

APHC010330772019



IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)

[3396]

WEDNESDAY, THE SEVENTH DAY OF AUGUST
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

WRIT PETITION NO: 15720/2019

Between:

G.SRIKANTH, S/O.VENKATEWARLU, AGED 43 YEARS, FORMER PC NO.437 OF ANANTHPUR DISTRICT ,NOW PC NO.18 KONDAVALUR PS,SPSR NELLORE DISTRICT R/O. NELLORE DISTRICT.

...PETITIONER

AND

- 1.THE SUPERINTENDENT OF POLICE, ANATHAPUR, ANANTHPUR DISTRICT.
- 2.THE DEPUTY INSPECTOR GENERAL OF POLICE, A.P. ANANTHPUR RANGE,ANANTHPUR DISTRICT.
- 3.THE INSPECTOR GENERAL OF POLICE, , A.P. RAYALASEEMA RANGE, ANANTHPUR DISTRICT.
- 4.THE STATE OF ANDHRA PRADESH, REP.BY ITS PRINCIPAL SECRETARY, HOME DEPARTMENT, A.P. SECRETARIAT BUILDINGS,AMARAVATHI, VELAGAPUDI, GUNTUR DISTRICT

...RESPONDENT(S):

Counsel for the Petitioner:

- 1.K R SRINIVAS

Counsel for the Respondent(S):

- 1.GP FOR HOME (AP)
- 2.GP FOR SERVICES I

The Court made the following:

ORDER:

This Writ Petition is filed under Article 226 of Constitution of India with the following prayer:

“.... to issue a writ or order or direction more particularly in the nature of a WRIT of MANDAMUS to set aside the major penalty of postponement of increments for 2 years with effect on future increments and pension imposed by Respondent No.1 in C.No.315/PR/A6/2008 dated.06.10.2009 which was upheld by Respondent No.2 in C.No.07/C2/App/RO/2010-ROO No.105/2010 dated.17.04.2010 by rejecting the appeal of the petitioner, by Respondent No.3 in L.Dis.143/IGP/L&O/RR-II/2010 Dated 30.10.2010 in rejecting the revision petition of the Petitioner by Respondent No.4 in Memo No.1249 (P) / Ser.II/A1/2018-2 dated.12.02.2019, while rejecting the representation of the petitioner by declaring these orders of the Respondents as illegal, arbitrary, unjust, violative of principles of natural justice, without any evidence, against the law laid down by the Supreme Court judgments.”

2. The case of the Petitioner, in brief, is as follows:

a) While the Petitioner was working as a Police Constable in Guntakal I Town Police Station, Respondent No.1 vide Orders dated 05.03.2008 placed him under suspension on the ground that the Petitioner used to visit the house of one Jelli Peddanna and demand “*Matka Mamool*” from him and the said suspension was revoked vide Orders dated 26.03.2008.

b) A charge was framed against the Petitioner by issuing a charge memo dated 21.06.2008 for which he submitted his explanation on 24.06.2008 denying the said charge. Thereafter, an Enquiry Officer was appointed, who submitted his report dated 26.07.2009 holding that the said charge was proved and based on same, the Petitioner submitted his representation dated 10.09.2009. Respondent No.1 vide proceedings dated 06.10.2009 imposed

major penalty of Postponement of Increments for two years with effect on future increments and pension besides treating the suspension period from 10.03.2008 to 24.04.2009 as not on duty and thereafter the suspension period was modified from 10.03.2008 to 24.04.2008 as not on duty by correcting the dates.

c) Aggrieved by the order of punishment dated 06.10.2009, Petitioner filed an appeal on 23.11.2009 to Respondent No.2, which was rejected *vide* proceedings dated 17.04.2010 without any reasons. Thereafter, Petitioner filed a revision before Respondent No.3 on 14.07.2010 and it was also rejected by proceedings dated 30.10.2010. Finally, Petitioner made a representation on 07.03.2011 to Respondent No.4 to set aside the punishment imposed against him but, the same was also rejected by proceedings dated 12.02.2019 without any reasons.

d) The findings of the Enquiry Officer in his report based on the statements of P.W.1 are that the Petitioner did not visit the house of Jelli Peddanna on 05.02.2008 or 06.02.2008 and did not demand any money and the wife of Peddanna also confirmed the same. However, without any evidence, the Enquiry Officer held that the Petitioner gained over the witness and at his instance only Peddanna stated in such a way.

e) It is stated that while the Petitioner was working at Guntakal I Town Police Station, due to sufferance from chicken-pox, he was on leave from 30.12.2007 to 21.01.2008 and he underwent treatment with a private medical practitioner at Guntakal on 06.02.2008. As such, the Petitioner neither visited the house of Jelli Peddanna nor demanded any amount on the alleged dates. The S.I of Police, who recorded the statement of Jelli Peddanna did not read over the

same to Peddanna and the same was admitted by said Peddanna. The neighbours of Peddanna also did not speak about the visit of the Petitioner to the house of Peddanna. As the Petitioner was not heeding to the instructions of the S.I of Police, in a biased manner he recorded the false statement of J.Peddanna and sent a report against the Petitioner.

