

HON'BLE SRI JUSTICE LAXMI NARAYANA ALISHETTY

WRIT PETITION (TR) No.6221 of 2017

ORDER:

This writ petition has been filed by the petitioner seeking the following relief:

“... to set aside the impugned G.O.R. No.554 Revenue (Vig.I) Department, dated 08.12.2015 issued by the 1st respondent and also proceedings No.Audit/2088/2009, dated 06.01.2010 issued by 3rd respondent appointing the enquiry officer, when a request is made for necessary documents by the applicant, treating it as an explanation as illegal, arbitrary, violation of principles of natural justice and in violation of Rule 20 of the APCS (CCA) Rules, 1991 apart from violation of Articles 14 and 16 of the Constitution of India and pass other order or orders...”

2. The brief facts leading to filing of the present petition are as under:

i) It is averred that the petitioner was initially appointed as Section Writer in 1971; that she was appointed by transfer as Junior Assistant and promoted as Senior Assistant and Sub-Registrar Grade-II on 17.11.2004. After rendering 39 years of service, she retired from service on attaining the age of superannuation on 31.01.2010. It is submitted that just 1½ months before her retirement, she was subjected to

disciplinary proceedings by the 3rd respondent vide Charge Memo No.AIR/IAR/2088/2009, dated 05.11.2009.

(ii) It is averred that above charge memo was illegal and contrary to APCS (CCA) Rules; that though it is mandatory to supply relevant material and documents along with Charge Memo to the petitioner to enable her to submit effective explanation, no material was supplied to her along with charge memo; that though charges are three in number, each charge is further sub-divided into several parts. The issue in Charge Memo relates to 1999 onwards, wherein the petitioner worked at Bodhan of Nizamabad District (Charge-IV), thus it could be seen that the very initiation of disciplinary proceedings against the applicant after long lapse of ten years, that too without furnishing any material is a clear case of violation of principles of natural justice. There is abnormal delay in initiating enquiry causing prejudice to the petitioner.

iii) Petitioner submitted explanation to the charge-I with documentary proof as charge-I relates to recent years and submitted application requesting material for charges-II and III; the 3rd respondent without even verifying the request

of the petitioner to furnish documents, without any application of mind, has immediately appointed an Enquiry Officer by proceedings dated 06.01.2010, directing the Enquiry Officer to conclude the enquiry within a month; that the appointment of Enquiry Officer would arise only after considering explanation of the delinquent employee and only on not satisfied with the explanation. The very action of the 3rd respondent in taking a decision to appoint Enquiry Officer is illegal and violation of principles of natural justice. Thus, the entire proceedings were vitiated and the petitioner is put to prejudice at every stage.

iv) The petitioner retired from service on attaining the age of superannuation on 31.01.2010; that she is being paid provisional pension only withholding gratuity; after prolonged period of 4½ years, suddenly the applicant received a communication dated 11.08.2014 from the District Registrar, Sanga Reddy claiming to be a new Enquiry Officer and directed the applicant to attend the enquiry on 26.08.2014 at 10.30 AM., in his office and the delay of 4½ years is unexplained; that before appointing another enquiry officer,

the disciplinary authority did not even verify the request of the petitioner for documents.

v) On 26.08.2014, during the enquiry, the petitioner was aghast and surprised to note that the presenting officer, who is supposed to be presenting the case of the Government, has started deposing as a witness against the petitioner before the enquiry officer; that the applicant was forced to cross-examine the presenting officer; that during the cross-examination, the presiding officer stated that copies will be supplied on receipt of letter from the petitioner, it amounts that petitioner was not afforded reasonable opportunity and supplied relevant documents to the petitioner.

vi) The enquiry officer issued memo dated 26.08.2014 and on the same day, asked the petitioner to submit final explanation holding that enquiry is concluded. Subsequently, on 06.09.2014, the applicant again reminded her request of furnishing documents which are basis for issuance charges. Finally, petitioner collected the available material from the Presiding Officer. On 06.01.2015, petitioner renewed her request to furnish full material instead of piecemeal and on

the same day, memo was issued to the applicant alleging that she has no defense to offer and submitted enquiry report *ex parte*.

