered the submissions made by the learned counsel for the parties.

9. It is relevant to note it is not in dispute that the petitioner remained absent for duty from 29.11.2009 to 29.01.2010. The petitioner has contended that it was due to his ill-health he remained absent for duty. The petitioner has produced medical certificate as per annexure-A2. In the enquiry, the doctor has been examined. The medical certificate shows that the petitioner was suffering from infective hepatitis and he was required to take rest from 29.11.2009 to 29.01.2010. The doctor has deposed that he treated the petitioner and advised rest for 62 days. The inquiry officer has concluded that the charge is proved. The disciplinary authority stating that the petitioner should have met the senior officer and took his permission and that he should have responded to the notice and explained his condition and the cause shown cannot be accepted has imposed punishment of compulsory retirement from service. The Karnataka Administrative Tribunal has dismissed the application stating that adherence to discipline is essential among the government employees to discharge their duties efficiently and need for discipline in police force is all the more essential.

10. The Hon''ble Supreme Court in the case of SHRI BHAGWAN LAL ARYA v. COMMISSIONER OF POLICE DELHI and ORS in APPEAL (CIVIL) NO. 1625 OF 2004 disposed of on 16.03.2004 has observed as follows:

"The disciplinary authority without caring to examine the medical aspect of the absence awarded to him the punishment of removal from service since their earlier order of termination of appellant's service under Temporary Service Rules did not materialise. No reasonable disciplinary authority would term absence on medical grounds with proper medical certificates from government Doctors as grave misconduct in terms of Delhi Police (Punishment and Appeal Rules, 1980). Non-application of mind by quasi-judicial authorities can be seen in this case. The very fact that respondents have asked the appellant for re-medical clearly established that they had received applicant's application with medical certificate. This can never be termed as wilful absence without any information to competent authority and can never be termed as grave misconduct."

11. This aspect has not been considered by the disciplinary authority or the Administrative Tribunal. We would have considered the matter ourselves. But, in the course of proceedings the learned counsel for the petitioner brought to the notice of the Court the order passed by the appellate authority. It is produced along with I.A.III/2015. It shows that the appellate authority has rejected appeal by order dated 06.09.2011 during the pendency of the application before the Administrative Tribunal. It remains unchallenged. Therefore, it is appropriate to remit the matter to Karnataka Administrative Tribunal for reconsideration by permitting the petitioner to challenge the order passed by the appellate authority also.

12. Accordingly, the writ petition is allowed. The impugned order passed by the Karnataka Administrative Tribunal, Bangalore, in Application No. 3408/2011 is hereby set aside. The matter is remitted to the Karnataka Administrative Tribunal, Bangalore for reconsideration with a request to consider the matter expeditiously within the outer limit of three months from the date of receipt of copy of this order, keeping in view that the petitioner is left with only 11 months of service if he succeeds and in the light of the observation made in the course of this order. The petitioner is permitted to challenge the order passed by the appellate authority also.

I.A.III/2015 is disposed of permitting the petitioner to challenge the order of the appellate authority before Administrative Tribunal.