



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

[3365]

**TUESDAY ,THE EIGHTEENTH DAY OF JUNE
TWO THOUSAND AND TWENTY FOUR**

PRESENT

THE HONOURABLE JUSTICE DR V R K KRUPA SAGAR

WRIT PETITION NO: 6078/2007

Between:

N.n. Prasad,

...PETITIONER

AND

The Asst Security Commissioner 2 Ors and **...RESPONDENT(S)**
Others

Counsel for the Petitioner:

1.A RAJENDRA BABU

Counsel for the Respondent(S):

1.JUPUDI V K YAGNADUTT(CENTRAL GOVERNMENT
COUNSEL)

2..

The Court made the following:

SUBMITTED FOR APPROVAL:

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

- | | |
|---|--------|
| 1. WHETHER REPORTERS OF LOCAL NEWSPAPERS
MAY BE ALLOWED TO SEE THE JUDGMENT? | YES/NO |
| 2. WHETHER THE COPY OF JUDGMENT MAY BE
MARKED TO LAW REPORTERS/JOURNALS? | YES/NO |
| 3. WHETHER HIS LORDSHIP WISH TO
SEE THE FAIR COPY OF THE JUDGMENT? | YES/NO |

Dr. V.R.K.KRUPA SAGAR, J

*** HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR**

+ WRIT PETITION NO: 6078/2007

% 18.06.2024

Between:

N.n. Prasad,

...PETITIONER

AND

The Asst Security Commissioner 2 Ors and **...RESPONDENT(S)**
Others

! Counsel for the Appellant(s) : A Rajendra Babu

^ Counsel for Respondent(S): Jupudi V K Yagnadutt

< Gist:

> Head Note:

? Cases referred:

1. (2022) 6 SCC 563
2. (2015) 17 SCC 541
3. (2001) 5 SCC 340
4. (2018) 7 SCC 670
5. 2005 (3) ALT 632 (AP) (DB)
6. (2015) 2 SCC 610

The Court made the following:

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

WRIT PETITION No.6078 of 2007

ORDER:

1. The writ petitioner is a constable in Railway Protection Force. He is governed by the Railway Protection Force Act, 1957 and the Railway Protection Force Rules, 1987. On certain allegations of mis-conduct, a preliminary enquiry was conducted and thereafter a regular departmental enquiry was conducted and he was found guilty by the disciplinary authority and punishment of penalty of reduction of his pay by two stages in the existing scale for a period of three years with cumulative effect was inflicted. His appeal and thereafter his revision before competent authorities were duly considered and were disposed of against him. It is in those circumstances, invoking the jurisdiction of this court under Article 226 of the Constitution of India, he preferred the present writ petition with the following prayer: -

“this Hon'ble Court may be pleased to issue an appropriate writ, order or direction more particularly in the nature of Writ of Mandamus declaring the Proceedings No.

D/XP.227/158/2005/16, in Divisional Order No. 06/2006 dated 08-02-2006 of the 1st respondent by which penalty of reduction of pay by two stages in the existing scale of Rs.3200-4900 for a period of 3 years with cumulative effect, and the 2nd respondent by Proceedings No. D/XP.227/158/2005/16, in Divisional Order No. 28/2006 dated 22-03-2006 rejected the appeal, and the same was confirmed by the 1st respondent by Proceedings No. X/P.227/153/Appeal/2006-20, Force Order No. 136/2006, dated 11-08-2006 as arbitrary, illegal, violation of principles of natural justice and total non application of mind and to quash or set aside the same and to pass such other order or orders, which are deemed fit and proper in the circumstances of the case.

2. On behalf of respondents, a counter affidavit was filed containing elaborate reply to the various contentions raised in the writ petition. The respondents sought dismissal of the writ petition.

3. Sri A. Rajendra Babu, the learned counsel for writ petitioner and Sri Jupudi V.K.Yagnadutt, the learned standing counsel for Central Government submitted arguments. Learned counsel on both sides cited precedent.

4. On behalf of writ petitioner, it is contended

- That the findings of the enquiry officer are perverse. The appellant authority and revisional authority mechanically disposed of the case without assigning any reasons.

