

THE HONB'E SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.24652 OF 2009

ORDER:

The writ petition is filed questioning the Memo No. CMD/Dir (HR)/CGM (HRD)/GM (S)/AS (DC)/PO-C/F.No.2073-C/04-60, dated 24.02.2009, issued by the 1st respondent-Northern Power Distribution Company of A.P. Ltd., Warangal.

It is the case of the petitioner that initially he was appointed as Bill-collector in the year 1982 in the erstwhile APSEB and at the relevant point of time he was working as UDC (Chowrastha Billing) with additional charges of UDC (Establishment) and JAO (Billing). While so, the 2nd respondent has issued a Memo dated 05.06.2004 by placing him under suspension and the Chief General Manager (HRD), who was appointed as Enquiry Officer, had issued a Memo No. CGM (Expr.) & EO/NPDCL/Fine/04/D.No.5579/04, dated 10.08.2004 framing four charges, for which he submitted his reply on 27.08.2004 by denying the said charges. Basing on the report submitted by the Enquiry Officer, the 2nd respondent issued a show cause notice dated 16.10.2004, for which he submitted his detailed explanation, however, without considering his explanation the 2nd respondent had issued Memo dated 15.02.2005 imposing punishment of dismissal. Against the said order, the petitioner filed W.P.No.16390 of 2005 and this Court disposed the same on 12.10.2007 ordering that "the petitioner shall be imposed with punishment of "Compulsory Retirement" from service w.e.f. 15.02.2005 and that he is entitled for all the benefits as per his eligibility treating that he retired from service compulsory w.e.f. 01-05-2005." Thereafter, the 2nd respondent preferred an appeal against the said order by filing W.A.No.733 of

2008 and the same was allowed on 18.04.2008, by setting aside the order dated 12.10.2007 passed in W.P.No.16390 of 2007 and remitted back the matter to the departmental appellate authority for fresh consideration of the appeal and to pass appropriate orders afresh within a period of two months. Later, the petitioner had submitted a fresh appeal before the 1st respondent on 06.08.2008, however, without considering the grounds of appeal, the same was disposed of on 24.02.2009 stating as follows:

- “9. The Chairman and Managing Director/NPDCL has critically reviewed the appeal submitted afresh by Sri J. Jayanth Kumar, Ex.UDC (Now dismissed from service) and taking into account of the directions of the Hon’ble High Court in his judgment dated 18.07.2008, gravity of the misconduct and financial hardship of the family of delinquent employee, it has been decided to reduce the punishment to ‘COMPULSORY RETIREMENT FROM SERVICE’ instead of ‘DISMISSAL FROM SERVICE’.
10. Accordingly, the punishment of ‘DISMISSAL FROM SERVICE’ awarded to Sri J. Jayanth Kumar, Ex.U.D.C. (now dismissed from service) is modified as “COMPULSORY RETIREMENT FROM SERVICE” with effect from 15.02.2005 i.e., the date of issue of final orders to him beside treating the period of suspension undergone by him from 05-06-2004 to 15-02-2005 as “Dies-Non.”

In the additional affidavit filed by the petitioner in support of the Writ Petition he submitted that the inquiry is not initiated by the appointing authority i.e., Superintending Engineer, but the Chief General Manager, HRD, who is the appellate authority against the order passed by the Superintending Engineer, has initiated disciplinary proceedings by appointing Chief General Manager (Exp) APNPDCL as an Inquiry Officer, vide proceedings dated 17.07.2004 and he issued sheet vide Memo dated 10.08.2004 framing four charges, which is illegal and in violation of APSEB Disciplinary and

Appeal Regulations, thereby initiating the disciplinary proceedings by appointing the Chief General Manager (Exp) as an Inquiry Office and asking him to frame the charge, vitiated the entire enquiry. Hence, the writ petition.

2nd respondent filed a counter affidavit denying the averments made in the writ affidavit and further submits that as per the Regulation (4) of Part-I of APSEB Service Regulations, the Company has the right of interpreting the Regulations to be governed by its employee and its decision shall be final and binding, as such the petitioner has no *locus standi* to seek out of turn claim / right against the decision of the respondent's organization in appointing enquiry officers in the interest of the Company for bringing the matter to justice. It is further contended that the averment of the petitioner that he did not cause loss to N.P.D.C. Ltd., is ridiculous and his citing *inter alia* that the inquiry officer had not summoned B. Sita Ramulu, UDC and Apprentice LDC Nagaraju, who purported to have made journal entries in the matter is purely an inventory exercise of the petitioner in order to divert his wrong doing to others. It is further contended that as the petitioner failed to put forth any new grounds for consideration in the fresh appeal, obliging the orders dated 18.07.2008 passed by this Court in W.A. No.733 of 2008, setting aside the order dated 12.10.2007 passed by this Court in W.P.No.16390 of 2005, 1st respondent has passed the impugned order dated 24.02.2009 modifying the punishment of 'dismissal from service' to 'compulsory retirement from service', thereby the respondent authorities have complied the orders of the High Court. Hence, prayed for dismissal of the Writ Petition.

Heard the learned counsel for the petitioner and the learned standing counsel for the respondents.

Having considered the rival submissions and having perused the material available on record, particularly the order impugned, this Court is of the opinion that the 1st respondent reiterated the averments made in the affidavit filed by the petitioner in the fresh appeal and simply modified the order as stated supra, which was earlier passed by this Court in W.P.No.16390 of 2005, and there is no consideration of the grounds of appeal raised by the petitioner. Therefore, the matter is liable to be remanded back to the 1st respondent for consideration of the fresh appeal on merits and to pass appropriate orders accordingly.

In the result, this Writ Petition is allowed setting aside the impugned orders dated 24.02.2009, issued by the 1st respondent, by remitting back to the 1st respondent with a direction to pass orders afresh within a period of eight weeks from the date of receipt of a copy of this order. As the order of punishment itself being set aside and as on date petitioner has retired, the pension which is being paid to the petitioner shall continue to be paid without interruption. There shall be no order as to costs.

Miscellaneous petitions, if any pending in this writ petition shall stand closed.

CHALLA KODANDA RAM, J

Date:01.09.2016.
Ssv