

*THE HONOURABLE SRI JUSTICE C.V. NAGARJUNA REDDY

+Writ Petition Nos.8107 and 8108 of 2009

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%04-8-2015

W.P. No.8107 of 2009

P. Srinivasa Rao

... Petitioner

Vs.

\$ Andhra Pradesh Central Power

Distribution Company Limited

Rep. by its Chairman & Managing Director

Red Hills, Hyderabad

and others

... Respondents

! COUNSEL FOR THE PETITIONER : Mr. Bhagavanth Reddy
for

Mr. S. Ravindranath

^COUNSEL FOR THE RESPONDENTS : Mr. R. Vinod Reddy,
Standing Counsel for
Telangana Central Power
Distribution Company Ltd.

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>HEAD NOTE:

? CITATIONS: 1. AIR 1971 SC 1447

2. 2009 (5) ALD 455 (DB)

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION NO.8107 AND 8108 OF 2009

DATED:04-8-2015

W.P. No.8107 of 2009

-
Between:

P. Srinivasa Rao

... Petitioner

And

Andhra Pradesh Central Power
Distribution Company Limited
Rep. by its Chairman & Managing Director
Red Hills, Hyderabad
and others

... Respondents

... Respondents

COUNSEL FOR THE PETITIONER: Mr. Bhagavanth Reddy for
Mr. S. Ravindranath

COUNSEL FOR THE RESPONDENTS: Mr. R. Vinod Reddy,
Standing

Counsel for Telangana Central
Power Distribution Company Ltd.

THE COURT MADE THE FOLLOWING:

COMMON ORDER:

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The petitioner in W.P. No.8107 of 2009 was an Upper Division Clerk in the Electricity Revenue Office of A.P. Central power Distribution Company Limited, at Habsiguda, and the petitioner in W.P. No.8108 of 2009 was a Junior Accounts Officer in the same office. Disciplinary proceedings against both of them were initiated.

The charge against each of the petitioners reads as under:

Charge against petitioner in W.P. No.8107 of 2009:

“Sri P.Srinivasa Rao, Ex-UDC/ERO/Habsiguda (now Retd.) during the period from 01-07-2000 to 21-4-2003 has incorporated un-authorised and irregular credit JEs into the In-house e-records in respect of 223 Nos. High Value Services transactions for an amount of Rs.47.63 lakhs.”

Charge against petitioner in W.P. No.8108 of 2009:

“Sri Jagadish, Junior Accounts Officer/ERO/Habsiguda during the period from 01-04-2000 to 31-07-2002 has failed to exercise the internal checks in respect of 161 nos. un-authorized/irregular credit JEs for Rs.35.03 lakhs incorporated into in-house computer records by the Subordinate staff as observed by the Accounts Officer/Internal Audit.”

The petitioners pleaded that initially a retired District Judge was appointed as enquiry officer and he has submitted his report on 20.10.2006 exonerating both the petitioners. However, the disciplinary authority, not satisfied with the said enquiry report, has appointed another enquiry officer, who has submitted his enquiry report

dt.26.5.2007. After inviting explanation from the petitioners, the disciplinary authority imposed penalty of 25% cut in pension for the petitioner in W.P.No.8107 of 2009 and 10% cut in pension for the petitioner in W.P. No.8108 of 2009, for a period of three years. First and second appeals filed by the petitioners were dismissed by the appellate authorities. Feeling aggrieved by these orders, the petitioners filed these two writ petitions.

Respondent No.1 has filed a counter affidavit justifying the impugned orders.

Mr. Bhagavanth Reddy, learned counsel representing, Mr. S. Ravindranath, learned counsel for the petitioners, submitted that the respondents have committed a serious illegality in appointing second enquiry officer ignoring the enquiry report submitted by the first enquiry officer. In support of his submission, he has placed reliance on the judgment of the Supreme Court in *K.R. Deb v. The Collector of Central Excise*^[1] and a Division Bench judgment of this Court in *C. Madhausudan v. APSEB, Hyderabad and another*^[2].

