

D. Vittal Vs. the Registrar (Administration), High Court of Andhra Pradesh, Hyderabad and anr.

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Court : Andhra Pradesh

Decided On : Jun-06-2002

Reported in : 2002(4)ALD58; 2002(5)ALT58

Judge : S.R. Nayak and ;S. Ananda Reddy, JJ.

Acts : Administrative Tribunals Act; [Constitution of India](#) - Articles 14, 21 and 226; Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 - Rule 21(4)

Appeal No. : Writ Petition No. 14615 of 1994

Appellant : D. Vittal

Respondent : The Registrar (Administration), High Court of Andhra Pradesh, Hyderabad and anr.

Advocate for Def. : M. Bhaskara Lakshmi, Standing Counsel for High Court

Advocate for Pet/Ap. : J. Venugopal Rao

Disposition : Writ petition allowed

Judgement :

S.R. Nayak, J.

1. Sri D.Vittal, former District Munsif, Sircilla, has filed this writ petition assailing the validity and legality of the Government Order G.O.Ms.No.455, Home (SC.S) Department, dated 14.6.1994 removing him from service by the Governor of Andhra Pradesh, in exercise of the powers conferred by Sub-Rule (4) of Rule 21 of the A.P. Civil Services (Classification, Control and Appeal) Rules, 1991, (for short, CCA Rules) with immediate effect, as a disciplinary measure.

2. At the relevant point of time, the petitioner was working as District Munsif-cum-Special Magistrate, Sircilla. While he was serving as such, the High Court, vide Notification No.100-B.Spl, dated 27.4.1992, transferred the petitioner as Additional District Munsif, Karimnagar. However, it seems, subsequent to the issuance of the above notification, the Registrar, Administration, High Court of A.P. on 2.5.1992 directed the District Judge on phone to inform the concerned officers not to give effect to the transfers ordered in the notification dated 27.4.1992 and await further orders from the High Court. Subsequently, the Registrar (Management) in his proceedings Roc. No. 1343/92 B.Spl. dated 26.6.1992 directed the learned District Judge to issue necessary instructions to the concerned judicial officers to carry out the transfers ordered in the High Court's notification dated 27.4.1992. This information was received by the learned District Judge on 30.6.1992 and on the same day the learned District Judge, in turn, issued instructions to the petitioner and Sri Balaram, District Munsif, who was posted in place of the petitioner at Sircilla, to give effect to the transfers ordered by the High Court in its notification dated 27.4.1992. In terms of the directions issued by the learned District Judge, Sri Balaram proceeded to Sircilla and took charge of the post on 1.7.1992 from the petitioner. It came to the notice of the learned District Judge that when the petitioner handed over the charge to Sri Balaram on 1.7.1992, he did not hand over a sum of Rs.18,350/-, being the case property in Cr. No. 83 of 1992 of Vemulawada Police Station. In that view of the matter and after the preliminary enquiry, the following charge, being charge No.1 was framed against the petitioner:

'Charge No.1. That a sum of Rs.18,350/- in Cr. No. 83/92 of Vemulawada P.S. was kept with the charged officer after handing over charge of his office to Sri V.Balaram, Addl. Dist. Munsif, Karimnagar on 1.7.1992 after noon and that ultimately the said money was handed over by the charged officer to the Superintendent, District Court, Karimnagar on 10.7.92 FN, thereby during this interregnum period the said sum of Rs.1350/- was kept with the charged officer without handing over to his successor.

The charge memo containing the above charge was served on the petitioner and he filed the written statement setting out the circumstances under which he could not hand over cash of Rs.18350/-, being the case property in Cr. No. 83 of 1992 of Vemulawada P.S. to his successor in office on 1.7.1992. The contents of the written statement, to put it briefly, are as follows:

