

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH

WRIT PETITION No.6110 OF 2005

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26th OCTOBER, 2015

Between:

R.Mallikarjuna Goud .. Petitioner

and

Government of Andhra Pradesh,
rep. by its Principal Secretary,
AH, Fisheries and Dairy,
A.P. Secretariat, Hyderabad,
and another. .. Respondents

THE HON'BLE SRI JUSTICE SANJAY KUMAR

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WRIT PETITION No.6110 OF 2005

ORDER

The petitioner, a Manager in the service of the Andhra Pradesh Dairy Development Co-operative Federation Limited, was subjected to disciplinary proceedings in connection with irregularities allegedly committed by him while working as a Processing Supervisor at the Ananthapur Dairy of the company. He was ultimately visited with the punishment of stoppage of two annual grade

increments with cumulative effect, by order dated 24.03.2003 of the Managing Director of the company. The same was confirmed in appeal by the Board of Directors of the company. This was intimated to him by letter dated 16.12.2004. This writ petition was filed by him challenging the disciplinary action taken against him and the enquiry report dated 09.10.2001, the substratum of the disciplinary action.

The petitioner alleged that the Enquiry Officer did not record evidence, either on behalf of the management or on his side, but cast the burden upon him to prove his innocence. Further, the Enquiry Officer was said to have submitted his findings on the same day that he conducted the enquiry, holding the petitioner guilty of the charge under a short and cryptic enquiry report. After a lapse of more than one year after such submission, show-cause notice dated 16.11.2002 was issued to the petitioner proposing the punishment of withholding his two annual increments with cumulative effect. The petitioner submitted his explanation on 10.12.2002, setting out his grievances as to the manner in which the enquiry was conducted. However, the disciplinary authority passed the order dated 24.03.2003 imposing upon him the punishment as proposed. His appeal against the same ended in dismissal and the same was intimated to him under letter dated 16.12.2004. However, the reasons for dismissal of his appeal were never intimated to him.

The admitted facts of the case are as under:

The charge against the petitioner was that he was involved in the supply of sub-standard milk to the consumers at Hindupur on 03.12.1993, 23.12.1993, 24.12.1993, 25.12.2003 and 26.12.1993. A charge sheet in this regard was issued to him on 11.02.1994. He submitted his explanation thereto by letter dated 07.03.1994. There was no further action in the matter till the year 2001 when, under proceedings dated 13.02.2001, an Enquiry Officer was appointed to look into the charges leveled against the petitioner. The enquiry report dated 09.10.2001 was submitted by the Enquiry Officer under letter dated 12.02.2002. The show-cause notice proposing punishment was issued to the petitioner on 16.11.2002 and he submitted his response thereto on 10.12.2002. The punishment was imposed by the disciplinary authority under order dated 24.03.2003.

The aforesaid dates clearly manifest the casual manner in which the company went about initiating and prosecuting disciplinary proceedings against the petitioner. There is no explanation forthcoming from the counter as to why no action

was taken between the years 1994 and 2001. Given this delay, which is not attributable to the petitioner, the Enquiry Officer was obviously handicapped as no evidence would have been available at that late point of time to establish the involvement of the petitioner in the supply of sub-standard milk. The enquiry report dated 09.10.2001 clearly evidences this. No witnesses were examined on behalf of the management and there is no indication of the petitioner being asked as to whether he would examine any defence witnesses. Reliance seems to have been placed upon test reports in evidence of the milk supplied having been sub-standard, but no witness was examined in that regard or to establish the petitioner's role. There is no indication that copies of these documents were even furnished to the petitioner. On the other hand, the Enquiry Officer surprisingly asked the petitioner to produce lab reports in support of his defence.

The main issue as to whether the petitioner was responsible at all for such supply of sub-standard milk was not even examined in the context of the scope of his duties as a Processing Supervisor and his failure, if any, in discharge of such duties.

Sri Palle Sriharinath, learned counsel appearing for the respondent company, produced photocopies of relevant extracts from the original record. Perusal thereof further demonstrates the lackadaisical manner in which the enquiry was conducted. At one stage during the examination of the petitioner, the Enquiry Officer recorded that he admitted the charge against him but at another he stated as under:

‘Management Representative present delinquent employee present. Delinquent employee examined. Charges read-over and explained to him, who/^{has not} admitted the charge and prayed for pardon. Enquiry completed for consideration.’

Sri Palle Sriharinath, learned counsel, was asked to produce the job chart at least before this Court to demonstrate that the petitioner had failed to discharge his duties, whereby he could have been held responsible for the supply of sub-standard milk. Thereupon, the learned counsel produced a certificate dated 08.10.2015 which is titled as ‘Certificate for the duties of the processing supervisor’, which reads as under:

‘CERTIFICATE FOR THE DUTIES OF THE PROCESSING SUPERVISOR

Certified that generally the Processing Supervisor will attend the following duties under Ananthapuram Milk Shed Jurisdiction.

1. The Processing Supervisor is responsible for receipt of good quality raw milk from milk collection centers/societies under the jurisdiction of the concerned dairy.
2. He is responsible for proper weighing of the milk quantity and issue the acknowledgements to the MPCs/MPACs for their supplied quality & quantity.
3. He is responsible for maintenance of accounts for milk receipts and its Kg Fat & Kg SNF input and output account.

In case of no officer available between Manager and Processing Supervisor he is also responsible to maintain account of Ghee, Cream, Butter Milk, Skim Milk Powder etc.
4. He is responsible to dispatch the sales milk to the local market as per FSSAI standards.
5. He is responsible for proper pasteurization of raw chilled milk and dispatch the same to the Milk Product Factory, Hyderabad and other stations.
6. He is also responsible to keep the Dairy/MCC premises, storage tanks, processing equipments, dairy dock, cans etc., clean & hygienic as per FSSAI Act.

In addition to the above any instructions issued by the higher authorities from time to time he shall obey the same for smooth running of the organization.

Sd/-

Date: 08-10-2015 Deputy DIRECTOR (DD)

APDDCF Ltd

ANANTAPUR MILKSHED

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However, the learned counsel was not in a position to explain as to how the petitioner, being a Processing Supervisor, was required to ensure good quality of the raw milk supplied by the milk collection centers/societies. Significantly, no

witness was examined during the enquiry as regards this aspect.

In effect, the charge leveled against the petitioner was never established by tangible evidence. Though Annexure-IV attached to the charge sheet named one witness to be examined in support of the charge leaving it open to cite additional witnesses, if necessary, the enquiry report manifests that no witness was examined at all.

His appeal against the disciplinary action seems to have been dealt with in the same spirit and there is no indication of the appellate authority even having recorded reasons for dismissal of the appeal. The petitioner specifically raised this ground in his writ affidavit but the counter affidavit is studiously silent as regards this aspect. The impugned disciplinary action and its underlying enquiry are therefore vitiated on grounds more than one.

The settled proposition of law is that mere delay in initiation of disciplinary proceedings would not be sufficient in itself to vitiate the proceedings, unless it results in prejudice to the charged employee. In the present case, the fact that the enquiry was held seven years after the alleged irregularities resulted in a one-sided enquiry with the predetermined objective of holding the petitioner guilty, as is evident from the enquiry report. Though this Court would normally not interfere with the findings of disciplinary authorities, the established exception to this proposition is where there is no material whatsoever to support the findings of such disciplinary authorities. That being the case presently, interference is warranted.

The writ petition is accordingly allowed, setting aside the impugned order dated 24.03.2003 and its confirmation in appeal. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

26th OCTOBER, 2015

PGS