

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

WRIT PETITION NO.34361 OF 2011

DATED:16-9-2015

Between:

S. Zabeda Parveen

... Petitioner

And

A.P. Women's Co-operative Finance Corporation

(A Government of A.P. Undertaking)

Rep. by its Managing Director

Behind Sri Saradhi Studios,

Ameerpet, Hyderabad

and others

... Respondents

... Respondents

COUNSEL FOR THE PETITIONER: Mr. J. Sudeer

COUNSEL FOR THE RESPONDENTS: Mr. J.S. Raju

THE COURT MADE THE FOLLOWING:

JUDGMENT:

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The proceedings of respondent No.2 terminating the services of the petitioner as District Manager (Temporary) under contract employment, are called in question in this writ petition.

FACTS:

2. The facts forming the backdrop of the case are briefly summarized as under:

Respondent No.1 has undertaken selection process for appointment of “Pranganam Officers” on contract basis. In pursuance of the employment notification issued by the respondents, the petitioner applied for the said post. She has appeared for written test held on 11.2.1996 and on passing the written test, the petitioner was called for interview on 10.6.1996. The petitioner was selected as “Pranganam Officer” and was issued appointment order on 20.9.1996, on a consolidated pay of Rs.6,000/- per month for a period of three years. After successful completion of training, the petitioner was posted as Pranganam Officer of Telugu Bala Mahila Pragati Pranganam, at Bommuru, East Godavari District. Though the contract appointment was for three years, the petitioner and six other similarly situated persons, who were appointed along with her, were continued in service of respondent No.1 – corporation.

3. By proceedings No.1081/WCFC/A1/08, dt.20.2.2009, the respondents have fixed minimum time scale, comprising Basic Pay to the petitioner and six others at Rs.9,285/- and Dearness Allowance with effect from 18.2.2009 in the minimum time scale of Rs.9,285 – 19,775 and they were designated as District Managers. The petitioner was posted at Hyderabad and later she was posted as District Manager, at Durgabai Mahila Shishu Vikasa Kendram (DMSVK) at

Sangareddy. While working at the said place, the petitioner has received Memo No.4305/WCFC/A1/04, dt.7.1.2010, issued by the Managing Director of respondent No.1- Corporation. It is stated therein that a total number of ten computers along with accessories were installed in the office of the District manager, DMSVK, Sangareddy, i.e., five each on 6.6.2006 and on 18.7.2006. That the same were received by the petitioner and she has endorsed on a challan that the systems were installed and fully working and that on 8.8.2006, M/s. Ram Computers submitted Invoice No.216 to the petitioner who has received 10 copies of Microsoft Windows XP Original Software and 3 copies of Microsoft Office 2003, based on which a sum of Rs.84,760/- was paid by the respondents towards purchase/supply of software to the said M/s.Ram Computers. It is further alleged that when the Managing Director has verified from the present District Manager, DMSVK, Sangareddy, regarding receipt of the CDs she has reported that same were not received by the District Manager and that no such software CDs are available. That since the computers were already installed and working, receipt of the software one month after their installation again appears illogical and suspicious. The Managing Director

alleged that the petitioner, who by the time was working as District Manager, at Guntur, has connived with M/s. Ram Computers and others and created documents as if the software was received without actually receiving the same and thereby she was responsible for the loss of Rs.84,760/- to the Corporation which amounts to fraud and financial irregularities. The Managing Director directed the petitioner to show cause why necessary disciplinary action should not be taken against her, within two weeks.

4. The petitioner has submitted her explanation dt.18.1.2010. She has stated therein that as per Bill No.121, dt.6.6.2006 and Bill No.172, dt.18.7.2006, five systems each i.e., ten computers were received from M/s. Ram Computers, that the systems were opened on 18.7.2006 and

electricity connections were given. At that time it was noticed that one monitor was defective and it was taken back on 18.7.2006, but the software was not installed. As per Bill No.216, dt.8.8.2006, of M/s. Ram Computers, one CD of Microsoft Windows XP Professional and one CD of Microsoft Office 2003 were supplied and the software was installed in all the ten systems on 9.8.2006. That when the supplier asked the petitioner to endorse bill No.216, she has questioned the supplier about the CDs, that the technical persons deputed to instal the software said that only one CD will be given and the software will be installed in all the ten systems and that is the reason for their mentioning on Bill No.216 as 1+9 and 1+2 and that the software was installed in all the ten systems on 9.8.2006 and the same was endorsed on C.E. Call Slip 1642 of M/s. Ram Computers that software was installed. The petitioner further explained that on Bill No.216, it was not written that the CDs were supplied and therefore the petitioner thought that the said Bill pertains to supply and installation of software, that the supplier had intelligently given bills as 1+9 and 1+2 and due to lack of proper knowledge in the software field and in confused state, the petitioner has endorsed on Bill No.216 along with other delivery challans; that the petitioner was not given any instructions from the Head Office about what the supplier was supplying to cross-check the items delivered and that they have acted only on the telephonic information from the Head Office. The petitioner has unequivocally denied collusion with the supplier as well as creation of false documents. The petitioner has therefore requested respondent No.1 to drop further action.

5. About six months after receipt of the said explanation, the Managing Director of respondent No.1 has kept the petitioner under suspension. In the said order, the Managing Director has observed that though the verification from the staff revealed that computers were installed on the dates on which they were supplied and even the computer trainings were being conducted, the petitioner has falsely

stated that the software was installed only on 9.8.2006, that the petitioner herself has endorsed on each of the delivery challans that five systems were installed and fully working, that when only one CD of each software was given though ten systems were installed, the petitioner should have written the same on the Bill, but she did not make any such remark. It is further stated that because of the acknowledgement of receipt of software which was not in fact received, payment of Rs.84,760/- was wrongly made to M/s. Ram Computers and that the facts and circumstances clearly indicate that she was patently in connivance with the said supplier and committed fraud for her personal gain causing a huge loss to the Corporation.

