

IN THE HIGH COURT OF TELANGANA AT HYDERABAD

WRIT PETITION No.35372 OF 2013

Between:

P. Dinesh Babu

... Petitioner

And

The Government of India represented
by its Under Secretary, Ministry for
Home Affairs, New Delhi & others

... Respondents

JUDGMENT PRONOUNCED ON: 18.07.2023

THE HON'BLE MRS JUSTICE SUREPALLI NANDA

1. Whether Reporters of Local newspapers : yes
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : yes

SUREPALLI NANDA, J

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> Head Note:

! Counsel for the Petitioner : Mr K. Venumadhav

^ Counsel for Respondents : Mr. B. Mayur Reddy, Learned
Senior Designated Counsel.

? Cases Referred:

1. (2006) Law Suit (SC) 412
2. (2022) Live law (SC) 304

HON'BLE MRS JUSTICE SUREPALLI NANDA

WRIT PETITION No.35372 OF 2013

ORDER:

Heard the Counsel for the Petitioner and the learned Senior Designated Counsel Mr. B. Mayur Reddy on behalf of the Respondents.

2. The petitioner has approached this Court, seeking the following relief:

"To issue an order or direction, more particularly one in nature of a Writ of Mandamus or anyother appropriate writ declaring the orders passed by the 2nd respondent dated 09.05.2013 and the order passed by the 3rd respondent in proceedings No.V-15014/L & R/SS/Rev/PDB/2012, dated 30.11.2012 confirming the order passed by the respondent no.4 dated 11.6.2012 which is passed confirming the order passed by the respondent no.5 in proceeding no.V-15014/GHH/Maj(18/11) DB-IGM (H)/Ad.IV/111558 dated 31.3.2012 imposing the penalty of "Reduction of pay by one Increment in Pay Band (PB-1) for a period of 01 (one) year with immediate effect. It is further directed that during the period of reduction, he will not earn increments of pay and on expiry of this period, the reduction will have the effect of postponing the future increments of his pay" even

though on the very same charges the petitioner faced criminal prosecution and the same is ended in acquittal through judgment in C.C.No. 93 of 2012 on the file of Special Magistrate No.II, Cyberabad at Malkajgiri, dated 11.12.2012, even though petitioner has not committed any such alleged accident and even though the petitioner is not the driver at the time of the alleged accident, without assigning any valid reasons, is nothing but arbitrary, illegal, null and void and violative of principles of natural justice and also violative of Articles 14, 19 and 21 of the Constitution of India. Consequently, direct the respondents to give all the benefits to the petitioner including release of the increment."

3. The case of the Petitioner, in brief, as per writ affidavit filed, is as follows:

- a) The petitioner was appointed as driver in the Central Industrial Security Force in the year 1997 and since then he has been working at the utmost satisfaction of the authorities.
- b) The respondent No.4 issued a charge Memo on 28.12.2011, alleging that following charge:

"CISF No.974340063 HC/Driver Dinesh Babu of CISF Hyderabad was detailed for duty with vehicle bearing No.AP-29 AD 0940 (Bolero). While bringing the

Assistant Commandant, CISF Group Headquarters, Hyderabad (who was looking after the duties of Unit Commandant, CISF Unit, IG Mint, Hyderabad) from CISF Group Headquarters, Hyderabad to CISF Unit, IG Mint, Hyderabad, the said vehicle met with an accident at about 15.40 hours on 06th July 2011 near M.R.R. School, Kushaiguda. During the accident, one civilian motor cycle rider viz., Mohd Nizamuddin, who was riding the motor cycle bearing No. AP 09 BU 8969 sustained head and knee injuries. While undergoing treatment, the motor cycle rider succumbed to injuries on 18th July 2011. Such act on the part of CISF No. 974340063 HC/Driver Dinesh Babu, P of CISF Unit, IG Mint, Hyderabad, amounts to careless and lack of alertness in driving the said official vehicle. Hence the charge."

