
(2022) 11 TEL CK 0068

High Court For The State Of Telangana:: At Hyderabad

Case No: Writ Petition No. 573 Of 2017

K.Uday Shekhar

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision: Nov. 14, 2022

Acts Referred:

- Constitution Of India, 1950 - Article 14, 16, 311(2)
- Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 - Rule 40, 54A(3), 54(5)

Hon'ble Judges: Surepalli Nanda, J

Bench: Single Bench

Advocate: V.Ravichandran

Final Decision: Allowed

Judgement

1. Heard learned counsel for the petitioner and learned Government Pleader for Revenue.

2. This Court vide its order dated 28.04.2022 was pleased to order W.P.M.P.No.28578 of 2017 in W.P.No.573 of 2017. As per the amended prayer,

the prayer of the petitioner in the present writ petition is as follows:

“to issue an appropriate writ, order or direction, more particularly one in the nature of a Writ of Mandamus declaring the action of the 2nd and 3rd

respondents in treating the out of employment period from 10.09.2013 to till date as Extra Ordinary Leave and thereafter, as not on duty vide

impugned proceedings issued in D.O.No.4898 (No.L&O/B8/ 1432/2001) dated 07.05.2016, Rc.No.148/T2/2016, dated 16.10.2016 and D.O.No.13020

dated 31.12.2016 though the order of removal was set aside by the A.P. Administrative Tribunal, Hyderabad with a direction to extend all

consequential benefits and confirmed by this Court in W.P.No.22451 of 2014 dated 07.01.2016 and further denying increments which fell due from

2014 onwards and promotion, as being arbitrary, illegal, unjustified and in violation of Articles 14 and 16 of the Constitution of India and consequently

hold that the petitioner is entitled to have the out of employment period regularized as on duty for all purposes including arrears of pay and allowances,

increments, promotion on par with his juniors etc.

3) The case of the petitioner, in brief, is as follows:

a) The petitioner while working as Police Constable at Chilkalguda P.S., he was dismissed from service vide orders dated 07.07.2001 invoking the

provisions of Article 311(2) of the Constitution of India citing involvement in Crime No.288 of 2001 and Crime No.440 of 2001.

b) The same was set aside by the Tribunal by an order dated 30.11.2001 giving liberty to take disciplinary action in accordance with law and

accordingly, the petitioner was reinstated into duty on 16.02.2002. Subsequently, the petitioner was acquitted in both the criminal cases on 16.10.2003

and 29.09.2004 respectively.

c) In respect of the very same incidents, disciplinary proceedings were initiated against the petitioner vide charge memo dated 20.05.2008 and the

same was culminated in the imposition of the penalty of removal vide proceedings dated 10.09.2013 issued by the 3rd respondent and the appeal

preferred was rejected vide proceedings dated 14.12.2013 by the 2nd respondent.

d) Aggrieved by the same, the petitioner has instituted O.A.No.6991 of 2013 before the Tribunal and the said O.A. was allowed vide order dated

18.03.2014 duly setting aside the order of removal with a further direction to the respondents to reinstate the petitioner in to service with all

consequential benefits.

e) As the respondents were not implementing the said O.A. order, the petitioner filed Contempt Application. Subsequent to filing of the said Contempt

Application, the respondents filed W.P.No.20416 of 2014. In the said writ petition, the High Court granted interim order on 17.11.2014. The said writ

petition was dismissed on 07.01.2016 affirming the order passed by the Tribunal.

f) The petitioner was reinstated into service on 07.05.2016. The suspension period from 07.07.2001 to 18.02.2002 was treated on duty, but out of

employment period from 10.09.2013 to 07.05.2013 has been treated as "Extra Ordinary Leave". Hence, this writ petition.