6. The petitioner questioned the said suspension order by filing Writ Petition No.17174 of 2010. She failed to secure an interim order in the said writ petition. However, in Writ Appeal No.547 of 2010 the Division Bench has directed completion of enquiry within three months. Thereafter, the Managing Director has appointed one Mr. M.R.G. J. Naidu, Executive Engineer of respondent No.1 Corporation, as Enquiry Officer to hold an enquiry in the matter. Interestingly, neither the Managing director, who is the disciplinary authority (DA) nor the Enquiry Officer has framed specific charges. However, the Enquiry Officer has issued a questionnaire to the petitioner containing nine questions to which the petitioner has furnished her answers. The Enquiry Officer has recorded the statements of some staff members behind the back of the petitioner and submitted his enquiry report dt.24.9.2010 to the DA. Relying upon the enquiry report, the DA has terminated the services of the petitioner, vide proceedings dt.27.9.2010, while reserving the right of the Corporation to recover the financial loss. The petitioner has assailed this order in W.P. No.25153 of 2010. The said writ petition was allowed by this Court on the short ground that the DA has committed an illegality in not furnishing the enquiry report to the petitioner. While setting aside the termination order, this Court has given liberty to the petitioner to submit her

explanation. After receipt of the enquiry report, the DA was directed to consider the same and pass an appropriate order.

7. Consequent on the order in W.P. No.25153 of 2010, the DA has supplied a copy of the enquiry report, vide his Memo No.4305/WCFC/A1/04, dt.20.11.2010, with a direction to the petitioner to submit her explanation within three weeks from the date of the order dt.8.11.2010 in W.P. No.25153 of 2010. The petitioner has sent a reply dt.25.11.2010 wherein she has pointed out that while issuing Memo dt.20.11.2010 which was received by her on 23.11.2010, there was no justification for the DA to reckon the period of three weeks from 8.11.2010, i.e., the date of the order of this Court, and that as she intends to verify the records, which requires a minimum of fifteen days, she has requested for time for submitting her explanation till 9.12.2010. The said request of the petitioner was turned down by the DA on 27.11.2010. However, he has permitted the petitioner to peruse the record while adhering to the time stipulated by this Court for submitting explanation. On the said day, i.e., on 27.11.2010 the petitioner has submitted her explanation wherein she has explained that the supplier has supplied ten computers on two different dates, that the electrical installations were made and demo was given, based on which she has given acknowledgement as fully working, that she did not notice with which CD the demo of the systems was given and that having noticed that the systems were working as there was no damage to electrical items, she has given acknowledgement showing that the systems are fully working. That the supplier attended the District Manager's office on 9.8.2006 and did some work to the systems informing the petitioner that the software was installed in the systems with one CD (1+9 user Windows XP Professional, 1+2 user Microsoft Office 2003). She has further stated that even a person with basic knowledge of software technology can understand that with one C.D software can be installed in as many systems as one wants and therefore she has given acknowledgement as 1+9 Windows XP

Professional and 1+2 Microsoft Office 2003. The petitioner pointed out that if there was any doubt in that regard the Head Office which made the payment ought to have obtained clarification. The petitioner has also referred to the contents of the enquiry report and pointed out that the Enquiry Officer has only alleged that the petitioner is negligent in her duties, without pinpointing how she is responsible for the alleged loss and also as to how she was negligent. That no charges were framed or a detailed enquiry was conducted to know the facts of the entire transaction/ procedure taken place in procuring the computers, that the supplier has never given any statement that they have not supplied ten CDs, but the statements of some staff members were obtained by the Enquiry Officer by force. That the Head Office has never communicated the purchase order to the D.M.'s office indicating the quantity of computers and their details or the D.M.'s office never placed any requirement for supply of the C.Ds, that the representatives of the supplier came to the office and supplied material and installation of computers was done in two spells and that while the same procedure was adopted in all the Districts, the petitioner cannot be singled out as she has not committed wrong or blunder. That the petitioner is justified in her giving acknowledgement for 1+9 and 1+2 as 1 CD each was supplied and that had the supplier supplied ten CDs and three CDs respectively she would have given acknowledgement for ten and three respectively. The petitioner has termed the allegation of connivance as absolutely baseless and that the said allegation needs to be established/proved.

8. After receipt of the petitioner's explanation, the DA vide his proceedings No.4305/WCFC/A/2014, dt.7.12.2010 once again terminated the petitioner's services and also ordered that 50% of the financial loss suffered by the Corporation be recovered from the petitioner.

9. The petitioner has filed an appeal before the appellate authority on 23.12.2010 and as the appeal was not disposed of for a

substantially long time, she filed the present writ petition questioning the order of the DA. Taking serious note of non-disposal of the appeal, this Court has directed the appearance of the DA. Accordingly the DA appeared in the Court and assured that the appeal will be disposed of expeditiously. By order dt.7.9.2012 this Court while adjourning the case to 28.9.2012 directed disposal of the appeal before that date failing which the appellate authority shall be personally present in the Court to explain the delay. Following the said direction, the appellate authority has passed order dt.25.9.2012 dismissing the appeal. The petitioner has filed W.P.M.P. No.42562 of 2012 for amendment of the prayer in order to question the order of the appellate authority. This application was allowed by order dt.2.11.2012.

10. The DA has filed a counter affidavit and the petitioner has filed a reply affidavit.

SUBMISSIONS:

11. I have heard Mr. J. Sudheer, learned counsel for the petitioner, and Mr. J.S. Raju, learned counsel for the respondents, at length and perused the record.

