
(2014) 06 AP CK 0132

In the Andhra Pradesh High Court

Case No : Writ Petition Nos. 3236 of 2007 and 25188 of 2013

T. Anila Kiran

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 25-06-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 5 ALD 17 : (2014) 5 ALT 1 : (2014) LabIC 4359

Hon'ble Judges : K.C. Banu, J;Anis, J

Bench : Division Bench

Advocate : Pratyusha Appari, Advocate for the Appellant; P. Vishnuvardhan Reddy, Advocate for the Respondent

Final Decision : Dismissed

Judgement

1. Writ Petition No.3236 of 2007 is filed challenging the order dated 09.11.2006 in Original Application No.257 of 2006 passed by the Central Administrative Tribunal, Hyderabad Bench, Hyderabad (for short, the Tribunal), whereunder and whereby the Tribunal dismissed the said Original Application.

The Original Application was filed seeking to quash the proceedings No.8/149/2003-Vig.II, dated 07.12.2005 of the first respondent, by virtue of which pay of the petitioner was reduced by two stages in the time scale of pay for a period of 3 years with a further direction that the petitioner will earn increments of pay during the period of said reduction and on expiry of such period, reduction will have the effect of postponing her future increments also.

2. Writ Petition No.25188 of 2013 is filed challenging the order dated 12.07.2013 in Original Application No.404 of 2011 passed by the Tribunal, whereunder and whereby the Tribunal dismissed the said Original Application.

The Original Application was filed seeking to declare the action of the respondents in not restoring the scale of pay of the petitioner to its original position on expiry of three years of currency of punishment pursuant to the order

dated 07.12.2005 as illegal and arbitrary and direct the respondents to restore the pay scale of the petitioner to its original position with effect from January, 2009 and based on the same direct the respondents to extend all benefits of revision of pay scale in favour of the petitioner and grant all consequential benefits including arrears of salary, increments and all other service benefits.

3. Since both the Writ Petitions are connected, they are being disposed of, by this Common Order at the request of both the parties.

4. The brief facts that are necessary for disposal of the present Writ Petitions may be stated as follows:

The petitioner was posted as Telecom District Manager (for short, TDM), Srikakulam and she worked in that capacity from 21.08.1998 to 17.02.2002. In the process of road laying/expansion, there was likelihood of good cable line getting damaged or atleast the joints losing efficiency thereby leading to heavy expenses incurred on jointing. The fault detection mechanism had suffered serious change with the development of the technology. The result of such development was the Cable Fault Locators (for short, CFLs) and Low Insulation Fault Locators (for short, LIFLs). The petitioner felt necessary to acquire these equipments to Srikakulam and she was made to believe that the said instrument along with its accessories was proprietary items and consequently there was no necessity for normal procedure of obtaining tenders, etc. The only safeguard which was liable to be taken was to ensure that the prices for these products are not at variance when compared to the prices at which they were procured by other telecom districts. The petitioner ensured that pricing is the same for these instruments and as such placed orders on the firm which was dealing with them.

As per the delegation of financial powers, a TDM has power to sanction and procure items from non-public sector undertakings for a value not more than Rs.2.00 lakhs per each occasion. The prices of the products purchased were ranging from Rs.1,90,000/- to Rs.1,99,000/-. Therefore, the purchases that were made by the petitioner were within her financial limits. These items were procured only when there was a demand from the Divisional Offices and her action cannot be said to be detrimental to the interest of the Department. As many as 11 sub-divisions expressed their need for procurement of such instruments in view of the frequent complaints from the customers and there was progress of National Highway expansion. At the behest of some anonymous complaint, an explanation was called for, to explain her action for procuring certain instruments. A proper explanation was given by her on 21.8.2001. She highlighted that the purchases except on one or two occasions, were made from either Government of India organization or from the Government undertaking. Thereafter, for about one year, there was no action. On 06.09.2002, again she received letter from the Deputy General Manager (Vig.) soliciting detailed remarks with regard to purchases of CFLs, for which she gave an explanation. Not satisfied with the explanation, the first respondent issued a charge memo on 15.09.2003 under Rule 14 of the Central Civil Services (Classification, Control

