

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WVMP.No.4349 of 2015

in

WP.No.8181 of 2015

and

WP.No.8181 of 2015

COMMON ORDER:

Heard the counsel for petitioners and Sri K. R. Babu, learned Standing Counsel for the Andhra Pradesh State Civil Supplies Limited, for respondents.

2. There was diversion of PDS rice to Sri Surya Manga Rice Mill, Kakarapalli Village of Kotananduru Mandal, East Godavari District, and the petitioners, who were employees of the 3rd respondent-Corporation, were suspected by 3rd respondent of being responsible for it.

3. Articles of charges were framed against them invoking the Andhra Pradesh State Civil Supplies Corporation Limited Staff Conduct, Discipline and Appeal Regulations, 1975, and they were placed under suspension pending enquiry.

4. The Special Grade Deputy Collector (LA), NAOB, Yellamanchili, was appointed as an enquiry officer. He conducted a detailed enquiry and submitted his report.

5. In the enquiry report dt.20.08.2013, the enquiry officer reported that there is no involvement of petitioners in the incident of diversion of PDS rice and there is no monetary loss sustained to the

Corporation. He categorically held that charges framed against the petitioners were not proved in the enquiry.

6. The 4th respondent, on perusing the said enquiry report, issued proceedings dt.18.03.2014 accepting the said findings and dropping the charges against the petitioners.

7. Subsequently, the petitioners were re-instated into duty.

8. Strangely, the 4th respondent again issued proceedings dt.02.03.2015 changing his mind, and appointing additional Joint Collector, Visakhapatnam as Enquiry Officer to again inquire into the charge of diversion of PDS rise leveled against the petitioners. The basis for this change of position is contained in the impugned order which indicates that the Commissioner of Civil Supplies, Andhra Pradesh, Hyderabad had spoken to the District Collector, Visakhapatnam and that the 4th respondent had perused the enquiry report and had come to a conclusion that there were serious lapses on the part of the Enquiry Officer, and that his enquiry was not fool-proof. It also mentioned that the Enquiry Officer had a *mala fide* intention and accepted the story of petitioners that the entire episode was bogus one.

9. The counsel for petitioners places reliance on the decision of the Supreme Court in **K.R. DEB v. The Collector of Central Excise, Shillong**¹.

¹ 1971 (2) SCC 102

10. The learned Standing Counsel for respondents contended that the impugned order is valid in law, and there is sufficient material pointed out therein on the basis of which the 4th respondent had changed his mind and directed a fresh enquiry. He referred to the proceeding dt.20.02.2015 of the Vice-Chairman and Managing Director of the Corporation wherein he had taken a decision to re-appoint an enquiry officer not below the rank of Special Grade Deputy Collector, to conduct *de novo* enquiry against the petitioners in the case to fix responsibility on the real culprits in the diversion of the PDS rice stock. He also referred to a petition addressed to the Director of Anti Corruption Bureau, Hyderabad against the petitioners. It is stated that the petitioners have nothing to fear from the fresh enquiry if they are not guilty of any lapse or irregularity and if they have discharged their duties fairly.

11. I have noted the contentions of both sides.

12. In this case, the 4th respondent had issued the proceedings dt.18.03.2014 in his capacity as ex officio Executive Director of the 3rd respondent-Corporation accepting the report of the Enquiry Officer. It would have been otherwise if he had disagreed with the findings of the Enquiry Officer and re-considered the evidence himself and came to a different conclusion. Admittedly, this did not happen.

13. Merely because the Commissioner of Civil Supplies had informed the District Collector that there were serious lapses in

discharging the duties by the enquiry officer i.e., the Special Grade Deputy Collector, Land acquisition, NAOB, Yelamanchili is not enough to direct a re-enquiry by another official i.e., the Addl. Joint Collector, Visakhapatnam. The impugned order does not say in what way the Enquiry Officer had committed lapse in conduct of his enquiry. To characterize the enquiry done by the enquiry as not a fool proof one is un-understandable. What is the basis of the conclusion in the impugned order that the enquiry officer had a mala fide intention is not stated. So there is no basis to hold that a re-enquiry is warranted. It appears therefore that the result of the enquiry was not to the satisfaction of the above officials and that was why a re-enquiry by another official is ordered. This is impermissible in law.

14. In **K.R. DEB** (1 supra), the Supreme Court considered Rule 15(1) of the Classification and Control Rules and observed as under :

“12. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9.

13. In our view the rules do not contemplate an action such as was taken by the Collector on February 13, 1962. It seems to us that the Collector, instead of taking responsibility himself, was determined to get some officer to report against the appellant. The procedure adopted was not only not warranted by the rules but was harassing to the appellant.

14. Before the Judicial Commissioner the point was put slightly differently and it was urged that the proceedings showed that the Disciplinary Authority had made up its mind to dismiss the appellant. The Judicial Commissioner held that on the facts it could not be said that the Disciplinary Authority was prejudiced against the appellant. But it seems to us that on the material on record a suspicion does arise that the Collector was determined to get some Inquiry Officer to report against the appellant."

15. This judgment has been subsequently reiterated in several other cases including **Vijay Shankar Pandey v. Union of India**² wherein it is reiterated that there can only be one enquiry as a normal rule and the fact that the report submitted by the enquiring authority is *not acceptable* to the disciplinary authority, is not a ground for completely setting aside the enquiry report and ordering a second enquiry.

16. In this view of the matter, I am of the opinion that the impugned order dt.02.03.2015 of the 4th respondent in directing a fresh enquiry against the petitioners on the same issue on which they were exonerated in his order dt.18.03.2014, is contrary to law and unsustainable. It is accordingly set aside and the Writ Petition is allowed. Consequently, the WVMP.No.4349 of 2015 is dismissed. No costs.

17. Miscellaneous petitions, pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 01-11-2016

Ndr/*

² (2014) 10 SCC 589