

M.Periya D Vs. The Dy.Inspector General, Chennai and An

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Court : Andhra Pradesh

Decided On : Nov-28-2014

Judge : The Hon'ble Sri Justice L.Narasimha Reddy and the Hon'ble S

Appellant : M.Periya D

Respondent : The Dy.Inspector General, Chennai and An

Judgement :

THE HONBLE Sr.JUSTICE L.NARASIMHA REDDY AND THE HONBLE Sr.JUSTICE CHALLA KODANDA RAM Writ Appeal No.513 of 2006 28-11-2014 M.Periya Dasan appellant.

The Dy.Inspector General, Chennai and another.Respondents Counsel for appellant:Sr.P.S.P.Suresh Kumar Counsel for Respondents:Sr.B.Narayan Reddy ?.

Cases referred THE HONBLE Sr.JUSTICE L.NARASIMHA REDDY AND THE HONBLE Sr.JUSTICE CHALLA KODANDA RAM Writ Appeal No.513 of 2006

JUDGMENT

: (Per the Honble Sr.Justice L.Narasimha Reddy) The appellant was working as Sub-Inspector in the Central Industrial Security Force of Visakhapatnam Steel Plant, in the year 2000.

On 15.05.2000, a charge memo was issued to him alleging that he failed in his duties to supervise the Constables, who are posted at the respective gates, and on account of the same, the Constable, by name, T.K.Rao, at B.C.gate, has permitted the entry of two labourers on 02.05.2000, by receiving a sum of Rs.5/- from each.

The appellant submitted his explanation denying the allegation against him.

The Disciplinary Authority, i.e.the 2nd respondent, ordered departmental enquiry.

A report was submitted by the Enquiry Officer, holding that the charge is proved.

Taking the same into account, the 2nd respondent, passed an order, dated 28.11.2000, imposing the punishment of stoppage of two increments with cumulative effect.

The appeal preferred by the appellant before the 1st respondent was rejected on 26.03.2001.

Therefore, he filed W.P.No.14223 of 2001.

The appellant pleaded that the allegation in the entire episode was that one Mr.T.K.Rao, Constable, allowed two labourers into the precincts of the steel plant by receiving a sum of Rs.5/- from each and though there was no failure on his part, the charge sheet was issued.

It was also his case that the labourers were not examined in the departmental enquiry, though he made a specific request for their examination.

Ultimately, it was pleaded that the imposition of punishment was absolutely without any basis.

The respondents filed a counter-affidavit, opposing the writ petition.

It was pleaded that but for lack of proper supervision on the part of the appellant, the instance of the Constable permitting the two labourers unauthorisedly, would not have arisen.

The learned Single Judge dismissed the writ petition, through order, dated 21.02.2006.

Hence, this writ appeal.

Heard learned counsel for the appellant and learned Assistant Solicitor General for the respondents.

The only charge framed against the appellant reads as under: That No.714330183 SI/Exe M.

Periyadasan of CISF Unit versus Visakhapatnam was detailed as shift in charge of A shift duty from 0500 hrs to 1300 hrs on 02.05.2000 at BC gate.

During his duty he failed to control/supervise his shift duty personnel at BC gate as a result of which two labourers were gained entry into the plant illegally through old vehicle in gate of BC gate without any valid documents in their possession.

This act on the part of SI/Exe.

M.Periyadasan tantamounts to gross dereliction of duty and unbecoming of a member of a disciplined Force like CISF.

From a perusal of this, it is clear that the imputation against the appellant is that he failed to exercise control or supervision on the shift duty personnel at B.C.Gate.

A Constable, by name, T.K.Rao, is said to have collected Rs.5/- from two labourers and permitted them to enter the precincts of the steel plant.

The record is not clear as to what action has been taken against the Constable.

In view of the peculiar nature of allegation against the appellant, it was obligatory on the part of the respondents to examine the Constable, as well as two labourers in the departmental enquiry held against the appellant.

The reason is that the department must establish that, but for the alleged slackness, or lack of supervision on the part of the appellant, the incident would not have taken place.

In addition to that, the very occurrence of the incident must be proved, and thereafter, effort must be made to establish a link between the incident and reported lack of supervision on the part of the appellant.

The entire proceedings against the appellant are on the basis of the statement said to have been recorded from the two labourers. Whatever may have been the justification for the respondents in not including those two persons in the list of witnesses, at least when the appellant insisted on their examination and filed their affidavits, the Enquiry Officer ought to have examined them.

Repeated requests made by the appellant in this behalf, were rejected.

Even the Constable, who is said to have received the amount and permitted the two labourers, was not examined.

Therefore, it is just un-understandable as to how the charge can be said to have been proved.

Assuming that the occurrence of the incident was proved, the lapse on the part of the appellant can be established, if only it was proved that he did not discharge the duties assigned to him.

In the CISF, the duties of each and every personnel are defined in clear terms. It is only when any specific duty, which was assigned to the appellant was found to be not discharged, that he can be accused of his lapses.

No effort was made in that direction also.

In case the approach of the respondents is that the appellant is responsible for the alleged acts of misconduct of the Constable, all superiors of the appellant also must be accused of similar lapse.

The appellant figures somewhere in between the Constable and the Commandant.

The whole episode smacks of arbitrariness and capriciousness, which are frowned at, by Article 14 of the Constitution of India.

We are satisfied that there was no basis for the respondents to impose the punishment of stoppage of increments.

The writ appeal is accordingly allowed as prayed for.

The increments shall be restored to the appellant.

However, since the delay is on account of pendency of the proceedings, the arrears of salary on account of setting aside the punishment, shall be restricted only to 50%.

There shall be no order as to costs.

The miscellaneous petitions filed in this appeal shall also stand disposed of.

_____ L.NARASIMHA REDDY, J.

_____ CHALLA KODANDA RAM, J.

Date:28.11.2014

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