c) Having acknowledged the said charge memo, the petitioner submitted a detailed explanation on 6-1-2012 in which he clearly denied the said charge. The respondent no.6 was appointed as an Enquiry Officer and after completion of enquiry even though the charges leveled against the petitioner were not proved and even though there is no material come on record to substantiate the charges leveled against him but upon his own given a finding that the charges leveled against him are proved.

d) Upon submitting such report by the 6th respondent, the 5th respondent passed orders dated 31.03.2012 imposing penalty of "Reduction of pay by one increment in Pay Band (PB-1) for a period of 01 (one) year with immediately effect. During the period of reduction, the petitioner will not earn increments of pay and on expiry of this period, the reduction will have the effect of postponing the future increments of his pay".

e) Aggrieved by the same, the petitioner preferred an appeal before the 4th respondent, but the 4th respondent without considering grounds raised by the petitioner and without assigning any valid reasons simply dismissed the appeal by imposing penalty on him dated 31.03.2012, through order dated 11.06.2012.

f) Aggrieved by the same, he preferred a revision before the 3rd respondent, the 3rd respondent also without considering the grounds raised by the petitioner, rejected through order dated 30.11.2012.

g) Further it is the case of the petitioner that in pursuance of the said accident, which was numbered as Calendar Case No.93 of 2012 was tried by the Hon'ble Special Magistrate No.II, Cyberabad at Malkajgiri, and after conducted trial and

considered the oral and documentary evidence, the petitioner was acquitted by the Judgment dated 11.12.2012.

h) After acquittal of the petitioner in the said case, he has submitted a representation on 29.01.2013 before the 2nd respondent without looking into the Judgment passed by the Hon'ble Special Magistrate No.II, Cyberabad at Malkajgiri and the charges levelled against the petitioner in the said criminal case as well as in the disciplinary proceedings is one and the same and for the very same charges the competent Judicial Magistrate was pleased to acquit the petitioner and the 2nd respondent not considering the same and rejected the petitioner's representation saying that the department remedies were exhausted by the petitioner as such no interference is due at this stage, is nothing but arbitrary, illegal, null and void and violative of principles of natural justice. Hence, the writ petition.

PERUSED THE RECORD :

4. Paras 14 and 15 of the final order impugned dt.31.03.2012 passed by the 5th Respondent herein reads as under :

Para 14: From the facts and evidence of the case as discussed in the above paragraphs, it is seen the

charged official while detailed for duty along with vehicle bearing No. AP-29-AD- 0940 (Bolero) for bringing P.W-1 from CISF Group HQrs Hyderabad to CISF Unit, IG Mint, Hyderabad, the vehicle met with an accident at about 1545 hrs on 06/07/2011 near MRR School, Kushaiguda in which a civilian namely Mohd. Nizamuddin who was riding motorcycle No.AP-09-BU-8969 without wearing helmet, had sustained head and knee injuries This fact is substantiated from the statement of P W-1, who was an eye witness to the incident, and the same is corroborated by PW-02, P.W-03, P.W-04 and C W-02 as also admitted by the charged official. Thereafter, the injured person was shifted to the nearby Raghavendra Hospital, A.S Rao Nagar. This fact is evident from the statement of PW-02, P.W-03, & P.W-04 as well as the charged official. As per the statement of PW-01 which is corroborated by the other witnesses viz P.W-02, PW-03, P W-04. C.W-02 as also defence version, the charged official was driving the vehicle following traffic rules at a speed of around 30 Kmph. But it was the civilian motorcyclist coming from the opposite direction and after touching a car ahead of him, got dis-balanced and taking a curve had hit the Bolero vehicle between its doors on rear right side and sustained injuries to his knees and head as he was not wearing helmet. Observing the civilian motorcyclist coming from opposite direction in an un-controlled manner,