12. Learned counsel for the petitioner has made the following submissions.

- (i) That the disciplinary proceedings were initiated with a delay of nearly four years and as the respondents failed to explain the delay, the disciplinary proceedings are liable to be declared as a nullity. In support of his submission, the learned counsel has placed reliance on the judgments of the Supreme Court in *B.C. Chaturvedi v. Union of India*^[1] and *P.V. Mahadevan v. M. D., T.N. Housing Board*^[2];
- (ii) That neither the disciplinary authority, nor the enquiry officer had issued a charge memo framing specific charges and that therefore the whole disciplinary

proceedings are *per se* illegal;

(iii) That the enquiry officer has adopted a strange and peculiar procedure of furnishing questionnaire to the petitioner without holding any enquiry whatsoever and hence the orders of termination passed by the disciplinary authority and confirmed by the appellate authority based on such enquiry were *ex facie* illegal; and

(iv) That the findings recorded by the disciplinary authority as well as the appellate authority are not based on any legal evidence besides the same traveling far beyond the scope of the allegations contained in Memo dt.7.1.2010.

13. Mr. J.S. Raju, learned counsel for the respondents, made strenuous efforts to sustain the impugned orders. He has submitted that the petitioner being a temporary contract employee, regular departmental procedure need not be followed in her case. He has further submitted that, as averred in the counter affidavit of the disciplinary authority, the respondents have right to terminate services of the petitioner even without a notice.

CONSIDERATION:

14. I have carefully considered the respective submissions of the learned counsel for the parties.

(i) Whether holding of a regular departmental enquiry against the petitioner, who was a temporary contract employee, was necessary?

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15. In paragraph 9 of the counter affidavit the disciplinary authority has taken the stand that the petitioner being a contract employee, the APCCA Rules are not applicable and that she can be terminated at any time without any notice as per the terms of the contract. While narrating the facts hereinabove, it was noted that the petitioner has undergone a regular selection process of appearing in the written test and also in interview albeit for a contract appointment for a period of three years. However, far from terminating her services on the expiry of the contract period, the respondents have extended the benefit of

minimum time scale by fixing her basic pay at Rs.9,285/-. Though formal regularization orders were not issued, the petitioner, along with six others, was not only continued in employment beyond the contract period of three years, but also minimum time scales were fixed for them. At this juncture, it is pertinent to note that the learned counsel for the petitioner has placed before the Court proceedings No.1831/WCFC/A1/10, dt.24.9.2013, a perusal of which shows that the earlier order of the management withdrawing the minimum time scale to five District Managers who are appointed along with the petitioner was withdrawn and they were placed in the minimum time scale of Rs.16,150 – 42,590 with effect from 22.6.2011. Thus, for all practical purposes, the petitioner and other similarly situated persons, though were appointed on contract basis for a limited term, are treated as regular employees. I am therefore of the opinion that in the matter of disciplinary proceedings a differential treatment cannot be meted out to the petitioner from regular employees of the Corporation.

16. Even if the petitioner is treated as a purely temporary contract employee, she is entitled to the protection of Article 311(2) of the Constitution of India as in the case of permanent Government servants, if her services are sought to be terminated on the ground of misconduct. The earliest and the most leading case on this point is the judgment in *Parshotam Lal Dhingra v. Union of India*^[3]. Dealing with the case of reversion of an official holding a higher post in an officiating capacity, the Constitution Bench of the Supreme Court observed:

“In short, if the termination of service is founded on the right flowing from contract or the service rules then, prima facie, the termination is not a punishment and carries with it no evil consequences and so Article 311 is not attracted. But even if the Government has, by contract or under the rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and

the requirements of Article 311 must be complied with.”

17. In *State of Punjab v. Sukh Raj Bahadur*^[4] it was *inter alia* held that if the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant.

In *Samsher Singh v. State of Punjab*^[5], a seven-Judge Bench of the Supreme Court considered the legality of the discharge of two Judicial Officers of the Punjab Judicial Service who were serving as probationers, and held:

“No abstract proposition can be laid down that where the services of a probationer are terminated without saying anything more in the order of termination than that the services are terminated it can never amount to a punishment in the facts and circumstances of the case. If a probationer is discharged on the ground of misconduct, or inefficiency or for similar reason without a proper enquiry and without his getting a reasonable opportunity of showing cause against his discharge it may in a given case amount to removal from service within the meaning of Article 311(2) of the Constitution.”

18. In *Radhe Shyam Gupta v. U.P. State Agro Industries Corporation Limited*^[6], Jagannadha Rao, J, speaking for the two Judge Bench, referred to seven Constitution Bench judgments and a judgment of seven Judges which include judgments in *Parshottam Lal Dingra* (3 supra), *State of Bihar v. Gopi Kishore Prasad*^[7], *State of Orissa v. Ram Narayan Das*^[8], *Madan Gopal v. State of Punjab*^[9] and *Samsher Singh* (5 supra) and various other subsequent judgments, and summed up the legal position to the effect that where termination of a temporary employee or probationer is simpliciter and misconduct was the motive behind such termination no enquiry is necessary, but where misconduct constitutes foundation of the termination order, regular departmental enquiry must precede such termination.

Singhvi, J, speaking for a two-Judge Bench in *State Bank of India v. Palak Modi*^[10] has extensively referred to the case law reflected in the various Constitution Bench judgments, including those referred to above and reiterated the above settled legal position.

19. Applying these principles to the present case, a mere look at the impugned order shows that the misconduct was the foundation and not merely the motive behind the termination of the petitioner's services and a serious stigma is cast on the petitioner by rendering a finding that she has given a wrong certificate of receipt and installation of original software without actually receiving the same and therefore she is a party to the fraud and thereby responsible for causing loss of Rs.84,760/-. Therefore, the order being not only stigmatic, but also punitive, the stand of the respondents that there was no need to conduct a regular departmental enquiry is contrary to the settled legal principles discussed above.

(ii) Delay in initiation of disciplinary proceedings:

20. The timeline pertaining to the alleged commission of misconduct by the petitioner and the initiation of disciplinary proceedings against her proves that there is a clear time lag of about 3½ years between the said two events.

