
(2022) 11 TEL CK 0095

High Court For The State Of Telangana:: At Hyderabad

Case No: Writ Petition No. 19286 Of 2017

K.Ram Prasad

APPELLANT

Vs

Superintendent Of
Police, Nalgonda And
Others

RESPONDENT

Date of Decision: Nov. 22, 2022

Acts Referred:

- Constitution Of India, 1950 - Article 14, 16, 21
- Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 - Rule 21(2)
- Andhra Pradesh Revised. Pension Rules, 1980 - Rule 9
- Indian Penal Code, 1860 - Section 304A, 337

Hon'ble Judges: Surepalli Nanda, J

Bench: Single Bench

Advocate: A.Tirupathi Goud

Final Decision: Allowed

Judgement

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

2. This writ petition is filed to issue a Writ, order or direction more in the nature of writ of Mandamus declaring the impugned G.O.Rt.No.578,

Home, dated 12.05.2014 in so far as treating the suspension period as not on duty is concerned and the connected Govt. Memo

No.1493/Ser.II/A1/2014, Home Department, dated 05.11.2014, in so far as the petitioner is concerned as being illegal, arbitrary unjust, contrary

to the Fundamental Rules and also subversive of Articles 14, 16 and 21 of the Constitution and consequently hold that the suspension period of the

petitioner from 15.07.2008 to 04.03.2009 is to be treated as on duty for all purposes with all consequential benefits.

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

a) The petitioner was appointed as Civil Police Constable w.e.f. 15.08.1993. The petitioner was placed under suspension while working at

Vijayapuri P.S., Nalgonda District by proceedings R.O.No.775/2008, dated 14.07.2008 issued by the 1st respondent on the ground that gross

reprehensible misconduct in demanding bribe of Rs.20,000/- and accepting an amount of Rs.10,000/- as illegal gratification from Sri Shaik Baji

Baba, owner-cum-driver of lorry No.AP16 x 6937 through PC 2187 Ram Prasad for providing him vehicle and case documents in an accident

case in Cr.No.44 of 2008 under Section 304 A and 337 IPC of Vijayapuri Town P.S.

b) The enquiry officer was appointed and submitted report on 15.04.2011 holding that the charge is not proved. Though the Government passed

G.O.Rt.No.578, dated 12.05.2014 dropping further action, but treated the period of suspension as not on duty, which is highly arbitrary and

unjust. The Government considered several cases of other Sis/Inspectors, who were red-handedly trapped by ACB and treated their suspension

period as on duty soon after their acquittal. Therefore, this writ petition is filed.

4. The counter filed by the 3rd respondent, in brief, is as follows:

a) The 2nd respondent forwarded the entire OE records to the Director General of Police, Hyderabad for onward transmission to Government

since the charge attracts in vigilance angle and also one of the Charged Officer i.e. Sri M.Ramnarsaiah, SI of Police retired from service on

superannuation pension w.e.f. 31.08.2009.

b) As per the instruction issued, vide Govt. Memo No.34911/Ser.II/A3/2011, dated 22.05.2013 communicated through Chief Office

Endt.No.4126/Appeal-1/2011, dated 21.06.2013 the 4th respondent issued directions to issue dissenting note to the petitioner and .Ramnarsaiah,

SI of police (Retired) under Rule 21(2) APCS (CC&A) Rules, 1991 while disagreeing with the findings of the Enquiry Officer and indicated the

charges are held proved and then refer the issue with further explanation of the Charged Officers to Government for finalizing the case under Rule 9

of AP Revised Rules, 1980.

c) The Government after careful examination of the matter with reference to records made available and the explanations of the petitioner and Sri

M.Ramnarsaiah, SI of Police (Retired) with reference to the dissent note, have noticed that there is substance in the explanations of the delinquents

and the charge is rightly held "not proved" by the enquiry officer. Therefore, further action is dropped against the petitioner and Sri

M.Ramnarsaiah, SI of Police (Retired) of Nalgonda District and the suspension period from 15.07.2008 to 04.03.2009 was treated as "not on

duty" vide G.O.Rt.No.578 Home (Services-II) department, dated 12.05.2014.

d) As per FR 54-B(3) if the suspension was wholly unjustified, the Government Servant shall subject to the provisions of Sub rule 8, be paid the

full pay and allowances to which he would have been entitled. But, in this case the suspension was not wholly unjustified and the petitioner was

involved in serious case of demand and acceptance of bribe which was recorded. Merely, because the disciplinary proceedings are dropped, he is

not entitled for suspension period to be treated as on duty. Therefore, the writ petition is liable to be dismissed.

