

HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No. 41741 OF 2015

DATED 21ST MARCH, 2016

BETWEEN

V.V. N.Malleswara Rao

....Petitioner

And

The Appellate Authority,
The Chairman, APPGENCO Ltd.,
Vidyut Soudha, Hyderabad and ors.

....Respondents.

HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No. 41741 OF 2015

ORDER:

This Writ Petition filed under Article 226 of the Constitution of India challenges the order passed by the third respondent inflicting punishment on the petitioner vide Memo No.CGM(Adm.IS& ERP) DS(Adm)/AS(Adm)/PO-A/33/2014, dated 30.08.2014 as confirmed by the first respondent—appellate authority vide Memo No.CCM(Adm.)IS & ERP/DS/(Admn)/PO-A/33/2014, dated 26.02.2015.

Heard Sri M.N.Narasimha Reddy, learned Counsel for the petitioner and Ms. K.Aruna, learned Standing Counsel appearing for the respondents.

The petitioner herein is working as Assistant Engineer in the respondents-Organization. The respondent authorities

initiated departmental enquiry against the petitioner and the Enquiry Officer-Superintending Engineer submitted report on 12.06.2014. The concluding para of the report reads as under:

“ That the said Sri VVN.Malleswara Rao, Assistant Engineer/Mech/RTPP/V.V.Reddy Nagar was absent to duty unauthorisedly for more than one year i.e. from 17.5.2012 onwards without proper sanction of leave from the Competent Authority is held proved, but other aspects like non rejection of improper leave letters and non issue of memos by the management to the charged employee directing him to join duty are to be examined”.

In pursuance of the said report, the Chief General Manager, fourth respondent herein, issued a show cause notice on 30.08.2014 calling upon the petitioner to show cause as to why proposed punishment of removal from service should not be imposed against him. In response to the said show cause notice, on 23.09.2014 the petitioner submitted his explanation. Thereafter the Managing Director-third respondent herein passed order vide Memo No. CGM(Adm.IS&ERP)/DS(Admn)/AS(Adm)/PO-A/3/3//2014, dated 22.11.2014 awarding punishment of stoppage of three increments with cumulative effect and reduction to lower rank in seniority by 30 ranks besides treating the period of absence from 17.05.2012 to 09.07.2013 as ‘DIES-NON’. Aggrieved by the said order of punishment imposed by the third respondent, the petitioner herein preferred an appeal before the appellate authority-first respondent herein. The first respondent-appellate authority by way of Memo No.CCM(Adm.).IS & ERP/DS/(Admn)/PO-A/33/2014, dated 26.02.2015 rejected the said appeal preferred by the petitioner.

Calling in question the validity and sustainability of the

punishment imposed by the third respondent, as confirmed by the first respondent, the Writ Petition has been filed.

It is contended by the learned Counsel for the petitioner that the orders passed by the first respondent-appellate authority are erroneous, contrary to law, opposed to the spirit and object of the Regulations of the respondents-Organization and violative of Article 14 of the Constitution of India. It is also the contention of the learned Counsel for the petitioner that though the petitioner submitted an elaborate explanation, the primary authority did not take into consideration the contents of the said explanation submitted to the show cause notice issued. It is further submitted by the learned Counsel for the petitioner that the appellate authority also erroneously rejected the appeal filed by the petitioner without assigning valid and cogent reasons.

On the contrary, it is contended by the learned Standing Counsel for the respondents that there is neither illegality nor the impugned orders suffer from procedural infirmity and as such the present Writ Petition is not maintainable and the petitioner herein is not entitled for any indulgence of this Court.

The material available before this Court manifestly discloses that in response to the show cause notice dated 8.1.2014 issued by the third respondent, the petitioner submitted his explanation and thereafter the primary authority-third respondent inflicted punishment on the petitioner by way of Memo No.CGM(Adm.IS&ERP)/DS(Admn)/AS(Adm)/PO-A/3/3//2014, dated 22.11.2014. Questioning the validity of the said order of punishment, the petitioner herein preferred an appeal before the first respondent-appellate authority. A perusal

of the memorandum of appeal dated 15.12.2014 filed before this Court as material paper clearly discloses that the petitioner herein urged a number of grounds for sustaining his stand. A reading of the order passed by the appellate authority candidly discloses that the appellate authority, except referring to the appeal filed by the petitioner as one of the references, did not make endeavor to consider the grounds of the appeal filed by the petitioner. This action on the part of the appellate authority, in the considered opinion of this Court, cannot be sustained in the eye of law. Having entertained the appeal, there is no justification on the part of the appellate authority in not considering the grounds raised therein. In view of the same, this Court is of the considered opinion that the ends of justice would be met if the matter is remanded to the first respondent-appellate authority for consideration afresh and in accordance with law, after giving notice and opportunity of hearing to the petitioner.

For the aforesaid reasons, the Writ Petition is partly allowed, setting aside the order of the appellate authority-first respondent vide Memo No.CCM(Adm.).IS & ERP/DS/(Admn)/PO-A/33/2014, dated 26.02.2015 and the appeal is remanded to the first respondent for consideration afresh after giving notice and opportunity of hearing to the petitioner herein. The said exercise shall be completed within three months from the date of receipt of a copy of this order.

Miscellaneous petitions pending consideration if any in the Writ Petition shall stand closed in consequence. No order as to costs.

JUSTICE A.V.SESHA SAI

DATED 21ST MARCH, 2016.
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