In *B.C. Chaturvedi case* (1 supra) the Supreme Court held that whether the delay in initiating disciplinary proceedings is an unfair procedure depriving the livelihood of a public servant offending Article 14 or 21 of the Constitution would depend upon facts of each case.

In *P.D. Agarwal v. S.B.I.*^[11] the Apex Court held that the delinquent must plead prejudice on account of delay in initiation of disciplinary proceedings. In *State of M.P. v. Banisingh*^[12], the Supreme Court held that initiation of departmental proceedings 12 years after the irregularities allegedly taken place is unfair and unreasonable.

21. A perusal of the explanations submitted by the petitioner at

different stages shows that she has not specifically raised the plea of prejudice. However, in the affidavit filed in support of this writ petition, the petitioner has raised the aspect of delay in initiation of proceedings as the very first ground. I could perceive the reason behind invalidating the disciplinary proceedings on the ground of delay due to the realization that human memory is fallible and with passage of time it will be difficult for a person to remember the facts vividly and by initiating disciplinary proceedings long time after taking place of alleged irregularities, the charged employee will be put to a distinct disadvantage of not being able to recollect his memory to the facts relevant to the controversy. Nothing could be deciphered from the record as to the reason why the DA has raked up the issue for the first time almost 3½ years after the alleged irregularity has taken place. It is not the pleaded case of the DA that any audit objection was raised or that any complaints were received in connection with the alleged irregularities. Memo dt.7.1.2010 through which the issue was raked up for the first time makes a casual reference to the verification by the DA regarding receipt of the C.Ds. From the record it appears that the incumbent holding the office of the Managing Director, who initiated disciplinary proceedings was at the helm of affairs nearly for two years before he issued Memo dt.7.1.2010. The reason for not verifying the correctness or otherwise of the transactions for nearly 3½ years is not forthcoming.

22. The delay of 3½ years in initiation of the disciplinary proceedings certainly causes great disadvantage to the petitioner. Sudden initiation of proceedings without any complaint from any quarter also supports the contention of the learned counsel for the petitioner that the very initiation of proceedings is vitiated by malice in law. However, in the absence of a specific plea raised by the petitioner in this regard, I am not prepared to invalidate the disciplinary proceedings on this ground.

(iii) Whether non-framing of charges affected the right of fair hearing?

23. The principles of natural justice require that whenever a person is likely to suffer evil consequences, he shall be given an opportunity of being heard. These principles comprise two fundamental aspects of fair procedure – No man shall be a Judge of his own cause (*nemo iudex in causa sua*) and a man shall not be condemned unheard (See *State of Orissa v. Dr. Bina Pani Dei*^[13]). No judgment has better illustrated the requirement of adherence to the principles of natural justice than that in the earliest English case, *Cooper v. Wandsworth Board of Works*^[14]. The principle is stated thus.

"...even God did not pass (a) sentence upon Adam, before he was called upon to make his defence. "Adam" (says God), "where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat".

In that case, even though there were no express words in the statute for a prior notice, the Court held:

"...although there are not positive words in a statute requiring that the party shall be heard, yet the justice of the common law (shall) supply the omission of the legislature".

24. In *Ridge v. Baldwin*^[15], Lord Reid emphasized on the universality of the right to a fair hearing whether it concerns the property or tenure of an office or membership of an institution. In *O'Reilly v. Mackman*^[16], Lord Diplock said that the right of a man to be given a fair opportunity of hearing, what is alleged against him and of presenting his own case is so fundamental to any civilized legal system that it is to be presumed that Parliament intended that failure to observe the same should render null and void any decision reached in breach of this requirement.

25. The Supreme Court in a slew of judgments highlighted the importance of the principle of *audi alteram partem* [Eg. *Dr. Bina Pani Dei* (13 supra) and *A. K. Kraipak v. Union of India*^[17]].

In *Sayeedur Rehman v. State of Bihar*^[18], the Supreme Court

held:

"This unwritten right of hearing is fundamental to a just decision by any authority which decides a controversial issue affecting the rights of the rival contestants. This right has its roots in the notion of fair procedure. It draws the attention of the party concerned to the imperative necessity of not overlooking the other side of the case before coming to its decision, for nothing is more likely to conduce to just and right decision than the practice of giving hearing to the affected parties."

26. In subsequent judgments, such as, *Mohinder Singh Gill v. Chief Election Commissioner*^[19], *Maneka Gandhi v. Union of India*^[20], *Swadeshi Cotton Mills v. Union of India*^[21], *Munshi Singh v. Union of India*^[22], *Shyam Nandan Prasad v. State of Bihar*^[23], *Union of India v. Mukesh Hans*^[24], *Hindustan Petroleum Corporation Ltd. v. Darius Shapur Chenai*^[25], *Anand Singh v. State of U.P.*^[26] and *Radhy Shyam v. State of U.P.*^[27] the supreme Court has reiterated and reemphasized the importance of principles of natural justice.

27. As noted above, the earliest Memo issued to the petitioner is dt.7.1.2010. Interestingly, the DA has not framed specific charges. It is not possible to visualize appointment of an Enquiry Officer without a charge memo. The main purpose of framing the charges is to enable the charged employee to know what precisely is the accusation against him/her so that he/she will be in a position to effectively reply. Unless the charge is specific, it disables the charged employee to come out with an effective explanation. Therefore, the Courts have held that either the absence of charge or non-framing of a specific charge renders the disciplinary proceedings invalid. The respondents cannot treat Memo dt.7.1.2010 as the charge memo as its purpose was only to invite explanation from the petitioner so as to decide whether disciplinary action should be initiated against the petitioner or not. Once the petitioner has submitted her explanation, the said Memo has outlived its purpose. Unless specific charges are framed against the

petitioner, she is not expected to effectively counter the accusation against her. This is the reason for envisaging framing of charges and the imputation in support thereof in the service regulations of every employer pertaining to disciplinary cases. The respondents have admitted the fact that they have adopted The Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (for short, 'the Rules'), for their regular employees.