- The enquiry officer failed to follow the procedure contemplated under the relevant provisions especially Rule 153 of RPF Rules, 1987.
- That the enquiry officer was appointed along with charge memo which is unknown to law.
- No presenting officer was appointed and the enquiry officer himself examined the witnesses and cross-examined the writ petitioner.
- The incident which is a subject matter of enquiry took place before TC office but the TC was not examined.
- Initiation of enquiry was only because of a news item published in the newspapers and the correspondent of the news item was not examined. That the explanation of the writ petitioner was not considered by the enquiry officer.
- That the punishment inflicted is disproportionate to the charges proved.

5. Learned counsel for writ petitioner brought attention of this court to Rules 146, 148, 153, 212, 217 of RPF Rules, 1987 and cited: -

1. ***State of Karnataka V. Umesh***¹
2. ***Brij Bihari Singh V. Bihar State Financial Corporation***²
3. ***Deokinandan Sharma V. Union of India***³
4. ***Union of India V. Ram Lakhan Sharma***⁴
5. ***Ch.Appala Reddy V. Eastern Power Distribution***⁵

6. Learned standing counsel for Central Government representing the respondents contended that the departmental enquiry was conducted in accordance with the rules and that there was no deviation and that the appellate authority and the revisional authority acted in accordance with the Rules 217 and 219 respectively and the orders impugned are based on evidence and supported by valid reasons and in the uniformed service discipline is the watchword and any infraction of law demeaning the esteem of the organization requires adequate punishment and the punishment inflicted is proportionate to the charges established and this writ court in such circumstances may not interfere with the impugned proceedings. Learned standing

¹ (2022) 6 SCC 563

² (2015) 17 SCC 541

³ (2001) 5 SCC 340

⁴ (2018) 7 SCC 670

⁵ 2005 (3) ALT 632 (AP) (DB)

counsel for central Government cited ***Union of India V. P.Gunasekaran***⁶.

7. The entire relevant record is placed before this court which include the preliminary enquiry and the report thereon and the disciplinary enquiry and the report thereon and the orders of the disciplinary authority, appellate authority and revisional authority. Having keenly considered the material on record and the arguments submitted on both sides, the following aspects are to be noticed: -

The charges made against the writ petitioner read as below: -

1. *He was detailed to perform duty in the circulating area of NDD station on 07-10-2005 in the shift of 14-00 hours to 22 hours, but was found in the T.C.Ss. office at about 20.30 hours by Sri Ch. Ramanaiah. H.C. 898 and Sri Md. Ibrahim Khan, ASIPF of NDD post, thus Sri N.N. Prasad has deserted his beat area and neglected his nominated duties thereby violating Rule 146.2(i) and (ii) of the RPF rules 1987*
2. *He has collected daily tips from the unauthorized hawkers of NDD station and also lent money to them on interest and acted in a manner unbecoming of a railway servant. He has thus placed himself under a pecuniary obligation to them i.e., bound to effect the proper discharge of his duties as a member of the Force. Thereby he violated Rule No. 3(1)(ii) of the Railway Services (Conduct) Rules 1966 and Rule 146.7(ii) and (iii) of the RPF Rules, 1987.*

⁶ (2015) 2 SCC 610

3. *On 07-10-2005 Sri N.N. Prasad CON. 434/ NDD has manhandled two hawkers in the station premises of NDD Station during his duty hours for personal reasons, which amounts to abuse of authority. The incident was reported in the tabloid of Telugu Daily Newspaper Eenadu on 08-10-2005 by his conduct he has lowered the image of the Force in the eyes of the public and thereby violated Rule 146.4 and 146.8(b) of the RPF Rules, 1987. He also violated the code of behaviour as envisaged in Rule No.146.1 of the RPF rules, 1987.*

The report of the enquiring authority runs into 20 pages and finally the findings arrived at read as below: -

