

PETITIONER:

THE GOVT. OF ANDHRA PRADESH, REPRESENTED BY ITS PRINCIPAL SE

Vs.

RESPONDENT:

B. ASHOK KUMAR

DATE OF JUDGMENT: 28/04/1997

BENCH:

K. RAMASWAMY, D.P. WADHWA

ACT:

HEADNOTE:

JUDGMENT:

Present:

Hon'ble Mr. Justice K. Ramaswamy

Hon'ble Mr. Justice D.P. Wadhwa

G. Prabhakar, Adv. for the appellant

L.N. Rao, Ramkrishna Prasad, V.S. Reddy, S.U.K. Sagar, and

D. Bharti Reddy, Advs. for the Respondent

O R D E R

The following order of the Court was delivered:

Leave granted.

The respondent was imputed with a charge that he demanded and accepted a sum of Rs.3,000/- as illegal gratification for refraining from registering a complaint in respect of the bribe given, against whom criminal prosecution was to be initiated. The matter was referred to the Tribunal for disciplinary proceeding which after enquiry submitted its report on July 20, 1994, holding that the charge against the respondent had been proved and he was guilty of the charge. However, it recommended to impose the penalty of stoppage of three increments with cumulative effect. The Government after consideration of the evidence found that the recommendation was not correct proper and that major penalty was required to be given. Accordingly, show cause notice, together with copy of the report, was issued for imposing punishment of dismissal from service and the respondent submitted his reply. The Government after considering the entire material came to the conclusion that the respondent deserved to be dismissed from service. Accordingly, order, viz. G.O.Ms. No.238 Home (SCA) dated July 28, 1995 dismissing him service was issued. On the O.A. having been filed before the Tribunal. The Tribunal while accepting that the charge had been proved was of the view that the Government should reconsider the question of imposition of the penalty of stoppage of three increments. Thus, this appeal by special leave against the order of Tribunal made on April 23, 1996 in O.A. No. 4297.

Shri L.N. Rao, learned counsel for the respondent contends that the Tribunal in disciplinary proceedings had opined that the evidence of the witness was weak and, therefore, it felt like holding that the charge of imposing penalty of stoppage of three increments would meet the end

of justice. In view of the finding given by the Tribunal, that imposition of the penalty of dismissal from service shook the conscience of the Tribunal, it does not warrant interference. We find no force in the contention. It is now legal settled position that imposition of the penalty is the right of the disciplinary authority consistent with the magnitude and the misconduct imputed and the evidence in support thereof. The Tribunal in disciplinary proceedings found as a fact that the respondent demanded and accepted illegal gratification of Rs. 3,000/- for not prosecuting the offender. Since the respondent is an Inspector of Police, a higher ranking officer, if he demands and accepts illegal gratification and restrains himself from initiating prosecution against the offender, it would have an effect on the maintenance of law and order in the society. Therefore, the finding of the Tribunal that it shook its conscience is unsustainable. We have seen that the Tribunal has no power to direct the appellant to reconsider the matter. This court in B.C. Chaturvedi vs. Union of India [(1995) 6 SCC 749] has held that the Tribunal has the power to direct the punishment, imposed by the disciplinary authority.

The appeal is accordingly allowed. The order of the Tribunal stands set aside. As a result, the order of the Government stands confirmed. No costs.