

HON'BLE SRI JUSTICE VENKATESWARLU NIMMAGADDA

WRIT PETITION No. 18893 of 2021

ORDER:

Heard learned counsel for the petitioner and learned Government Pleader for Services appearing for the respondents.

2. The case of the petitioner, in brief, is that initially, the petitioner was appointed as a Police Constable in Kurnool District in the year 1983 and while he was working as an Assistant Sub-Inspector of Police, he retired from service on 31.07.2021. When he was working at Kurnool Traffic Police Station, basing on a complaint of one Dudekula Shahi Nabi that the petitioner demanded and accepted bribe of Rs.2,000/- from him for doing official favour and handed it over to the then Inspector of Police, a trap was conducted and a case was registered against the petitioner vide Crime No.4/Rct-Kur/2012 dated 21.08.2012. Subsequently, taking into consideration the factual and legal aspects, the 1st respondent issued G.O.Rt.No.1931 dated 07.10.2013 refusing to sanction prosecution in the above crime and ordered for a

departmental action for the charge of corruption. Pursuant thereto, the 2nd respondent issued a memorandum of charge vide C.No.385/02/2014 dated 03.09.2015. The charge memo was issued not only on the complaint of Dudekula shahi Nabi but also on the allegation that the petitioner failed to submit his annual property returns from the date of joining into service as contemplated under Andhra Pradesh Civil Services (Conduct) Rules, 1964 (for short 'the Conduct Rules, 1964'). To the charge memo, the petitioner submitted two different explanations requesting to drop the further action. Without considering the explanations, the respondents conducted an oral enquiry and submitted minutes dated 21.01.2017 holding that the charges are proved. The enquiry was conducted by the Revisional Authority and the enquiry report was submitted to the petitioner, for which the petitioner submitted a reply on 30.08.2017 denying the allegation that non-submission of annual property reports is not an intentional and he never received any instructions for the same. However, without examining the reply of the petitioner, the 1st respondent awarded a minor punishment of stoppage of one

increment without cumulative effect and the period of suspension shall be treated as not on duty, vide G.O.Rt.No.849, Home (SC.A) Department, dated 11.09.2018. The same is assailed in this writ petition.

3. A counter affidavit is filed on behalf of the respondents wherein it is stated that on 21.08.2012, Sri A.G.Krishna Murthy, Inspector of Police, Kurnool Traffic P.S. and the petitioner herein were caught red handed by ACB, while they were accepting illegal gratification of Rs.2,000/- from one Smt. Dudekula Shahinabi of Kurnool District for doing an official favour. In this connection, Crime No.4/RCT-Kur/2012 of ACB Kurnool Range was registered against them and they were arrested on 22.08.2012. In the light of their arrest, they were placed under suspension. Subsequently, the 1st respondent issued orders vide G.O.Rt.No.1932, Home (SC.A) Department, dated 07.10.2013 and vide memo dated 12.12.2013, revoking the suspension of both the charged officers.

i) Though the charged officers are bound to submit their annual movable and immovable property returns every year as per Rule 9

of the Conduct Rules, 1964, the petitioner did not submit the same to the competent authority and the then Inspector of Police also failed to submit the property returns except for the years 1988, 2009, 2010 and 2012. Therefore, the 1st respondent vide G.O.Rt.No.1930, Home (SC.A) Department, dated 07.10.2013 issued orders to the 2nd respondent to initiate departmental action against the charged officers for not submitting the annual property returns to the competent authority. In pursuance of the said orders, the 2nd respondent vide C.No.385/02/2014 dated 03.09.2015, issued a memorandum of charge under Rule 20 of the A.P. Civil Services (Control, Classification and Appeal) Rules, 1991 (for short 'the CCA Rules, 1991') against the charged officers. The Inspector General of Police, South Zone, Rayalaseema Region, was appointed as an Inquiry Officer, to conduct an oral enquiry into the charges. The Inquiry Officer, after conducting inquiry, submitted his minutes of inquiry holding that the charges are proved. The Inquiry Report was forwarded to the 1st respondent. The 1st respondent, after examining the minutes of inquiry and the explanation of the then Inspector of Police, vide G.O.Rt.No.409,

Home (SC.A) Department, dated 17.04.2019, issued orders imposing penalty of 10% cut in pension for a period of one year against him, as he retired from service on 28.02.2017. Similarly, the 1st respondent, after examining the minutes of inquiry and the explanation of the petitioner, vide G.O.Rt.No.849, Home (SC.A) Department, dated 11.09.2018, issued orders imposing penalty of stoppage of one increment without cumulative effect against the petitioner.

