

THE HON'BLE SRI JUSTICE M.S.K.JAISWAL

WRIT PETITION No.24318 OF 2004

ORDER:

This writ petition is filed seeking a Writ of Mandamus declaring the impugned Memo dated 20.03.2001 and consequential Memo dated 12.04.2001 of the 2nd respondent are illegal and arbitrary and consequently direct the respondents to restore the already deferred annual increment of the petitioner duly treating the period of suspension as on duty and release all consequential benefits including fixation of pension.

Heard the learned counsel appearing for the petitioner and the learned Counsel appearing for the respondents.

The brief facts of the case are as under:

The petitioner was a retired Additional Assistant Engineer in the 1st respondent-Southern Power Distribution Company of A.P.Limited. While he was in service, the consumer of Service No.23064, K.G.market, Vijayawada, by name Mr.B.Bhaskar Rao sent a complaint letter to D.E/DPE/Nellore against the petitioner stating that the petitioner demanded and took bribe from him for not booking a case against him by DPE Squad. It is stated that basing on the said letter of the consumer, the D.E/DPE/Nellore called the petitioner on 12.07.2000, threatened and insisted him to confess the misconduct, otherwise he will recommend for his suspension. Under duress, the petitioner gave a statement. Basing on the false complaint, the petitioner was placed under suspension and a charge memo was issued against the petitioner with the following charges:

- i) Sri P.Sambasiva Rao, Additional Assistant Engineer/O/K.G.Market, Vijayawada has committed grave misconduct by taking bribe from the consumer of SC No.23064 of K.G.Market, Distribution, Vijayawada;

- ii) Taking of bribe of Rs.5,000/- from the consumer to manage the D.P.E.Squad for non-booking of a case on the consumer by tarnishing the image of the D.P.E.Wing;

It is stated by the petitioner that for the above charges, he submitted detailed explanation on 12.10.2000. Without considering his explanation, an enquiry was conducted. It is further stated that in the Enquiry, the consumer who sent a complaint letter deposed that he has not paid any bribe to the petitioner. Further, the other witnesses ADE and AAE deposed that on 12.07.2000 the D.E called, threatened and insisted the petitioner to give confessional statement and further they stated that the petitioner has not taken any bribe. The Enquiry Officer held that the charges framed against the petitioner are not proved. However, the 2nd respondent vide memo dated 20.03.2001 imposed punishment of postponement of 2 increments. It is submitted that subsequently vide Memo dated 12.04.2001 the 2nd respondent imposed further punishment of treating the period of suspension *dies-non*. Aggrieved thereby, the petitioner filed appeal to the 1st respondent on 14.05.2001. Vide Memo dated 10.08.2001, the 2nd respondent rejected the appeal though the appeal was filed before the 1st respondent. In the meanwhile, the petitioner retired from service on 30.06.2003. It is stated that subsequent to his retirement, the 1st respondent issued memo dated 01.08.2003 reducing the punishment of postponement of 2 increments to that of postponement of one increment without cumulative effect, besides treating the period of suspension as *dies-non*.

The respondents filed counter denying the contentions of the petitioner. It is contended that the petitioner was placed under suspension pending enquiry for the alleged misconduct of taking bribe of Rs.5,000/- from the consumer of Service Connection No.23064 of K.G.Market, Vijayawada to manage the DPE Squad for not booking a

case against the consumer for the irregularity of drawing excess power through single phase instead of three phase. In the departmental enquiry, the petitioner was given ample opportunity to defend himself. It is contended that as per the findings of the Enquiry Officer, it was proved that the petitioner instead of taking Rs.8,000/- towards Development Charges in the form of DD, collected Rs.5,000/- from the consumer in the form of cash, which is not proper, for which, the disciplinary authority issued show cause notice proposing the punishment of postponement of two increments with cumulative effect. Though the petitioner submitted his reply to the show cause notice, but he could not substantiate the reasons for collecting less amount than the required development charges. However, the disciplinary authority taking a lenient view, reduced the punishment and awarded the punishment of postponement of two increments without cumulative effect. Subsequently, the period of suspension was treated as *dies-non*. Further, the disciplinary authority taking a lenient view, further reduced the punishment of postponement of 2 increments to that of postponement of one increment without cumulative effect, though there were no additional points in the appeal to consider it on merit. It is further contended that the Enquiry Officer did not absolve the petitioner and therefore, questioning of differing from the findings of the Enquiry Officer by the Disciplinary Authority does not arise and as such, treating the suspension period as *dies non* does not amount to second punishment. It is contended that whenever a suspended employee is reinstated after punishment, the treatment of the suspended period is ordered either way as leave or as such, and in the instant case it was treated *dies non*.

The petitioner was working as Additional Assistant Engineer in the Southern Power Distribution Company of A.P. Ltd., and he retired on superannuation on 01-08-2003. However, on 19-07-2003, he was placed under suspension on the basis of a complaint said to have been made by one B.Bhaskar Rao, Consumer of Service No.23064,

K.G.Market, Vijayawada, dated 12-07-2000. It was alleged that the petitioner has demanded a bribe of Rs.5,000/- from the said consumer for prevailing upon his superior officers not to register any case against the consumer. On 12-09-2000, a charge memo was issued to the petitioners which are as stated supra.