3. The key averments of the counter filed Respondent No.1, in brief, are as follows:

a) After considering the explanation submitted by the Petitioner, the Sub-Divisional Police Officer, Ananthapuram was appointed as an Enquiry Officer and after conducting detailed enquiry, the SDPO submitted his report.

b) Further, after considering the explanation submitted by Petitioner and the entire material, the-then Superintendent of Police, Ananthapuram awarded the punishment as stated above.

c) Being aggrieved by Orders of Respondent Nos.2 and 3, the Petitioner preferred a mercy petition to Respondent No.4 and said petition was disposed of with an observation that there is no provision of mercy petition as contemplated under CCA Rules, *vide* Memo No.3794/Ser.II/A1/15, dated 18.11.2015. Petitioner has submitted another mercy petition to the Government *vide* Memo No.1249(P)/Ser.II/A1/2018 (Home Ser.II) Department and the same was also rejected by the Government *vide* Memo No.1249(P)/Ser.II/A1/2018-2, dated 12.02.2019 and was communicated with C.O.Endt.Rc.No.642/T2/2018, dated 01.05.2019.

d) The Enquiry Officer followed the due procedure established under law and basing on the findings of the Enquiry Officer, Respondent Nos.1 to 3 scrutinized the same and passed orders.

e) Except producing the medical certificate, the Petitioner has not taken any steps to prove the genuineness of the said certificate and having considered the said certificate, the Enquiry Officer categorically stated that though the Petitioner was on leave, he stayed in Guntakal Town on 06.02.2008 which shows that in the free time he went to the house of Jelli Peddanna and hence, the said certificate cannot be taken into consideration at the belated stage. There are no grounds to allow the petition. The Petitioner being the employee in discipline force, should not indulge in such type of malpractices.

4. Heard Sri K.R.Srinivas, learned counsel for the Petitioner and Learned Government Pleader for Services-I.

5. Learned counsel for the Petitioner would submit that the Petitioner worked as a Police Constable in Guntakal I Town Police Station. While he was working there, a Memorandum of Charge has been issued against him on 21.06.2008 alleging that he used to visit the house of one Jelli Peddanna and demand "*Matka Mamool*" and he was suspended on administrative grounds. It is stated that the Enquiry Officer found him guilty for the said charge of gross misconduct. Learned counsel would further submit that the Disciplinary Authority imposed punishment of two annual increments with cumulative effect besides treating the period of suspension as "not on duty" and with effect on future increments and pension. It is submitted that the Petitioner preferred an appeal before the Deputy Inspector General of Police, Ananthapuram, and the same was rejected.

Thereafter, the Petitioner preferred a revision before Respondent No.3 and it was also rejected. Learned counsel would further submit that the mercy petition filed by the Petitioner before Respondent No.4 was also denied with an observation that there is no provision of mercy petition as contemplated in CCA Rules. The individual has submitted another mercy petition and the same was also rejected by the Government *vide* Memo dated 12.02.2019. It is further submitted that Enquiry Officer has erroneously come to the conclusion that the charge against the Petitioner is proved. In fact, the Petitioner was suffering from Chicken-Pox from 30.12.2007 to 21.01.2008 and he reported sick. In proof of the same, the Petitioner filed medical certificate before the Enquiry Officer. However, it was vaguely observed by the Enquiry Officer that, though the charged officer was on leave, he stayed in Guntakal which shows that in the free time he visited the house of Jelli Peddanna and the medical certificate was not considered on that ground. Learned counsel further submits that the charged officer might have gained over the witness. Learned counsel would further submit that the enquiry report is based on surmises and conjectures and hence, prays to allow the petition by setting aside the impugned orders. In support of his contention, learned counsel has placed reliance on the judgment of the Hon'ble Apex Court in **United Bank of India v. Biswanath Bhattacharjee**¹ and **Roop Singh Negi v. Punjab National Bank & Others**².

6. Learned Government Pleader would submit that the matter may be remanded back for fresh consideration.

¹ Civil Appeal No.8258 of 2009, dated 31.01.2022

² Civil Appeal No.7431 of 2008, dated 19.12.2008

7. Having heard the submissions of learned counsel for both parties and on perusal of the material on record, the point that would emerge for determination is:

Whether the Petitioner is entitled for setting aside the order of postponement of increments for 2 years with effect on future increments and pension, imposed against him?