4. The respondents filed counter, in brief, is as follows:

a) In obedience of the orders of the Tribunal and the High Court, the petitioner was reinstated into service with all consequential benefits treating the

out of employment as "extra ordinary leave", but not as "not on duty", since they did not do duty as contended by the petitioner.

b) The delay of 4 months to reinstate the petitioner is purely an administrative delay occurred during the official correspondence and the respondent

cannot be held responsible for the same.

c) The petitioner, submitted a representation, on 12.07.2016 to the 2nd respondent to treat the period of out of employment as "on

duty".

d) There is an opportunity provided to every Government Servant under Rule 40 of Andhra Pradesh Civil Services (Classification, Control and

Appeal) Rules, 1991 to prefer a revision petition against any order of the disciplinary authority and appellate authority. But instead of availing this

opportunity and without following the procedure prescribed Rule 40 of the said Rules, the petitioner has invoked the jurisdiction of the High Court.

Therefore, the writ petition is liable to be dismissed.

5. The main contentions put-forth by the counsel for the petitioner are as under:

a) That while the Petitioner was working at Chilakalaguda Police Station the Petitioner was falsely implicated in Crime No.288/2001 U/s. 419, 420 and

395 IPC and Crime No.440/2001 U/s. 392 IPC of S.R.Nagar Police Station for which the Petitioner was placed under suspension.

b) That the Metropolitan Sessions Judge's Court gave the petitioner a clean acquittal in both the cases, later departmental proceedings were

initiated against the petitioner and the Inquiring Authority conducted the inquiry and held the charge as proved. The Disciplinary Authority agreed with

the findings of the Inquiry Authority and submitted the copy of the Inquiry report to the petitioner and the petitioner submitted a detailed representation

and not satisfied with the petitioner's representation, the Disciplinary Authority issued orders vide D.O. No.5779 (No.L&O/B8/1432/2001-13,

dated 10.09.2013 of Commissioner of Police, Hyderabad) for petitioner's removal from service treating the period of suspension of the petitioner

PC 3440 from 07.07.2001 to 18.02.2002 as not on duty. That the petitioner's appeal petition was also rejected by the Appellate Authority.

c) That the petitioner filed O.A.No.6991/2013 on the file of A.P.A.T., and the APAT vide its common order dated 18.03.2014 had set aside the

punishment of removal from service.

d) That the department had filed W.P.No.20416 of 2014 before the High Court against the order dated 18.03.2014 issued by the APAT. The High

Court in its common order dated 07.01.2016 observed that there was no reason to interfere with the common order of the Tribunal and the same is

confirmed and the Writ Petitions are devoid of any merit and the same are dismissed.

e) That the Commissioner of Police, Hyderabad vide D.O. No.4898 (No.L&O/B8/1432/2001, dt. 07.05.2016 had issued orders for the petitioner's

reinstatement into service duly directing that the period of out of employment from 10.09.2013 to till date be treated as Extra Ordinary Leave.

f) That for no fault of the petitioner, the petitioner was out of employment from 10.09.2013 to 07.05.2016 and both the Tribunal and the High Court

directed for petitioner's reinstatement into service with all consequential benefits and therefore the Petitioner is entitled for a direction directing the

respondents for treating the period out of employment also as on duty and to issue appropriate orders releasing all consequential benefits to the

Petitioner.

g) That in respect of one Sri K.Ramesh Goud, Sub-Inspector of Police, and Sri K.Peethamber Babu, PC 7934 formerly at Kachiguda Police Station,

Hyderabad for regularization of suspension and dismissal period as on duty, orders had been issued in their favour by the Government but however

curiously in respect of the Petitioner the request to treat the period of out of employment of the Petitioner and another from 10.09.2013 was rejected

illegally.

h) That the petitioner was not issued any notice prior to the impugned order nor the impugned order indicates any reasons.

i) That as per Fundamental Rule 54-A Sub-Rule 3 the Petitioner is entitled for relief as prayed for in the Writ Petition.