vii) The 3rd respondent addressed a letter to the 1st respondent on 24.01.2015 enclosing the enquiry report for taking necessary action under Rule 9 of Revised Pension Rules. The 1st respondent imposed punishment of 50% cut in pension permanently besides recover of loss vide G.O.Ms.No.554 Revenue (Vig.I) Department dated 08.12.2015. Hence, the petitioner filed O.A.No.3084 of 2016 before the A.P.Administrative Tribunal.

3. Consequent to abolition of APAT, the said O.A.No.3084 of 2015 was transferred to this Court and the same is renumbered as W.P.(TR).No.6221 of 2017.

4. The respondent No.3 filed counter and contended that the charge memo was communicated to the petitioner on 05.11.2009 with a request to submit her defense statement within 15 days, however, she sought extension of time for submitting her defense statement till 25.11.2009. But, till 06.01.2010, she has not submitted any defense nor there was

any request for supply of material at that time. The articles of charges were framed vide Memo dated 05.11.2009 by the Deputy Inspector General (R&S), Hyderabad-II for wrong calculation of the market values for the properties registered through the documents mentioned in the charges and for causing loss of revenue of Rs.19,59,955/- to the Government.

4.1. The petitioner through her letter dated 23.11.2009 requested to give 15 days more time to submit her defense statement on the above articles of charge; that even after lapse of two months, she has not submitted her defense statement. Therefore, disciplinary authority ordered for regular enquiry and appointed Sri. M.Venkateshwarlu, District Registrar, Nizamabad as regular enquiry officer to inquire into the charges framed against the petitioner. Meanwhile petitioner retired from service on attaining the age of superannuation of 58 years on 31.01.2010.

4.2. As per the instructions of 2nd respondent vide Memo dated 22.02.2014, Sri K.Raghubabu, District Registrar, Medak at Sangareddy was appointed as regular enquiry officer in place of M.Venkateshwarlu, who was promoted as

Deputy Inspector General (R&S), Warangal. The regular enquiry officer held the enquiry on 26.08.2014; the petitioner submitted representation dated 06.09.2014 to the presenting officer to supply the records and material i.e., copies of documents, extracts of market value registers, reviews of inspection reports etc., to her so as to enable her to submit her defense statement to the enquiry officer. Again on 06.01.2015 the petitioner made a representation to the enquiry officer and stated that she was only given review of annual inspection reports, copies of documents extracts of market value registers and pen drive etc., and requested to supply the copies of her first replies.

4.3. On 17.01.2015, she submitted another letter to the enquiry officer stating that she was supplied with insufficient records and expressed her inability to submit her final defense statement and requested to supply the annual inspections reports/internal audit reports. Since 26.08.2014, after commencement of enquiry, the petitioner simply went on questioning the presiding officer for supply of different material and did no cooperative with the enquiry officer for early completion of inquiry and caused delay in completion of

enquiry despite the material available with the enquiry officer; that even after giving sufficient time, the petitioner has not submitted her final defense statement; that she was allowed to verify all the records during the enquiry. Therefore, the regular enquiry officer had submitted his findings that the charges are proved partly and settled the loss of revenue of Rs.4,20,655/-.

4.4. Based on the merits in the enquiry report and final defense statement submitted to the Government, a show-cause notice was issued to the petitioner and after that respondent no.1/competent authority proposed the punishment of 50% cut in pension permanently besides recovery of loss of revenue finalized in the enquiry.

4.5. It is further averred that enquiry was conducted as per the procedure envisaged and the petitioner went on requesting the regular enquiry officer to supply the material for submissions of her defense statement, but never submitted it; that during the enquiry also, petitioner played delay tactics and not cooperated with the enquiry for smooth completion of the enquiry. Finally, it is submitted that there

was no violation of principles of natural justice and there was no prejudice shown against the petitioner and prayed to dismiss the writ petition.

