

CASE NO.:
Appeal (civil) 2043 of 2007

PETITIONER:
Government of A.P. and Ors.

RESPONDENT:
Mohd. Taher Ali

DATE OF JUDGMENT: 09/10/2007

BENCH:
A.K. MATHUR & MARKANDEY KATJU

JUDGMENT:
JUDGMENT

ORDER

We have heard learned counsel for the parties.

This appeal by special leave is directed against the order dated 9.3.2005 passed by the Division Bench of the Andhra Pradesh High Court in Writ Petition No. 19690 of 2004 whereby the Division Bench has affirmed the order passed by the Administrative Tribunal whereby the Administrative Tribunal remitted the matter back to the disciplinary authority for consideration of the punishment imposed in the matter. Hence the present appeal filed the State of A.P.

It is not necessary to go into the detailed facts. Suffice it to say that the incumbent was a police Constable at Alwal (Halia) P.S. and he was detailed for election duty at Cuddapah Election Bandobusth duty along with other PS men with instructions to report before SDPO Miryalguda, but he did not report for duty on 2nd September, 1999 along with other PS men before SDPO Miryalguda and absented himself unauthorisedly without leave or permission with effect from 2nd September, 1999. Therefore, he was charged for the offence of desertion. The C.I. of Police, Miryalguda was appointed as Inquiry Officer to conduct the inquiry. The respondent did not file any written representation of defence in response to the charges levelled against him. Therefore, the Inquiry Officer held an Inquiry and found him guilty and submitted his report to the Superintendent of Police, Nalgonda and the Superintendent of Police on receipt of the same, sent a copy of that report to the respondent but he did not file any written representation of defence in response to that report. Therefore, the Superintendent of Police concluded that the respondent has no explanation to the charges levelled against him. It was also recorded that this is not a solitary incidence. The respondent has also earlier been found to be guilty of desertion on a couple of occasions. Hence the S.P. imposed a punishment of compulsory retirement from service with immediate effect. This was challenged before the Administrative Tribunal. The Administrative Tribunal did not interfere with the finding of the report of the Inquiry Officer but remitted the matter back to the disciplinary authority for reconsideration of the question of punishment. Aggrieved by that order, the State Government filed a writ petition before the High Court. The High Court affirmed the order of the Administrative Tribunal. Hence the present appeal.

It is an admitted position that the respondent was appointed on election duty but he absented himself from election duty. It seems that the respondent did not consider the election duty to be an important business which is very important for the whole nation. The respondent was appointed on election duty and was deputed to take security arrangement but absented himself from duty. This is a very serious lapse on the part of the respondent. The police force is a disciplined force and the respondent. The

police force is a disciplined force and the respondent was detailed for such an important duty of election. He absented himself from election duty. Such kind of serious lapse cannot be treated lightly. It is a very important function and if the incumbent avoided the duty of election, he cannot escape from the liability of the penalty of compulsory retirement. We fail to understand the reason for the Administrative Tribunal or for the High Court to have remitted the matter back to the disciplinary authority for reconsideration of the punishment of compulsory retirement imposed on the respondent.

Learned Counsel appearing on behalf of the respondent submitted that in fact, the disciplinary authority while passing the order has taken into consideration the earlier absence of the respondent from the duty. He submitted that this could not have been taken into consideration as the respondent was not aware about these incidents and those were not the part of the charges levelled against him. In support of his submission learned counsel for the respondent has invited our attention to the judgment of this Court titled *State of Mysore v. V.K. Manche Gowda*, reported in [1964] 4 SCR 540 but in the present case we are satisfied that in fact the respondent deliberately absented himself from duty and did not offer any explanation for his absence from election duty. It is not the respondent's first absence. He also absented himself from duty on earlier occasions also. In our opinion there can be no hard and fast rule that merely because the earlier misconduct has not been mentioned in the chargesheet it cannot be taken into consideration by the punishing authority. Consideration of the earlier misconduct is often only to reinforce the opinion of the said authority. The police force is a disciplined force and if the respondent is a habitual absentee then there is no reason to ignore this fact at the time of imposing penalty. Moreover, even ignoring the earlier absence, in our opinion, the absence of 21 days by a member of disciplined force is sufficient to justify his compulsory retirement.

Looking to the facts and circumstances of the case, we are of the view that the view taken by the High Court as well as by the Administrative Tribunal cannot be sustained. Hence we allow this appeal, set aside the order of the High Court as well as of the Administrative Tribunal and confirm the order of compulsory retirement for the serious lapse on the part of the respondent.

This appeal is accordingly, allowed.

No order as the Costs.