On 27.6.1992, the petitioner suffered an intense heart attack at Sircilla and when he consulted his local Doctor, he was advised to consult a Cardiologist. Therefore, on 28.6.1992, he went to Nizamabad and consulted a Cardiologist, who advised him to get himself admitted into the hospital for taking ECG and also to keep him under observation for three days. But, he had to return to Sircilla and accordingly he returned to Sircilla and consulted his local Doctor, Dr. Purnachandra Rao, who took ECG and advised the petitioner to come after 48 hours i.e., on 1.7.1992 for taking ECG and prescribing medicines. On 1.7.1992, at about 11.30 A.M, Sri Balaram came to him with the orders from the District Judge and requested him to hand over the charge, and accordingly he handed over the charge including all the valuables to Sri Balaram on that day, except cash of Rs.18350/- and that the entire process of handing over the charge was done in the presence of the Head Clerk, Deputy Nazir and other staff members before going to Bench after lunch recess. While handing over the charge, the petitioner informed Sri Balaram about the amount of Rs.18350/- being the case property in Cr. No. 83 of 1992 and told him that as the Advocate for the accused in Cr. No. 83 of 1992 represented to him in the morning hours that he would file necessary petition for return of the case property, he did not hand over the said sum of money to Sri Balaram. After lunch recess, when he went to the Bench again, no such petition was filed, by the learned counsel for the accused, as earlier stated in the morning hours till about 5

P.M. After he rose for the day, he had to rush to his local Doctor, Dr. Purnachandra Rao, as earlier advised by him for taking ECG and to have prescription of medicines. In those circumstances, though the Advocate for the accused in Cr. No. 83 of 1992 did not file the petition for the return of the case property, the petitioner without handing over the cash of Rs.18,350/- to his successor in office, in his anxious mood immediately after the court hours, rushed to his local Doctor and on his advice went to Hyderabad for further treatment and he was in Hyderabad between 2.7.1992 and 7.7.1992, during which period he was under the observation of Dr.Gopinath. When he was in Hyderabad, according to the petitioner, on 2.7.1992, he remembered the fact of not handing over the cash of Rs.18350/- to his successor in office and, therefore, he immediately instructed the Deputy Nazir to take the said cash and hand over the same to Sri Balaram and as per his instruction when the Deputy Nazir took money to hand over the same to Sri V.Balaram on 3.7.1992, Mr. Balaram refused to receive the same on the ground that it was not handed over to him by the petitioner at the time of handing over the charge of the office on 1.7.1992, and that when he came to know about this fact, he met Mr. Balaram on the night of 7.7.1992, but Sri Balaram gave the same reply to him also. Subsequently on 9.7.1992, he went to Manthani and took charge of his new office and deposited the amount of Rs. 18350/- on 10.7.1992 with the learned District Judge. In those circumstances, the petitioner claims that he did not act with dishonest or malafide intention and his not handing over the sum of Rs.18350/- on 1.7.1992 itself is bona fide and he became a victim of circumstances. After the petitioner filed his written statement to the first charge, the learned District Judge, Karimnagar, in the course of preliminary enquiry with the staff members of the Munsif Magistrate Court, Sircilla, noticed that the property seizure memo in Cr. No. 83 of 1992 of Vemulawada P.S., was removed from the records by the petitioner and in that view of the matter, the learned District Judge issued a memo dated 13.7.1992 to the petitioner to send the property seizure memo, and accordingly the petitioner, through his letter dated 18.7.1992, sent the said property seizure memo to the Munsif Magistrate Court, Sircilla, marking a copy to the learned District Judge. Subsequently, the Munsif Magistrate, Sircilla, in his report dated 18.7.1992 informed that the petitioner personally handed over the property seizure memo along with other documents. Basing on the said letter and

the documents sent to the enquiry officer, an additional charge was framed being Charge No.2. It reads as follows: 'Charge No.2 (Addl). The Charged Officer in the property list in Cr. No. 83/92 of Vemulawada P.S. removed certain papers from the record and handed over the same to Sri B.Eshwar Rao, Munsif Magsitrate, Sircilla on 18.7.1992, only after he was issued a memo on 13.7.92.'

3. The petitioner filed his objection to additional charge No.2 contending that the enquiry officer has no competence to frame the second charge on the basis of the tutored evidence of few staff members who spoke on this aspect evidently under duress and fear administered by the learned District Judge. According to the petitioner, not only the property list but also some other relevant papers of the case were lying mixed up and mingled with his personal papers in office which he subsequently returned to the Munsif Magistrate, Sircilla and, therefore, he is totally innocent of the second charge.