28. In *Surath Chandra Chakravarty v. State of West Bengal*^[28] the Supreme Court observed as under:

*“The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has to be stated. This rule embodies a principle which is one of the basic contents of a reasonable or adequate opportunity for defending oneself. **If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded, he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him.**”*

(emphasis supplied)

29. In *Delhi Development Authority v. H.C. Khurana*^[29] the Supreme Court explained in detail the procedure to be followed in disciplinary proceedings. It was held that “framing the charge-sheet, is the first step taken for holding the enquiry into the allegations, on the decision taken to initiate disciplinary proceedings. The charge-sheet is framed on the basis of the allegations made against the government servant; the charge-sheet is then served on him to enable him to give his explanation; if the explanation is satisfactory, the proceedings are closed, otherwise, an enquiry is held into the charges-, if the charges are not proved, the proceedings are closed and the government servant exonerated; but if the charges are proved, the penalty follows.” The Supreme Court has accordingly concluded that the service of the charge-sheet on the government servant follows the decision to initiate

disciplinary proceeding.

30. Rule 20 of the Rules postulates the procedure for holding departmental proceedings. Under sub-rule (3) the disciplinary authority or the controlling authority, as the case may be, shall draw up –

- (i) *“The substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge.*
- (ii) *A statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain –*
 - (a) A statement of all relevant facts including any admission or confession made by the Government servant.*
 - (b) A list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be sustained.”*

31. Sub-rule (4) of Rule 20 of the Rules contemplates delivery of articles of charge along with statement of the imputations of misconduct or misbehavior and a list of documents and witnesses by which each article of charge is proposed to be sustained and copies of the said documents and statements of the said witnesses be delivered to the Government servant requiring him to appear before the disciplinary authority on such day and at such time not exceeding ten working days and submit a written statement of his defence and to state whether he desires to be heard in person or not.

32. The DA has failed to follow these express provisions of the Statutory Rule keeping the petitioner in dark as to what precisely the charge against her is. Thus by not framing specific charges, the respondents have denied the opportunity of one of the facets of the principles of natural justice viz., fair hearing.

(iv) Whether the enquiry conducted by the enquiry officer is valid in law?

33. Rule 20 of the Rules laid down a detailed procedure to be followed by the Inquiring authority in the enquiry.

Under sub-rule (7)(a) of Rule 20 of the rules the disciplinary authority shall *inter alia* forward to the Inquiring Authority –

- (i) *“a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;*
- (ii) *a copy of the written statement of defence, if any submitted by the Government Servant;*
- (iii) *copies of the Statements of Witnesses, referred to in sub-rule (3);*
- (iv) *copies of documents referred to in sub-rule (3);*
- (v) *evidence proving the delivery of copies of the documents referred to in sub-rule (3) to the Government Servant; and*
- (vi) *a copy of the order appointing the “Presenting Officer”.*

Under sub-rule (8) of Rule 20 of the Rules, after receiving the documents mentioned under sub-rule (7)(a), the Inquiring Authority shall issue a notice in writing to the Presenting Officer and also to the Government Servant to appear before him on such day and at such time and place specified by him which shall not exceed ten days.

Under sub-rule (9) thereof, the Presenting Officer and the Government Servant shall appear before the Inquiring Authority on the date fixed under sub-rule (8). The Inquiring Authority shall then give an opportunity to the government servant to inspect the documents if he so wishes for the purpose of preparing his defence.

Under sub-rule (10)(a) of Rule 20 of the Rules, on the date fixed for recording the evidence, the oral and documentary evidence by which the articles of charges are proposed to be proved shall be produced by or on behalf of the disciplinary authority, and under clause (b) the evidence shall be recorded as far as possible on day-to-day basis till the evidence on behalf of the Disciplinary Authority is completed. Under clause (c) the witnesses shall be examined by or on behalf of the Presenting Officer and they may be cross-examined by or on behalf of the Government Servant. Under sub-clause (e) the Inquiring Authority may also put such questions to the witnesses as it thinks fit.

Under sub-rule (12)(a) of Rule 20 of the Rules when the case for the Disciplinary Authority is closed, the Government Servant shall be required to state his defence orally or in writing as he may prefer and to

submit a list of witnesses to be examined on his behalf for which purpose the case may be adjourned to a date not exceeding five days. Under clause (b) thereof, if the defence is made orally, it shall be recorded and the Government Servant shall be required to sign the record. In either case, a copy of the statement of defence and the list of defence witnesses may be provided to the Presenting Officer.

Under sub-rule (13) of Rule 20 of the Rules, the evidence on behalf of the Government Servant shall then be produced. Under sub-rule (15) the Inquiring Authority may hear the Presenting Officer, if any appointed, and the Government Servant, or permit them to file written briefs of their respective cases, if they so desire.

34. Giving a complete go-by to this elaborate procedure, the enquiry officer has adopted a strange and peculiar method of issuing a questionnaire containing nine questions to the petitioner. The enquiry report submitted by him shows that he has done so to elicit answers in writing from the petitioner to the said questionnaire and recorded the statements of Smt. A. Vijaya Laxmi, UDA, and Smt. Sukanya, Instructor of DMSVK, Sangareddy. He has later approached M/s. Ram Computers and requested them to give reply to the questionnaire and received reply from them. The enquiry officer further obtained a statement in writing from Mr. D.S.V. Prasad, the then Development Officer. Interestingly, the DA has not appointed any Presenting Officer. The enquiry officer has neither issued a notice to the DA nor to the petitioner or any of the witnesses for attending enquiry by fixing dates for enquiry. He has obtained answers to the questions supplied by him from the petitioner and the supplier and the statements of the above mentioned three witnesses behind the back of the petitioner. Thus, every step followed by the enquiry officer is in brazen violation of the procedure envisaged under Rule 20 of the Rules as referred to above.