5. Heard Sri C.Srinivasa Baba, learned counsel for the petitioner and the learned Government Pleader for Service-II appearing for the respondents. Perused the record.

6. Learned counsel for the petitioner submitted that from the very initiation and appointment of enquiry officer is *per se* illegal and contrary to the rules and violation of principles of natural justice; that initially charge memo was issued stating that petitioner has caused loss to the Government to a tune of Rs.19,59,955/-; that with the ex-party enquiry report, the enquiry officer held and arrived at Rs.4,20,655/-, that if an opportunity was given to the petitioner, the loss caused to the government would not arise; that what was done by the respondents is in violation of principles of natural justice.

7. He submitted that no reasonable opportunity was given to the petitioner and documents, which are relevant to the enquiry, as sought by the petitioner were not supplied to her to defend her case; that without furnishing the relevant

documents sought by the petitioner, the respondent authorities concluded the enquiry and held that the charges leveled against the petitioner are proved, which is utter violation of principles of natural justice, causing deep prejudice to the petitioner. He submitted that basing on the enquiry report, the 1st respondent imposed punishment of 50% cut in pension permanently besides recovery of loss vide G.O.Ms.No.554, dated 08.12.2015, which is illegal, arbitrary violation of principles of natural justice and in violation of Rule 20 of the CCA Rules apart from violation of Articles 14 and 16 of the Constitution of India and prayed to set aside the impugned order and allow the petition.

8. *Per contra*, learned Government Pleader for respondents submitted that petitioner was given sufficient opportunity to submit her defense statement, however, the petitioner sought extension of time for submitting her defense statement; that though sufficient time was granted to the petitioner, she had not submitted any defense statement nor there was any request for supply of material at that time; that on every stage of enquiry, the petitioner sought time for furnishing documents; that even though documents were furnished to

the petitioner as sought for, she has not cooperated with the enquiry and dragged the matter only on the ground that relevant papers were not furnished to her; that petitioner was allowed to examine the documents available with the presiding officer, but without doing so, she went on delaying the enquiry on lame reasons and excuses; that the respondents on thorough examination of the case of the petitioner, have imposed the punishment of 50% cut in pension permanently besides recovery of loss of revenue finalized in the enquiry report. He further submitted that there was no violation of principles of natural justice and no prejudice shown against the petitioner and the punishment was in tune with the gravity of irregularities committed by the petitioner and therefore, prayed to dismiss the writ petition.

Consideration:

9. The only issue involved in this writ petition is whether the impugned order was passed without giving sufficient opportunity and without furnishing relevant documents to the petitioner ?

10. A perusal of the record discloses that the competent authority initiated enquiry proceedings against the petitioner on the allegation that she was responsible for loss of revenue to the government, as shown in the charges, due to wrong calculation of chargeable value of the documents and wrong levy of stamp duty and registration fee, which exhibited lack of integrity, devotion to duty and conduct unbecoming of a Government and thereby contravened the Rule 3 (1) & (2) of the APCS (Conduct) Rules, 1964; that accordingly charge memo dated 05.11.2009 was issued to the petitioner directing to submit written statement of her defense by 25.11.2009, failing which, further action will be processed based on the material available on record. The Presiding officer was appointed vide proceedings dated 06.01.2010 to present the case on the charges framed against the petitioner.

11. From the record, it appears that petitioner was served with a notice on the same day of hearing enquiry on 26.08.2014 directing her to submit her final defense statement within (15) days from the date of receipt of Memo and further directed her that in failure of which, final report could be submitted treating that she has no defense to offer

and it was acknowledged by her on the same date i.e., on 26.08.2014. Later, on 05.09.2014 she submitted a letter to the Regular Enquiry Officer requesting (15) days time to submit her defense statement as her brother's son was joined in Apollo Hospital due to head injury in accident. Petitioner again requested the Presenting Officer on 06.09.2014 to supply connected records in the case.

