

IN THE HIGH COURT OF ANDHRA PRADESH :: AMARAVATHI

THE HON'BLE SMT. JUSTICE SUMATHI JAGADAM

Writ Petition (AT) No.78 of 2021

Between:

K. Mohan Rao

... Petitioner

and

The Superintendent of Police, Srikakulam  
District and others

... Respondents

Counsel for the petitioner

: Sri M.R.Tagore

Counsel for the respondents

: Sri R.S.Manidhar, Assistant  
Government Pleader for  
Services-I

This Court made the following:

**ORDER:**

This writ petition is filed seeking to declare the action of the 1<sup>st</sup> respondent in imposing major punishment of postponement of increment for one year with cumulative effect by treating the suspension period as not on duty, vide proceedings C.No.09/Major-PR/2012, dated 29.05.2013, and the consequential orders dated 11.02.2014, dated 19.07.2014, and 18.11.2015 passed by respondent Nos.2, 3 & 5 respectively, as illegal and arbitrary, and consequently, to set aside the same.

2. The petitioner belongs to ST community. He was initially appointed as Police Constable and is due for promotion as Sub-Inspector. The 1<sup>st</sup> respondent, vide proceedings D.O.No.115/2012, dated 16.02.2012, has suspended the petitioner on the allegation that the petitioner and two others demanded money from Sri Polumuru Ramarao, who is organizing cube game.

3. The 1<sup>st</sup> respondent has initiated disciplinary proceedings, based on the report submitted by the Inspector of Police on 13.02.2012, and framed single charge of demanding money. The petitioner has submitted his explanation on 09.06.2012. On 30.08.2012, the petitioner was reinstated into service. On 23.03.2013, the Enquiry Officer submitted a report holding that the charge is not proved.

4. Based on the preliminary report prepared by the Inspector of Police, a Dissent Memo C.No.09/Major-PR/2012, dated 23.04.2013,

was issued by the 1<sup>st</sup> respondent. The 1<sup>st</sup> respondent, without considering the explanation, has issued the impugned proceeding C.No.09/Major-PR/2012, dated 29.05.2013, imposing the punishment of postponement of increment for one year with effect on future increments and pension, while treating the period from 24.02.2012 to 05.09.2012 as 'Not on Duty'. Aggrieved by the same, the petitioner has preferred an appeal to the 2<sup>nd</sup> respondent on 22.06.2013, which was rejected vide proceeding C.No.131/Appeal/2013, dated 11.02.2014. Against which, the petitioner has preferred a revision before the 3<sup>rd</sup> respondent, which was rejected vide proceeding Rc.No.478/A1/IGP-NCZ/Revision/2014, dated 19.07.2014. Thereafter, the petitioner filed a mercy petition before the 5<sup>th</sup> respondent which was also rejected vide Memo No.3794/Ser.II/A1/15, dated 18.11.2015. Aggrieved by the same, the present writ petition is filed.

5. Heard, Sri E. Venkata Rao, learned counsel, representing Sri M.R.Tagore, learned counsel for the petitioner on record, and Sri R.S.Manidhar, Assistant Government Pleader for Services-I, appearing for the respondents.

6. Learned counsel for the petitioner argues that when the Enquiry Officer has held that the charge is not proved, the 1<sup>st</sup> respondent, instead of dropping the charge, has issued dissent memo dated 23.04.2013 on the ground that the petitioner has managed the witnesses. The said dissent memo was issued based on the preliminary report submitted by the Inspector of Police on 13.02.2012 and thereby,

conducted regular enquiry which clearly shows that the 1<sup>st</sup> respondent has gone beyond the scope of CCA Rules and imposed the major penalty. The appeal, revision and mercy petition filed by the petitioner before respondent Nos.2, 3 & 5 respectively are rejected. The learned counsel has relied on the decision of the Constitution Bench of the Hon'ble Supreme Court in **Nirmala J. Jhala Vs. State of Gujarat**<sup>1</sup>, wherein it is held at paras 41 and 42 as under:

*“41. ... .. Therefore, the question does arise as to whether it was permissible for either of them to take into consideration their statements recorded in the preliminary inquiry, which had been held behind the back of the appellant, and for which she had no opportunity to cross-examine either of them.*

*42. A Constitution Bench of this Court in Amalendu Ghosh Vs. North Eastern Railway, reported in AIR 1960 SC 992, held that the purpose of holding a preliminary inquiry in respect of a particular alleged misconduct is only for the purpose of finding a particular fact and prima facie, to know as to whether the alleged misconduct has been committed and on the basis of the findings recorded in preliminary inquiry, no order of punishment can be passed. It may be used only to take a view as to whether a regular disciplinary proceeding against the delinquent is required to be held.”*

7. On the other hand, learned Assistant Government Pleader for the respondents submits that the petitioner demanded money from Polumuru Ramarao and Gorle Thavudu and warned them that he will

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<sup>1</sup> (2013) 4 SCC 301

implicate them in criminal cases, if they do not pay money. The victims have approached the village elder Sri Bhaskara Rao who met the Sub-Divisional Police Officer, who in turn submitted a report against the petitioner. Based on the report submitted by the Inspector of Police, the petitioner was placed under suspension. The Sub-Divisional Police Officer, Srikakulam, conducted departmental enquiry and held that the charge leveled against the petitioner is not proved, since no witnesses supported the prosecution to prove the allegation. The learned Assistant Government Pleader further submits that the Sub-Divisional Police Officer, Srikakulam, has sent enquiry report dated 25.03.2013. Having not agreed with the findings of the Enquiry Officer, dissent memo along with copy of enquiry report was served to the petitioner on 23.04.2013 and major penalty was imposed only after giving due opportunity, and sought for dismissal of the writ petition.

8. Once the Enquiry Officer has held that the charge is not proved, the 1<sup>st</sup> respondent cannot impose the major penalty based on the preliminary report. Since the preliminary enquiry cannot be used in regular enquiry, as the Charged Officer or the delinquent is not associated with it, and the opportunity to cross-examine the persons examined in such enquiry is not given. Using of such evidence would be the violation of the principles of natural justice. Moreover, the preliminary enquiry report loses its significance, once the regular enquiry is initiated by issuing the charge sheet to the delinquent.

9. In view of the foregoing discussion, the Writ Petition (AT) is allowed, by setting aside the impugned proceedings dated 29.05.2013 issued by the 1<sup>st</sup> respondent as well as the consequential proceedings issued by respondent Nos.2, 3 & 5. The respondents are directed to consider the case of the petitioner for promotion to the post of S.I.(Civil) notionally on par with his juniors, with all consequential benefits. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

8<sup>th</sup> May, 2025

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**SUMATHI JAGADAM, J**

THE HON'BLE SMT. JUSTICE SUMATHI JAGADAM

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8<sup>th</sup> May, 2025

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