PERUSED THE RECORD :

5. Learned Government Pleader placed reliance on the judgment of the Apex Court passed in C.Jacob v Director of Geology and Mining and

another (2008) 10 SCC 115 and in particular paras 9, 10 and 11, which reads as under:

"7. The courts/tribunals proceed on the assumption, that every citizen deserves a reply to his representation. Secondly they assume that a mere

direction to consider and dispose of the representation does not involve any 'decision' on rights and obligations of parties. Little do they realize the

consequences of such a direction to 'consider'. If the representation is considered and accepted, the ex-employee gets a relief, which he would not

have got on account of the long delay, all by reason of the direction to 'consider'. If the representation is considered and rejected, the ex-employee

files an application/writ petition, not with reference to the original cause of action of 1982, but by treating the rejection of the representation given in

2000, as the cause of action. A prayer is made for quashing the rejection of representation and for grant of the relief claimed in the representation.

The Tribunals/High Courts routinely entertain such applications/petitions ignoring the huge delay preceding the representation, and proceed to

examine the claim on merits and grant relief. In this manner, the bar of limitation or the laches gets obliterated or ignored.

8. Every representation to the government for relief, may not be replied on merits. Representations relating to matters which have become stale or

barred by limitation, can be rejected on that ground alone, without examining the merits of the claim. In regard to representations unrelated to the

department, the reply may be only to inform that the matter did not concern the department or to inform the appropriate department.

Representations with incomplete particulars may be replied by seeking relevant particulars. The replies to such representations, cannot furnish a

fresh cause of action or revive a stale or dead claim.

When a direction is issued by a court/tribunal to consider or deal with the representation, usually the directee (person directed) examines the matter

on merits, being under the impression that failure to do may amount to disobedience. When an order is passed considering and rejecting the claim

or representation, in compliance with direction of the court or tribunal, such an order does not revive the stale claim, nor amount to some kind of

'acknowledgment of a jural relationship' to give rise to a fresh cause of action.

6. The judgments relied upon by learned counsel for the petitioner (1) Judgment dated 05.09.2022 passed in WP No.10766 of 2007 and (2) the

Judgment of the Apex Court dated 28.07.2011 reported in 2011 (8) SCC 155 in Greater Hyderabad Municipal Corporation v. M. Prabhakar

Rao, do not directly apply to the facts of the present case and for grant of relief as sought for by the petitioner and it is limited to the extent of the

principle laid down as contended by the counsel for the petitioner, that in view of the fact that the petitioner was acquitted hence, the petitioner

should be entitled for all benefits eventually due to the petitioner including treating the period of suspension of the petitioner as period on duty and

the judgment relied upon by learned Government Pleader in C.Jacob v Director of Geology and Mining and another (2008) 10 SCC 115, that the

representations need not be answered by giving specific reasons cannot come to the rescue of the respondents either in view of the simple fact as

borne on record that the impugned order of the 4th respondent herein is dated 12.05.2014 passed vide G.O.Rt.No.578 and the consequential

order vide Memo No.1493/Ser.II/A1/2014, dated 05.11.2014 of the 4th respondent are not orders issued after giving notice to the Petitioner nor

are orders passed assigning specific reasons as mandated under Fundamental Rule 54.

7. The impugned order of the 4th respondent in G.O.Rt.No.578 dated 12.05.2014 reads as under:

In the letter 1st read above, the Director General of Police, Andhra Pradesh, Hyderabad, has stated that Sri M.Ramanarasaiah, SI of Police (Now

retired) and Sri K.Ramprasad PC 2187 of formerly Nalgonda District were handed up an OE for the following charge:

“Gross reprehensible conduct in demanding bribe of Rs.20000/- and accepting an amount of Rs.10000/- as illegal gratification from Sri Shaik

Baji Baba, owner-cum-driver of lorry No.AP 16 X 6937 through PC 2187 Ramprasad for providing him vehicle and case documents in an

accident case in Cr.No.44/2008 u/s 304-A & 337 IPC of Vijayapuri (T) PS.

2. The SDPO, Miryalaguda, has conducted the Oral Enquiry and held the charge against the charged officers as "not proved". The DIG

Hyderabad Range, Hyderabad, has agreed with the findings of the enquiry report and proposed to drop further action against both the charged officers.