1. *Sri. N.N. Prasad, Constable 434/NDD detailed to perform duty in the circulating area of NDD station, on 07.10.2005, in the shift of 14.00 hours to 22.00 hours but was found in the Ticket Collector office at about 20.30 hours by Sri. Ch.Ramanaiah, HC-898/NDD and Sri. MD. Ibrahim Khan, ASIPF/NDD. Thus Sri. N.N. Prasad, Constable 434/NDD has deserted his beat area and neglected his nominated duties is **'PROVED'** beyond all the reasonable doubts.*
2. *Sri. N.N. Prasad, Constable 434/NDD has collected daily tips from the unauthorised Hawkers of NDD station is **'NOT PROVED'** and lent money to the unauthorised Hawkers on interest and acted in manner unbecoming of a Railway servant is **'PROVED'** beyond all the reasonable doubts.*
3. *On 07.10.05, Sri. N.N. Prasad, Constable 434/NDD has manhandled the hawkers in the station premises of NDD station during his duty hours for personal reasons, which amounts to abuse of authority. The incident was reported in the Tabloid of Telugu daily newspaper Eenadu on 08.10.05. By his conduct, he has lowered the image of the Force in the eyes of the public is **'PROVED'** beyond all the reasonable doubts.*

8. In ***State of Karnataka V. Umesh (referred supra)***, the Hon'ble Supreme Court of India held that disciplinary proceedings are to enquire into allegations of mis-conduct against delinquent employee. Rules of evidence which apply to criminal trials do not apply with equal force in the disciplinary enquiry. Charges could be taken to have been proved based on preponderance of probabilities. That the judicial review available under Article 226 of the Constitution of India does not enable the writ court to act as an appellate forum over the findings of disciplinary authority and the writ court is inhibited from re-appreciating the evidence. Their Lordships held that the writ court in exercise of judicial review must restrict its review to determine whether: -

1. Rules of natural justice have been complied with
2. Findings of misconduct whether based on some evidence or no evidence
3. Whether statutory rules governing conduct of disciplinary authority were violated or not
4. Whether findings of disciplinary authorities suffer from any perversity
5. The proportionality of the penalty

9. In ***Union of India V. P.Gunasekharan(referred supra)***, similar principles were laid down by their Lordships of the Hon'ble Supreme Court of India and it is further held that while assessing

the proportionality of punishment, the interference of a writ court is called for only when the punishment inflicted shocks the conscience of the court but not otherwise. Their Lordships further stated that a writ court cannot correct the errors on facts, however grave it may appear to be, as long as the conclusions arrived at by the disciplinary authority are based on evidence available on record.

10. The above principles shall govern the case at hand as they lay down the contours of the powers of writ court in service matters. It is undisputed that the punishment inflicted against the writ petitioner is a major punishment and the procedure governing it is prescribed in Rule 153 of RPF Rules, 1987. Rule 153.5 mandates that the disciplinary authority shall deliver a copy of the articles of charge well before commencement of the enquiry. Rule 153.2.1 permits the disciplinary authority to appoint an enquiring officer. The contention raised on behalf of the writ petitioner is that preparation of articles of charge and appointment of enquiring officer took place at the same time and that is against law. In this regard, for appellant **Ch.Appala Reddy V. Eastern Power Distribution(referred supra)** is cited. That is a case where enquiring officer was first appointed and subsequently charges were framed. It is in the said context, Hon'ble Division Bench of this court held as mentioned below: -

“In any disciplinary proceedings, the necessity to appoint an Enquiry Officer arises only when the appointing authority points out certain acts of indiscipline on the part of the delinquent employee and the explanation offered by the

employee is not satisfactory. On the other hand, where the explanation is found to be satisfactory, the necessity to proceed further does not arise or remain. In V.K. Khanna 's case, the Supreme Court reinstated this position of law and held that appointment of an Enquiry Officer even before a show-cause notice or charge-sheet is served upon an employee is unknown to service jurisprudence. It was further observed that in such an event, an element of bias exists vis-a-vis the Enquiry Officer”

In the case at hand, the fact situation is different. The regular departmental enquiry is preceded by a preliminary enquiry which indicated the need for holding a regular departmental enquiry. It was thereafter articles of charge were made by disciplinary authority. The charges were served on the writ petitioner and he submitted his written statement as mentioned in paragraph No.4 of the affidavit filed in support of the writ petition. Since he denied the allegations, enquiry proceeded further. The appointment of enquiry officer as well as formulation of articles of charge took place on 28.10.2005. That makes it clear that the enquiry officer was not appointed before formulation of charges. The ruling cited is distinguishable by that aspect. The writ petitioner failed to bring to the notice of this court any provision in RPF Rules, 1987 and its infraction in this regard. It is not the ground urged in the writ petition or is it the argument advanced on his behalf, that there was any bias on part of the respondents in appointing the enquiry officer or that there was any bias attributed against the enquiry officer. Therefore, this court holds that there exist no bias and formulating articles of charge and appointing enquiry officer simultaneously by itself is not in violation of any

statutory provisions or rules. Therefore, this contention is negated.