and Appeal) Rules, 1965 (for short, CCA Rules). The sole charge relates to purchase of CFLs and LIFLs during her tenure, and violation of Rules 103 and 104 of the General Finance Rules, 1963 and Rule 60 of the P&T Financial Hand Book Volume-I and the instructions issued by the DoT Circular letter No.60-8/99-MMS, dated 03.01.2000. The petitioner submitted elaborate explanation to the charge memo and pointed out that there was no irregularity in procuring the items and requested to drop the charges. The General Manager, Telecom District, Vizianagaram was appointed as Enquiry Officer. After completing the enquiry, the Enquiry Officer submitted report on 30.09.2004. Copy of the enquiry report was furnished to the petitioner on 15.12.2004. She gave her comments through her representation dated 27.01.2005. Since the petitioner is a Group-A officer, it is necessary that the second respondent has to be consulted before any penalty is imposed. The disciplinary authority and the second respondent have not considered the factors pointed out by the petitioner, which is evident from the advice rendered by the second respondent. As the order is passed in the name of the President of India and there is no appeal, punishment was challenged before the Tribunal.

5. Learned counsel for the petitioner contended that the petitioner placed an order for procurement of 11 sets of CFL and LIFLs with accessories, by following the procedure and obtained permission from the committee constituted for that purpose; that out of 11 sets of CFL and LIFLs, 8 sets were procured from the Government agencies and 3 sets were obtained through tender process, and the price of the sets procured through tender process is less than the procurement made from the government agencies; that though the Enquiry Officer found that the procurement is obtained at exorbitant rates, the Union Public Service Commission concluded that it is not proved; that once it is found that there is no procurement at exorbitant rate, the question of proving market justification does not arise; that the Enquiry Officer opined that 8 sets were purchased after following due procedure, but only 3 sets were procured violating the procedure; that even if there are violations, price for procurement of said 3 sets is less than the price of the instruments which were procured from the government agencies; that Rule 103 of the General Finance Rules, 1963 contemplates that the purchase shall be made in most economical manner and admittedly, it is not a case of purchase for high prices; that, with regard to allegation that purchase orders were split up in order to avoid necessity of obtaining sanction from higher authority, there cannot be any objection for purchase of 3 sets when there was no objection with regard to procurement of 8 sets in split manner, and that these aspects have not been considered by the Tribunal in right perspective, and hence, he prays to set aside the impugned order and quash the proceedings No.8/149/2003- Vig.II, dated 07.12.2005 of the first respondent.

6. On the other hand, learned counsel representing the Assistant Solicitor General contended that without following the due procedure, in order to avoid prior sanction from the higher authorities, items were split up so as to bring the purview under the financial power of the TDM, and without there being any

market justification, they were obtained from the government agencies and that no tenders were called for, so as to get the articles for competitive prices; that in total disregard to the Rules 103 and 104 of the General Finance Rules, 1963, the procurement has been effected; that after following due procedure, a regular departmental enquiry was conducted and reasonable opportunity was given to the petitioner to participate in the enquiry and also to defend her case through an authorized person; that it is not a case of no evidence at all; that the scope of judicial review is very limited and unless it is a case of no evidence or the punishment shocks conscience of the Court, the order needs no interference by this Court; that after elaborate consideration of all the aspects, the Tribunal rightly dismissed the Original Application and that order needs no interference by this Court.

7. During enquiry, 9 witnesses were examined. It is not a case where principles of natural justice have been violated. Similarly, it is not a case where due opportunity was not given to the petitioner. The enquiry was conducted in accordance with the CCA Rules. The petitioner had taken assistance of a retired Deputy General Manager, and she was given opportunity to defend her case, during enquiry.

