

HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO

+ WRIT PETITION No. 13610 OF 2012

-

% Dated 31-03-2015

-

Between:

V. Shivanna

.. Petitioner.

And:

\$ A.P. State Housing Corporation Limited,

Rep. by its Managing Director & another.

..Respondent.

! Counsel for the petitioner : Sri Mahadeva Kantrigala

^ Counsel for the respondents : Sri T. Sudhakar Reddy

< GIST:

>HEAD NOTE:

? Cases referred:

1) (1971) 1 SCC 1

2) AIR 1963 SC 375

3) (1975) 1 SCC 155

4) (1999) 2 SCC 10

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

W.P.No.13610 of 2012

-

ORDER:

The petitioner, who is employed as a Deputy Executive Engineer with the A.P. State Housing Corporation Limited, mounts a challenge to the legality and validity of the order passed on 21.04.2012 by the first respondent-Andhra Pradesh State Housing Corporation Limited (henceforth referred to as 'the Corporation')

imposing on him the punishment of dismissal from service, apart from ordering for recovery of the amount towards loss said to have been caused to the Corporation.

Heard Sri K.G. Krishnamurthy, learned Senior Counsel on behalf of the learned counsel for the petitioner Sri Mahadeva Kantrigala and Sri T. Sudhakar Reddy, learned Standing Counsel for the first respondent-Corporation.

It appears, the petitioner was initially recruited as a Work Inspector (Technical) by the respondent-Corporation in the year 1988 and subsequently he was promoted as an Assistant Engineer (Graduate) on 03.04.2006. He was further promoted as a Deputy Executive Engineer on 01.11.2008 and posted as such at C.K. Palli Sub-Division, Anantapur District. He was initially placed under suspension, pending disciplinary proceedings, by an order dated 16.10.2009, as serious allegations of misappropriation of certain amounts were made against him. A charge-sheet comprising of the following two charges has been framed on 24.12.2009.

“ARTICLE-1

That Sri V. Sivanna, Dy.EE(II) (U/s) of C.K. Palli Sub-Division of Anantapur district committed certain grave misconduct in as much as he resorted to corruption practices in collusion with beneficiaries of M.C. Palli and Nasannakota villages of C.K. Palli Sub-Division and not started houses and without construction of houses to a tune of Rs.1,69,12,350/- and thereby violated provisions of the APCS (Conduct) Rules 1964 read with APSHCL, (Conduct) Rules, 1997.”

Sl.No.	Name of the village	No of houses not constructed	Amount misappropriated
1	M.C.Palli	459	1,03,66,350
2	Nasannakota	382	65,46,000
	Total	841	1,69,12,350

ARTICLE-2

That Sri V. Sivanna, Dy.EE(II) (U/s) of C.K. Palli Sub-Division of Anantapur district, on 25.02.2009 & 26.02.2009 has requested the Branch Manager, SBH Dharmavaram to stop the payment to V.Os, since, the Assistant Engineer (H) C.K. Palli Sub-Division has generated the PROs without MHOs recommendations. Subsequently, the Dy. Executive Engineer (H), C.K. Palli on 28.02.2009 and 2.3.2009 requested the Bank authorities to release the payments without actually having MHO recommendations with him.

Thus, Sri V. Sivanna, Dy.EE(II) (U/s) of C.K. Palli Sub-Division of Anantapur district by his above mentioned acts has exhibited lack of integrity, devotion to duty, conduct unbecoming of a public servant and thereby contravened rule 3 of APCS (Conduct) rules 1964 read with APSHCL, (Conduct) Rules 1997.”

The petitioner submitted his explanation to the charge-sheet on 02.02.2010 denying his culpability behind the charges. A Special Officer working in the first respondent-Corporation has been appointed as an Enquiry Officer for conducting a detailed enquiry, through the proceedings dated 20.03.2010.

