

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.16349 of 2003

ORDER:

This Writ Petition is filed by the petitioner to declare the action of the respondents in imposing major punishment of stoppage of two increments with cumulative effect and to set aside the orders dt.12-03-1998 of 3rd respondent as well as order dt.13-03-2000 of 2nd respondent and order dt.21-06-2003 of 1st respondent and seeking consequential benefits including increments and arrears.

2. Petitioner was employed as a Deputy Plant Manager in the AP Forest Development Corporation (for short 'the Corporation'). A charge dt.06-05-1996 was issued to him framing three charges:

(1) Failure in safeguarding the Corporation property and gross negligence of his primary responsibilities and lack of adequate vigilance on his part in providing needed protection.

2) Negligence of duty resulting in heavy loss to the Corporation and

3) Failure to report the matter to superiors and suppression of facts.

3. The gist of the charges are that when he was holding the charge of Timmapur and Narayanpur with Eucalyptus plantations, (EPs) and also additional charge of Jakaram plantation, there were illicit fellings and also formation of bricks and kilns within the plantation area but he did not control the same and on account of his negligence, loss was caused to the Corporation. It was also contended that he did not inform the superiors about the illicit fellings and the existence of brick kilns.

4. Petitioner submitted an explanation dt.12-03-1997 denying

the charges.

5. Thereafter, the Junior Assistant in the Corporation recorded the replies of the Plant Manager, Pasara and Plantation Watcher to certain questions put by the petitioner on 07-07-1997 in the Divisional Office of the Corporation.
6. A Notice dt.15-07-1997 issued by the Divisional Manager, Warangal (R-3, who is the disciplinary authority) stating that the inquiry is fixed on 31-07-1997 and petitioner should attend it at the Divisional Office in Warangal. It was further stated that if he failed to attend inquiry, the matter will be finalized by the competent authority as per the Rules.
7. Petitioner submitted a reply there to on 24-07-1997 stating that he had already attended oral inquiry on 07-07-1997 and statements had been recorded on that day by the Junior Assistant of the office of 3rd respondent and therefore, he would not attend the inquiry fixed on 31-07-1997. He requested 3rd respondent to supply the photo copy of the statement recorded.
8. Even thereafter, a notice dt.12-08-1997 was issued to the petitioner to attend the inquiry on 21-08-1997, but it appears that he has not attended any of the subsequent sittings.
9. Thereafter, office order No.6/98 in Ref. No.7-7-05/DM/Wgl/98/865 dt.12-03-1998 was passed by 3rd respondent imposing punishment of stoppage of four increments with cumulative effect.
10. It is the contention of the petitioner that there was no domestic inquiry at all and that no inquiry officer was appointed

by the disciplinary authority; copy of the inquiry report was not given to him and no show cause notice was given to him seeking his response on the findings in the inquiry report.

11. The petitioner preferred an appeal to 2nd respondent on 18-06-1998. By Office Order No.9/2000, in Ref.No. 1.7.181/B/4/98/373 dt.13-03-2000, 2nd respondent confirmed the Office Order of the disciplinary authority-3rd respondent holding that the petitioner was negligent in the discharge of his duties and had failed to safe guard the property of the Corporation, but modified the quantum of punishment by reducing the punishment to “stoppage of two increments with cumulative effect”.
12. But petitioner contends that the appellate authority had not given any reasons in support of its conclusion and therefore, the order of the appellate authority is vitiated.
13. Petitioner then preferred a mercy petition dt.09-08-2000 to 1st respondent as a further appeal. The 1st respondent passed an order dt.10-04-2002 stating that the said appeal was time barred.
14. The petitioner then filed W.P.No.5790 of 2003 questioning the same.
15. On 07-04-2003 the Writ Petition was allowed and 1st respondent was asked to consider the mercy petition/appeal of the petitioner and dispose of the same on merits.
16. By Order dt.21-06-2003, 1st respondent disposed of the appeal holding that the punishment imposed by the appellate

authority is appropriate.

17. This Order is also questioned in the present Writ Petition.
18. The respondents, through 3rd respondent, have filed a counter affidavit opposing grant of any relief to the petitioner. They contended that the petitioner had failed in his duty to protect the Eucalyptus Plantations which were subjected to illicit fellings, caused loss to the Corporation and also allowed the surrounding villagers inside the plantations in the forest lands to form illegal brick kilns. According to respondents, after receiving the explanation to the charge sheet, domestic inquiry was held on 07-07-1997 to give opportunity to the petitioner to defend the charges against him and that the petitioner had cross examined the Plantation Manager and Plantation Watcher concerned and their statements were recorded during the inquiry. They contended that petitioner vide his letter dt.24-07-1997 had informed that he would not attend any further sittings of inquiry since he had already attended the inquiry hold on 07-07-1997 and even though opportunity was given to him to attend inquiry on 21-08-1997 and 29-09-1997, he did not do so. They therefore contended that 3rd respondent had no option but to examine the matter with reference to the record and material evidence available and decide the issue by holding that the charges are proved by Order 12-03-1998. They contended that there is no violation of principles of natural justice as alleged by the petitioner.
19. The learned counsel for the petitioner contended that before imposing the punishment, the disciplinary authority had not conducted any domestic inquiry by appointing any inquiry officer

and copy of such inquiry report was also not issued to him. He further contended that no show cause notice was issued by the disciplinary authority before imposing the punishment on him.

20. The petitioner as well as respondents have placed before me A.P. Forest Development Corporation Limited Staff Regulations, 1975 (for short 'the Regulations'). Regulation 63 (3) provided that the nature of misconduct and disciplinary procedure shall be as envisaged in the disciplinary rules appended to the staff regulations. In the appendix to the Regulations, the said Rules are set out, *inter alia*, after setting out the different types of misconduct.