12. Petitioner made further request letter to the Regular Enquiry Officer on 10.10.2014 to supply the records to submit her final defense statement. On 21.10.2014, the Regular Enquiry Officer addressed a letter to the Presenting Officer, Nizamabad, to provide the records to the charged Officer as required by her. The District Registrar and Presenting Officer Nizamabad informed the District and Regular Enquiry Officer Medak through letter dated 24.10.2014 that the records required by the petitioner would be supplied. The Deputy Inspector General of Registration and Stamps, Nizamabad also instructed the District Registrar & Presenting Officer Nizamabad on 23.09.2014 to provide the records required by her. Later, On 20.11.2014, the District Registrar and Presenting Officer, Nizamabad informed that

the records required by the petitioner were sent through registered post on 15.11.2014 and the registered post parcel was returned on 19.11.2014 due to non-receipt of the same by the petitioner. After receiving the letter on 24.11.2014 from the presenting officer, the Regular Enquiry Officer immediately issued Memo dated 24.11.2014 mentioning all the above facts and requested the petitioner to get the material from the presenting officer immediately as she refused to receive the material and the material sent through registered post was returned and submit her final defense statement within (10) days from the date of receipt of the above memo and failing which, the report would be submitted in absence of the final defense statement of petitioner as she was given reasonable time from the date of enquiry on 26.08.2014.

13. Further, instead of getting material from the presenting Officer, petitioner again represented to the Regular Enquiry Officer on 06.01.2015 to supply some of the material in addition to the material received from the presenting Officer on 05.01.2015 to submit her final defense statement. Finally, memo dated 12.01.2015 was issued to the petitioner by the

Regular Enquiry Officer, clearly explaining her delay tactics to prolong the enquiry as she was given sufficient time since the hearing of enquiry on 26.08.2014. In response to Memo dated 12.01.2015, the petitioner submitted representation on 17.01.2015 again seeking documents. Therefore, the enquiry officer finalized the enquiry and submitted enquiry report dated 23.01.2015 basing on the material available on hand and evidence adduced during the enquiry and on receipt of further material from the Presenting Officer like copy of documents, market value guidelines etc., wherever necessary treating her silence in submission of final defense statement as she was not willing to submit the same even though the required material was supplied and sufficient time was allowed.

14. From the above material available on record, it emerges that from the date of inception of enquiry till the date of issuing impugned order, the petitioner all along has been trying to protract the enquiry proceedings on the ground that relevant documents concerning the charges framed against her were not furnished to her. However, the ground raised by the petitioner that no copies of documents were provided to

her is misleading, which is apparent from the material available on record. Petitioner failed to explain as to what prejudice is caused to her because of non-supply of documents, except general statement made by her in her representations. Further, petitioner filed some of the challan copies relating to payment of meager amounts. Several charges relating to deficit collection of stamp duty and registration fee pertaining to various documents were held proved, however, there is no explanation from the petitioner on that aspect. It amounts to admission of charges proved against the petitioner.

15. From the pleadings and material, it appears that the presenting officer sent the documents and material as sought by the petitioner through registered post on 15.11.2014, however, the same were returned on 19.11.2014 with an endorsement door locked.

16. It is pertinent to note that during pendency of the enquiry proceedings, petitioner had given complaint to Lokayuktha for settlement of pensionary benefits. It appears that Lokayuktha addressed a letter dated 15.04.2014 to the

Commissioner and Inspector General (R&S) vide Memo dated 25.07.2014. However, no material is placed on record with regard to result of that complaint filed before the Lokayuktha.

17. It is also pertinent to note that enquiry officer had permitted the petitioner to verify the records, material and therefore, petitioner ought to have availed the opportunity given by the respondents. However, petitioner kept quiet on making request to furnish documents. As per the contentions of the respondents, petitioner was also provided with relevant material, extracts. However, petitioner sought further documents and the same was sent by the respondents through registered post to the petitioner on 15.11.2014, but the same was returned on 19.11.2014 as door locked.