35. In *Chandrama Tewari v. Union of India* ^[30] the Supreme Court held that the disciplinary enquiry must be held in accordance with the

rules and in just and fair manner, that the procedure at the enquiry must be consistent with the principles of natural justice, that the principles of natural justice require that the copy of the document, if any, relied upon against the party charged, should be given to him and he should be afforded opportunity to cross-examine the witnesses and to produce his own witnesses in his defence; and that if findings are recorded against the government servant placing reliance on a document which may not have been disclosed to him or a copy whereof may not have been supplied to him during the enquiry when demanded, would contravene principles of natural justice rendering the enquiry, and the consequential order of punishment illegal and void.

36. In *G.K. Doraiswamy Naidu v. State of A.P.*^[31] this Court while considering Section 8 of the A.P. Civil Services (Disciplinary Proceedings) Tribunal Act, 1960, held that the word 'enquiry' covers the hearing of the proceedings i.e., recording evidence, admitting documents and generally complete the record upon which a finding would be based. This view was approved by the Apex Court in *Dr. M.N. Dasanna v. State of A.P.*^[32].

37. Dealing with Rule 7 of the U.P. Government Servant (Discipline & Appeal) Rules, 1999, which *inter alia* prescribed procedure for the enquiry officer to be followed in case where the charged government servant does not appear on the date fixed for enquiry, the Supreme Court, in *State of U.P. v. Saroj Kumar Sinha*^[33] observed:

*“A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the Government servant despite notice of the date fixed failed to appear that the inquiry officer can proceed with the inquiry ex parte. Even in such circumstances it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge sheet. Since the Government servant is absent, he would clearly lose the benefit of cross examination of the witnesses. **But nonetheless in order to establish the charges the department is required to produce the necessary***

evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge....”
(emphasis supplied)

Further, the Supreme Court has discussed the essential attributes of enquiry officer in disciplinary proceedings in paragraph 28, which reads as under:

“An inquiry officer acting in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Department, even in the absence of the delinquent official to see as to whether the un-rebutted evidence is sufficient to hold that the charges are proved. In the present case the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.”

In paragraph 30 the Supreme Court held:

“When a departmental enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The inquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.”

38. Emphasizing on the importance of access to documents and the statements of the witnesses to meet the charges in an effective manner, the Supreme Court in *Krishna Kanth Dikshita v. Union of India* ^[34] held as under:

“When a government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the concerned employee prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible?....”

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39. In *S.C. Girotra v. United Commercial Bank* ^[35] the employer

bank obtained certain reports and on the basis of the reports and some certificates issued by the officers of the bank, charges were framed against the employee and on the basis of the enquiry report the employee was dismissed. The Supreme Court held that there was violation of principles of natural justice as the employee was not allowed to cross-examine the officers who gave the certificates and reports, before the enquiry officer.

40. In *State of Mysore v. Sivabasappa*^[36], the Supreme Court while holding that tribunals exercising quasi-judicial functions are not courts and that therefore they are not bound to follow the procedure prescribed for trial of actions in Courts nor they are bound by strict rules of evidence. It has however held that the obligation which the law casts on them is that they should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair opportunity to explain it. What is fair opportunity must depend on the facts and circumstances of each case. Dealing with recording of evidence in the enquiry, the Supreme Court held as under:

"In respect of taking the evidence in an enquiry before such tribunal, the person against whom a charge is made should know the evidence which is given against him, so that he might be in a position to give his explanation. When the evidence is oral, normally the examination of the witness will in its entirety, take place before the party charged, who will have full opportunity of cross-examining him. The position is the same when a witness is called, the statement given previously by him behind the back of the party is put to him, and admitted in evidence, a copy thereof is given to the party, and he is given an opportunity to cross-examine him. To require in that case that the contents of the previous statement should be repeated by the witness word by word, and sentence by sentence, is to insist on bare technicalities, and rules of natural justice are matters not of form but of substance. They are sufficiently complied with when previous statements given by witnesses are read over to them, marked on their admission, copies thereof given to the person charged and he is given an opportunity to cross-examine them."

I do not intend to multiply the judgments on this aspect.

41. Tested on the anvil of the law laid down by the Courts on the fair procedure to be followed in the enquiry, one would have no qualm of

conscience to hold that every step taken by the enquiry officer in the present case is blatantly contrary to the settled legal principles. The enquiry officer has reduced the enquiry to a mockery. He has acted both as prosecutor and Judge, which is forbidden by law. He has not insisted on the DA to appoint a Presenting Officer. He has not called upon the DA to produce evidence from its side. He has not fixed dates of enquiry for recording evidence. Not only that he has recorded the statements of four witnesses behind the back of the petitioner, but also he has not supplied those statements to the petitioner, much less summoning the persons who gave those statements for being cross-examined by the petitioner. Therefore, it would be a travesty of truth for anyone to claim that an enquiry in law was conducted by the enquiry officer. Thus I have no hesitation to hold that the purported enquiry is highly farcical and nothing but a façade.

(v) Whether the impugned order is legally sustainable on merits?

42. In order to find an employee guilty of misconduct, the burden lies on the department to prove that the employee is guilty of such misconduct based on legal evidence. Unlike in a criminal case where proof beyond reasonable doubt is sine qua non for conviction of an accused, in departmental proceedings preponderance of probabilities is sufficient to find an employee guilty of misconduct. As discussed above, no formal charge memo was issued in this case. Therefore, it is not possible to find out with certainty as to what precisely the charge is. However, if one looks into Memo dt.7.1.2010, whereunder show cause notice was issued to the petitioner, proceedings dt.3.7.2010, by which the petitioner was suspended, proceedings dt.4.8.2010, under which enquiry officer was appointed, and order dt.27.9.2010 terminating the petitioner's services, they will give some idea as to the nature of the accusation against the petitioner. It can be summarized as under.