3. The DGP has referred the matter to Government since the charge attracts vigilance angle and also one of the charged officers i.e. Sri

M.Ramanarasaiah SI of Police retired from service on superannuation on 31.3.2009.

4. The Director General of Police, Andhra Pradesh, Hyderabad, vide letter 3rd read above, has furnished revised enquiry report against Sri

M.Ramanarasaiah, SI of Police (Now retired) and Sri K.Ramprasad PC 2187 of formerly Nalgonda District, received from DIG H/R, Hyderabad

together with the connected records. Subsequently, a dissent note was issued to the charged officers by the Disciplinary authority and their

explanations thereon were obtained and furnished to Government, vide letter 5th read above, for further orders in the matter.

5. Government after careful examination of the matter with reference to records made available and the explanations of the charged officers with

reference to the dissent note, have noticed that there is substance in the explanations of the delinquents and the charge is rightly held "not

proved" by E.O. Therefore, further action against Sri M.Ramanarasaiah, SI of Police (now retired) and Sri K.Ramprasad PC 2187 (f) of

Nalgonda District is hereby dropped. The period of suspension is, however, treated as "not on duty".

6. The Director General of Police, Andhra Pradesh, Hyderabad, is requested to take necessary action accordingly in the matter.

7. The records received through the letter 5th read above are returned herewith and the DGP is requested to acknowledge the receipt of the

same.

8. The consequential proceedings dated 05.11.2014 of the 4th respondent vide Memo No.1493/Ser.II/A1/2014 reads as under:

“The attention of the DGP, Telangana, Hyderabad is invited to the references cited. He is informed that the request of Sri M.Ramanarasaiah,

S.I(Retd), Nalgonda and Sri K.Ram Prasad PC 2187, Nalgonda S.B. City, Hyderabad for treating their suspension period from 15.07.2008 to

21.02.2009 and 15.07.2008 to 04.03.2009 respectively, as on duty is examined and the same is hereby rejected.

The Director General of Police, Telangana, Hyderabad is requested to intimate the same to the individual.

DISCUSSION & CONCLUSION :

9. Fundamental Rule 54-B Sub-Rule (3) (4) AND (5) read as under:

“(3) Where the authority competent to order reinstatement is of the opinion that the suspension was wholly unjustified, the Government servant

shall subject to the provisions of sub-rule (8), be paid the full pay and allowances to which he would have been entitled, had he not been

suspended:

Provided that where such Authority is of the opinion that the termination of the proceedings instituted against the Government servant had been

delayed, due to reasons directly attributable to the Government servant, it may after giving him an opportunity to make his representation (within

sixty days from the date on which communication to this regard is served on him) and after considering the representation, if any submitted by him,

direct for reasons to be recorded in writing, that the Government servant shall be paid for the period of such delay (only such amount (not being

the whole) of such pay and allowances as it may determine).

(4) In a case falling under sub-rule-(3) the period of suspension shall be treated as a period spent on duty for all purposes.

(5) In cases other than those falling under sub-rules (2) and (3), the Government servant shall subject to the provisions of sub-rules (8) and (9). be

paid [such amount (not being the whole) of the pay and allowances] to which he would have been entitled had he not been suspended, as the

competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the

representation, if any, submitted by him in that connection within such period [which in no case shall exceed sixty days from the date on which the

notice has been served] as may be specified in the notice.

10. The Apex Court in a judgment reported in AIR 1968 SC 240 between M.Gopal Krishna Naidu v State of M.P. and P.J.Agarwal v State of

U.P reported in (1973) 1 SLR 194 and B.H.Marwaha v Union of India reported in (1973) 2 SLR 315 held that where an order proposed to be

passed in FRs which causes pecuniary loss, an opportunity must be given to the employee likely to be affected.

11. In a judgment of the Apex Court reported in AIR 1968 SC page 240 in M.Gopal Krishna Naidu v The State of Madhya Pradesh, the

Hon'ble Apex Court at paras 5 and 7 observed as under:

“(5) Under F.R. 54 where a government servant is reinstated, the authority has to consider and make a specific order (i)

regarding pay and allowances payable to him for the period of his absence from duty and (ii) whether such period of absence should be treated as

one spent on duty. The consideration of these questions depends on whether on the facts and circumstances of the case the Government servant

had been fully exonerated and in case of suspension whether it was wholly unjustified. If the authority forms such an opinion the Government

servant is entitled to full pay and allowances which he would have been entitled to had the order of dismissal, removal or suspension, as the case

may be, not been passed. Where the authority cannot form such an opinion the Government servant may be given such proportion of pay and

allowances as the authority may prescribe. In the former case the period of absence from duty has to be treated as period spent on duty for all

purposes and in the latter case such period is not to be treated as period spent on duty. But the authority has the power in suitable cases to direct

that such period of absence shall be treated as period spent on duty in which case the government servant would be entitled to full pay and allowances.

