

THE HON'BLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.1992 OF 2011

ORDER:

At the relevant point of time, the petitioner was working as Upper Division Clerk (UDC). Having noticed certain irregularities in the functioning as UDC, the petitioner was placed under suspension on 01.11.2007. On 11.11.2008, a charge memo was issued containing six charges. Enquiry was conducted into the charges levelled against the petitioner. The Enquiry Officer submitted his report on 14.09.2009 holding the charges as proved. After considering the explanation submitted by the petitioner to the show cause notice and based on the findings in the enquiry report, final orders were passed on 03.12.2010 imposing the punishment of dismissal from service as well as recovery of Rs.7,57,430/-. Challenging the said order, this Writ Petition is filed.

2. Heard learned counsel for the petitioner and learned Standing Counsel for the respondents.

3. Learned counsel for the petitioner contends that the findings of the Enquiry Officer are not based on the evidence on record and he had simply adopted the statement of the charges in the charge sheet and held the charges as proved and that no reasons were assigned in support of his findings. He further contends that the Enquiry Officer had not considered the prayer of the petitioner for production of alleged fake challens and the same were not verified with the originals. The production of original challens is necessary to identify the handwriting. Learned counsel also contends that Enquiry Officer having believed the statements of other employees involved in the misappropriation, not considered the statement of the petitioner, and the petitioner was made a scapegoat in the hands of the higher officials. He submits that the very fact that 50% of the alleged misappropriated amount is only levied on the petitioner would show

that other employees are also responsible, whereas no action is taken against them and the petitioner is only penalised. He therefore submits that selective punishment is therefore illegal. In support of the said contention, learned counsel placed reliance on the judgment of the Supreme Court reported in **K. Sukhendar Reddy v. State of Andhra Pradesh** ^[1]. He further submits that the Enquiry Officer erred in not considering the explanation to the show cause notice and passed a mechanical order.

4. Learned Standing Counsel for the respondents submits that after following the due procedure, the impugned punishment is imposed. He further submits that all the witnesses were examined, and after a detailed enquiry and on due assessment of the material on record, the Enquiry Officer recorded the findings. By referring to depositions of witnesses, learned Standing Counsel submits that all the witnesses have categorically stated that they never authorised the petitioner to indulge in falsification of records and withdrawal of the amounts in cash from the employees' accounts, instead of directly transferring them to income tax and professional tax accounts. Learned Standing Counsel further submits that the material on record would clearly show that all persons responsible for the illegalities were proceeded against and appropriate punishments were imposed. By referring to averments in paragraph Nos.5 to 7 of the counter affidavit, learned Standing Counsel submits that other officers, who were found to have indulged in such illegalities, were also penalised. According to him, it is apparent, that the petitioner was the main person who indulged in such illegalities and therefore, the most severe punishment of dismissal from service as well as recovery of 50% of amount of loss caused was imposed upon him.

5. A perusal of the depositions would clearly disclose that all the witnesses point finger at the petitioner. The petitioner does not

substantiate his claim as to how the amounts were withdrawn by cash and as to why they were not credited to concerned accounts. It is seen from the report of the Enquiry Officer that he has analysed the depositions of witnesses and after considering the material on record has recorded categorical finding holding that the petitioner is guilty.

The Enquiry Officer holds thus:

“...But Sri Patrudu could not prove his point that Sri S. Ravi Kumar, L.D.C., and Sri J. Suri Babu, U.D.C., are the real culprits. From the above, it can be construed that Sri M.V.S. Patrudu, U.D.C., In-charge of Cash Section in C&O Division, Paderu, had drawn/got drawn the cash from SBI/Bakuru in the way of self-cheques/cheques got endorsed in case of remittances of Profession Tax, Income Tax and E.P.F., related to C&O Division, Paderu and misappropriated. To cover up his misdeed, he had fabricated the vouchers and booked the same in cash book and got the signatures of the supervisory officers...”

6. The Enquiry Officer holds that UDC is responsible for wrong taking of D.D. and drawing the amount instead of remitting to the concerned account. He further holds that:

“...As per the banking system, the cheque issued remain in valid after six months from the date of issue of such cheque. In spite of that there is an approved procedure that stale cheques are credited only after obtaining non-payment certificate from the concerned banking authorities. In the instance case, the above procedure is not followed...”

7. Thus, it cannot be said that the Enquiry Officer has not recorded the findings independently and mechanically adopted the statements.

8. It is seen from the record that due procedure was followed and after according due opportunity to the petitioner, the punishment was imposed. The record would disclose that the petitioner was responsible for misappropriation of huge amount. Thus, it cannot be said that punishment is not validly imposed nor is not commensurate. As pointed out by learned Standing Counsel, all other similarly

situated persons were also visited with appropriate punishment. Thus, it is not correct to contend that the petitioner alone was visited with the punishment. Therefore, it cannot be said that the petitioner was treated differently. Hence,

I see no error in the impugned order warranting interference by this Court in exercise of power of judicial review under 226 of the Constitution of India.

9. Accordingly, the Writ Petition is dismissed. There shall be no order as to costs.

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

P. NAVEEN RAO, J

Date:20.07.2016

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[\[1\]](#) (1999) 6 SCC 257