

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.12726 OF 2011

DATED : 30.09.2016

Between :

A.Ramalingeswara Rao S/o.Late Narayana, Aged 38 yrs, Male,
Hindu, working as Addl. Assistant Engineer,
A.P.E.P.D.C.L, Visakhapatnam,
R/o.D.No.19-93, Lingala Colony, Paikaraopet (M), Visakhapatnam
District.

.. Petitioner

And

Eastern Power Distribution Company of A.P., Ltd.,
Rep., by Chief General Manager/H.R.D,
Visakhapatnam (Primary Authority) & another

.. Respondents



This court made the following :

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ORDER :

The petitioner while working as Additional Assistant Engineer, in Kotananduru, disciplinary authority received complaints of demanding huge amount for release of agricultural service connections. It appears the Inspector of Police, Vigilance, and APTS/Rajahmundry, submitted report against the petitioner. Based on the said report, the disciplinary authority came to a prima-facie, conclusion that petitioner was guilty of the allegations leveled therein and issued show cause notice dated 21.05.2009 calling upon the petitioner to submit his explanation as to why punishment of stoppage of three increments with cumulative effect should not be imposed.

2. In response to the said show cause notice, petitioner submitted detailed explanation. After extracting the contentions urged by the petitioner in his explanation, the disciplinary authority passed final orders on 25.03.2010 imposing the punishment of with holding of three annual increments with cumulative effect. Aggrieved thereby petitioner preferred appeal. But the said appeal was also rejected by order dated 07.02.2011. Hence, this writ petition.

3. Heard Smt B. Geetanjali Devi, representing Dr.P.B.Vijay Kumar, learned counsel for the petitioner on record and Sri M.Ravindra, learned counsel for the respondents.

4. The first and foremost submission of learned counsel for the petitioner is that the punishment imposed against the petitioner is major punishment and no such punishment can be imposed without following the due procedure. In the instant case, due procedure was not followed and with holding of three annual increments with cumulative effect would forfeit permanently the annual increments payable to the petitioner for three years. Therefore, the punishment has severe adverse consequences for the entire career of the petitioner. Thus, whenever a major punishment is imposed, it is mandatory to follow a detailed procedure of conducting enquiry by affording due opportunity and only after following due procedure, major punishment can be imposed. In support of such contention learned counsel placed reliance on the decision of the Hon'ble Supreme Court in ***Kulwant Singh Gill Vs State of Punjab***¹.

5. The stand of the respondents that the punishment of with holding of increments according to the service Regulations of the respondents is not a major punishment and therefore there is no requirement to conduct a detailed enquiry and after giving due opportunity the order impugned is passed. It is the further stand of the respondents that allegation leveled against the petitioner is grave and therefore, punishment is validly imposed.

6. It is not in dispute that no departmental enquiry was conducted. The petitioner was called upon to submit his explanation vide memo dated 21.05.2009. This memo refers to the report submitted by the Inspector of Police. This memo even does

¹ 1991 Supp (1) Supreme Court Cases 504

not reflect whether the copy of the report was furnished to the petitioner. Even before show cause notice was issued, the disciplinary authority comes to a conclusion that the charge leveled against the petitioner is established; that the charge as reported by the Inspector of Police, is serious and therefore, serious punishment of stoppage of three increments with cumulative effect be imposed. Thus, what was called upon was with reference to imposing of punishment and it can be classified as post decisional hearing. A decision was already made to impose punishment and thereon a show cause notice was issued.

7. It appears from a reading of the show cause notice that not even a charge memo was issued. Even assuming that what is contended by the respondent is correct that the punishment imposed is treated by the respondents as not a major mis-conduct, there must be charge memo and after calling for explanation and after consideration of the explanation, the order is required to be passed. But no such charge memo was drawn and communicated to the petitioner.

8. As held by the Supreme Court in **Kulwant Singh Gill**, whenever, punishment of with holding of increments with cumulative effect is imposed, it would result in permanent deferment of annual increments and therefore is a major punishment and no major punishment can be imposed without conducting enquiry as required by the service Regulations. As noted above, in the instant case no enquiry was conducted and in fact no charge memo was also drawn.

9. The order of the disciplinary authority as well as appellate authority are also liable to be set aside for another reason.

10. In response to the show cause notice issued by the disciplinary authority, detailed explanation was filed. One of the objections raised by the petitioner before the disciplinary authority as well as appellate authority was that no enquiry was conducted and there was no enquiry report and even before enquiry was conducted and report is drawn, the punishment cannot be imposed. It was specifically asserted before the appellate authority that the disciplinary authority passed order erroneously and straight away imposed punishment without conducting enquiry. The disciplinary authority does not deal with this objection and the order only concludes as under :

“The under-signed after careful examination of the reply to the Show Cause Notice submitted by Sri.A.Ramlingeswara Rao, Ex.AAE/O/Kotananduru now AAE/Operation/Nakkapalli, has observed that the explanation of the individual is not convincing and the under-signed has decided to confirm the punishment proposed in the Show Cause Notice “Stoppage of Three Increments with Cumulative effect” to Sri A. Ramlingeswara Rao, Ex.AAE/O/Kotananduru now AAE/Operation/Nakkapalli.

Accordingly, Sri A.Ramlingeswara Rao, Ex.AAE/O/Kotananduru now AAE/Operation/Nakkapalli is here by awarded with punishment of “Stoppage of Three Increments with Cumulative effect”.

11. Similarly the appellate authority extracts all the contentions of the petitioner and thereafter passed a simple order of affirming the decision of the disciplinary authority. Para No.3 of the order of the appellate authority reads as under :

“The Director/HRD being the appellate authority has examined the appeal of Sri A.Ramalingeswara Rao, Ex.AAE/O/Kotananduru now AAE/Operation/Nakkapalli with that of the records available & the points put forth by him and observed that the appeal submitted by him is in general nature, does not contain any evidences in support and no fresh points brought in his appeal. Therefore, the undersigned has decided to

reject the appeal of the individual duly confirming the punishment of “Stoppage of three increments with cumulative effect” awarded in the final orders.”

12. The Disciplinary Authority and the Appellate Authority being quasi-judicial authorities when decide an issue adversely affecting the employee, minimum requirement expected from them is to assign due reasons in support of their decisions and reasons for rejecting the objections filed by the delinquent employee. Thus, orders of Disciplinary Authority and Appellate Authority cannot be called as reasoned orders.

13. For all the aforesaid reasons the orders under challenge are liable to be set aside and accordingly set aside.

14. The writ petition is accordingly allowed. There shall be no order as to costs.

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

30th September, 2016
Rds

P.NAVEEN RAO,J