4. Subsequently a regular departmental enquiry was conducted and as many as eight witnesses were examined on behalf of the disciplinary authority and documents Exs. P.1 to P.17 were marked in order to prove the charges against the petitioner-delinquent officer. When the petitioner was offered to examine defence witnesses, he did not file any list of witnesses and on the other hand on 22.5.1993 the petitioner informed the enquiry officer that he did not want to adduce any defence evidence. On completion of recording of evidence, the petitioner filed his written arguments and also addressed oral arguments to the enquiry officer. The enquiry officer, on appreciation of the oral and documentary evidence adduced in course of enquiry, found the petitioner guilty of both the charges, and accordingly he submitted his report dated 7.6.1993 holding that the petitioner is guilty of both the charges. The High Court, in the light of the findings recorded by the enquiry officer and agreeing with the findings, thought it fit to remove the petitioner from service as a disciplinary measure. Accordingly, the High Court, vide its letter dated 3.1.1994, recommended to the Government that the petitioner be removed from service as a disciplinary measure. Subsequently, the Government, in the light of the recommendations of the High Court and also taking into account the findings of the enquiry officer, issued G.O. Ms. No. 455 dated 14.6.1994 removing the petitioner from service with immediate effect as a disciplinary measure. Hence this

writ petition by the delinquent officer assailing the validity of the said Government Order.

5. Sri J.Venugopala Rao, learned Counsel appearing for the petitioner first contended that having regard to the circumstances under which the petitioner could not hand over the sum of Rs.18350/- being the case property in Cr. No. 83 of 1992 of Vemulawada P.S., to his successor in office on 1.7.1992 itself and having regard to the fact that even according to the enquiry officer there was no malafide intention on the part of the petitioner to misappropriate the said sum of money even temporarily, the enquiry officer is not justified in recording the finding that the petitioner is guilty of the first charge only because of the fact that on 1.7.1992, the petitioner did not hand over the sum of Rs.18350/- being the case property in Cr. No. 83 of 1992 of Vemulawada P.S., to his successor in office. Sri J.Venugopala Rao contended that the view taken by the enquiry officer and accepted by the High Court and the Government is too much technical and at the most, the conduct of the petitioner in not handing over a sum of Rs.18,350/- on 1.7.1992 itself to his successor in office may tantamount to a technical lapse or a technical misconduct, and such a misconduct would never justify imposition of the extreme penalty of removal from service. Sri J.Venugopala Rao also contended that the enquiry officer, in recording the finding on charge No. 2, has not properly appreciated the explanation offered by the petitioner that the property seizure memo was mixed up with his personal papers and when he traced out the same, he positively reported and returned the same to the learned Munsif Magistrate, Sircilla under intimation to the learned District Judge. Sri J.Venugopala Rao contended that at the most it can be said that the petitioner committed a trivial misconduct, in the sense that admittedly he did not hand over a sum of Rs.18350/- being the case property in Cr. No. 83 of 1992 of Vemulawada P.S., to his successor in office on 1.7.1992, and by that date, he did not return the said property to the learned counsel for the accused in Cr. No. 83 of 1992 of Vemulawada P.S. Sri J.Venugopala Rao further contended that even assuming that the petitioner has committed a sort of misconduct in not handing over the money on 1.7.1992, that circumstance itself could not be a justification for the High Court to recommend the extreme penalty of removal from service or for the Government to accept such a recommendation and pass the impugned order. Sri

J.Venugopala Rao contended that the extreme penalty of removal from service imposed on the delinquent officer as a disciplinary measure should shock the conscience of the Court and it is totally disproportionate to the gravity of the misconduct committed by the petitioner.

6. Smt. M. Bhaskara Lakshmi, learned Standing Counsel for the High Court, on the other hand, would support the impugned Government Order. According to her, the misconduct committed by the petitioner is not trivial in nature as sought to be made out by the learned counsel for the petitioner, but it is really a grave misconduct in nature. She would further contend that since both the charges are held proved, the penalty imposed on the delinquent officer cannot be said to be disproportionate.

