



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3460]

**TUESDAY, THE FIFTH DAY OF AUGUST
TWO THOUSAND AND TWENTY FIVE**

PRESENT

THE HONOURABLE SRI JUSTICE NYAPATHY VIJAY

WRIT PETITION NO: 5728/2025

Between:

1. PASALA SMITHNER, PASALA SMITHNER, S/O. LATE FRANKLIN RAJA BUSHANAM, AGED ABOUT 41 YEARS, ACTO/GSTO, O/O. ASSISTANT COMMISSIONER, SATTENAPALLI CIRCLE, GUNTUR-2 DIVISION (STATE TAXES), ANDHRA PRADESH.

...PETITIONER

AND

1. THE STATE OF ANDHRA PRADESH, REP. BY ITS PRINCIPAL SECRETARY, DEPARTMENT OF REVENUE (VIGILANCE-VI) SECRETARIAT, AMARAVATI.
2. THE CHIEF COMMISSIONER, STATE TAXES, GUNTUR, ANDHRA PRADESH.

...RESPONDENT(S):

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an order, direction or writ, more particularly one in the nature of writ of Mandamus, declaring G.O.Rt.No.689, dated 27.09.2024, imposing penalty of withholding three (03) annual grade increments with cumulative effect basing on the concocted allegation of Rs.9500/- said to have been found in my table desk as belonging to the petitioner during the surprise check of

Anti-Corruption Bureau Officials on 03.06.2016, at Border Check Post, Pondugula, Dachepalli Mandal, Guntur District, despite the Inquiry Officer and Commissioner (ST), O/o. Chief Commissioner (ST), Andhra Pradesh, Vijayawada, holding the charge as not proved, for being illegal, arbitrary, against the principles of natural justice, contrary to the provisions of Andhra Pradesh Civil Services (Classification Control and Appeal) Rules, 1991, and the Andhra Pradesh Civil Services (Conduct) Rules, 1964, and unconstitutional and consequently set aside G.O.Rt.No.689, dated 27.09.2024, and pass such other order.

IA NO: 1 OF 2025

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased may be pleased to suspend the operation of G.O.Rt.No.689 Revenue (Vigilance-11) Department, dated 27.09.2024, pending disposal of the above Writ petition, and pass such other order.

Counsel for the Petitioner:

1. SRINIVASA RAO BODDULURI

Counsel for the Respondent(S):

1. GP FOR REVENUE

The Court made the following:

HON'BLE SRI JUSTICE NYAPATHY VIJAY**WRIT PETITION No.5728 of 2025****ORDER:**

1. The present Writ Petition is filed questioning G.O.Rt.No.689, Revenue (Vigilance-II) Department, dated 27.09.2024, imposing penalty of withholding three (3) annual grade increments with cumulative effect, as illegal, arbitrary and contrary to the provisions of Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 [for short “**APCS (CCA) Rules, 1991**”].

2. The facts in brief are as follows;

The Petitioner while working as Assistant Commercial Tax Officer in the Commercial Tax Office, Narasaraopet Circle, Guntur-2 Division was deputed to the Border Check-Post, Pondugula, Dachepalli Mandal, Guntur District, wherein he was issued a Charge Memo under Rule 20 of APCS (CCA) Rules, 1991 vide G.O.Rt.No.302, Revenue (Vigilance-II) Department, dated 02.03.2020, in which two Articles of Charges were framed.

3. The first Article of Charge was that the Petitioner along with his staff was collecting bribes/mamools from the transport goods vehicle drivers/owners at the check-post and on the day of surprise check,

he was in possession of Rs.9,500/- in his table desk, for which he could not properly account for. The second Article of Charge was that Petitioner did not enter particulars of personal cash in Personal Cash Register.

4. In the statement of Imputations of Misconduct or Misbehaviour, it is stated that on credible information that the officials of Commercial Tax Department of Border Check-Post at Pondugula Village, Dachepalli Mandal, Guntur District on Addanki-Narkatpalli State Highway were collecting bribes from the drivers of goods vehicles, the Deputy Superintendent of Police, Anti-Corruption Bureau, Guntur District organized a surprise check on the said check-post along with his staff in the presence of two mediators from 21.00 hours on 03.06.2016 to 04.00 hours on 04.06.2016.

5. After reaching near the check-post, the surprise check party and mediators took vantage positions in and around the said Border check-post and watched the activities of the staff and noticed that one person is stopping transport goods vehicles by whistling and taking the drivers/cleaners of the said vehicles inside the check-post and, in turn, the staff of the check-post, who are six (6) in number were collecting some money from them even without verifying records.

6. When some of the drivers/cleaners of the transport goods vehicles were denying to pay money to the staff, they forced them to pay the amounts, otherwise they will impose compounding fees. It is stated that at 9.00 p.m., the Deputy Superintendent of Police and the Surprise Check Party surprised the check-post and found the Government Servant and other staff of the check-post and also six (6) transport vehicle drivers. On search, an amount of Rs.390/- was found with the Government Servant, which was stated to be the personal cash. On perusal of the Personal Cash Register at the check-post, it was found that the shift personal cash particulars were not entered in the Register.