6. The main contentions put-forth by the Counsel for the respondents are as under:

a) That the Director General of Police, Telangana vide Memorandum R.C.No.148/T2/2016, dt. 26.10.2016 had informed that "to treat the period of

suspension in respect of S/Sri Uday Sekhar, P.C. 3440 w.e.f., 07.07.2001 to 18.02.2002, Ch. Sudhakar Reddy, w.e.f., 07.07.2001 to 19.02.2002 and

B.Suresh Kumar, PC 7934 w.e.f, from 07.07.2001 to 04.07.2002 and the period out of employment from 10.09.2013 to 07.05.2016 of above 3 PCs as

not on duty as per the provisions of F.R. 54(5) and the same was informed to the Petitioner.

b) That there is an opportunity provided to every Government servant under Rule 40 of Andhra Pradesh Civil Services (Classification, Control and

Appeal) Rules 1991 to prefer a Revision Petition against any order of the Disciplinary Authority and the Appellate Authority. But the petitioner instead

of availing of the said opportunity and without following the procedure prescribed under the Rule 40 of Andhra Pradesh Civil Services (Classification,

Control & Appeal) Rules 1991 the Petitioner has invoked the jurisdiction of the High Court.

c) Placing reliance and referring to paras 20 and 21 of the Common Order dt. 18.03.2014 passed in O.A.No.6990/2013 and O.A.No.6991/2013 the

learned counsel for the respondents contends that the order passed in favour of the petitioner is not on merits and hence therefore the petitioner's

plea that Fundamental Rule 54-A Sub-Rule 3 applies is false and incorrect and therefore Fundamental Rule 54(5) applies to the facts of the present

case and the Writ Petition has to be dismissed in limine.

7. In consequence to the main impugned proceedings dated 07.05.2016 the consequential proceedings impugned in the present writ petition are dated

26.10.2016 and 31.12.2016. In so far as the impugned proceedings Rc.No.148/T2/2016, dated 26.10.2016 of the office of the Director General of

Police, Telangana, Hyderabad reads as under:

"The attention of Commissioner of Police, Hyderabad is invited to the references cited and he is informed that to treat the period of suspension in

r/o S/Sri Uday Shekar, PC 3440 wef 7.7.2001 to 18.2.2002, Ch.Sudhakar Reddy wef 7.7.2001 to 19.2.2002 and B.Suresh Kumar, PC 7934 wef

7.7.2001 to 4.7.2002 and the period of out of employment from 10.9.2013 to 7.5.2016 of above (3) PCs is treated as "Not on Duty" as per the

provisions of FR 54(5).

He is therefore requested to inform the petitioners accordingly under intimation to Chief Office.

8. In so far as impugned proceedings D.O.No.13020, (L&O/B8/1432/2001, dated 31.12.2016, it is the consequential proceedings issued by the

Commissioner of Police, Hyderabad City referring to the proceedings dated 26.10.2016 in Rc.No.148/T2/2016, extracted above, whereunder the

D.G.P., Telangana informed to "treat the period of suspension of the petitioner herein i.e. Sri Uday Shekar, PC 3440 w.e.f. 07.07.2001 to

18.02.2002 and the period out of employment from 10.09.2013 to 07.05.2016 is treated as "not on duty" as per the provisions of FR 54(5) and

requested to inform the petitioner accordingly under intimation to C.O.

PERUSED THE RECORD :

9. The Common Order dated 18.03.2014 passed in O.S.No.6990/ 2013 and O.A.No.6991/2013 paras 20, 21, 24, 25 and 26 are as under:

Para 20. Similarly, in another judgment of the Hon'ble Supreme Court in Sher Bahadur Vs. Union of India and Others, reported in (2002) 7 SCC 142,

their Lordships have held that the misconduct of the delinquent official has to be linked to the charge.

