

THE HON'BLE SRI JUSTICE C.V. NAGARJUNA REDDY

WRIT PETITION NO.1119 OF 2011

DATED:22-9-2015

Between:

N. Nageswar Rao ... Petitioner

And

Telangana Northern Power

Distribution Company Ltd.,

Rep. by its Chairman & Managing Director

Corporate Office

Warangal

and others ... Respondents

... Respondents

COUNSEL FOR THE PETITIONER: Mr. A. Pitchaiah, for Mr. S. Ravindranath

COUNSEL FOR THE RESPONDENTS: Mr. N. Indrasena Reddy, for

Mr. P. Laxma Reddy

THE COURT MADE THE FOLLOWING:

ORDER:

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This writ petition is filed for a certiorari to quash the proceedings in Memo No.CMD/CGM/HRD/JS/AS-DC/PO-E/C-2/F.No.1234/07-25, dated 23.12.2010 of respondent No.2.

2. Brief facts leading to the filing of this writ petition are stated hereunder. The petitioner was appointed in the erstwhile Andhra Pradesh State Electricity Board (APSEB) on 17.11.1988 as Sub-overseer, at Vyra in Khammam District. In the year 1997 he was promoted as Additional Assistant Engineer and was transferred to

Sattupally, Khammam District, in the year 1999. While he was working as Additional Assistant Engineer (Operations), Khammam, the Chairman and Managing Director of Northern Power Distribution Company of Andhra Pradesh Limited, (successor to the APSEB) appointed respondent No.3 as enquiry officer to enquire into the purported grave charges against the petitioner and five other officers, by authorizing him to frame specific charges on the material available on record. In pursuance thereof, respondent No.3 has framed as many as eleven charges. The enquiry officer has submitted his enquiry report. By the impugned proceedings dt.23.12.2010 respondent No.2 has dismissed the petitioner from service. Feeling aggrieved by the said order, the petitioner filed this writ petition.

3. At the hearing, Mr. M. Pitchaiah, learned counsel appearing for the petitioner, made several submissions. However three of these submissions which are very material are as under:

- i. There is a delay of five years in initiating disciplinary proceedings and that therefore the enquiry itself is vitiated.
- ii. The disciplinary authority which was competent to frame charges has abdicated its function and delegated the same to the enquiry officer who has framed charges and that therefore there is a serious procedural illegality in the conduct of the disciplinary proceedings.
- iii. Respondent No.2, who is the superior officer to the Chief Engineer, who is the designated disciplinary authority, has exercised the power of disciplinary authority and thereby deprived the petitioner of the right of appeal.

4. Learned Standing Counsel representing the respondents has strongly opposed the above submissions and commended the correctness of the procedure followed by the respondents as well as the order passed by respondent No.2 dismissing the petitioner from service.

5. As regards the first submission of the learned counsel for the petitioner, he has placed reliance on the judgment of the Supreme Court in *State of Madhya Pradesh v. Bani Singh*. A perusal of the said judgment shows that the Supreme Court has invalidated the disciplinary proceedings initiated twelve years after commission of

the alleged irregularities. The Supreme Court, however, has not laid down any specific ratio as to the reasonable time limit within which the disciplinary proceedings need to be initiated. Considering the fact that the disciplinary proceedings were initiated within five years of the alleged irregularities, I am of the opinion that the judgment of the Supreme Court will not be of help to the petitioner.

6. As regards the second submission of the learned counsel for the petitioner, he has placed reliance on a Division Bench judgment of this Court in *Ch. Appala Reddy v. Eastern Power Distribution Company of A.P. Ltd.*. In that case, disciplinary proceedings were initiated against a Line Inspector. The disciplinary authority, namely, Superintending Engineer, appointed an enquiry officer and instead of framing charges himself, he has delegated the power to the enquiry officer. Dealing with these facts, the Division Bench held that non-framing of charges by the disciplinary authority vitiated the disciplinary proceedings. Thus, this judgment fully supports the plea of the petitioner that it is the disciplinary authority which is competent to frame charges.

7. With regard to the third submission, namely, by exercise of power of disciplinary authority, respondent No.2, who is the appellate authority, has denied the petitioner the opportunity of appeal, under Annexure-I to the Employees Discipline and Appeal Regulations of the respondents (for short, 'the Regulations'), for the petitioner, who falls under Class-III, both the appointing authority and the disciplinary authority is the Chief Engineer, and against his order, an appeal lies to the Chairman and Managing Director, i.e., respondent No.2. Unlike in the case of employees falling under Classes-I and II in respect of whom an appeal to the Board is provided under Regulation 14(a) of the Regulations, such appeal is not provided to the petitioner who falls under Class-III service.

8. The learned Standing Counsel for the respondents has placed reliance on Regulation No.7(e) of the Regulations which vested in the superior authority the jurisdiction to exercise the power of disciplinary authority in its discretion. He has also placed reliance on the judgment of the Supreme Court in *Chairman, A.P. State Electricity Board v. M. Kurmi Naidu* in support of his submission that exercise of power of disciplinary authority by the superior authority is permissible under the Regulations of the respondents. No doubt, Regulation 7(e) of the Regulations empowers the authority superior to disciplinary authority to exercise the latter's power on its discretion. However, if such exercise of power denies the remedy of

appeal to the aggrieved party, the same cannot be sustained in law. In *M. Kurmi Naidu* (supra 3), the delinquent was an Assistant Engineer, who was a Class-II Officer. The Supreme Court sustained the action of the Chairman of the APSEB who was the appellate authority, in exercising the power of the disciplinary authority, on the ground that the delinquent employee was still left with the remedy of appeal before the Board and therefore no prejudice was caused to him. As noted above, while the employees belonging to Classes-I and II have the remedy of appeal before the Board, such remedy is not available to the petitioner, who belongs to Class-III service. Thus, the fact remains that the petitioner was deprived of the valuable remedy of appeal.

9. In the light of the findings rendered above, it is unnecessary to refer to other aspects argued by the learned counsel for the petitioner.

10. For the above reasons, the impugned order dismissing the petitioner from service, is not sustainable and the same is accordingly quashed.

11. With regard to the relief to be granted to the petitioner, learned counsel for the petitioner fairly agreed, after consulting his client who is present in the Court, that he will forego 50% of the monetary benefits. Hence, the respondents are directed to reinstate the petitioner into service with continuity of service and 50% of the monetary benefits.

12. The writ petition is accordingly allowed to the extent indicated above.

As a sequel to disposal of the writ petition, W.P.M.P. Nos.1367 of 2011, 36303 of 2013, 6422 and 35006 of 2014 and 27257 of 2015 shall stand disposed of as infructuous.

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C.V. NAGARJUNA REDDY, J

22-9-2015

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