ii) The 1st respondent, vide G.O.Rt.No.1930, Home (SC.A) Department, dated 07.10.2013, issued orders to the 2nd respondent to initiate departmental action against the charged officers for the charge of corruption, instead of sanctioning prosecution against them. Pursuant thereto, the 2nd respondent vide C.No.385/02/2014 dated 19.03.2019 issued a memorandum of charge under Rule 20 of the CCA Rules, 1991 against the charged officers. The Inspector General of Police, Guntur Range, was appointed as an Inquiry Officer to conduct the oral enquiry into the said charge.

iii) The petitioner, on attaining the age of superannuation, retired on 31.07.2021 as an Assistant Sub-Inspector of Police and filed the present writ petition on 22.08.2021 after lapse of three years against the punishment awarded by the 1st respondent. Sri A.G. Krishna Murthy died on 08.01.2021 due to ill-health. Therefore, the 1st respondent vide G.O.Rt.No.647, Home (SC.A) Department, dated 20.07.2021 had abated further disciplinary proceedings against Sri A.G. Krishna Murthy. At present, the inquiry is under progress against the petitioner. Therefore, the contention of the petitioner that only one memorandum of charge has been initiated for both the charges, is not correct. The petitioner was placed under suspension in view of his involvement as an accused in a criminal case and pursuant to his arrest in the said criminal case. After following due procedure laid down under the CCA Rules, 1991, suitable punishment was imposed on the petitioner for the charges of misconduct. There are no merits in the writ petition and hence the same is liable to be dismissed.

4. It is an admitted fact that against the petitioner and Sri A.G. Krishna Murthy, Inspector of Police, a crime No.4/Rct-Kur/2012 was registered by the ACB on 21.08.2012 for illegal gratification of Rs.2,000/-. It is also an admitted fact that the 1st respondent issued G.O.Rt.No.1931 dated 07.10.2013 refusing to sanction prosecution in the above crime against them, but ordered for departmental disciplinary action. It is not in dispute that pursuant to the disciplinary proceedings, the petitioner was awarded a minor punishment of stoppage of one increment without cumulative effect and the period of suspension from 22.08.2012 to 27.12.2013 be treated as not on duty. It is also not in dispute that in view of the criminal case, the petitioner, who is A.2, was arrested and thereby he was suspended on 22.08.2012 and later he was reinstated into service on 28.12.2013. It is also not in dispute that the Inquiry Officer held the charges proved against the petitioner. It is also not in dispute that the punishment awarded against the petitioner is two-fold, one is minor punishment and the other is treating of suspension period as not on duty.

5. The contention of the learned counsel for the petitioner that the impugned proceedings, under which two punishments were awarded, is disproportionate and amounts to double jeopardy, is tenable and sustainable in view of the Fundamental Rule 54-B, according to which, the suspension period should be treated as on duty period in the event of awarding of minor punishment, in view of the law laid down by this Court in *A.V.Vinod Kumar Vs. The Executive Committee*¹ wherein it is held that no reasonable person could have treated the period of suspension as not on duty while imposing the minor punishment of censure and treating the period of suspension as not on duty, while imposing a punishment of censure in the disciplinary proceedings, will lead to imposing a major punishment, as such, the action of the disciplinary authority in treating the period of suspension as not on duty is unreasonable and against good conscience. Similarly, in *Shri S.P.Naik Vs. The Board of Trustees, Mormugao*² it is held that when minor penalty is imposed, period of suspension cannot be treated as not on duty.

It is also observed that the Government of India has ruled that

¹ 2007 (5) ALD 445

² 1999 (4) BomCR 531

when an inquiry has been held for imposition of a major penalty and finally minor penalty is awarded, the suspension should be considered justified and in terms of F.R.54-B the employee should be paid full pay and allowances for the period of suspension by passing a suitable order under F.R.54-B.

6. The contention of the learned Government Pleader that the Inquiry Officer submitted a report holding that the charges levelled against the petitioner are proved, therefore, imposition of punishment of stoppage of one increment without cumulative effect and treating of suspension period as not on duty, cannot be interfered with, is untenable and unsustainable, in view of the ratio laid down in the decisions referred supra and also in view of F.R.54-B.

7. For the aforesaid reasons, the Writ Petition is partly allowed and the impugned G.O.Rt.No.849, Home (SC.A) Department, dated 11.09.2018, is hereby set aside only to the extent that the period of suspension of the petitioner shall be treated as not on duty. The petitioner shall be entitled to full pay and allowances for

the period of suspension. As such, the respondents are specifically directed to take all the steps for payment of pay and allowances as entitled by the petitioner, within a period of three months from the date of receipt of this order. No order as to costs.

Consequently, miscellaneous applications, if any, pending shall stand closed.

VENKATESWARLU NIMMAGADDA, J

20th December, 2022
cbs

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