8. The specific case of the Department is that the applicant deliberately split up the purchases with a mala fide intention to avoid the necessity of obtaining prior financial sanction of the higher authorities. It is also the case of the Department that the purchases have been made in the absence of any demand, and even from the government agencies, no tenders have been called for. It is also the case of the Department that the findings of the Enquiry Officer, the statutory advice rendered by the Union Public Service Commission and the impugned order imposing the penalty are based upon the evidence on record.

9. After conclusion of the enquiry, the Enquiry Officer is required to prepare a report which is generally referred to, as Enquiry Report. It is well settled that the enquiry report can be challenged in the Courts only on the ground of perversity. A finding is said to be perverse if it is based on no evidence whatsoever or if it is based upon mere suspicion. The evidentiary material must be such that it amounts to guilt of the employee in respect of the charge against her with some degree of definiteness. The conclusion must be based on existent and relevant material. Courts will, however, interfere with the finding, if it is based on misreading of material evidence or is so unreasonable or grossly unjust that no reasonable person can judicially arrive at that conclusion. The factual findings of the disciplinary authority are not open to challenge and the power of judicial review does not extend to examining the correctness or truth of the charges. Interference is permissible only when the charges framed are not made out or the charges are contrary to law. While exercising the powers of judicial review, the court cannot embark upon appreciation of evidence and arrive at a conclusion on its own on the sufficiency of the evidence or on the correctness of the conclusion which is based on such evidence, nor can the order of the

authority be interfered with, on the ground of absence of independent evidence. When the evidence given on behalf of the Department constitutes the charge of misconduct, no interference is called for. In other words, the findings must be based on some evidence.

10. The scheme of the Conduct Rules almost invariably is to first of all enumerate general rule of conduct and behaviour followed by specific prohibitions and restrictions. Every government servant shall, at all times maintain absolute integrity; maintain devotion to duty and do nothing which is unbecoming of a government servant. This general Rule is followed by several Rules which deal with specific prohibitions and restrictions, including following Rules in the finance matters. One such Rule is Rule 103 of the General Finance Rules, 1963, which reads that purchases shall be made in the most economical manner in accordance with definite requirements of public service; and that care shall be taken not to purchase stores much in advance of actual requirements, if such purchase is likely to prove unprofitable to Government. Similarly, Rule 104 of the Rules provides that purchase orders shall not be split up to avoid necessity for obtaining sanction of higher authority required with reference to the total amount of the orders.

Rule 60 of the P&T Financial Hand Book Volume-I emphasizes need for observance of high standards of financial propriety and the need to enforce financial order and strict economy at every step and to see that all the relevant financial rules and regulations are observed.

11. It is not in dispute before this Court that during the period from 20.10.1999 to 29.12.2000, the petitioner ordered purchase of 11 nos. of CFL and 12 nos. of LIFLs. 4 nos. of CFL with accessories and 4 no. of items of LIFLs with accessories were purchased by accepting single quotation. One item of CFL with accessories and another item of LIFL with accessories, costing about nearly Rs.4.00 lakhs, were purchased on 20.10.1999; one item of CFL and another item of LIFL costing about nearly Rs.4.00 lakhs were purchased on 24.12.1999; another item of CFL and another item LIFL were purchased on 03.02.2000; one item of CFL was purchased on 09.03.2000. Another 3 items were purchased by calling for quotations. Another 3 items of CFL and LIFL were purchased by calling for tenders. The interval between each item purchases that were made is very short period. When purchase of an item of CFL and an item LIFL was made on the same day, which exceeds the financial power of the petitioner, there was no justification for accepting the single quotation. The petitioner ought to have called for the quotations from the government agencies as well as from the private agencies so that the lowest price can be accepted. The items were split up. From the record, it is clear that she has done intentionally so as to avoid obtaining of prior financial sanction from the higher authorities. The petitioner has not adduced any evidence to show that there was demand from the field units and need for split up of the purchase orders, so as to bring the same within her financial powers. The total value of 11 nos. of CFL and 12 nos. of LIFL was