the charged official turned the vehicle to left side of the road and immediately applied brake. There was no mechanical fault in the Bolero veh which is confirmed as per the report dt. 19/07/2011 of MVI, RTA. Uppal (PW-02/Exhibit-6) The traffic at the time of accident was not heavy as revealed by the PW-01 inspection of the spot of accident conducted by the enquiry officer on 18/02/11 behaved that there was sufficient space on the road for the charged official to turn bolerojeep to left side of so as to avert collision with the Motorcyclist. But the official being highly experienced driver of an Armed Force had failed to adjudge situation and take timely decision which resulted in a fatal accident in which the civilian motorcyclist had succumbed to his injuries on 18/07/2011, while undergoing medical treatment This fact is evident from the postmortem report dt 18/07/11 issued by Osmania Hospital, Hyderabad (PW-02/ Ext P7) Moreover, the charged official was holding copy of driving license only as he had deposited the original driving license for renewal Consequent to the incident, FIR No 428/2011 dt.06/07/11 (PW-02/Exht.5) has been lodged in Kushaiguda P.S by Shri. MohdKhilamuddin, S/o.Iqbal (brother of the deceased) Subsequently, Si of Police, Kushaiguda has filed a charge sheet vide C.R No.428/2011 under section-304(A) IPC & 196/177 MV Act (PW-02/Exhibit-8) against the charged official before the Court of Hon'ble Xth Metropolitan

Magistrate, Cyberabad, Malkajgiri Thus, on careful examination of the entire evidence on record and circumstantial evidence of the case, I find that there was carelessness and lack of alertness on the part of the charged official which resulted into a fatal accident thereby resulting in loss of precious human life. Had the charged official been more circumspect & alert in the given situation collision of the civilian motorcyclist with the Bolero vehicle could have been very well averted, but he failed to do so. As such, I agree with the findings of the Enquiry Officer and accordingly, hold the charged official guilty of the charge leveled against him. However, keeping in view of the clean record of service and future career of the charged official, I intend to take a lenient view in the case.

Para 15: I, therefore, in exercise of powers conferred upon me under Rule-32 read in conjunction with Schedule-I and with Rule-34 (v) of CISF Rules 2001 hereby award the penalty of "Reduction of pay by one increment in Pay Band (PB-1) for a period of 01 (one) year with immediate effect. It is further directed that during the period of reduction, he will not earn Increments of pay and on expiry of this period, the reduction will have the affect of postponing the future Increments of his pay" to No 974340083 HC(Dvr) Dinesh Babu P of

CISF Unit: IG Mint. Hyderabad to meet the end of justice.

5. Paras 4 and 6 of the counter affidavit filed by the Respondents reads as under :

Para 4 : With regard to Para No.6.7 & 8 of the Writ petition, it is respectfully submitted that the Petitioner had submitted a representation dt. 29.01.13 addressed to the DG/CISF Hqs, New Delhi quoting Judgement order passed by Special Magistrate-II, Cyberabad at Malkajgiri in Calender Case No. 93/12 acquitting him in the criminal case. He also requested to set aside the penalty awarded in the instant case. In turn, his representation was disposed off vide CISF Hqs, New Delhi Ltr. No. V-11014/17/1&R/2013/1399, dt, 09.5.2013 informing the Petitioner that the order dt.11.12.12 passed by the Hon'ble Special Magistrate No. II. Cyberabad at Malkajgiri in the case No. 428/2011, 93/2012 discharging him from the charge, is not tenable as the intent and purpose of departmental enquiry and criminal case are different and distinct. The charge against the petitioner was proved in departmental enquiry and as he had exhausted all the departmental remedies by way of appeal and revision petition and therefore cannot be interfered. The Petitioner acknowledged the said letter on 31.5.13. As such the averment of the petitioner that rejection of his representation addressed to DG/CISF

is arbitrary, illegal and violative of principles of natural justice is not tenable and hence denied.

Para 6 : In reply to para no 12 of the Writ petition, it is respectfully submitted that the Enquiry Officer proved the charge of careless and lack of alertness in driving the said vehicle by the petitioner on the basis of material evidences and statement of witnesses recorded during the Departmental Enquiry. The Petitioner could not present any new issue/point to prove his innocence. Gp. Commandant CISFGp. HQrs Hyderabad after considering the representation submitted by the petitioner against the Enquiry report and the evidences held on record in the case files passed the final order awarding the penalty of "Reduction of pay by one increment in Pay Band (PB-1) for a period of 01 (one) year with immediate effect. It is further directed that during the period of reduction, he will not earn increments of pay and on expiry of this period. the reduction will have the effect of postponing the future increments of his pay" to the petitioner which commensurate with the gravity of offence committed by him. Hence, the averment of the petitioner is denied."