Software was installed on 6.6.2006 and 18.7.2006, when five systems each were supplied; based on the software, training classes were commenced and therefore the endorsement dt.9.8.2006; that the

software was installed on that day by the supplier, was fraudulently made by the petitioner in collusion with the supplier and thereby the petitioner was responsible for loss of Rs.84,760/- paid based on her endorsement.

43. The charge as culled out above proceeds on the premise that the required software was installed on 6.6.2006 and 18.7.2006 and hence there was no need to instal software again on 9.8.2006 and without installation of any further software on 9.8.2006 the petitioner made a false endorsement. The petitioner explained that she was not aware of the existence of the arrangement between the head office and the supplier and she was not communicated a copy of the contract under which the computers were supplied, and that no communication whatsoever regarding the computers and software was received from the head office. Neither any evidence has been placed on record by the DA nor any finding has been rendered by the enquiry officer holding this stand of the petitioner as incorrect. Whether the cost of the computers was inclusive of software and whether the supplier was bound to instal the software at the time of installation of computers itself, are matters for simple verification with reference to the terms of the contract. No effort whatsoever was made by either the DA or by the enquiry officer to verify the contract and ascertain these facts. Thus both these functionaries have made a heavy weather of a simple verifiable fact by drawing unwarranted inferences and baseless presumptions. If the software was part of the cost of the computers it was the duty of the supplier to instal without which he would not be entitled to payment. The very fact that payment of Rs.84,760/- was made towards installation of software pre-supposes that installation of software is not part of the contract price and when the software is installed the supplier is entitled to payment of its value. This being the position, it hardly matters whether the software was installed when the computers were installed on 6.6.2006 and 18.7.2006, or it was installed on 9.8.2006. Nowhere it was alleged that on account of non-

installation of software, training programmes could not be conducted. On the contrary, it is the positive case of the respondents that classes were conducted immediately after the computers were installed. Therefore, one fails to understand as to how the department suffered loss of Rs.84,760/-.

44. If one closely examines the facts, the Memo dt.7.1.2010, which is the first document making accusation against the petitioner, accused her of giving certificate as if she has certified receipt of 10+3 CDs. Later, this allegation was relegated to back seat and the respondents started accusing the petitioner of wrongly certifying that software was installed on 9.8.2006. It is the pleaded case of the petitioner that initially computers were installed by giving electricity connections and on 9.8.2006 software was installed in all the ten systems and that on being asked by the supplier the petitioner has endorsed on Bill No.216 prepared by the supplier for 1+9 (Windows XP Professional) and 1+2 (Microsoft Office Software 2003) CDs were installed. To the allegation of availability of only one C.D. the petitioner has explained in her explanation dt.18.1.2010 that she has not endorsed to the effect that the supplier had supplied 10+3 CDs, that even one CD can be used for all the systems and that she was under the impression that the Bill endorsed by her was in respect of supply of software and not CDs.

45. In the very first question of the questionnaire supplied to her by the enquiry officer, the petitioner was asked to explain as to how in the C.E. Call slip, she has certified on 6.6.2006 when five computers were supplied that they were fully working, the petitioner has answered by stating that on 6.6.2006 electrical installations for the first batch of five computers was done and demonstration of the computers was given with software Windows XP Professional and as all the parts of the system were working she has certified as fully working. She has further explained in answer to question No.4 that after completion of electrical installations and demonstration of software, she has certified that the systems are in good condition. The petitioner has lamented

that neither the computers nor the software was supplied at her instance, that the head office has instructed through telephone to receive the computers to be supplied by M/s. Ram Computers. No specific instructions were received from the head office as to how many computers were proposed to be supplied or the details of the software.

46. In her explanation dt.27.11.2010 the petitioner has stated that when the computers were installed she has not noticed which are the CDs that were used for demo of the systems, that on 9.8.2006 the supplier has attended to some work on the systems and she was told that software was installed in the systems with one C.D. (1+9 user Windows XP Professional and 1+2 user Microsoft software 2003), that any person with basic knowledge of software technology can understand that with one C.D., software can be installed in as many systems as one wants and the same thing happened in the present case, that with that understanding she has given acknowledgement for 1+9 Windows XP Professional and 1+2 Microsoft Office Software 2003 and that before making payment, the head office ought to have sought clarification in the event of any doubt. This explanation, in my view, appears highly convincing and in the absence of any evidence brought out against the petitioner, to prove the same wrong, no person of ordinary prudence can find her guilty of misconduct. In his final order, the DA has concluded that it was proved beyond any doubt that the software was neither received nor installed, but based on the certificate issued by the petitioner excess payment of Rs.84,760/- was fraudulently made to the supplier. The basis for this conclusion was the purported verification made from some of the staff allegedly revealing that the computers were installed on the dates when they were supplied on 6.6.2006 and 18.7.2006 and computers training programme was conducted from the date of the installation. The DA has accordingly rendered a finding that these facts would clearly disprove the version of the petitioner that on the dates of supply of

computers only electrical connections were given.

47. Had the enquiry officer summoned the supplier and examined him in the presence of the petitioner as to the date on which the software was installed and whether he has collected the cost of the software twice or not, the truth would have come out. The enquiry officer in his report has stated that he has in fact given a questionnaire to the supplier also, but he has brushed aside the information furnished even without referring to its contents. Neither the DA nor the enquiry officer has examined the contract under which supplies were made to find out whether the supplier was liable to supply software along with computers the cost of software is exclusive of the price payable to the supplier for supply of computers. They have lost sight of the simple logic that unless the contract price included cost of software, payment of Rs.84,760/- would not amount to double payment and the question of causing loss to the Corporation does not arise. On a deep analysis of the nature of the accusation against the petitioner and the facts brought out on record, I have no hesitation to hold that the petitioner was made victim of accusations which have no basis, logic and rationale. The respondents have miserably failed to prove the alleged collusion between the petitioner and the supplier. The allegation that the petitioner committed fraud is nothing but a fertile imagination of the respondents. Interestingly, after the DA has taken charge, he has given a police report based on which F.I.R. No.18 of 2011 was registered on 28.4.2011. The copy of the report enclosed to the F.I.R. *inter alia* contains the following allegations against Mr. A. Krishna, Managing Director, who was at the helm of affairs when the alleged misconduct was committed by the petitioner.

