

(2017) 10 AP CK 0041
In the Andhra Pradesh High Court
Case No : 29503 of 2017

The State of Telangana and 3 others	Vs	APPELLANT
S.Dada Saheb		RESPONDENT

Date of Decision : 24-10-2017

Acts Referred:

Citation : (2017) 10 AP CK 0041

Hon'ble Judges : C.V.Nagarjuna Reddy, Kongara Vijaya Lakshmi

Bench : DIVISON BENCH

Final Decision : Allowed

Judgement

1. These two writ petitions arise out of the order dated 19.02.2016 in O.A.No.4974 of 2010 on the file of the Andhra Pradesh Administrative Tribunal at Hyderabad.

2. W.P.No.29503 of 2017 is filed by the State of Andhra Pradesh and the functionaries of Home Department. W.P.No.35163 of 2017 is filed by the applicant in O.A.No.4974 of 2010.

3. For convenience, the parties are referred as they are arrayed in W.P.No.35163 of 2017.

The petitioner, while working as Police Constable, faced disciplinary proceedings, wherein the following charge was framed: Sri S.K. Dada Saheb, PC 2205 of PS Uppal Cyberabad has absented for duty from 11.11.2005 without leave, permission or intimation and continued to remain absent for more than (21) days, and thereby deserted from the force. As per APPM order No.184 he was declared as Deserter vide DO No.1007/2006, dt. 16.5.2006, which is unbecoming of a member of disciplined Police force in violation of Rule 3(1 to 3) of APCS Conduct Rules, 1964.

4. A written statement was filed by the petitioner denying the charge. The Disciplinary Authority appointed an Enquiry Officer, who held enquiry, and

submitted his report finding the petitioner guilty of the charge. After furnishing the copy of the enquiry report to the petitioner, the Disciplinary Authority has imposed the penalty of postponement of increments for three years with effect on his future increments and pension, besides treating the period of absence from 11.11.2005 to 13.06.2006 and also the suspension period as not on duty. The appeal filed by him having been rejected, the petitioner has filed the aforementioned O.A. The respondents have not filed counter- affidavit for three years during which the O.A. was pending. The Tribunal while accepting the findings of the Enquiry Officer, however, interfered with the penalty imposed on the petitioner by observing that the same is disproportionate to the gravity of the charge held proved and thereby it shocks the judicial conscience. The Tribunal has accordingly set aside the order of the Disciplinary Authority to the extent of imposition of penalty and remitted the same to respondent No.3 with a direction to take into consideration the ill-health of the petitioner and impose a lesser penalty which would be reasonable under the circumstances of the case. Both parties have challenged the said order of the Tribunal in these two writ petitions.

5. Mr. Gulam Rabbani, learned counsel for the petitioner submitted that the evidence recorded by the Enquiry Officer as discussed in his report clearly shows that the witnesses examined by the presenting officer such as G. Yadaiah, A.S.I of Uppal Police Station, Sri A. Mutyam Reddy, Inspector of Police, Pahadi Shareef Police Station, Cyberabad clearly admitted that the petitioner was instructed to avail sick rest and join duty with fitness certificate from R.M.O., Osmania General Hospital, Hyderabad and therefore ML passport was not issued and that it is further proved that the procedure of issuing of ML Passport is not followed by the Pahadi Shareef Police Station. He has also invited our attention to the various portions of the depositions of the witnesses referred to in the enquiry report and submitted that the Tribunal has committed a serious error in accepting the findings of the Enquiry Officer on their face value without even cursorily considering its contents.

6. Learned Government Pleader for Services (TS) who tried to support the order of the Tribunal, however, failed to show that the Tribunal has considered the contents of the enquiry report and whether the findings rendered by the Enquiry Officer are supported by the evidence or not. He has, however, stated that having accepted the findings of the Enquiry Officer and held that the charge has been proved against the petitioner, the Tribunal ought not to have interfered with the penalty imposed by the Disciplinary Authority on the petitioner.

7. A perusal of the order of the Tribunal shows that it has straightaway accepted the enquiry report mainly based on the fact that the petitioner did not enter the witness box and produced documents showing the factum of his illness and his taking treatment in Osmania General Hospital and thereby he has failed to discharge his initial burden. It has, however, not considered the depositions of the witnesses examined by the department and the answers/replies given by them to the various questions put by the petitioner in the cross- examination.

For example, G. Yadaiah, A.S.I was cross- examined by the petitioner, as under: After obtaining sick passport from you I have procured (8) weeks medical rest from RMO, OGH and then I return(ed) back to PS Uppal and asked ML Passport to you. But why you have not issued ML passport to me?

The witness answered as under: I have already incorporated in my oral statement that, I have instructed to avail the sick rest and then you should join for duty with fitness certificate from RMO OGH. As such I have not issued ML passport to you.

As regards Mr. A.Mutyam Reddy, Inspector of Police, Pahadi Shareef Police Station, the following question was put by the petitioner:

Myself not obtained the ML passport from your PS- Similarly other PCs of your PS obtained ML Passport or not when they are reported sick? In this context PC 1591 was also reported sick and availing medical rest. Are (sic) you issued ML Passport to PC 1591?

8. The following answer was given by the witness: I have not issued ML Passport to you as well as PC 1591. The procedure of issuing ML Passports are not followed in the PS when even police personnel report sick.

9. The above reproduced answers extracted from the witnesses may have a vital bearing in deciding the charge as to whether the petitioner has failed to report back and obtained ML Passport, under intimation to the Police Station or not. Unfortunately, the Tribunal has not referred to the contents of the report and the evidence on record. We, however, hasten to add that the Tribunal would not act as an Appellate Authority while deciding a case arising out of disciplinary proceedings. But to the limited extent of knowing whether the findings of the Enquiry Officer are based on evidence or not, or appreciation of evidence by the Enquiry Officer is perverse, the Tribunal or the Court is bound to examine the evidence on record. Without undertaking this exercise, it would not be fair on the part of the Court or Tribunal to accept the findings of the Enquiry Officer and the Disciplinary Authority on their face value as such a course would seriously affect the career of an employee. We are therefore of the opinion that the O.A. needs to be heard and decided afresh based on the material on record.

10. As regards the substituted penalty imposed by the Tribunal, the same cannot be sustained as the entire case needs to be re-examined by the Tribunal, as directed above. Therefore, the impugned order of the Tribunal is set aside in toto.

11. At the hearing, learned Government Pleader has submitted that consequent on the abolition of the Andhra Pradesh Administrative Tribunal in respect of the cases relating to the Telangana State, the matter may have to be remanded to the learned single Judge of this Court to consider the O.A. after being renumbered as Transfer Writ Petition by the Registry. This submission is not disputed by the learned counsel for the petitioner.

12. In the facts and circumstances of the case, the Registry is directed to convert

O.A.No.4924 of 2010 as Transfer Writ Petition and post before the learned Judge having the roaster to hear the case within a period of four weeks from the date of receipt of a copy of this order for hearing and disposal.

13. Both the writ petitions are accordingly allowed. No order as to costs.

14. As a sequel to disposal of the writ petitions, W.P.M.P. No.36726 of 2017 in WP No.29503 of 2017 and WP MP No.43685 of 2017 in WP No.35163 of 2017 are disposed of as infructuous.