Para 21. In the present case, the charge is based on the alleged confessional statement of the applicants. But the enquiry officer endeavoured to link

the misconduct of the applicants with the confessional statements of the other Accused (A1 & 2) and not the applicants. The Accused 1 & 2 were

not included in the list of witnesses also and thus there was no opportunity to the applicants to cross examine them during the enquiry and thus the

procedure adopted was not in accordance with the principles of natural justice. Thus, there is not an iota of doubt left that the finding of the applicant

is beyond the scope of the charge and the alleged misconduct is not linked to the charge. There must be fair play in action particularly when charges

involve consequences of termination of service which now-a-days means loss of livelihood. It is clearly a case of finding the applicants guilty of the

charge without any evidence to link them with the alleged misconduct as stated in the charge leveled against them. Therefore, the order of the

disciplinary authority under challenge cannot be sustained.

Para 24. In view of the above facts and circumstances obtaining in the two O.As., the impugned orders bearing D.O.No.5779 (L&O/BB/NZ/

1432/2001-13) dated 10.09.2013 issued by the 3rd Respondent and the impugned order issued by the 2nd Respondent vide D.Dis.No.

2829/Appeal.2/2013, dated 14.12.2013 are held to be bad in law. The point is answered accordingly.

Para 25. Point-11: For the reasons recorded above, the imposition of the punishment of removal from service deserves to be set aside and they

deserve to be reinstated into service with all consequential benefits.

Para 26. Accordingly, the O.A's are allowed and the impugned orders bearing D.O.No.5779 (L&O/B8/NZ/1432/2001- 13) dated 10.09.2013 issued by

the 3rd Respondent and the impugned order issued by the 2nd Respondent vide D.Dis.No.2829/Appeal.2/2013 dated 14.12.2013 are set aside.

Respondents are directed to reinstate the applicants into service forthwith with all consequential benefits. No order to the costs.

10. In the order dated 07.01.2016 in W.P.Nos.20416 and 22451 of 2014 at paras 11, 12 & 13 it is observed as follows :

Para 11 : The Tribunal based on evidence has categorically found that the findings of the enquiry officer that the respondents made confession is

factually incorrect and he recorded his findings based on the confessional statements of other accused A-1 and A-2 in the criminal case. Therefore, as

rightly found by the Tribunal, the respondents were found guilty on non -existing ground. A Division Bench of this Court in K. Balram Raju vs. High

Court of A.P. (5 supra), held as under :

“47. This Court in the normal circumstances would not have interfered with the findings of the fact recorded at the domestic enquiry, even if there

is some evidence on record which is acceptable and which could be relied, however compendious it may be. The findings would be of two kinds, basic

and ultimate. The ultimate findings could be reached only on the basic facts. If the basic facts does not exist or is not accepted, there cannot be an

ultimate finding.”

Para 12. Therefore, without the respondents making confessions, holding them guilty, as held by this court in the above judgment, would amount to

reaching ultimate findings without basic facts.

Para 13 : In view of the above facts and circumstances, the Tribunal rightly set aside the punishment of removal from service imposed on the

respondents and directed for their reinstatement with all consequential benefits. We do not find any reason to interfere with the impugned common

order of the Tribunal and the same is confirmed. The issue framed is accordingly answered. The writ petitions are devoid of any merit and the same

are dismissed. No costs.

11. Fundamental Rule 54-A Sub-Rule 3 reads as under:

“54- A(3): If the dismissal, removal or compulsory retirement of a Government servant is set aside by the court on the merits of the case, the

period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal,

removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as (duty for all purposes and the shall be paid the

full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended

prior to such dismissal, removal or compulsory retirement as the case may be.”

DISCUSSION & CONCLUSION :

12. A bare perusal of the order impugned clearly indicates that the 3rd Respondent herein did not apply Fundamental Rule 54-A Sub-Rule (3) and

instead applied 54(5) Fundamental Rule to the facts of the present case which is in fact unwarranted and uncalled for.