11. It is contended on behalf of writ petitioner that there was no presenting officer was appointed and the enquiry officer himself examined the witnesses and cross-examined the writ petitioner who testified during the course of enquiry. It is in this regard for writ petitioner ***Union of India V. Ram Lakhan Sharma(referred supra)*** is cited. That case pertains to armed forces governed by Central Reserved Police Force Act, 1949 and Central Reserved Police Force Rules, 1955. In that case, no presenting officer was appointed and the enquiry officer himself led the examination in chief of prosecution witnesses. It was in that context of the above facts, their Lordships observed that where the statutory rules are silent about appointment of presenting officer, there is no legal requirement of appointing a presenting officer in each and every case. However, the facet of principles of natural justice falls for consideration in such instances. It is the legal requirement that the enquiry officer has to be independent and should not act as a representative of disciplinary authority. If the enquiry officer starts acting in any other capacity and proceeds to act in a manner as if he is interested in eliciting evidence to punish the employee, the principle of bias comes into play. Thus, their Lordships held that where the enquiry officer failed to play his neutral role and indulged in acting adversely, it is only in those cases, the proceedings may be held as invalid. In the case at hand, the writ petitioner failed to indicate any provision from RPF Rules, 1987 mandating disciplinary authority to appoint a presenting officer. In

the grounds urged in the writ petition as well as in the arguments advanced nothing was suggested before this court to say that the enquiry officer lost his neutrality and acted in such a fashion to see that the employee is punished at any cost. The aspect of bias is neither pleaded nor argued. This court has looked into the entire enquiry report and finds that he has recorded the statements of all the prosecution witnesses in the presence of the charged officer/ writ petitioner and the charged officer was permitted and he accordingly cross-examined all those witnesses. The charged officer alone testified in his defence and he was questioned in cross by the enquiry officer. A reading of the evidence narrated in the enquiry report does not make anyone to think that the enquiry officer lost his neutrality and acted with bias. When that being the case, mere non-appointment of presenting officer has no adverse effect in this case. It may also be mentioned here that before the appellate authority and revisional authority, these aspects were never raised by the writ petitioner. He has been raising these contentions for the first time before this court. For all these reasons, this contention is negated.

12. It is contended for the writ petitioner that the findings of the enquiry officer are perverse and that there was no appreciation of evidence on his part and that the authorities concerned failed to consider the contentions raised by the writ petitioner in his written statement and therefore the enquiry report and the order passed based on it cannot be maintained at law. This court has gone through the entire enquiry report which finds extensive narration of facts spoken to by 7 prosecution witnesses and the facts

elicited from them by the charged employee by way of cross-examination. It also contains extensive reference to evidence given by the writ petitioner and the facts elicited in his cross-examination. The enquiry report indicates appropriate consideration of all that evidence. A perusal of this report also shows the contentions raised by the writ petitioner and as to how those contentions were found to be incorrect and are against the material on record. For instance, it referred to the evidence of PWs.2 and 3 to hold that writ petitioner was not at his duty point, namely, the circulating area of beat point in Nidadavolu Station and at the relevant time, he was found in Ticket Collector's office at 08.30 pm on 07.10.2005. It considered the evidence of PW.1/inspector, RPF, Nidadavolu Station and from his evidence, it found that the cause assigned by the charged officer explaining his presence at ticket collector's office was found incorrect and his presence was found for other reasons. The enquiry report also shows the consideration of evidence of PWs.6 and 7 and based on that, it held that the writ petitioner was found lending money to unauthorized hawkers. It considered the evidence of PW.4 and 5 and from whose evidence it found that he was manhandling and threatening them. Thus, it is clear that there was evidence collected during the course of enquiry and it is further clear that there is extensive reference to this evidence and there is clear consideration of the evidence and the conclusions arrived at were based on evidence. There was due consideration of contentions of charged officer and contentions raised in his written statement and reasons for negating such contentions. They are adequately mentioned in the enquiry report. Therefore,

it cannot be said that the findings in the enquiry report are perverse.