about Rs.42,98,500/-. In the absence of market rate justification and in the absence of calling for quotations from the government and private organizations, it can be inferred that at exorbitant rates, the purchases were made. What was the need for the petitioner to split up the purchases when certain items were purchased on the same day and the cost exceeds more than Rs.2.00 lakhs. Rules contemplate that purchases shall be made at most economical manner in accordance with definite requirements of public service and care shall be taken not to purchase stores much in advance of actual requirements, and purchase orders shall not be split up to avoid the necessity of obtaining sanction of higher authority. Therefore, the petitioner violated Rules 103 and 104 of the General Finance Rules, 1963.

12. On the other hand, during enquiry, the petitioner has taken a stand that her financial powers are same as that of her next higher authority, who is the General Manager. As per the documents, claim of the petitioner cannot be substantiated by evidence. It is in the evidence that the requirement for purchase of 8 sets was clearly known in advance. Still, no action was taken by the petitioner for procuring them in a consolidated manner after obtaining approval of the higher authorities. It is in the evidence that the petitioner accorded approval for each set individually without specifying any justifiable reason.

13. It is specifically observed by the Tribunal that the petitioner has been given full opportunity to defend her case during the enquiry and no procedural lacunae have been pointed out by her and that appropriate punishment was given by the disciplinary authority after seeking statutory advice from the Union Public Service Commission. None of the findings of the Tribunal is shown to be perverse or contrary to law. It cannot be said to be a case of no evidence.

14. Coming to the quantum of punishment, there cannot be any dispute that it is the discretion of the competent authority to award punishment, which can be minor or major, as per the conscience and the circumstances of the case. Unless it is shown that the penalty imposed is harsh or disproportionate to the proved misconduct, ordinarily this Court will not exercise its jurisdiction under Article 226 of the Constitution of India to interfere with the punishment.

15. Learned counsel for the petitioner pointed out that the punishment imposed violates Rule 11 (v) of the CCA Rules. His contention is that where there is a reduction to a lower stage in the time scale of pay for a specified period, but allowing a government servant to earn increment of pay during the period of such reduction on expiry of such period, the reduction will not have the effect of postponing the future increments. Rule 11 (v) of the CCA Rules reads thus: Save as provided for in Clause (iii) (a), reduction to a lower stage in the time-scale of pay for a specified period, with further directions as to whether or not the government servant will earn increments of pay during the period of such reduction and whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay.

Therefore, when reduction is to a lower stage in the time scale of pay for a specified period and even if the government servant is allowed to earn increment of pay during such period, after expiry of that period, reduction will have the effect of postponing the future increments also in terms of the above Rules.

16. Learned counsel for the petitioner relied upon Rule 29 (2) of the Fundamental Rules, which reads thus:

If a government is reduced as a measure of penalty to a lower service, grade or post or to a lower time-scale, the authority ordering the reduction may or may not specify, the period for which the reduction shall be effective; but where the period is specified, that authority shall also state whether, on restoration, the period of reduction shall operate to postpone future increments and, if so, to what extent.

The authority while ordering reduction, specified the period for which the reduction shall be effective. When the period is specified, the authority has also stated that on the expiry of such period, the reduction shall operate to postponing future increments. Therefore, the order imposing punishment is clearly within Rule 11 (v) of the CCA Rules. So, it cannot be said that the punishment imposed is without making any application of mind or erroneous. There is no error of law or fact apparent on the face of the record so as to call for interference by this Court. None of the findings of the Tribunal is shown to be perverse or contrary to the material on record. The Tribunal has rightly exercised its jurisdiction within the parameters of law and there is no illegality in the impugned order of the Tribunal so as to call for interference by this Court. The Writ Petition is devoid of merits and is liable to be dismissed.

17. The Writ Petitions are, accordingly, dismissed. No costs. Miscellaneous petitions pending, if any, in the Writ Petitions shall stand closed.