13. The plea of the Counsel for the Respondent that the orders dated 18.03.2014 passed in O.A.No.6991 of 2013 is an order which is not passed on

merits cannot be accepted in view of the observations of the Court in paras 20, 21, 24, 25 and 26 of the said order referred to and extracted above,

since a bare perusal of the said observations clearly indicates that it is an order passed on merits and hence the plea of the Learned Counsel for the

Respondent that Fundamental Rule 54(5) applies is not tenable and cannot be accepted. A bare perusal of the order of Division Bench of High Court

dated 07.01.2016 passed in W.P.Nos.20416 & 22451/2016, confirming the orders dated 18.03.2014 passed in O.A.No.6990/2013 and O.A.No.6991/

2013 and the relevant paras 11, 12 and 13 of the said judgment, referred to and extracted above, clearly indicates that the order of the High Court

issued in favour of the Petitioners is also a detailed order passed on merits.

14. The plea of the Counsel for the Respondent that the Petitioner has a remedy of revision cannot be accepted in view of the simple fact that it is not a mandatory remedy.

15. In view of the fact that Fundamental Rule 54-A(3) clearly stipulates that if the dismissal, removal or compulsory retirement of a Government

servant is set aside by the Court on merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement

including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall

be treated as (duty for all purposes and the shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not

been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement as the case may be, and in

the present case as borne on record the orders passed in favour of the Petitioner setting aside the punishment of removal is an order passed on merits

of the case by the APAT and also the same being confirmed by the High Court based on its merits, therefore, this Court is of the firm opinion that the

Petitioner is entitled for the relief as prayed for.

16. Further this Court also takes note of the fact that there is no justification in the action of the respondents in granting relief as prayed for in the

present Writ Petition under similar circumstances to other similarly situated persons like the Petitioner and denying the same to the Petitioner without

assigning any reasons and the same amounts to clear discrimination and the same is in clear violation of the Article 14 of the Constitution of India

(Memo No.86/Spl/A1/2021-3, dated 09.12.2021).

17. Taking into consideration all the above referred circumstances and the fact that the order impugned in D.O. No.4898 (N0.L&O/B8/1432/2001)

dated 07.05.2016 is passed without assigning any reasons and the plea taken by the Respondents that the period out of employment of the petitioner

from 10.09.2013 to 07.05.2016 is treated as Extra Ordinary Leave is as per the provisions of F.R. 54(5), cannot be sustainable in view of the simple

fact that the orders passed in favour of the Petitioner by the Tribunal and also by the High Court (referred to and extracted above) are clear orders

passed on merits, this Court opines that F.R. 54(5) has no application at all to the facts of the present case and the petitioner's case squarely falls

under F.R. 54-A(3).

18. In view of the fact that the impugned order dated 07.05.2016 issued in D.O.No.4898 (No.L&O/B8 /NZ/1432/2001, of the Commissioner of Police,

Hyderabad cannot be held to be legal and cannot be sustained in the eye of law, therefore, the consequential proceedings in Rc.No.148/T2/2016, dated

26.10.2016 of the Director General of Police, Telangana, Hyderabad and the D.O.No.13020, dated (L&O/B8/1432/2001, dated 31.12.2016 of the

Commissioner of Police, Hyderabad city also cannot be sustained and accordingly, the writ petition is allowed setting aside the order impugned issued

in D.O. No.4898 (No.L&O /B8/1432/2001) dated 07.05.2016 in so far as treating the out of employment period of the petitioner from 10.09.2013 to

07.05.2016 as Extra Ordinary Leave as being arbitrary, illegal, contrary to the provisions of Fundamental Rule 54-A(3) and the consequential

proceedings in Rc.No.148/T2/2016, dated 26.10.2016 of the Director General of Police, Telangana, Hyderabad and the D.O.No.13020, dated

(L&O/B8/1432/2001, dated 31.12.2016 of the Commissioner of Police, Hyderabad city are also set aside. The Respondents are further directed to

regularize the out of employment period of the Petitioner from 10.09.2013 to 07.05.2016, as on duty, for all purposes including arrears of pay and

allowances, increments and promotion on par with the juniors of the petitioner within a period of one month from the date of receipt of the copy of the

order. There shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand closed.