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

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WRIT PETITION NO.953 OF 2005

DATED 2nd SEPTEMBER, 2015

Between

V. Gopi Krishna

… Petitioner

and

The Andhra Pradesh Industrial Infrastructure Corporation, rep. by its Vice Chairman and Managing Director, Hyderabad and another

… Respondents

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.953 OF 2005

O R D E R

This writ petition was filed by an Assistant Zonal Manager working in the Andhra Pradesh Industrial Infrastructure Corporation (for brevity, 'the Corporation'), assailing the disciplinary action taken against him under proceedings dated 31.12.2004 passed by the Vice Chairman and Managing Director of the Corporation. By the said proceedings, the petitioner was visited with the penalty of stoppage of one increment with cumulative effect apart from recovery of the sum of Rs.4,77,684.85 ps. from his salary.

It is stated that the recovery has been effected during the pendency of the writ petition.

The petitioner entered the service of the Corporation as an Assistant Zonal Manager in November, 1992. He was transferred from the Corporation's Guntur office to its Visakhapatnam office in June, 2003. According to him, he was not given any time frame within which he was to hand over charge at Guntur and as the officer to whom he had to hand over charge expressed his inability to take over, the process was delayed. He also stated that owing to the ill-health of his near relation, he had to leave to Hyderabad and could not report for duty at Visakhapatnam immediately. He further claimed that his own health deteriorated as he was afflicted with a lower back pain. He stated that he had submitted letters seeking sanction of leave till 25.08.2003.

After joining at Visakhapatnam, he was issued Memo dated 28.08.2003 and he submitted his explanation thereto on 09.09.2003.

Thereupon, Charge Memo dated 07.10.2003 was issued to him, whereunder one ‘Article of Charge’ was framed against him. The gist of this charge was that he had failed to hand over the material in the stores at Guntur as directed and that, when the lock of the stores shed was broken open in the presence of witnesses, it was found that material worth Rs.4,71,713.64 ps. was missing. The charge further detailed that the petitioner was called upon to hand over the missing material under letter dated 13.08.2003 of the Zonal Manager of the Corporation at Vijayawada and that he had failed to respond. This act on his part was stated to constitute misconduct under Rule 26(d) and (u) of the Conduct, Discipline and Appeals Rules, 1974.

According to the petitioner, he never received the letter dated 13.08.2003 alleged to have been addressed to him by the Zonal Manager of the Corporation at Vijayawada. He accordingly submitted his explanation denying the charge. Dissatisfied therewith, the Corporation appointed an enquiry officer to look into the matter.

The petitioner states that the enquiry officer gave him a questionnaire relating to the alleged shortage of material and he filled in the same on 24.03.2004. According to the petitioner, without any further examination of witnesses or production of records and without affording him an opportunity to produce defence witnesses, the enquiry officer submitted his report to the Corporation holding that the charge leveled against him was proved. On the basis of the said report, the Corporation issued a show-cause notice to him proposing the penalty of stoppage of one increment with cumulative effect along with recovery of the loss caused. The petitioner submitted his objections thereto, but by way of the impugned proceedings dated 31.12.2004, the punishment was imposed.

The Manager (Law) of the Corporation filed a counter-affidavit stating that the punishment imposed upon the petitioner by way of the impugned proceedings was after following the due procedure laid down in the rules. He adverted to the merits of the matter and sought to justify the findings recorded against the petitioner. According to him, the enquiry conducted against the petitioner was as per the due procedure and the petitioner was given adequate opportunity to put forth his case.

Sri S. Rahul Reddy, learned counsel representing Sri S. Lakshma Reddy, learned counsel for the petitioner, fairly conceded that this Court, in exercise of writ jurisdiction, would normally not sit in appeal over the decision arrived at by the enquiry officer or the disciplinary authority and that interference would be warranted only if the decision making process is tainted. According to the learned counsel, that is exactly the case presently as the enquiry held against the petitioner was not in accordance with the due procedure and therefore, the disciplinary action taken pursuant thereto stands vitiated.

In the light of this argument, Sri P. Roy Reddy, learned standing counsel for the Corporation, was asked to produce the record relating to the subject enquiry. The record was accordingly placed before this Court.

Under the Conduct, Disciplinary and Appeal Rules, 1974 (for brevity, 'the Rules of 1974') of the Corporation, penalties that may be imposed upon its employees are stipulated in Rule 27 falling in Part-III. The penalties are categorized as 'minor penalties' and 'major penalties'. Though withholding of increments is shown as a 'minor penalty', reduction to a lower stage in the incremental scale (time scale) is shown to be a 'major penalty'. As withholding of an increment with cumulative effect would have the effect of reduction to a lower stage in the incremental scale, the punishment imposed upon the petitioner would qualify as a 'major penalty' ***(KULWANT SINGH GILL V/s. STATE OF PUNJAB[1])***.