18. A perusal of chronological events would suggest that the petitioner has been taking time for filing her defense statement on the ground of non-furnishing of documents and as stated supra, despite serving the relevant material, extracts, petitioner again sought for further documents. It is pertinent to mention that show-cause notice was issued on 05.11.2009 and the enquiry report was submitted on

23.01.2015 i.e., after a period of more than four months on account of non-cooperative attitude of the petitioner with the enquiry proceedings and adjournment of proceedings from time to time at the request of the petitioner.

19. The record would also indicate that the petitioner was permitted to verify the entire material, report, but the petitioner did not cooperate with the enquiry proceedings. Therefore, it only leads to conclusion that petitioner intentionally tried to protract the enquiry proceedings. Furthermore, petitioner failed to demonstrate as to how prejudice was caused to her because of non-supply of alleged documents sought by her.

20. The enquiry officer, on due enquiry and taking into consideration the material placed on record, submitted enquiry report dated 23.01.2015 to the effect that charges against the petitioner are partly proved and settled the loss of revenue to the Government to the tune of Rs.4,20,655/-.

21. The Government, on careful examination of enquiry report, provisionally decided to impose punishment of 50% cut in pension permanently and to recover the loss of

Rs.4,20,655/- and accordingly, a show-cause notice was issued to the petitioner. Petitioner submitted her explanation dated 05.09.2015. The Government, on due consideration of explanation submitted by the petitioner, confirmed the provisional punishment of 50% cut in pension permanently besides recovery of loss of revenue finalized in the enquiry report vide G.O.Rt.No.554 dated 08.12.2015.

22. In **Mithilesh Singh vs. Union of India and others**¹, it was consistently observed by the Hon'ble Supreme Court that the scope of interference by this Court with the punishment awarded by a disciplinary authority is very limited and unless the punishment appears to be shockingly disproportionate, the Court cannot interfere with the same. The Hon'ble Supreme Court at paragraph-9 held as under:

“9. The only other plea is regarding punishment awarded. As has been observed in a series of cases, the scope of interference with punishment awarded by a disciplinary authority is very limited and unless the punishment appears to be shockingly disproportionate, the court cannot interfere with the same...”

¹ (2003) 3 SCC 309

23. In **Ram Lal v. State of Rajasthan and others**², the Hon'ble Supreme Court held as under:

“10. ... We are conscious of the fact that a writ court's power to review the order of the disciplinary authority is very limited. The scope of enquiry is only to examine whether the decision-making process is legitimate. (See *SBI v. A.G.D. Reddy* [*SBI v. A.G.D. Reddy*, (2023) 14 SCC 391 : 2023 SCC OnLine SC 1064 : 2023 INSC 766] .) As part of that exercise, the courts exercising power of judicial review are entitled to consider whether the findings of the disciplinary authority have ignored material evidence and if it so finds, the courts are not powerless to interfere. (See *United Bank of India v. Biswanath Bhattacharjee* [*United Bank of India v. Biswanath Bhattacharjee*, (2022) 13 SCC 329 : (2023) 2 SCC (L&S) 705 : 2022 INSC 117] .)”

24. Perusal of record indicates that petitioner was given sufficient opportunity to submit her defense statement and participate in the enquiry and the petitioner was allowed to verify all the records during the enquiry proceedings and thus, in considered opinion of this Court, no prejudice was caused to her.

25. In the light of discussion and legal position, in considered opinion of this Court, the writ petition is devoid of

² (2024) 1 SCC 175

any merit and further petitioner failed to make out any ground to interfere with the impugned G.O. Thus, Writ Petition fails and is accordingly dismissed. There shall be no order as to costs.

Pending Miscellaneous Applications, if any, shall stand closed.

LAXMI NARAYANA ALISHETTY,J

Date: 13.03.2024
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