



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 23RD DAY OF FEBRUARY, 2026

PRESENT

THE HON'BLE MR. JUSTICE H.P.SANDESH

AND

THE HON'BLE MR. JUSTICE VENKATESH NAIK T

WRIT PETITION NO.1096 OF 2025 (S-KSAT)

BETWEEN:

1. SRI. MOTILAL NAIK M.,
S/O TAVARE NAIK
AGED ABOUT 63 YEARS
RETIRED EXECUTIVE ENGINEER
PUBLIC WORKS DEPARTMENT
RESIDING AT DOOR NO.5000/2
'TULAJA KRUPA', 8TH CROSS,
SIDDAVEERAPPA EXTENSION,
DAVANAGERE - 577 004.
2. SRI. H. DWARAKANTH
S/O H. RAMACHAR
AGED ABOUT 65 YEARS,
RETIRED ASST. EXECUTIVE ENGINEER
PUBLIC WORKS DEPARTMENT
RESIDING AT
C/O SOMASUNDAR RAO
FS-31, 1ST MAIN, 1ST CROSS
BEHIND VINAYAKA TEMPLE
IAF POST, VINAYAKANAGAR
BAGALUR CROSS, YELAHANKA
BENGALURU-560 063.

...PETITIONERS

(BY SRI. B.O. ANIL KUMAR, ADVOCATE)





AND:

1. THE STATE OF KARNATAKA
REPRESENTED BY ITS PRINCIPAL SECRETARY
MINOR IRRIGATION AND GROUND WATER
DEVELOPMENT DEPARTMENT
VIKASA SOUDHA,
BENGALURU-560001.
2. THE PRINCIPAL SECRETARY TO GOVERNMENT
PUBLIC WORKS, PORTS AND INLAND
WATER RESOURCES DEPARTMENT
MULTI STORIED BUILDINGS
BENGALURU-560001.

...RESPONDENTS

(BY SMT. RASHMI PATEL, HCGP FOR R1 AND R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF CONSTITUTION OF INDIA, PRAYING TO SET ASIDE THE ORDER DATED 19.04.2022 IN APPLICATION NO.5866 AND 5867/2019 (ANNEXURE-A) PASSED BY THE KARNATAKA STATE ADMINISTRATIVE TRIBUNAL IN SO FAR AS DISMISSING THE APPLICATION WITH RESPECT TO RECOVERY OF RS.5,93,011 AND RS.4,48,070/- ALONG WITH 8% INTEREST FROM 31.07.2007 FROM THE PENSIONARY BENEFITS OF THE PETITIONERS.

THIS PETITION COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE H.P.SANDESH
and
HON'BLE MR. JUSTICE VENKATESH NAIK T



ORAL ORDER

(PER: HON'BLE MR. JUSTICE H.P.SANDESH)

1. Heard the learned counsel appearing for the petitioners as well as the learned High Court Government Pleader appearing for the State/respondents.

2. This writ petition is filed praying this Court to set aside the order dated 19.04.2022 in Application No.5866 & 5867 of 2019, Annexure - A passed by the Karnataka State Administrative Tribunal at Bangalore in so far as dismissing the application with respect to recovery of Rs.5,93,011/- and Rs.4,48,070/- along with 8% interest from 31.07.2007 from the pensionary benefits of the petitioners and consequently allow the application in full with all consequential benefits including withheld pension and pensionary benefits along with interest and grant such other relief as deems fit in the circumstances of the case.

3. The factual matrix of case is that the petitioners working in the Public Works Department and petitioner No.1 has retired from service as Executive Engineer on



30.04.2015 and petitioner No.2 has retired from service as Assistant Executive Engineer on 31.12.2013. It is the case of the petitioners that a departmental enquiry was initiated against the petitioners and two others by the government vide government order dated 27.01.2018 and these petitioners were imposed with penalty of recovering sum of Rs.5,93,011/- from the pensionary benefits admissible to the petitioner No.2 and sum of Rs.4,48,070/- from the pensionary benefits admissible to petitioner No.1 together with interest at the 8% p.a., from 31.01.2017 till the date of order and so also for withholding 5% of pension payable to petitioner for a period of 2 years.

4. The counsel for petitioners would submits that the charges are initiated against all the delinquent officials and also counsel would submits that joint enquiry was conducted and enquiry officer having recorded the statement of witnesses and also considering the material available on record, given the report in terms of Annexure -A4 in coming to any conclusion that charges have not



been proved and the disciplinary authority having considered the said report, issued second show cause notice to all the delinquent officials vide Annexure-A5 dated 13.11.2014.

5. The counsel would submits that all of them have given reply to the second showcase notice and the government vide order dated 19.01.2016 exonerated two of them by warning and in respect of these two petitioners are concerned, other proceedings will be initiated against these petitioners and subsequently, vide Annexure-A9 vide order dated 27.01.2018 directed to make the payment with interest and also imposed the penalty of 5% on the pension for a period of 2 years, the same is challenged before the Tribunal in filing application No.5866 & 5867/2019 and Tribunal partly allowed by setting aside the order of imposing of penalty for a period of 2 years in respect of the pensionary benefits, but did not set aside the order of the government with regard to the direction



given to make the payment and hence, the present writ petition is filed before this Court.