Though the charges are two in number, but it refers to one act of the petitioner namely his demanding a bribe of Rs.5,000/- from the Consumer of S.C.No.23064 whereas the second charge pertains to the alleged disrepute brought to the Department by the petitioner by demanding and accepting the said bribe. On 12.10.2000, the petitioner offered his explanation denying the charges and has specifically contended that his Superior Officer namely Divisional Engineer from Nellore has come and threatened him to admit the alleged accusation, failing which he was threatened with suspension. This incident is said to have been witnessed by Venkateshwar Rao, Assistant Divisional Engineer and Syed Sirajuddin, Additional Assistant Engineer. The explanation was not accepted and enquiry was ordered and even during the course of enquiry, the evidence that was adduced clearly showed that he did not indulge in any alleged acts of accepting and demanding bribe and even though, the Enquiry Officer has found him not guilty of the charges, the disciplinary authority in his proceedings, dated 20-03-2001, proposed the punishment of withholding of two increments. Rejecting his explanation, the said punishment was imposed and subsequently on 12-04-2001 another proceeding was issued treating the period under suspension as *dies-non*. The petitioner was unsuccessful in his appeal which was rejected on 10-08-2001 and nearly 22 months thereafter i.e., on 30-06-2003, he retired on superannuation and on 11-08-2003, the first respondent has modified the punishment to withholding of one increment without cumulative effect and treating the period under suspension as *dies-non*.

The contention of the writ petitioner is that inspite of evidence

and findings of the Enquiry Officer, the disciplinary authority without affording any opportunity, has found him guilty and proposed the punishment without any additional material on record and hence the same is erroneous and which is liable to be set aside. In support of this contention, learned Counsel appearing for the petitioner relied upon a decision of the Supreme Court in Civil Appeal No.7433 of 1995, dated 19.08.1998 (**PUNJAB NATIONAL BANK AND ORS. V. SH.KUNJ BEHARI MISRA**) wherein it is held as under in paras 17 and 18:-

“These observations are clearly in tune with the observations in Bimal Kumar pandit’s case (1964) 2 SCR 1) quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the inquiry officer had given an adverse finding, as per Karunakar’s case (1993) 4 SCC 727) the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the inquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be over-turned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the inquiring officer holds the charges to be proved then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the inquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings what is of ultimate importance is the findings of the disciplinary

authority.

Under Regulation – 6 the inquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged Officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording of guilt, imposes punishment on the Officer. In our opinion, in any such situation the charged Officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in Karunakar's case (1993) 4 SCC 727)."

Reliance is also placed on **RAM KISHAN v. UNION OF INDIA**

& ORS ^[1] wherein it is held as under in para 10:-

"The next question is whether the show cause notice is valid in law. It is true, as rightly contended by the Counsel for the appellant, that the show cause notice does not indicate the reasons on the basis of which the disciplinary authority proposed to disagree with the conclusions reached by the inquiry officer. The purpose of the show cause notice, in case of disagreement with the findings of the enquiry Officer, is to enable the delinquent to show that the disciplinary authority is persuaded not to disagree with the conclusions reached by the inquiry officer for the reasons given in the inquiry report or he may offer dl reasons in support of the findings by the inquiry officer. In that situation, unless the

disciplinary authority gives specific reasons in the show cause on the basis of which the findings of the inquiry officer in that behalf is based, it would be difficult for the delinquent to satisfactorily give reasons to persuade the disciplinary authority to agree with the conclusions reached by the inquiry officer. In the absence of any ground or reason in the show cause notice it amounts to an empty formality which would cause grave prejudice to the delinquent Officer and would result in injustice to him. The mere fact that in the final order some reasons have been given to disagree with the conclusions reached by the disciplinary authority cannot cure the defect. But, on the facts in this case, the only charge which was found to have been accepted is that the appellant had used abusive language on the superior authority. Since the disciplinary authority has said that it has agreed partly to that charge, the provisional conclusion reached by the disciplinary authority in that behalf even in the show cause notice, cannot be said to be vague. Therefore, we do not find any justification to hold that the show cause notice is vitiated by an error of law, on the facts in this case.”

As already stated, though there are two charges with regard to the alleged act of the petitioner that he demanded and accepted bribe of Rs.5,000/- from a consumer and thereby brought disrepute to the officials of the Department. The Enquiry Officer, in his enquiry report, dated 16-08-2000, concluded the report observing as under:-

“From the depositions recorded from Assistant Divisional Engineer/D-1/O/Vijayawada, Assistant Divisional Engineer/DPE-I/Vijayawada and the Additional Assistant Engineer Maint/132 KVSS/Guadala and more over the reply of charge employee reveals that the statement of Additional Assistant Engineer/D1/K.G.Market taken by calling to sub-division office by threatening him saying if he did not oblige, the matter will be reported to Joint Managing Director/Security of Vigilance/A.P.Transco/Hyderabad and see that the suspension orders will be given to the charged employee even though the charged employee requested that the amount collected only for charging

service from 1-Q to 3-Q and no necessity to manage the D.P.E. Squad as no fault was observed at the premises of SC No.23064 during the inspection by D.P.E., Squad, Nellore, in both the occasions on 28-06-2000 and on 12-07-2000. Thereby the charge could not be proved emphatically.”