7. Before dealing with the contentions of the learned counsel for the parties, at the out set, it needs to be noticed that the High Court, while reviewing disciplinary actions under Art. 226 of the Constitution, does not exercise the powers of the appellate Court/authority, and the jurisdiction of the High Court, in such cases, is very much limited and circumscribed and the High Court can interfere with the disciplinary action only where it is found that the domestic enquiry conducted by the employer is vitiated because of non-observance of principles of natural justice or infraction of the mandatory procedure prescribed under the relevant statute or denial of reasonable opportunity to the delinquent or where the findings recorded by the enquiry officer and accepted by the employer are based on no evidence or where the punishment imposed on the delinquent is totally disproportionate to the proven misconduct of the employee. This position is well settled by catena Judgments of the Apex Court and the High Courts, and there is no need to burden this Judgment by referring to those Judgments in detail. Suffice it to refer to few decisions of the Supreme Court, and they are State of A.P. v. Sree Rama Rao,¹ State of A.P. v. Chitra Venkat Rao,² Corporation of the City of Nagpur v. Ramachandra,³ and Nelson Motis v. Union of India,⁴ Ranjit Tahkur v. Union of India,⁵ B.C. Chaturvedi v. Union of India,⁶ Indian Oil Corporation v. Ashok Kumar Arora,⁷ Union of India v. Ganayutham⁸ and Om Kumar and Others v. Union of India.⁹

8. In the premise of the above well-settled position in law, let us proceed to review the disciplinary action taken against the petitioner. The two charges framed against the petitioner-delinquent officer are held to have been proved by the enquiry officer and those findings have been accepted by the High Court and the Government. It is well settled that while reviewing the findings recorded by the enquiry officer in a disciplinary proceeding, what the Court should see is whether the findings recorded by the enquiry officer are based on some acceptable substantive legal evidence or not, and not the adequacy or sufficiency of the evidence. In other words, if the Court finds that the findings recorded by the enquiry officer/authority are based on some acceptable substantive legal evidence, the Court cannot interfere with those findings on the ground that the evidence is not sufficient or adequate. In the instant case, even according to the petitioner-delinquent officer, he did not hand over a sum of Rs.18350/- being the case property in Cr. No. 83 of 1992 of Vemulawada P.S.on 1.7.1992 itself to his successor in office when he handed over the charge of his office. It is also admitted position that the property seizure memo was separated from the records and it was wrongly mixed up with the personal papers of the petitioner-delinquent officer. In that view of the matter, the charges framed against the petitioner-delinquent are technically proved. We hasten to observe that the charges are 'technically proved', because, there is no charge against the petitioner-delinquent that he, by not handing over a sum of Rs.18350/- to his successor in office on 1.7.1992 itself, misappropriated the said sum of money during the period between 1.7.1992 and 10.7.1992. Similarly, charge No.2 also does not accuse the petitioner-delinquent officer that he removed the property seizure memo from the record with an intention to misappropriate a sum of Rs.18350/- even temporarily. Even according to the enquiry officer, there was no malafide intention on the part of the delinquent officer in not handing over the sum of Rs.18350/- on 1.7.1992 to his successor in office. It has also come in the evidence of P.W.1, Deputy Nazir, that on 2.7.1992 itself, the delinquent Officer directed him to take sum of Rs.18350/- and hand over the same to his successor in office, Mr. Balaram and as per the instruction of the petitioner, the Deputy Nazir took the money to the successor in office, i.e., Mr. Balaram, and offered to hand over the same to him, but Mr Balaram refused to receive the same. In the context of the above proved

facts, whether the explanation offered by the delinquent officer in not handing over the cash of Rs.18350/- to his successor in office on 1.7.1992 when he handed over the charge of the office assumes credence or not is the question for the Court to decide. If the petitioner-delinquent officer wanted to misappropriate the sum of Rs.18350/-, even temporarily for few days, then, he would not have asked the Deputy Nazir on the very next day to hand over the money to the successor in office and that the Deputy Nazir would not have taken the money on 3.7.1992 itself to hand over the same to Mr. Balaram. In the absence of any malafide intention attributed to the delinquent officer and in the absence of any other circumstance or circumstances which would indicate or suggest that the delinquent officer did not hand over the sum of Rs.18350/- to the successor in office on 1.7.1992 itself with an intention to make use of the same for his personal purpose even for a few days, the question to be considered by us is whether the extreme penalty of removal from service, which is held to be an economic capital punishment, if not justified, can be sustained on the touch-stone of Art. 14 of the Constitution by applying Wednesbury principle and the doctrine of proportionality.