6. The main contention of the counsel appearing for the petitioners before this Court is that common charges are framed against all of them and also the counsel would submit that joint enquiry was conducted and enquiry officer submitted the report that there was no any material to prove the charges. However, second show cause notice was given to all of them and they have given the same reply stating that work was carried out for the reason that the soil was not strong and hence, work was done with the prior oral approval. The counsel also would submit that those who have exonerated by warning, given the similar reply by explaining the circumstances warranted in doing the excess work and payment and the explanation given by all of them was similar, but while passing an order vide Annexure-A8, both of them particularly the Executive Engineer and Assistant Executive Engineer were exonerated by warning, but when the



similar reply was given by these petitioners that work was done with the approval of the higher officers, but an erroneous observation is made that these two petitioners have given wrong information.

7. The counsel would submits that even the officials who have been exonerated have not stated anything about the same in their reply statement. In the reply statement they have stated that work was done in the circumstances which was warranted to strengthen the quality of the work and not for any other reasons. When such being the case, when similar reply was given, there cannot be any different yardsticks while considering the explanation, but erroneously imposed the penalty and recovery order. The counsel would submits that the Tribunal while discussing the same also though discussed in paragraph No.9, but not discussed the factual aspects and only jumps to the conclusion that the decision was taken by the disciplinary authority to record the finding that charges against both the applicants herein are proved



and no such discussion at all. But, Tribunal comes to the conclusion that after perusal of the entire material, do not find any illegality or irregularity committed by the disciplinary authority in concluding that the charges are proved against the applicants herein and also imposing penalty as against them and also comes to the conclusion that did not find any error in the decision of the government and while coming to such a conclusion by the Tribunal, except that conclusion, there is no any discussion at all and partly allowed the applications and hence, it requires interference.

8. The counsel also in support of his argument relies upon the judgment of **Rajendra Yadav Vs/ State of Madhyapradesh** reported in **(2013) 3 Supreme Court cases 73**. The counsel brought to notice of this Court, paragraph No.9, 10, 11 and 12 and the same is extracted to consider the issue involved in the matter.

" 9. The doctrine of equality applies to all who are equally placed; even among persons who are found



guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing punishment when all of them are involved in the same incident. Parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The disciplinary authority cannot impose punishment which is disproportionate i.e. lesser punishment for serious offences and stringent punishment for lesser offences.

10. *The principle stated above is seen applied in a few judgments of this Court. The earliest one is DG of Police v. G. Dasayan wherein one Dasayan, a police constable, along with two other constables and one Head Constable were charged for the same acts of misconduct. The disciplinary authority exonerated two other constables, but imposed the punishment of dismissal from service on Dasayan and that of compulsory retirement on the Head Constable. This Court, in order to meet the ends of justice, substituted the order of compulsory retirement in place of the order of dismissal from service on Dasayan, applying the principle of parity in punishment among co-delinquents. This Court*



HC-KAR

held that it may, otherwise, violate Article 14 of the Constitution of India.

11. *In Shaileshkumar Harshadbhai Shah case the workman was dismissed from service for proved misconduct. However, few other workmen, against whom there were identical allegations, were allowed to avail of the benefit of voluntary retirement scheme. In such circumstances, this Court directed that the workman also be treated on the same footing and be given the benefit of voluntary retirement from service from the month on which the others were given the benefit.*

12. *We are of the view that the principle laid down in the abovementioned judgments would also apply to the facts of the present case. We have already indicated that the action of the disciplinary authority imposing a comparatively lighter punishment on the co-delinquent Arjun Pathak and at the same time, harsher punishment on the appellant cannot be permitted in law, since they were all involved in the same incident. Consequently, we are inclined to allow the appeal by setting aside the punishment of dismissal from service imposed on the appellant and order that he be reinstated in service forthwith. The appellant is, therefore, to be reinstated from the date on which Arjun Pathak was reinstated and be given all*



consequential benefits as were given to Arjun Pathak. Ordered accordingly. However, there will be no order as to costs."

9. Per contra, the learned High Court Government Pleader appearing for the State-respondents would submits that while passing an order, Annexure A8 having considered the reply submitted by these two petitioners, comes to the conclusion that both of them have submitted the wrong information to the higher officials and made the excess payment and the same is discussed in detail in respect of these two petitioners are concerned while passing an order dated 19.01.2016. The counsel also would submits that further proceedings was initiated and ordered to pay the amount vide order dated 27.01.2018 wherein reasons also assigned for directing them to make the payment with interest to the State Exchequer and there was no any prior approval and only it is stated that oral permission was taken and the same is not substantiated and hence, it does not requires interference of this Court.