The Special Officer –cum- Inquiry Officer, Andhra Pradesh State Housing Corporation Limited, Chittoor & Anantapur Districts, through her communication dated 06-04-2010, directed the writ petitioner to present himself in the Office of the Project Director (Housing), Anantapur, at 11-00 am on 12-04-2010 to provide his explanation. Since the petitioner was placed under suspension, the said communication has been forwarded to the Executive Engineer (Housing), Dharmavaram Division in Anantapur District as he was not available at C.K.Palli Sub-Division. Again, through another communication dated 26-04-2010, the petitioner was asked to appear before the Inquiry Officer on 12-05-2010. It appears, the petitioner has not appeared before the Inquiry Officer. The Special Officer –cum- Inquiry Officer, through her communication dated 03-01-2011, noted that the petitioner has attended to the inquiry on 03-01-2011 with relevant records and on verification of the records, with a view to obtain some more information from the delinquent officer, a questionnaire was issued to him with instructions to resubmit the particulars in the questionnaire by providing additional information and for final confirmation of the details provided by him in this regard. The additional information sought for on nine different items was enclosed to the said memorandum. It appears that the Special Officer –cum- Inquiry Officer concluded her inquiry and submitted her final report on 20-08-2011 holding the two charges framed against the petitioner as held established. The Inquiry Officer, in para 5 of her report, detailed the method of inquiry adopted by her. It is set out therein that upon finding the explanation of the delinquent officer as not supported by any documentary evidence, with a view to finalize the quantum of money that is stated to have released by the delinquent officer during his tenure, she has approached the Center for Good Governance,

Hyderabad (CGG) through the Chief General Manager of the respondent Corporation with a request to provide the payment particulars for all the beneficiaries stage-wise, date-wise from the stored data available with the CGG and that is how the Inquiry Officer has worked out and assessed the total payments made by the petitioner. Painstakingly, the Inquiry Officer has analyzed the entire material and arrived at the conclusion that Charge No.1 laid against the petitioner was held established. Similarly, with regard to Charge No.2, one Sri Ashok, the then Mandal Housing Officer (MHO) of C.K.Palli, was examined. Sri K. Ashok Kumar, the then Mandal Level Officer (MLO), was also examined.

The grievance of the petitioner in this case is that he was not informed by the Inquiry Officer that the then MHO and the MLO are going to be examined in his presence as witnesses on behalf of the Corporation and that he would be provided an opportunity to cross-examine them. Hence, it is contended that the Inquiry has not been conducted in accordance with Rule-20 of the Andhra Pradesh Civil Services (CCA) Rules, 1991 (for short, 'the Rules'), which Rules are adopted by the respondent Corporation. This apart, the material obtained from the CGG has not been put to the writ petitioner by providing an opportunity to contradict the same.

It is not in dispute that the Rules are adopted by the respondent Corporation for regulating the affairs relating to the disciplinary control of the employees over the Corporation. Before a major punishment is conceived and imposed, it is incumbent that the said procedure has to be faithfully followed. By virtue of the procedure contemplated by Rule-20 of the Rules, witnesses will have to be examined in the presence of the delinquent employee and in case any statement of such a witness, which was recorded earlier, is relied upon, a copy thereof must be made available to the delinquent employee before-hand, so that the delinquent employee will be in a position to effectively cross-examine such a witness. In ***CHANNABASAPPA BASAPPA HAPPALI v. THE STATE OF MYSORE***, the following principle has been settled by the Supreme Court:

“At any enquiry facts have to be proved and the person proceeded against must have an opportunity to cross-examine witnesses and to give his own version or explanation about the evidence on which he is charged and to lead his defence.”

The principle that a statement of a witness, which was recorded earlier, either

during the preliminary enquiry or during investigation, can be relied upon or not during the regular course of enquiry was considered by the Supreme Court in **STATE OF MYSORE v. SHIVABASAPPA SIVAPPA**. Again the said principle is reiterated in **THE STATE OF PUNJAB v. BHAGAT RAM**:

“

7. The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the Government servant is afforded a reasonable opportunity to defend himself against charges on which inquiry is held. The Government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the Government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the Government servant. Unless the statements are given to the Government servant he will not be able to have an effective and useful cross-examination.

8. It is unjust and unfair to deny the Government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges leveled against the Government servant. A synopsis does not satisfy the requirements of giving the Government servant a reasonable opportunity of showing cause against the action proposed to be taken.
.....”