By way of an amendment to the Rules of 1974, effected under Office Order No.4/PW/APIIC/2002 dated 23.01.2003 of the Executive Director (E&A) of the Corporation, the procedure laid down for conducting an enquiry as per the rules and orders of the Government was directed to be followed.

The rules applicable to the Government for conducting an enquiry against its employees would be the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (for brevity, 'the Rules of 1991'). The Corporation was therefore bound to follow the said procedure while taking action against the petitioner. Rule 20 of the Rules of 1991 details the procedure to be followed for imposing a major penalty upon an employee, including the steps to be taken during the enquiry. The question that arises for consideration is whether the said procedure has been followed by the enquiry officer in the present case?

The record of the Corporation produced by the learned standing counsel demonstrates that the Chief Engineer-I of the Corporation was appointed as the enquiry officer under Rule 28(3) of the Rules of 1974 and was required to conduct a regular enquiry in the matter. However, the peculiar procedure adopted by the said enquiry officer was to issue a questionnaire to the petitioner requiring him to fill in the answers. Similar such questionnaires were also given to the Zonal Manager, Vijayawada, the Senior Deputy Zonal Manager (E), Vijayawada, and the Assistant Zonal Manager (E), Vijayawada. All the questionnaires were filled in on the same day, viz., 24.03.2004. There is no indication that the questionnaires collected from the aforestated three persons were given to the petitioner. There is also no indication of the petitioner being given an opportunity to cross-examine these three witnesses on their responses to these questionnaires. There is also no evidence of the petitioner being asked as to whether he wanted to examine any witnesses in his defence.

Having adopted this uncharacteristic procedure, the enquiry officer thereupon submitted his report under covering letter dated 30.06.2004. Therein, he mentioned the fact that the questionnaires were prepared and given to the witnesses examined to make out a case against the petitioner and that they had responded to the said questionnaires. Significantly, he did not even record that the petitioner was asked as to whether he would like to cross-examine any of the said witnesses or whether copies of their questionnaires were given to him. Upon this brazen unilateral collection of evidence, the enquiry officer concluded that the petitioner had failed to discharge his duties in a responsible manner in handing over the charged materials and was therefore responsible for the loss of Rs.4,71,713.64 ps.

On the above facts, this Court has no hesitation in holding that the strange procedure adopted by the enquiry officer in this case falls foul of the procedure stipulated in Rule 20 of the Rules of 1991. Under Sub-rule 10(c) of Rule 20, witnesses are to be examined by or on behalf of the presenting officer and they may be cross-examined by or on behalf of the employee. In the present case, the examination of witnesses was by way of recording of their responses to a prepared questionnaire. This questionnaire was not prepared by a presenting officer. In fact, there is no indication of any presenting officer having been appointed at all and the enquiry officer himself seems to have discharged the functions of a presenting officer also. He therefore played the roles of prosecutor and judge at the same time. Under Rule 20(12)(a) of the Rules of 1991, after the closure of the evidence of the witnesses for the disciplinary authority, the employee is to be given an opportunity to submit a list of witnesses to be examined on his behalf. There is no indication of this step of the procedure having been followed in the present case. On the other hand, the statements of all the witnesses, including the petitioner, were obtained in the form of responses to prepared questionnaires on the same day.

The procedural steps posited by the Rules form an integral and crucial part of the 'due process' contemplated as a condition precedent for initiating disciplinary action against an employee. Going through the motions of an enquiry by paying mere lip service to the essential requirements of such an exercise would make a mockery of the rule of law and would inevitably vitiate the entire proceedings.

Given the aforestated legal position and the clear violations of the applicable procedure by the enquiry officer in the present case, this Court holds that the enquiry held against the petitioner was not in accordance with the due procedure and he was not given a full opportunity to defend himself, not only violating the stipulated procedure as per the Rules of 1991 but also the principles of natural justice. The disciplinary action taken against the petitioner based on this tainted enquiry therefore cannot be sustained and the impugned proceedings, visiting the punishment of withholding of one increment with cumulative effect along with recovery of the alleged loss suffered by the Corporation, are consequently held invalid in law.

The writ petition is accordingly allowed setting aside the impugned proceedings dated 31.12.2004. The petitioner shall be entitled to all consequential benefits, including refund of the amounts recovered from his salary. Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

2nd SEPTEMBER, 2015

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[1] 1991 Supp (1) SCC 504