10. Having heard the counsel appearing for the petitioners as well as the learned High Court Government Pleader appearing for the State-respondents and also considering the principles laid down in the judgment referred supra as well as considering the charges levelled against all of them and also the proceedings at Annexure A8 and A9, the point that would arise for the consideration of this Court are:

- i) Whether the Annexure-A8 and A9 are sustainable in the eye of law and consequently whether the order passed by the Tribunal requires interference of this Court?*
- ii) What Order?*

Point No.1 and 2:

11. Having considered the submission of respective counsels and also on perusal of material on record, there is no dispute that similar charges are framed against all the four. It is also not in dispute that in terms of



Annexure-A4, the enquiry officer who conducted the joint enquiry submitted the report that charges are not proved, however, a second show cause notice was issued against all of them vide Annexure- A5 dated 13.11.2014. It is also not in dispute that all of them have given the common explanation and explanation given by both the petitioners are also placed before this Court as per Annexure - A6 and A7.

12. Now during the course of argument, the counsel appearing for the petitioners placed on record copies of articles of charges dated 20.03.2012 and also copy of the reply given by DGO-1 dated 02.02.2015 to the second showcase notice. The counsel brought to notice of this Court that the DGO-1 has also given the similar reply and in the reply, he categorically explained the reason for doing the additional work that is extra work and payment is concerned and nowhere it is stated that without his permission, work was done but the statement is very clear that additional work was carried out in order to strengthen



the work and to maintain the quality and no different reply is given compared to these two petitioners. When such reply was given, but the respondent while issuing the Annexure-A9 comes to a other conclusion that wrong information was given to the higher authorities and the same is not stated by the DGO-1 that wrong information was given and got the work done and excess payment was made, but similar reply was given defending the work done by these two petitioners by the DGO-1 and 3 and when such similar reply was given, committed an error in issuing Annexure-A8 exonerating the DGO -1 and 3 that there was no any mistake on their part, but comes to the conclusion that wrong information was given to them and when DGO-1 and 3 not stated the same while giving their reply such an order, it is presumed that wrong information was given and the very exonerating of the DGO - 1 and 3 and not exonerating these petitioners is nothing but double yardstick while considering the reply. There cannot be any double yardstick when the charges are framed and



similar charges are framed and exempting two of them and penalizing other two. There is a force in the contention of the counsel appearing for the petitioners relying upon the judgment which has been referred in paragraph No.9 to 12 wherein Apex Court held that the doctrine of equality applies to all who are equally placed; even among persons who are found guilty. The persons who have been found guilty can also claim equality of treatment, if they can establish discrimination while imposing the punishment when all of them are involved in the same incident, parity among co-delinquents has also to be maintained when punishment is being imposed. Punishment should not be disproportionate while comparing the involvement of co-delinquents who are parties to the same transaction or incident. The disciplinary authority cannot impose punishment which is disproportionate i.e., lesser punishment for serious offences and stringent punishment for lesser offences. In the present case on hand also when the similar charges were framed and even though similar



explanation was given, but the reply was accepted by the respondent in respect of DGO - 1 and 3 and in respect of these petitioners have not been accepted, it is nothing but double yardstick while applying yardstick in considering. When even similar charges are framed and similar explanation is given, ought to have been accepted the explanation given by these two petitioners also when the other two are accepted.

13. It is pertinent to note that even DGO - 1 and 3 also categorically stated that work was done and even stated in the reply that work was carried out and the reason also given for doing the additional work in order to strengthen the work carried out that too for the purpose of maintaining with regard to the technical issues. When such being the case, issuance of Annexure-A9 making discrimination against these two petitioners are not sustainable in the eye of law and hence, it requires interference of this Court. The Tribunal while passing an order not appreciated the factual aspects of the case and



jumped into the conclusion that a decision was taken by the disciplinary authority to record the finding that the charges against both the petitioner herein are proved, but while coming to such conclusion, not discussed the factual aspects of the case, except mentioning that after perusal of the entire material, do not find any illegality or irregularity committed by the disciplinary authority in concluding that the charges are proved against the applicants herein and also imposing the penalty as against them except as observed in paragraph No.9, no other reasons are assigned. When such being the case, the Tribunal also not properly appreciated the factual aspects while coming to such a conclusion and only carried away with the reasoning given in Annexure-A8 and fails to take note of different yardstick is applied when the similar reply was given by all of them and also fails to take note of all of them have defended the act that due to technical reasons and to improve the quality of work, the said work was done and the same is not discussed in the order of the



Tribunal. When such being the case, Tribunal committed an error partly allowing the applications and ought to have allowed the applications in entirety as sought by the petitioners. Hence, we answer the point accordingly.

14. In view of the discussions made above, we pass the following:

ORDER

- i) The writ petition is ***allowed***.
- ii) The order of the Karnataka State Administrative Tribunal in Application No.5866 and 5867/2019 dated 19.04.2022 is modified by allowing the applications in entirety.
- iii) The Annexure-A9 is quashed as not sustainable in the eye of law.
- iv) The respondents are directed to give all benefit in favour of the petitioners in accordance with law in view of quashing of



Annexure - A9 and modifying the order of
the Tribunal.

**Sd/-
(H.P.SANDESH)
JUDGE**

**Sd/-
(VENKATESH NAIK T)
JUDGE**

RHS
List No.: 1 Sl No.: 7