Recently, after reviewing the earlier law, it was set out in paras 32 and 33 of the Judgment of the Supreme Court in **KULDEEP SINGH v. COMMISSIONER OF POLICE AND OTHERS** in the following words:

“32..... Where a statement previously made by a witness, either during the course of preliminary enquiry or investigation, is proposed to be brought on record in the departmental proceedings, the law as laid down by this Court is that a copy of that statement should first be supplied to the delinquent who should thereafter be given an opportunity to cross-examine that witness.

33. In *State of Mysore v. Shivabasappa Shivappa Makapur* (AIR 1963 Sc 375) the witness was not examined in the presence of the delinquent so far as his examination-in-chief was concerned and it was his previous statement recorded at an earlier stage which was brought on record. That statement was put to the witness who acknowledged having made that statement. The witness was thereafter offered for cross-examination and it was held that although

the statement (examination-in-chief) was not recorded in the presence of the delinquent, since the witness had been offered for cross-examination after he acknowledged having made the previous statement, the rules of natural justice were sufficiently complied with.”

This apart, if any adverse material has been gathered from the CGG, the same, which has got a direct bearing upon the charges framed against the petitioner, must be made available to him duly providing him reasonable time to react and respond to it, so that he will be able to produce and establish any contradictions or any valid defence, which he had. Failure to examine the two witnesses in the presence of the petitioner and instead, placing reliance upon the statements made by them before the same Inquiry Officer in connection with the disciplinary proceedings initiated against them separately, has resulted in denial of a fair and reasonable opportunity to the petitioner. In other words, the material, which has been gathered behind the back of the petitioner, is put to use without affording any opportunity whatsoever to offer his defence thereto and he has been faulted on the basis of such material. For denying the opportunity to the petitioner to cross-examine those two witnesses and also for denying the opportunity to explain the adverse material that was found against him from the data collected from the CGG, I cannot but hold that the Inquiry Officer’s Report cannot be accepted as it is not in conformity with the procedure prescribed under Rule-20 of the Rules read with the principles of natural justice. It is, in fact, the Corporation that has initiated disciplinary action against the petitioner on the ground that he was guilty of gross misconduct. Hence, it was required of the Corporation to hold a detailed enquiry in the presence of the petitioner, whereat appropriate material evidence in support of the charges laid against him should be gathered in his presence and thereafter if he desires to bring on record contra evidence, he should be provided a fair opportunity to do so. Then a careful consideration should be shown to the entire evidence. It is a settled principle that any person, who is likely to be visited with grave and serious consequences, must necessarily be provided a fair and reasonable opportunity to defend properly and principles of natural justice have got to be adhered to at every stage faithfully. For sheer failure to do so in the instant case, the impugned order of termination, which, in turn, is based upon the Inquiry Officer’s Report, has got to be set aside.

However, the petitioner cannot be allowed to be entertained to duty as he was initially kept under suspension. He, therefore, is required to be treated and considered to have been continued under suspension and he would be entitled to be paid subsistence allowance throughout this period. The disciplinary proceedings have been initiated against him for grave acts of misdemeanor allegedly committed by him. Material was also gathered from the CGG, which has lent support to the allegation. Therefore, the 1st respondent Corporation will entrust the Inquiry once again to the Special Officer or, for any reason her services are not available, by appointing another Inquiry Officer. Copies of the statements made by the two witnesses must be furnished to the petitioner by providing a minimum of fifteen days' time for him to get ready for cross-examining those two witnesses with regard to the contents of the statements so made by them. The material / data gathered from the CGG must also be made available to the petitioner, duly providing him a minimum of fifteen days time for explaining away the adverse circumstances noticed in the data against him. On a proper and careful analysis of the material so gathered, duly following the procedure prescribed under Rule-20 as well as the principles of natural justice, the Inquiry Officer's Report should be finalized and follow up action should be taken as expeditiously as possible preferably within three months.

With this, the writ petition stands disposed of at the admission stage, but however, without costs.

Consequently, the miscellaneous petitions, if any, stand disposed of.

NOOTY RAMAMOHANA RAO, J.

Note:

LR Copy to be marked.

(bo)

Sp/mrk

31.03.2015.