DISCUSSION AND CONCLUSION :

6. A bare perusal of the final order dt. 31.03.2012 passed by the 5th Respondent herein (the relevant portion,

being referred to and extracted above) clearly indicates that it is a detailed speaking order passed by the 5th Respondent in exercise of the powers conferred by the 5th Respondent under Rule 32 read in conjunction with Schedule I and with Rule 34 (v) of CISF Rules, 2001 and a penalty of "reduction of pay by one increment in Pay Band (PB-1) for a period of 01 (one) year with immediate effect and it was further directed that during the period of reduction Petitioner will not earn increments of pay and on expiry of the said period the reduction will have the effect of postponing the future increments of Petitioner's pay.

7. The Petitioner preferred an Appeal against the said order dt. 31.03.2012 to the 6th Respondent herein and the 6th Respondent rejected the Appeal petition preferred by the Petitioner through a detailed Speaking Order vide Proceedings dt. 11.06.2012. Petitioner also preferred a Revision Petition aggrieved against the final order No.(1558) dt. 31.03.2012 passed by the 5th Respondent herein to the 3rd Respondent who rejected the same vide detailed Speaking Order dt. 30.11.2012 holding that the penalty awarded to the Petitioner by the Disciplinary

Authority was upheld by the Appellate Authority since it was found commensurate with the gravity of charge and the Revision Petition was rejected being devoid of merit. The Petitioner thereafter submitted a representation dt. 29.01.2013 to the 6th Respondent herein seeking to set aside the punishment on the ground that the Hon'ble Special Magistrate No.II, Cyberabad at Malkajgiri in the Case No.428/2011 on 09.03.2012 discharged the Petitioner from the charges and the said request was rejected by the 6th Respondent vide impugned proceedings dt. 09.05.2013 clearly observing that the charges against the Petitioner had been proved in the Departmental Enquiry and the Petitioner had already exhausted all the Departmental remedies by way of Appeal and Revision Petition and therefore the same does not warrants interference at this stage.

8. Aggrieved by the said final order dt. 31.03.2012 passed by the 5th Respondent as confirmed by the Appellate Authority that is the 6th Respondent vide its order dt. 11.06.2012 and the proceedings dt. 30.11.2012 passed by the 3rd Respondent rejecting the Revision Petition filed by the Petitioner aggrieved against the final

order dt. 31.03.2012 awarded by the 5th Respondent and the proceedings dt. 09.05.2013 of the 6th Respondent rejecting the Petitioner's representation dt. 29.03.2013 seeking to set aside the punishment, in view of the fact that the Petitioner had been discharged from the charges in Case No.93/2012 on 11.12.2012 by the Special Magistrate No.II, Cyberabad at Malkajgiri, the present writ petition has been filed by the Petitioner.

9. It is true that it is settled law as per the Judgement of the Apex Court reported in (2022) Livelaw (SC) 304, dt. 22.03.2022 in State of Karnataka and Another Vs. Umesh in Civil Appeal Nos.1763 – 1764 of 2022, that in the exercise of the judicial review, the Court does not act as an Appellate Forum over the findings of the Disciplinary Authority. The Court does not re-appreciate the evidence on the basis of which the finding of misconduct has been arrived at in the course of a disciplinary enquiry. The Court in the exercise of judicial review must restrict its review to determine whether :

- i. The rules of natural justice have been complied with.

- ii. The finding of misconduct is based on some evidence.
- iii. The statutory rules governing the conduct of disciplinary enquiry have been observed.
- iv. Whether the findings of the disciplinary authority suffer from perversity and the penalty is disproportionate to the proven misconduct.