13. it is contended that appellate authority failed to consider the matter in the appropriate perspective and personal hearing was not afforded to writ petitioner. In this regard, ***Deokinandan Sharma V. Union of India(referred supra)*** is cited. Their Lordships of the Hon'ble Supreme Court of India held that appellate and revisional authorities hold a duty to pass reasoned orders and the orders impugned indicate due consideration of contentions raised by the aggrieved employee. In the case at hand, Rule 217 of RPF Rules, 1987 lays down the procedure for consideration of appeals by the appellate authority. Rule 219 provides for the procedure for consideration of the Revision. As per Rule 219.2, the procedure prescribed for consideration of appeals under Rule 217, so far as may be, apply to application for Revision. Therefore, it is relevant to notice Rule 217.1 which reads as below: -

“While considering the appeal, the appellate authority may, on request, grant personal hearing to the aggrieved enrolled member of the Force in case it considers it in the interest of administration of justice”

It is never the case of the writ petitioner that he made a specific request seeking for personal hearing. Even if there was a request it was well within the discretion of the appellate authority to grant or negative the same and the sole consideration for exercising the discretion is the aspect of interest of administration of justice. There is neither a ground urged in the writ petition nor a

point argued here that there was specific request for personal hearing and it was incorrectly negated by the appellate authority and the revisional authority. Thus, the facts indicate that the writ petitioner was granted opportunity to present his appeal with all the grounds thereon and he accordingly presented the same and that was considered by the appellate authority and the same was disposed of. A perusal of the appellate authority's report shows a brief mention of four contentions raised in the appeal by the writ petitioner. It further shows the due application of mind of the appellate authority as it recorded that the writ petitioner was supposed to produce the hawker before the officers of the RPF but he did not do it and he had an ulterior motive and therefore he avoided it and it further disclosed the inconsistency in the defence taken by the writ petitioner as to the name of the hawker apprehended by him as he was telling different names at different stages of the enquiry. It further indicates due consideration of family and financial difficulties of the writ petitioner expressed before him with reference to the measure of punishment. It categorically mentioned that the evidence of PW.6 and 7 fully established about the lending of money by the writ petitioner to unauthorized hawkers and as to why it found no force in the writ petitioner's contention in that regard. It made a clear mention that the disciplinary authority followed the rules of procedure and finally it found no merit in the appeal and therefore it refused to interfere with the impugned orders therein and accordingly dismissed the appeal. A perusal of the order of the revisional authority would go to show a brief description of the case and its outcome and the rules that were violated by the writ petitioner

and the punishment inflicted. It recorded that from the material on record, it found that the writ petitioner deserted his duty point and was found elsewhere and he was found quarrelling with hawkers and his conduct brought adverse publicity to the image of the Railway Protection Force. It is for those reasons, it refused to interfere with the impugned orders. One may have to notice that the disciplinary authority on considering the enquiry report and on considering the explanation submitted by the writ petitioner mentioned that the charged officer deserved a deterrent punishment for the defaults proved against him but still a lenient view is taken with a hope that he would desist from such defaults in future. It is in the light of the above facts, this court has to state that the punishment inflicted is not disproportionate and at any rate for the proved mis-conduct, the punishment inflicted cannot be said to be the one that shocks the conscience of the court. That the orders of the enquiring authority and the appellate authority and the revisional authority indicate due consideration of all the rules that are relevant and all the evidence brought on record and appropriate consideration of the contentions raised by the charged officer. Therefore, in this judicial review entertained under Article 226 of the Constitution of India, this court finds no scope for any interference with the orders impugned.

14. In the result, this writ petition is dismissed.

As a sequel, miscellaneous applications pending, if any, shall stand closed.

Dr. V.R.K.KRUPA SAGAR, J

Date: 18.06.2024
Dvs

Note: -LR Copy may be marked

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

WRIT PETITION No.6078 of 2007

Date: 18.06.2024

Dvs