(7) The order as to whether a given case falls under Cl. 2 or Cl. 5 of the Fundamental Rule must depend on the examination

by the authority of all the facts and circumstances of the case and his forming the opinion therefrom of two factual findings; whether the employee

was fully exonerated and in case of suspension whether it was wholly unjustified. Besides, an order passed under this rule would obviously affect

the government servant adversely if it is one made under Cls. 3 and 5. Consideration under this rule depending as it does on facts and

circumstances in their entirety, passing an order on the basis of factual finding arrived at from such facts and circumstances and such an order

resulting in pecuniary loss to the government servant must be held to be an objective rather than a subjective function. The very nature of the

function implies the duty to act judicially. In such a case if an opportunity to show cause against the action, proposed is not afforded, as admittedly

it was not done in the present case, the order is liable to be struck down as invalid on the ground that it is one in breach of the principles of natural

justice.

12. The Division Bench of the Apex Court in a recent judgment dated 23.03.2022 reported in 2022 SCC online SC 378 in Civil Appeal

No.2386/2022 in State of Rajasthan & Another vs. Mangat Lal Sidana dealing with a similar situation at paras 16 to 24 observed as under :

Rule 54 with which we are concerned contemplates an amalgam of situations which deal with disciplinary proceedings culminating in dismissal,

compulsory retirement and removal and it also deals with absence from duty on account of suspension. In other words, when an employee at the

end of the disciplinary proceedings is punished in terms thereof and as a result of the order passed is reinstated, then the competent authority is

called upon to consider and pass specific order regarding the pay and allowances to be paid for the period for absence from duty. The Rule

appears to separately contemplate the duty to provide for the pay and allowances for the period of suspension ending with the date of retirement

on superannuation as the case may be. In other words, the Rule in its application contemplates a situation wherein a Government servant being

dismissed, removed, compulsory retired or suspended is reinstated. It also takes in a case where but for his retirement, he would have been

reinstated while under suspension. In both these cases, the duty of the competent authority is to pass the order within the contemplation of Rule

54(1)(a) and (b). This means that apart from dealing with pay and allowances, as to whether the period of absence is to be treated as duty must be

dealt with. This flows from Rule 54(1)(b). The manner in which the authority is to pass the order is regulated by subsequent provisions in Rule 54.

Sub-rule 54(2) contemplates that the competent authority must examine the proceedings, apply its mind, and find whether it is a case where the

Government servant at the end of the day has been fully exonerated. In the case of suspension where a person being under suspension is

reinstated, the duty lies on the competent authority to consider the question as to whether the suspension was justified or wholly unjustified. If the

suspension was wholly unjustified, the Government servant would be entitled to be paid the full pay and dearness allowance which he was entitled

to had he not been suspended. The same is the case of the Government servant visited with the penalty of dismissal, removal or compulsory

retirement. If it is found that at the end of the day that the penalty was wholly unjustified in that, on merit it is found that the employee stands

completely exonerated, he would be entitled to get full pay and dearness allowance. Rule 54(3) is the residuary clause. The provisions of Rule

54(2) and (3) are mutually exclusive. In other words, if an employee is not fully exonerated, he is to be given such proportion of the pay and

allowances as the competent authority may prescribe. Sub-rule (4) of Rule 54 is relatable to sub-rule 54(1)(b). In other words, whenever there is

re-instatement in the circumstances attracting Rule 54, the authority is to pass a specific order relating to the pay and allowances to be paid and

also as to whether the period of such absence is being treated as period spent on duty. Both these aspects must be reflected in the order.

Para 17 : In the case where there is full exoneration, the rule-maker had made it clear that the period of absence is to be treated as duty for all

purposes. However, the provisions of Rule 54(5) contemplate a situation where the employee is not fully exonerated and therefore is governed by

Rule 54(3). Then the period of absence is not to be treated as duty unless the authority specifically directs that it shall be duty for any specified

purpose. The proviso to Rule 54(5) contemplates that it is open to the Government to direct that the period of absence shall be converted into

leave of any kind due and admissible for Government servant. This would appear to be the scope and purport of Rule 54.