10. In the present case it is borne on record that the departmental proceedings and criminal case are based on identical and similar set of facts without there being any iota of difference and the charge in the departmental case against the Petitioner and the charge before the Criminal Court are one and the same, the eye witness/prosecution witness, in the criminal case PW-3 Pankaj Kumar, Asst. Commandant, CISF, GP, HQRs., Hyderabad, is also the prosecution witness before the Disciplinary Authority (PW-01) and the Court of Special Magistrate No.II, Cyberabad at Malkajgiri in Calander Case No.93/2012 in its order dt. 11.12.2012 at para 13 specifically observed that there is absolutely no evidence whatsoever to show that the accused/petitioner drove the crime vehicle at the time of the accident, as the result of which the deceased received injuries and died subsequently and

further acquitted the Petitioner holding that the Petitioner is found not guilty of the offence punishable U/s.304-A of the Indian Penal Code and U/s.196/177 of Motor Vehicles Act in Cr.No.428/2011, whereas the charge framed against the Petitioner by the Disciplinary Authority referring to the very same accident attributed careless and lack of alertness in driving the said official vehicle to the Petitioner herein, this Court opines that the Respondents have to reconsider the orders impugned in the present Writ Petition.

11. The Apex Court in the Judgement in G.M. Tank vs. State of Gujarat, in its decision dt. 10.05.2006, at paras 31, 32 and 33 observed as under :

Para 31. The judgments relied on by the learned Counsel appearing for the respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and

material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer, Mr. V. B. Raval and other departmental witnesses were the only witnesses examined by the Enquiry Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal Court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by his judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the finding recorded in the departmental proceedings to stand.

Para 32. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference,

the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. Though finding recorded in the domestic enquiry was found to be valid by the Courts below, when there was an honourable acquittal of the employee during the pendency of the proceedings challenging the dismissal, the same requires to be taken note of and the decision in Paul Anthony's case, (1999 (3) SCC 679) will apply. We, therefore, hold that the appeal filed by the appellant deserves to be allowed.

Para 33. In the instant case, the appellant joined the respondent in the year 1953. He was suspended from service on 8-2-1979 and got subsistence allowance of Rs. 700/- p.m. i.e. 50% of the salary. On 15-10-1982 dismissal order was passed. The appellant has put in 26 years of service with the respondent i.e. from 1953-1979. The appellant would now superannuate in February, 1986. On the basis of the same charges and the evidence, the department passed an order of dismissal on 21-10-1982 whereas the Criminal Court acquitted him on 30-1-2002. However, as the Criminal Court acquitted the appellant on 30-1-2002 and until such acquittal, there was no reason or ground to hold the dismissal to be erroneous, any relief monetarily can be only w.e.f. 30-1-2002. But by then, the appellant had

retired, therefore, we deem it proper to set aside the order of dismissal without back wages. The appellant would be entitled to pension."

12. Taking into consideration of the above referred facts and circumstances and the view taken by the Apex Court at paras 31, 32 and 33 of the Judgement dated 10.05.2006 reported in (2006) Law Suit (SC) 412, in G.M.Tank v State of Gujarat the Writ Petition is disposed of directing the Respondents to reconsider the final order dt. 31.03.2012 passed by the 5th Respondent herein and also the other consequential orders dated 11.06.2012 passed by the 6th Respondent and the order dated 30.11.2012 passed by the 3rd Respondent and the order dated 09.05.2013 passed by the 6th Respondent duly taking into consideration Para 13 of the order dated 11.12.2012 passed in Calender Case No.93/2012 by the Court of Special Magistrate No.II, Cyberabad at Malkajgiri, and also the law laid down by the Apex Court in Judgements referred to and extracted above and re-examine the whole issue whether the finding of misconduct alleged against the Petitioner and proved against the Petitioner by the Disciplinary Authority is

based on some evidence as observed by the Apex Court at para 17 in its recent judgment dt.22.03.2022, reported in (2022) Livelaw (SC) 304, in State of Karnataka and Another Vs. Umesh in Civil Appeal Nos.1763 – 1764 of 2022 and pass appropriate orders within a period of (6) weeks from the date of receipt of the copy of the order duly communicating their decision to the Petitioner.

13. With these observations this Writ Petition is disposed of. However, there shall be no order as to costs.

MRS. JUSTICE SUREPALLI NANDA

Date: 18.07.2023

Note : L.R.copy to be marked.
B/o.KVRM/YVKR