In the enquiry report, the enquiry officer has also referred to the statement recorded by him during the course of enquiry from Venkateshwar Rao, ADE, T.Sundar Rao, AAE, and B.Bhaskar Rao, the consumer of S.C.No.23064. The evidence of the two officers of the department supports the contention of the petitioner that the Divisional Engineer has questioned the petitioner as to whether he has demanded and accepted bribe of Rs.5,000/- from the consumer and when that was refused, the said Divisional Engineer has threatened him of dire consequences and forcibly obtained a statement from the petitioner admitting his guilt to the complaint said to have been made by the consumer – B.Bhaskar Rao. The Enquiry Officer has also recorded the evidence of the complainant – Sri B.Bhaskar Rao. The said consumer/complainant in his evidence before the Enquiry Officer stated that the authorities of the department have inspected the service connection of the complainant and found the meter burnt and suggested it to be replaced by paying Rs.500/- towards costs of the meter and that he had to pay the same by way of Demand Draft of Rs.500/- and got the meter changed. He further deposed that he has also applied for change of the service connection from Single Phase to III-Phase meter and for that purpose, he paid Rs.8,000/-, Rs.800/- and Rs.325/- by obtaining three different Demand Drafts and got the meter changed.

The Enquiry Officer, by taking into consideration the oral evidence on record, categorically observed that the complainant – B.Bhaskar Rao did not tell him that he has given cash of Rs.5,000/- to the petitioner and also insisted that he has not given any bribe of Rs.5,000/- to the petitioner.

After considering the material on record, the Enquiry Officer categorically held that as per the statements of both the complainant/consumer – B.Bhaskar Rao as well as the petitioner, the money that was paid by the consumer was towards change of the service connection from single phase to III-Phase, but the enquiry Officer observed that the petitioner/Additional Assistant Engineer ought not to have accepted cash and by accepting the cash, he is at fault. No specific finding is given by the Enquiry Officer insofar as the first charge is concerned, namely, as to whether it has been proved or not, but merely the Enquiry Officer said that the delinquent/petitioner ought not to have taken cash instead of Demand Draft towards fees for changing the electricity connection.

As already stated, the second charge is the continuation of the first charge namely by accepting money, the petitioner has brought bad name to the Department. On this charge, the Enquiry Officer, as already observed above, categorically held that this charge could not be proved emphatically. Therefore, the Enquiry Officer found both the charges to be not proved except for observing that the petitioner ought not to have accepted cash in place of Demand Draft towards fees for changing the meter.

However, without further enquiry or any evidence, or even affording any opportunity to the petitioner, the disciplinary authority viz., Chief Engineer/HRD, APSPDCL, Tirupati, in his proceedings dated 20-03-2001, imposed the punishment of postponement of two increments without cumulative effect and subsequently also inflicted the punishment of treating the period under suspension as *dies-non*, thereby affect the pension of the petitioner.

While the power of disciplinary authority to differ with the report of the Enquiry Officer is not questioned, but what is required to be done is that if he is not in a position to accept the report of the Enquiry Officer, there is a need for giving an opportunity to the delinquent/charged Officer and pass speaking order. But in the instant case, the

disciplinary authority has passed the impugned order, which reads as under:-

“After careful examination of the explanation of the AAE it is observed that in the delinquent reply the reasons for collecting less amount than the required development charges are not furnished and the explanation given in the ref.2nd cited is not convincing however taking a lenient view in the matter the Chief Engineer/HRD/APSPDCL/Tirupati has decided to award the punishment of “postponement of two increments without cumulative effect” against Sri P.Sambasiva Rao, AAE/K.G.Market/Vijayawada for the above irregularities committed by him.

Accordingly Sri P.Sambasiva Rao, AAE/K.G.Market/Vijayawada was awarded the punishment of “postponement of two increments without cumulative effect” for the irregularities committed by him.”

For coming to such conclusions, there is no material before the disciplinary authority and therefore the said order is clearly unsustainable.

It is also on record that he made representations, which was though initially rejected but after he retired on 30-06-2003, the first respondent has modified the punishment by reducing the punishment to postpone one increment without cumulative effect instead of two increments as ordered earlier. In view of the foregoing discussion, the order of the disciplinary authority imposing the punishment of even postponement of one increment without cumulative effect is not sustainable and the same is liable to be set aside.

The writ petition is accordingly allowed, as prayed for. The respondents are directed to restore the deferred annual increment of the petitioner, duly treating the period of his suspension as on duty and release all consequential benefits, including fixation of pension and other terminal benefits to the petitioner, within a period of 3 (three) months from the date of receipt of a copy of this order. In the circumstances, there shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed
in consequence.

M.S.K.JAISWAL,J

Date: 22.12.2015

Dsr/Smr

[\[1\]](#) AIR 1996 SC 255