POINT:

8. As can be seen from the record, the following charge has been framed against the Petitioner:

“Article of charges:

Exhibited gross misconduct of duty and offensively he is to visit the house of Jelli Peddanna, S/o.Lakshmana of Guntakal town and demanded “MATKA MAMOOOL” though he is not in a profession. Thereby he exhibited gross misconduct and reprehensible conduct by demanding MATKA MAMOOOL from the public and tarnished the image of the Police in the eyes of public”.

9. In the light of the charge referred to *supra*, it is alleged that the Petitioner demanded “*Matka Mamool*” from the public. The said charge has been framed basing on the complaint of Jelli Peddanna, who was examined during the course of enquiry. It is the contention of the Petitioner that he suffered Chicken-Pox, he was on sick leave and underwent treatment till 06.02.2008. The Petitioner denied that he demanded any amount from Jelli Peddanna, who was once a *Matka Beater*. A memo has been filed along with the entry in the service register of the Petitioner, which shows that he was on medical leave from 23.01.2008 to 28.01.2008 and from 29.01.2008 to 26.02.2008 for a total period of 35 days. The

allegation against the Petitioner is that he had visited the house of Jelli Peddanna on 05.02.2008 and demanded "*Matka Mamool*".

10. It is apposite to mention that P.W.1 (Jelli Peddanna) stated before the Enquiry Officer that he knew the charged officer and he once took him to Guntakal I Town Police Station and produced before the Sub-Inspector of Police and after that he did not call him and did not ask any amount. It was stated that the charged officer did not visit his house in the month of January, 2008 or in the 1st week of February, 2008. It was further stated that he does not know whether the charged officer was working or not. According to P.W.1, he signed the statement before the Sub-Inspector of Police, Guntakal Police Station. The S.I of Police did not read over the statement to him. He further deposed that the charged officer never demanded any amount from him. P.W.1 further stated that the S.I of Police who was examined as P.W.2 while proceeding to the Police Station from Kasapuram road, when he was in front of his house, asked him to come to the Police station. P.W.1 finally stated before the Enquiry Officer that he did not pay any amount to the charged officer i.e., the Petitioner herein.

11. The Sub-Inspector of Police was examined as P.W.2. According to him, he went to the house of Jelli Peddanna along with a Constable. He has not recorded the statement of Jelli Peddanna or his wife at his house. He further stated that he received telephone call from P.W.1 while he was on special duty in executing NBW of Chagallu Chand Basha. After informing the same to the Inspector of Police, he went to the house of Jelli Peddanna along with a Constable. Whereas, according to P.W.1, he was called to the Police Station and he signed without knowing the contents of the complaint. P.W.1 categorically

denied of paying any amount to the Petitioner. To probablize the version of the charged officer, he has filed the medical record to show that, during the relevant period, he was on sick leave. Such being the case, the Enquiry Officer opined that the charge is proved and there is no evidence that the charged officer oftenly visiting the house of P.W.1. It appears that the finding on the charged officer is contra to the material placed on record. As such, imposing punishment of two increments with cumulative effect is a major penalty. For imposing such penalty, the enquiry has to be done by following the due process as per the Rules in vogue. In the present case, the findings of the Enquiry Officer are contra to the record which was not interfered even at appellate stage or in the revision.

12. Further, the Order of the Disciplinary Authority and also the Revision Authority are not supported by any reason. As the orders passed by them have severe financial consequences on the Petitioner, appropriate reasons should have been assigned. A decision must be arrived at on some evidence, which is legally admissible. Though the provisions of the Evidence Act may not be applicable in a departmental proceeding, the principles of natural justice are. As the order of the Enquiry Officer was based on surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence.

13. In view of the foregoing discussion, this Court is of the view that the Order passed against the Petitioner by Respondent No.1 imposing penalty of postponement of increments for 2 years with effect on future increments and pension in C.No.315/PR/A6/2008 dated 06.10.2009, is liable to be set aside.

14. In the result, the Writ Petition is allowed setting aside the Order dated 06.10.2009 in C.No.315/PR/A6/2008 passed by Respondent No.1 against the Petitioner by imposing penalty of postponement of increments for 2 years with effect on future increments and pension. There shall be no order as to costs.

Pending applications, if any, shall stand closed.

VENKATA JYOTHIRMAI PRATAPA, J

Date:07.08.2024

Dinesh

THE HONOURABLE SMT. JUSTICE VENKATA JYOTHIRMAI PRATAPA

W.P.No.15720 of 2019

Dt.07.08.2024

Dinesh