9. It is true that the quantum of punishment in disciplinary matters is primarily for the disciplinary authority and the jurisdiction of the High Courts under Art. 226 of the Constitution or the Administrative Tribunals constituted under the Administrative Tribunals Act, is limited and is confined to the applicability of one or other of the well known principles known as 'Wednesbury principles' enunciated in *Associated Provincial Picture Houses v. Wednesbury Corporation*.¹⁰ Lord Greene, in the above case, held that when a statute gives discretion to an administrator to take a decision, the scope of judicial review would remain limited. Lord Greene said that interference was not permissible unless one or the other of the following conditions are satisfied, namely, the order was contrary to law, or relevant facts were not considered, or irrelevant factors were considered, or the decision was one which no reasonable person could have taken. These principles enunciated in the Wednesbury rule have been consistently followed both in UK and in India to Judge the validity of administrative action including disciplinary action. In *Council for Civil Services Union v. Minister of Civil Service*,¹¹ Lord Diplock summarised the principles of judicial review of administrative action as based upon one or other of the following viz., illegality, procedural irregularity or irrationality. Lord Diplock

hastened to opine that 'proportionality' was a 'future possibility'. But even long before that, as pointed out by the Supreme Court in Om Kumar's case (9 supra), the Indian Supreme Court had applied the principle of 'proportionality' to legislative action since 1950. In the above case, the Supreme Court held-

'By 'proportionality', we mean the question whether, while regulating exercise of fundamental rights, the appropriate or least-restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the Court will see that the legislature and the administrative authority 'maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve'. The legislature and the administrative authority are, however, given an area of discretion or a range of choices but as to whether the choice made infringes the rights excessively or not is for the court. That is what is meant by proportionality. '

10. The ground of arbitrariness available to a litigant flowing from Art. 14 of the Constitution is available to the petitioner-delinquent officer in the instant case to assail the punishment imposed on him as a disciplinary measure. The doctrine of proportionality means that whenever the legislature or administrative action granted an area of discretion or range of choices, exercise of such discretion or opting choices should be such that the exercise of such discretion or choices should not hurt the rights of the affected interests excessively, that is to say, more than what is necessary in the assessment of an ordinary prudent man. In Ranjit Thakur's case (5 supra), the Supreme Court referred to 'proportionality' in the quantum of punishment and held that the punishment was shockingly disproportionate to the misconduct proved. Similarly, in B.C.Chaturvedi's case (6 supra), the Supreme Court opined that the Court would not interfere with the quantum of punishment unless the punishment awarded is one which shocks the conscience of the Court. Therefore, it is permissible for the Court to step in and interfere with the quantum of punishment only where the Court is of the opinion that a case is made out to apply the doctrine of proportionality and/or where the Court thinks that the punishment is shockingly disproportionate to the misconduct

proved or where the punishment imposed on the delinquent officer shocks the conscience of the Court. The question is whether these conditions exist in the present case or not.