Para 18 : We have seen the order passed in the leading case.

Para 19 : This is a case where the respondents have not been fully exonerated as such. The proof of the same is to be found in the fact that they

have been visited with a penalty as the disciplinary proceedings have admittedly culminated in the penalty being passed which may be a minor

penalty.

Para 20 : The other aspect of the matter is about the observance of principles of natural justice. The employee must be given an opportunity before

any order is passed. The matter is no longer *res integra*. [See *M. Gopalakrishna Naidu v. State of Madhya Pradesh*, AIR 1968 SC 240]. It does

not need reiteration that even under Rule 54, the position is the same. Observance of principles of nature justice is of cardinal importance for the

employee whose very life will be at stake for he would on the one hand if he is heard get an opportunity to persuade the competent authority that

his case would fall under Rule 54(2) and not under Rule 54(3). Denial of opportunity can have very serious consequences. In this case, the finding

is that the principles of natural justice were not complied with. On this ground, the respondents would support the judgment.

Para 21 : Dr. Manish Singhvi, learned Additional Advocate General appearing for the appellants would point out that in such circumstances, the

course to be adopted would be to remit it back to the competent authority so that the competent authority may ensure that the respondents appear

before the authorities and then the case is decided. In fact, we find that the course adopted by this Court finally in M. Gopalakrishna Naidu was to

remit the matter back to the competent authority to pass an order after hearing the employee. But then, learned counsel for the respondent would

point out that the respondent is aged 76 and at this stage, remitting back the matter would be highly inequitable. In the leading case, we notice, at

the time of admission, this Court had passed an order of stay subject to payment of 50 per cent of the back-wages.

Para 22 : Having heard the learned counsel for the parties, we are of the view that the following conclusions can be arrived at.

Para 23 :

The disciplinary proceedings against the respondents in both the cases have not culminated in a situation where it could be said that they have been

completely exonerated. This would take their case outside the four walls of Rule 54(2) of the Rules. Their suspension may not fall in the category

of unjustified suspension. This inevitably and necessarily would bring their cases within the scope of Rule 54(3). This would necessarily mean that

the exact amount of pay and allowances to be paid is to be less than the full pay and allowances. However, this exercise can be done only after

notice to the employee. Admittedly, there is a failure by the appellants in this regard. But, at the same time, to remit it back for this purpose in our

view would be inequitable. Hence we would rather adopt the middle path by directing that in the facts and circumstances of the case, the

respondents be paid pay and allowances fixed at 50 per cent of the pay and allowances which they would have drawn for the period of their

absence. Accordingly, the appeals are partly allowed. We direct that the respondents in both the cases will be paid the pay and allowances at 50

per cent of the amount which they would be entitled for the period in question.

Para 24 : The appeals are allowed as above. No orders as to costs.

13. This Court opines that in similar circumstances orders have been passed vide G.O.Rt.No.1238, dated 18.05.2013 and vide G.O.Rt.No.1268,

dated 22.05.2013 treating the period of suspension in the said cases as on duty under Fundamental Rules 54(B)(4) by the 3rd Respondent herein.

However, no relief has been given to the petitioner herein though the Government has set aside the punishment of PPI for one year with effect

imposed against the petitioner vide G.O.Rt.No.1670 dated 13.09.2012 under 54-B(3), the Government however admittedly as borne on record

did not issue any notice to the petitioner and did not pass specific orders treating the period of suspension of the petitioner as a period spent on

duty for all purposes as per 54-B(4), having extended the said benefit to similarly situated persons like the petitioner, the same has been denied to

the petitioner for no rhyme or reason.

14. Taking into consideration of the above referred facts and circumstances and the law laid down by the Apex Court in the judgments referred to

and discussed above, this Court opines that the orders impugned cannot be sustained and accordingly, the writ petition is allowed setting aside the

order impugned vide G.O.Rt.No.578, dated 12.05.2014 issued by the 4th Respondent and the consequential proceeding vide Memo

No.1493/Ser.II/A1/2013, dated 05.11.2014 of the 4th respondent, and the respondents are further directed to regularize the suspension period

(out of employment period) of the petitioner from 15.07.2008 to 21.02.2009 as on duty for all purposes including the arrears of pay and

allowances, increments and promotion etc. in terms of Fundamental Rule 54(B)(4) and pass appropriate order within a period of one month from

the date of receipt of the copy of the order. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.