Mr. R. Vinod Reddy, learned counsel for the respondents, placed before this Court, Memo No.DS(Per)/AS(Per)/PO(DC-I)/1244-C5/2005-8, dt.22.1.2007, issued by the Chairman and Managing Director of respondent No.1, whereunder second enquiry officer was appointed and sought to justify imposition of penalties against the petitioners.

Initiation of disciplinary proceedings against the employees of respondent No.1 Corporation is envisaged by the Andhra Pradesh State Electricity Board Employees' Discipline and Appeal Regulations (for short, 'the Regulations'). Regulation 10 of the Regulations provides for procedure for imposing penalties. Clauses (a) and (c) of sub-regulation (2) and clause (b) of sub-regulation (4) of Regulation 10 which are relevant for the purpose of present case read as under:

10(2) (a). In every case where it is proposed to impose on a member of a service any of the penalties specified in terms (iv), (vi), (vii) and (viii) in regulation 5, the authority competent to impose the penalty shall appoint

an Enquiry Officer, who shall be superior in rank to the person on whom it is proposed to impose the penalty, or shall itself hold an enquiry either suo motu or on a direction from a higher authority. In every such case the grounds on which it is proposed to take action shall be reduced to the form of definite charge or charges, which shall be communicated to the person charged, together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders in the case. He shall be required, within a reasonable time, to file a written statement of his defense and to state whether he desires an oral enquiry or to be heard in person or both. The person charged may, for the purpose of preparing his defense be permitted to inspect and take extracts from such official records as he may specify, provided that the enquiry officer may, for reasons to be recorded in writing refuse such permission, if, in his opinion, such records are not relevant for the purpose or it is against public interest to allow access thereto. On receipt of the statement of defense within the specified time or such further time as may have been given, an oral enquiry shall be held if such an enquiry is desired by the person charged or he is decided upon by enquiry officer or is directed by the competent authority. At that enquiry, oral evidence shall be heard as to such of the allegations as are not admitted and the persons charged shall be entitled to cross examine the witness, to give evidence in person and to have such witnesses called as he may wish, provided that the enquiry officer may, for special and sufficient reason to be recorded in writing, refuse to file, call a witness. After the oral enquiry is completed, the person charged shall be entitled to file, if he so desires, any further written statement of his defense. If no oral enquiry is held and the person charged desires to be heard in person, a personal hearing shall be given to him. The enquiry officer shall, on completion of the enquiry or the personal hearing of the person charged or both, forward the proceedings of the enquiry to the authority competent to impose the penalty unless he is himself such an officer. The proceedings shall contain the charges framed against the person charged along with the grounds of charge, written statement filed in defense, if any, a sufficient record of the evidence adduced during the oral enquiry, a memorandum of the point urged by the person charged during the personal hearing, if any, a statement of the findings of the enquiry officer on the different charges and the grounds therefor.

...

(b)

(c) *After the authority competent to impose the penalty mentioned in clause (a) has arrived at a provisional conclusion in regard to the penalty to be imposed, the person charged shall be supplied with a copy of the report of the enquiry officer and be given a reasonable opportunity of making representation, within a reasonable time not ordinarily exceeding one month, on the penalty proposed. Any representation made in this*

behalf by the person charged shall be duly taken into consideration by the competent authority before final orders are passed.

Provided that such representation shall be based only on the evidence adduced during the enquiry referred to in clause (a).

...

(4)(b) The competent authority may authorize any officer in Class-I or Class-II service superior in rank to the employee to initiate departmental proceedings and to hold enquiry against the employee. On the findings of that officer, the competent authority may award punishment or otherwise give a decision."

A careful perusal of the Regulations extracted above shows that no provision is envisaged for appointment of a second enquiry officer for holding fresh enquiry or re-enquiry. While considering Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, in *K.R. Deb* (1 supra), the Supreme Court held as under:

"It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in rule 15 for completely setting aside previous inquiries on the ground that the report-of, the Inquiring Officer or Officers does not appeal to the Disciplinary Authority-. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under rule 9."