21. Rule 2 of the Rules provided that whenever the Competent Authority to impose penalties/Disciplinary Authority is of the opinion that there are grounds for inquiring into the truth of any misconduct or misbehaviour against Corporation employee, it may itself inquire into or appoint an authority to inquire into the truth thereon and the Enquiry under this rule may be delegated to an officer of the corporation of the rank not below that of the employee against whom the charges have been framed.

22. Rule 3 provided for framing of a charge sheet and Rule 4 provided for service thereof on an employee. Sub Rule (1) of Rule 4 provided that, on receipt of Written Statement of defence, the Competent Authority to impose penalties/Disciplinary Authority, may itself inquire into such of the articles of charges as are not admitted, or if it considers it necessary to do so, appoint an Inquiring Authority for the purpose; and where all the articles of charges have been admitted by the employee in his Written Statement of defence, the Competent Authority to impose

penalties/Disciplinary Authority shall record its finding on each charge after taking such evidence as it may think fit and shall take necessary further action to impose penalties.

23. A perusal of these Rules indicates that the Disciplinary Authority may itself inquire into charges or may appoint an Inquiring Authority “to inquire into the truth of the charges”.

24. From the facts stated in the affidavits of both sides and the material produced, it appears that a Junior Assistant in the office of 3rd respondent was only asked to record the answers given by the Plant Manager and the Plant Watcher to the questions put by the petitioner on 07-07-1997 and he did so. The said Junior Assistant was not asked to inquire into “the truth or otherwise of the charges” against the petitioner. Therefore, the contention of the petitioner that the Junior Assistant, being of a rank below his rank, could not have conducted such an inquiry, cannot be accepted. In my considered opinion only if the Junior Assistant had been asked to inquire into the truth of the charges against the petitioner, the bar in Rule 2 of the Disciplinary Rules would apply and not otherwise.

25. Therefore, in fact, it appears that Disciplinary Authority had only asked the Junior Assistant to record the statements of the Plant Manager and the Plant Watcher concerned and the Disciplinary Authority himself went into the truth or otherwise of the allegations made against the petitioner. As there was no Inquiry Officer appointed by the Disciplinary Authority to inquire into “the truth or otherwise of the charges made” against the petitioner and to submit the inquiry report giving his tentative opinion on the charges framed against the petitioner, there

would not be any inquiry report and the question of giving the inquiry report to the petitioner or issuing any show cause notice to the petitioner to respond on the findings of the inquiry report, would not arise.

26. So the contention of the learned counsel for the petitioner that the impugned proceedings are vitiated on the ground that the inquiry report copy is not given or that the opportunity to show cause notice against findings of the inquiry report is not given is without substance.

27. A reading of the Order dt.12-03-1998 of 3rd respondent indicates that 3rd respondent has considered the explanation of the petitioner as well as the statements of the Plant Manager and the Plant Watcher and found that the charges framed against the petitioner are proved and thereafter awarded punishment of stoppage of four increments with cumulative effect to the petitioner. It therefore, cannot be said that the explanation of the petitioner to the charges was not considered by the disciplinary authority. The 3rd respondent held that the petitioner was incharge of the plantations from 1994-95 onwards and the plantations are located at a distance of only 20 to 25 kilometers; apart from this, the petitioner had been provided with two permanent watchers for better protection and constant vigil over the plantations entrusted to him; and so his plea that he was looking after plantations located at a distance of 50 kilometers apart cannot be accepted. He relied on the evidence of plantation Manager recorded on 07-07-1997 and conclude that the petitioner had failed to report illicit fellings and bricks formation in the plantations even though he was aware of the

same.

28. The petitioner had questioned this order by filing an appeal before 2nd respondent. The 2nd respondent confirmed the finding of guilt of the petitioner but however reduced the punishment from stoppage of four increments with cumulative effect to stoppage of two increments with cumulative effect. A reading of the appellate authority's order indicates that independent reasons have been furnished by the appellate authority for accepting the findings of 3rd respondent. I therefore reject the contention of the learned counsel for the petitioner that no reasons have been given by the appellate authority.
29. The petitioner had filed a mercy petition/appeal to 1st respondent against the order dt.13-03-2000 of the appellate authority rejecting his appeal. Although there is no provision for such an appeal in the service regulations, in view of the order dt.07-04-2003 in W.P.No.5790 of 2003 directing 1st respondent to entertain it and pass orders, 1st respondent passed orders on 21-06-2003 confirming the order of appellate authority. The said order also gives adequate reasons.
30. Having perused the entire record of the case, I am satisfied that there is no violation of principles of natural justice and that the petitioner was given adequate opportunity to defend himself in the enquiry. A copy of the charge sheet was served on him. He submitted an explanation thereto. He was allowed to put questions to the Plant Watcher and the Plant Manager concerned in an enquiry which was held on 07-07-1997. The

petitioner himself had addressed a letter dt.24-07-1997 saying that he would not be willing to attend any further hearings of the inquiry since he had already attended the oral inquiry held on 07-07-1997. So the petitioner having declined to avail himself of any further opportunity to lead evidence, cannot complain that the respondents have committed violation of principles of natural justice. I am also satisfied that considering the charge framed against the petitioner, the punishment imposed is commensurate and cannot be said to be disproportionate.

31. In this view of the matter, I do not find any merit in the Writ Petition and the same is accordingly dismissed. No costs.

32. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 24-03-2015

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