7. On further search of the check-post in the presence of mediators and the Administrative Officer of the check-post, an amount of Rs.9,500/- was found in the table desk of the Petitioner and he could not account for the same. It is stated that the Deputy Superintendent of Police, ACB had examined 6 transport goods drivers and they had stated that the check-post staff are collecting Rs.150/- each for stamping on transit pass and they are demanding money from other lorry drivers. List of documents were specified in Annexure-III and List of Witnesses were specified in Annexure-IV of the Charge Memo.

8. Sri D. Ramesh, formerly Additional Commissioner (ST) and then Commissioner (ST), Office of the Chief Commissioner (ST), Andhra Pradesh, Vijayawada was appointed as Enquiry Officer. After thorough enquiry, the findings regarding Charges-I & II were held as not proved. The Respondent No.1 taking note of the enquiry report issued a disagreement note vide Memo No.REV-17023/39/2016-VIG II – REV, dated 19.03.2023 calling for the explanation of the Petitioner and 6 others. The Petitioner and 6 others submitted their explanation to the disagreement note on 03.08.2024.

9. Thereafter, Respondent No.1 issued the impugned proceedings vide G.O.Rt.No.689, dated 27.09.2024, imposing penalty of withholding of three (3) annual grade increments with cumulative effect. The Paragraph No.4 of the impugned order is extracted below;

“4. The Government, after a detailed examination of the Inquiry Report and the written representations submitted by the Charged Officers to the disagreement factors, found that although mediators did not witness any money exchanges during the surprise check, the unaccounted cash found suggests bribery. It was concluded that the Charged Officers were responsible for the seized amounts based on the preponderance of probability standard in departmental action. The Government have decided to impose penalties on the Charged Officers for committing irregularities and for violation of APCS (Conduct) Rules, 1964.”

10. The Government imposed penalties against the charged Officers under Rule 9 of A.P. Civil Service (CC& A) Rules, 1991 as detailed below:

Sl.No.	Name of the Charged Officer	Punishment imposed
1.	Sri Ande Santharam, Administrative Officer	Imposed a punishment of one increment without cumulative effect
2.	Smt.G. Majula Rani, CTO, Piduguralla	
3.	Sri P. Smithner, ACTO	Imposed penalty of withholding of three (3) annual grade increments with cumulative effect
4.	Sri L. Srinivasulu, Sr. Assistant	
5.	Sri P. Raghavulu, Sr. Assistant	
6.	Sri T. Venkateswarlu, Jr. Assistant	
7.	Sri D.V. Suresh Kumar, Jr. Assistant	
8.	Sri P. Veereswara Rao, Jr. Assistant	
9.	Sri Ch. Venkateswarlu, Office Subordinate	

11. Hence, the present Writ Petition is filed.

12. Learned counsel for the Petitioner would contend that the impugned order does not mention any reasons for imposing a major penalty, more so, when the same is being passed in disagreement to the enquiry report. Learned counsel for the Petitioner would further submit that even the disagreement note dated 09.03.2024 is not in

consonance with the procedure prescribed under the APCS (CCA) Rules, 1991, which requires tentative reasons for disagreement and then calling for explanation, which is not faulted with in this case.

13. Learned Assistant Government Pleader for Services-I would submit that the disagreement note dated 09.03.2024 is in consonance with the A.P.C.S (CCA) Rules, 1991 and the disagreement need not be duplicated in the impugned proceedings.

14. Having heard the respective counsel, the following issue falls for consideration;

a) Whether the tentative reasons issued by the Disciplinary authority are sustainable?

15. **Issue (a):** The impugned order as extracted above does not mention any reasons but only stated that the Petitioner was responsible for the seized amounts based on preponderance of probability of any departmental action. It is relevant to note here that in the enquiry, the Enquiry Officer issued notices to six truck drivers, who were said to have been examined by the surprise check party, who said to have stated about the demand of Rs.150/- for stamping on transit pass and other amounts by the staff at the check-post.

16. Though notices were issued to all the six truck drivers, only one truck driver by name R. Shiva Kumar had attended the enquiry and he deposed that no person at the check-post was demanding money and he had not given any money to the staff of the check-post. The relevant portion of the enquiry report regarding this aspect is extracted below;

“8. Notices were issued to all the six (6) truck drivers through the Presenting Officer to attend before the undersigned for inquiry. In spite of issuance of notices, only one truck driver by name Sri R. Shiva Kumar with vehicle bearing No.AP 27 TB 7371 attended before the Inquiry Officer and deposed that no one at check-post are demanding money and also he had not given any money to the staff of Check-Post. The other 5 truck drivers/cleaner not attended for inquiry before me so as to examine and to know whether the illegal gratifications if any, were collected from them or not.