- i) *Sri A. Krishna, IFS, former MD unauthorizedly purchased 15 computers, 11 laptops, 92 UPS, 30 printers, and other accessories and electronic equipment by spending an amount of Rs.1.2 crores, in violation of G.O. Ms. No.43, Finance and Planning Dt.15.6.98 according to which purchases have to be done through APTS or as per the rates approved by APTS. Above purchases are also in violation G.O. Ms.87,*

dt.21.05.92 of WD&CW Dept., according to which any purchase exceeding Rs.25,000/- has to be done through tenders and purchase committee and the same was not followed.

- ii) Further out of the said expenditure an amount of Rs. About 13 lakhs was showed towards purchase of original licensed software of Windows XP Professional Operating System (113 copies) MS Office (51) copies without actually receiving the supplies, on basis of false and fabricated bills. Almost all the computer related purchases were made from M/s. Ram Computers in violation of norms. Further the said purchases were made without prior approval of the Managing Committee or the Govt. without there being earmarked budget for the purpose in violation of norms as a result the corporation suffered huge losses due to non competitive prices and poor quality. Sri S. Lakshminarayana, the then Superintendent/AGM and Sri DSV Prasada Rao, the then Development Officer/DGM (Planning) who dealt the matter are also responsible for the above irregularities.*
- iii) Further no proper records were maintained for the items purchased, and the concerned staff say that 4 laptops were taken by the former MD and not returned to the Corporation. Similarly, one laptop was taken by Sri Harinath Babu, District Manager, NEDCAP, who was taken on deputation as General Manager, by former MD, and the same was not returned when he was repatriated and this would amount to criminal misconduct."*

The above reproduced paragraphs have clearly depicted the former Managing Director in the poorest light and he was the one who was alleged to be the real culprit in the entire transactions pertaining to purchase of computers and software of Windows XP Professional Operating System (113 copies) and MS Office (51) copies. He was accused of creating false and fabricated bills without actually receiving supplies from M/s.Ram Computers. It is significant to note that not even a whisper has been made against any of the District Managers, including the petitioner nor a case was registered against them. This fact itself would vindicate the stand of the petitioner that she was made a scapegoat by being unjustly accused of collusion with M/s. Ram Computers. If there is any semblance of truth in the allegations against the petitioner, one would not imagine as to why the DA has not named

the petitioner as accused and made accusations against her in his report given to the Police. Even according to the DA, it was the former Managing Director who was responsible for the misfeasance and malfeasance in the transactions of purchase of computer systems and software, but, surprisingly he had no qualm of conscience in holding the petitioner guilty of misconduct. Unless complicity between the petitioner and the former Managing Director was alleged and proved, there is no way by which the petitioner can be held guilty for the alleged irregular transactions.

Conclusions:

48. The detailed discussion undertaken above, would lead to the following inevitable conclusions:

- (i) Absence of specific charges against the petitioner vitiated the departmental proceedings.
- (ii) The procedure followed by the enquiry officer is opposed to the well-settled legal principles, besides Section 20 of the Rules thereby rendering the enquiry a nullity.
- (iii) Even on application of preponderance of probabilities, the respondents have miserably failed to prove the alleged misconduct of the petitioner.

Relief:

49. On the analysis as above, the writ petition is allowed with costs quantified at Rs.20,000/- (Rupees Twenty Thousand only). The petitioner is entitled to reinstatement into service with continuity of service and all consequential benefits including full salary during the period of her suspension and the revision of pay scales taken place during the pendency of this writ petition.

As a sequel to the disposal of the Writ Petition, WPMP Nos.42770 of 2011 and 42563 of 2012 are disposed of as infructuous.

C.V. NAGARJUNA REDDY, J

16-9-2015

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- [1] (1995) 6 SCC 749
- [2] (2005) 6 SCC 636
- [3] AIR 1958 SC 38
- [4] AIR 1968 SC 1089
- [5] (1974) 2 SCC 831
- [6] (1999) 2 SCC 21
- [7] AIR 1960 SC 689
- [8] AIR 1961 SC 177
- [9] AIR 1963 SC 531
- [10] (2013) 3 SCC 607
- [11] (2006) 8 SCC 776
- [12] (1990) Supp (1) SCC 738
- [13] AIR 1967 SC 1269
- [14] (1863) 14 CB (NS) 180: 143 ER 414 : (1861-73) All ER Rep. Ext. 1554
- [15] 1964 AC 40
- [16] 1983 (2) AC 237
- [17] (1969) 2 SCC 262
- [18] (1973) 3 SCC 333
- [19] (1978) 1 SCC 405
- [20] (1978) 1 SCC 248
- [21] (1981) 1 SCC 664
- [22] (1973) 2 SCC 337
- [23] (1993) 4 SCC 255
- [24] (2004) 8 SCC 14
- [25] (2005) 7 SCC 627
- [26] (2010) 11 SCC 242
- [27] (2011) 5 SCC 553
- [28] AIR 1971 SC 752
- [29] (1993) 3 SCC 196
- [30] 1987 (Supplement) SCC 518
- [31] ILR 1967 A.P. 904
- [32] (1973) 2 SCC 378
- [33] (2010) 2 SCC 772
- [34] (1986) 3 SCC 229

[\[35\]](#) 1995 Supp (3) SCC 212

[\[36\]](#) AIR 1963 SC 375