In *C. Madhausudan* (2 supra), a Division Bench of this Court considered the scope of Regulation 10(4)(b) of these very Regulations and held:

"Further, the issue for consideration is whether it was open to the disciplinary authority to baldly discard the first enquiry report and resort to a de novo enquiry at the hands of a new Enquiry Officer. The regulations applicable to the respondent Association do not indicate any such power being vested in the disciplinary authority. On the other hand, Rule 10(4)(b) states to the effect that on the findings of the Enquiry Officer, the disciplinary authority may award punishment or otherwise give a decision. The later portion of this regulation clearly indicates the possibility of the disciplinary authority disagreeing with the findings of the Enquiry Officer, but there is no scope for appointment of a new Enquiry Officer for a de novo enquiry."

The learned Standing Counsel for the respondents has not

disputed that in the first enquiry held by a retired District Judge the petitioners were exonerated. When this Court required the learned Standing Counsel to produce the proceedings by which the second enquiry officer was appointed, he has placed before the Court, Memo No.DS(Per)/AS(Per)/PO(DC-I)/1244-C5/2005-8, dt.22.1.2007 wherein the Chairman and Managing Director of respondent No.1 has stated as under:

“Under Regulation 10 (2) (a) of A.P.S.E.Board Employees Discipline and Appeal Regulations as adopted by APCPDCL the Chairman & Managing Director/APCPDCL/ Hyderabad hereby appoints Sri G. Sudershan, Chief General Manager (Retd.) as Enquiry Officer to re-enquire into the allegations of misappropriation of company funds by incorporating credit JE’s at In-House Computers in Habsiguda ERO against (1) Sri K. Linga Murthy, AO (2) Sri H. Chiranjeevi, AAO (3) Sri K. Paripurna Chary, AAO (Retd.) (4) Sri Jagadish, JAO (Retd) (5) Sri K. Raja Rama Sarma, JAO (6) Sri A. Prakash, Ex-UDC (now JAO) (7) Sri P. Srinivasa Rao, UDC (8) Smt. Suguna, UDC (9) Sri T. Narasimhulu UDC (10) Sri A. Vishnusharma, UDC (11) Sri Syed Bilal Basha, SAO (12) Sri P. Srinivas Goud, AO (Retd.) (13) Sri V.V. Hanumantha Rao, SAO (14) Sri T. Venkatesham, AO (15) Sri K. Purushotham, SAO (16) Sri A. Narayana Reddy, SAO (Retd.) (17) Sri K. Shiva Raj, SAO (Retd.)

2. The Enquiry Officer will frame appropriate and specific charges with reference to the material on record and conduct a detailed enquiry.

3. The Enquiry Officer is vested with powers to summon any witness required in connection with the enquiry.”

From the contents of the above mentioned Memo it is clear that the disciplinary authority relied upon Regulation 10(2)(a) for appointing an enquiry officer to re-enquire into the allegations against 17 officers. The said regulation reproduced above does not authorize the disciplinary authority to appoint an enquiry officer to re-enquire. Further, the Chairman and Managing Director has even failed to refer to the fact of previous enquiry, leave alone the reasons for ordering re-enquiry. As held by the Division Bench in *C. Madhasudan* (2 supra) the Regulations do not authorize the disciplinary authority to appoint second enquiry officer and that under Regulation 10(4)(b) of the Regulations there is scope for issuing show cause notice if the disciplinary authority differs with the findings of the enquiry officer and

pass an appropriate order. Respondent No.1 has failed to follow this procedure and instituted the second enquiry, which in my opinion is wholly impermissible in law.

For the above mentioned reasons, the orders of the disciplinary authority, as confirmed in appeals, are not sustainable and they are accordingly quashed.

The writ petitions are accordingly allowed.

As a sequel to disposal of the writ petition, W.P.M.P. No.10599 of 2009 in W.P. No.8107 of 2009 and W.P.M.P. No.10600 of 2009 in W.P. No.8108 of 2009 shall stand disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

04.08.2015

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[\[1\]](#) AIR 1971 SC 1447

[\[2\]](#) 2009 (5) ALD 455 (DB)