9. The case must be judged as a whole having regard to the totality of the evidence. In other words, the evidence in totality has to be kept in mind in coming to the conclusion as to the guilt or otherwise of the accused. In reaching a conclusion about the guilt of the accused, I being the Inquiry Officer have to analyze and access the evidence placed before me. It is axiomatic when the evidence is sufficient so as to prove the existence of a fact conclusively, then no difficulty arises. But when the material evidence adduced during the enquiry before the Inquiry Officer create a reasonable doubt, the benefit should necessarily go to the accused.”

The evidences deposed before me by the mediators (that they have not seen any driver giving money to the check-post staff) and that of the truck driver (that no one at check-post are demanding money and also he had not given any money to the staff of Check-Post) give rise to a reasonable doubt that the accused has not been proved. No circumstantial evidence has been established before me to prove that the unaccounted amounts found in the BCP are illegal collections by the duty staff at the time of surprise check. Hence the same cannot be attributed to the individuals who are on duty at the time of surprise check in the check-post. In the absence of any other evidence and without any traces of collection by the check-post staff on duty, the findings recorded in Mediators Report is only an otiose. No connecting evidence has been adduced before me to fix up the responsibility against the charged employees. In the said circumstances, it is unsafe to come to an adverse opinion. In such circumstances, the charged officers/staff ought to be given benefit of doubt.”

17. As regards the Charge-II, the Enquiry Officer held that the same is not proved as the requirement of declaring personal cash by the Government Officials at the time of reporting to duty vide G.O.Ms.No.200, General Administration (Ser.C) Department, dated 26.03.2007 regarding the declaration of personal cash was required only when the employee is carrying more than Rs.500/-. As these amounts were not in excess of Rs.500/-, the Article of Charge-II was held to be unproved.

18. In the light of categorical findings by the Enquiry Officer, tentative reasons for disagreement are required to be given under Rule 21(2) of APCS (CCA) Rules, 1991. The Rule 21(2) of APCS (CCA) Rules, 1991 reads as under;

*“2. The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or **where the disciplinary authority is not the inquiring authority a copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge** to the Government servant who shall be required to submit, if he so desires, his written representation of submission to the disciplinary authority within fifteen days, irrespective of whether the report is favorable or not to the Government servant.”*

19. The above extracted Rule requires tentative reasons with reference to evidence on record and the findings arrived at in the enquiry report on any article of charge and this is apparent on the highlighted portion of the above Rule. A general and a vague reason disagreeing with the enquiry report would not suffice, as the delinquent would be in a piquant situation as he would be uncertain as to the cause of disagreement. The requirement to provide tentative reasons for disagreement by the disciplinary authority on the basis of findings and evidence on record is not only a statutory requirement, but is also an aspect of fair play.

20. In the present case, the disagreement issued by the disciplinary authority is on the premise that recovery of amounts from the office stood proved and the onus of disproving the same is on the charged officers even though it is not established by the prosecution that the bribe amounts/mamools are collected by charged officers. It is to be noted that the very enquiry is to ascertain whether there is recovery of cash as alleged in the surprise check and whether the Petitioner had indulged in any act of misconduct and the enquiry report is categorical with regard to these aspects. Therefore, the tentative reasons given do not satisfy the requirement under Rule 21(2) of APCS (CCA) Rules, 1991 and are not in consonance with fair play.

21. Apart from what has been stated above, the preponderance of probability does not mean that punishment can be on speculative grounds. The reasoning in the impugned order stating that recovery of amounts is suggestive of bribery without referring to evidence on record can only be said to be speculative. The Hon'ble Supreme Court in **Roop Singh Negi v. Punjab National Bank**¹ at Paragraph 23 held as follows;

"23. *Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have*

¹ (2009) 2 SCC 570

*been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis of selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. **A decision must be arrived at on some evidence, which is legally admissible.** The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are.”*

22. For the aforesaid reasons, the impugned order has to fail on two grounds i.e. (i) for want of tentative reasons as per Rule 21(2) of the APCS (CCA) Rules, 1991 and (ii) the absence of reasons in the impugned order of punishment. The issue is accordingly answered.

23. In the light of the above, this Court is inclined to dispose of the Writ Petition with the following directions;

(i) The impugned order issued by Respondent No.1 vide G.O.Rt.No.689, Revenue (Vigilance-II) Department, dated 27.09.2024 is set-aside;

(ii) the case is remitted to the disciplinary authority for taking further action from the stage of enquiry report.

(iii) No order as to costs.

24. As a sequel, pending applications, if any, shall stand closed.

NYAPATHY VIJAY, J

Date: 05.08.2025

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HON'BLE SRI JUSTICE NYAPATHY VIJAY

WRIT PETITION No.5728 of 2025

Date: 05.08.2025

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