11. After necessary reflection and anxious deep thought to do justice, we are inclined to think that here is a fit case where the doctrine of proportionality has to be applied and the conditions indicated in B.C.Chaturvedi (6 supra) do exist. The postulates of Art.14, which are intended to ensure fairness in action, should be allowed to operate in the domain of disciplinary proceedings and actions also. Where an administrative action, such as a punishment in a disciplinary case, is challenged as 'arbitrary' under Art. 14 of the Constitution on the basis of the enunciation of the law by the Apex Court in A.P. Rayappa v. State of Tamil Nadu,¹² the question will be whether the administrative order is 'rational or reasonable' and the test then is the 'Wednesbury test'. It is trite that it is not the law of the land that whenever an employee is found guilty of misconduct, regardless of the nature and gravity of the misconduct, he should be sacked and sent home. The punishment of dismissal or removal from service, the severest of punishments, not only brings about termination of employment, but also termination of the source of livelihood of the concerned employee. Therefore, fairness in action guaranteed under Art. 14 read with Art. 21 of the Constitution would require the employer, public or private, to exercise this drastic extreme power vested in his hands, only in a case of grave form of misconduct and only where such drastic action is necessary to sub serve public interest and enforce discipline in the work force. As pointed out supra, the charges framed against the petitioner-delinquent officer are simple and they do not involve any moral turpitude. The evidence placed by the disciplinary authority in the course of enquiry also simply prove the fact that the delinquent officer did not hand over the sum of Rs.18350/- being the case property in Cr. No. 83 of 1992 of Vemulawada P.S. to his successor in office on 1.7.1992. The evidence does not indicate anything further against the petitioner. It is also matter of evidence that on the very next day i.e., 2.7.1992 the petitioner - delinquent officer, when he was in Hyderabad for medicare for his heart disease, directed his Deputy Nazir, P.W.1, to hand over the money to his successor in office and this fact is acknowledged and spoken to by P.W.1 in his evidence, and according to this witness, he wanted to

hand over the money to Mr. Balaram on 3.7.1992, but Mr. Balaram refused to receive the same stating the same should have been handed over to him by the petitioner on 1.7.1992 itself. It is one of the rarest of rare cases where the extreme punishment of removal from service imposed on the petitioner-delinquent shocks the conscience of the Court and, therefore, we are of the considered opinion that the punishment imposed on the delinquent officer cannot be treated as a fair and reasonable punishment or a punishment which a reasonable prudent man would have awarded. In other words, in our opinion, the punishment is totally arbitrary and violative of Art. 14 postulates. In that view of the matter, a case is made out by the petitioner to apply the Wednesbury principle and the doctrine of proportionality.

12. The next question to be considered by us is whether this Court itself should award alternative penalty or the proceedings should be remanded to the High Court on the administrative side to decide on appropriate, reasonable penalty. Ordinarily, when an administrative action in general, and discretionary action in particular, is set aside or quashed on any permissible ground of judicial review, the administration will be directed to reconsider the issue and pass appropriate order. In that view of the matter, since we found that the penalty of removal imposed on the petitioner-delinquent officer is arbitrary and violative of Art. 14 postulates, we should have quashed the impugned Government Order and left the question of deciding the appropriate punishment to the High Court and the Government on reconsideration of the issue. But in this case, the petitioner was removed from service as far back as on 14.6.1994 and the writ petition is coming up before us for final hearing after nearly eight years. The Supreme Court in Ganayutham's case (8 supra) has opined that in rare situations, the Court can award an alternative penalty. Further, it is well settled that in appropriate cases and if there is any justification for doing so, the Court can exercise the very power which is available to the original authority itself instead of remanding the proceedings to the original authority. In taking this view, we are fortified by the opinions handed down by the Apex Court in Bhagat Ram v. State of Himachal Pradesh and others,¹³ Prafulla Chandra Mohapatra v. State of Orissa,¹⁴ Union of India and others v. I.S.Singh¹⁵ and Gujarat Steel Tubes Ltd v. Gujarat Steel Tubes Mazdoor Sabha and others,¹⁶ and of this Court in Subedar Kashmira Singh v. Government of India¹⁷ and in M.Vijaya Bhaskara Reddy v. High Court of Andhra Pradesh.¹⁸ In that view of the

matter and having regard to the time already spent, we think it appropriate to give quietus to this dispute. We have taken into account the institutional interests as well as the interest of the delinquent officer in forming this opinion.

13. In the result and for the foregoing reasons, we allow the writ petition and set aside the impugned order of the Government, G.O. Ms. No. 455 Home (SC.S) Department dated 14.6.1994. A direction shall issue to the respondents to reinstate the petitioner into service with continuity of service with all attendant benefits, except back wages for the period between the date of removal of the petitioner from service and date of reinstatement. This direction shall be implemented within a period of six weeks from today. No costs.

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