

**THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO**

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WRIT APPEAL NO.1012 OF 2015

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J U D G M E N T

(per Hon'ble Sri Justice Sanjay Kumar)

The Telangana State Northern Power Distribution Company Limited and its officers are in appeal against the order dated 22.09.2015 passed by a learned Judge partly allowing W.P.No.1119 of 2011. By the said order, the appellants, being the respondents in the writ petition, were directed to reinstate the respondent/writ petitioner in service with continuity of service and 50% of the monetary benefits.

The respondent was an employee of the erstwhile Andhra Pradesh State Electricity Board. He was promoted as an Additional Assistant Engineer in the Northern Power Distribution Company of Andhra Pradesh Limited, the successor-in-interest of the erstwhile Board and the predecessor-in-interest of the present Telangana State Northern Power Distribution Company Limited, and was posted at Sattupally, Khammam District, in the year 1999.

While so, in the year 2008, the Chief General Manager of the organization, the third appellant herein, was appointed as an enquiry officer to look into the charges leveled against the respondent and five others. Pursuant thereto, the third appellant framed as many as 11 charges and after due enquiry, submitted his report indicting the respondent. Pursuant thereto, the respondent was dismissed from service under proceedings dated 23.12.2010 of the Chairman & Managing Director of the organization, the second appellant. He filed the subject writ petition assailing the said proceedings. Three issues were considered by the learned Judge in relation to the impugned proceedings. Whether the delay of five years in initiating disciplinary action vitiated the impugned proceedings? Secondly, whether the enquiry officer could have framed the charges instead of the disciplinary authority or the same amounted to a serious procedural illegality tainting the disciplinary proceedings and finally, whether the respondent was deprived of the right of appeal?

On the first issue, relying upon **STATE OF MADHYA PRADESH V/s. BANI SINGH**^[1], the learned Judge opined that the Supreme Court had not laid down any specific indicia as to the reasonable time limit within which

disciplinary proceedings need to be initiated and concluded that the delay of five years in the present case was not fatal. As to the second issue, the learned Judge relied upon the Division Bench judgment in **CH.APPALA REDDY V/s. EASTERN POWER DISTRIBUTION COMPANY OF A.P. LTD.**^[2] and held that non-framing of charges by the disciplinary authority and delegation of that function to the enquiry officer vitiated the disciplinary proceedings. On the final issue, the learned Judge agreed with the respondent that he was denied the right of appeal as the Chairman & Managing Director of the organization, the second appellant, had passed the dismissal order instead of the Chief Engineer. In this regard, the learned Judge referred to but distinguished on facts the decision in **CHAIRMAN, A.P. STATE ELECTRICITY BOARD V/s. M. KURMI NAIDU**^[3], which held to the effect that even if the order of removal was passed by the appellate authority, no prejudice would be caused to such employee if he is still left with an appeal before a higher authority. Owing to two of the three issues being decided in favour of the respondent, the learned Judge granted relief to him by directing his reinstatement in service and as the learned counsel for the respondent agreed to forego 50% of the monetary benefits, the same was accepted.

Though the learned Judge held against the respondent as regards the issue of delay, Sri M.Pitchaiah, learned counsel for the respondent, would contend that he can canvass the validity of this adverse finding of the learned Judge without filing a separate appeal, by virtue of the provisions of Order 41 Rule 22 CPC.

Order 41 Rule 22 CPC permits a respondent in the appeal to not only support the decree on the issues decided in his favour but also canvass the correctness of the finding against him by the Court below which, according to him, ought to have been decided in his favour. It is relevant to note that Rule 24 of the Writ Proceedings Rules, 1977, framed by this Court under Article 225 of the Constitution, states that the provisions of the Code of Civil Procedure, 1908, would apply to writ petitions and writ appeals in so far as they are not inconsistent with the said rules. As there is no discernible inconsistency between the provisions of Order 41 Rule 22 CPC and the said rules, we are inclined to allow Sri M.Pitchaiah, learned counsel, to canvass the correctness of the finding on the first issue which went against his client before the learned

Judge.

Sri G.Vidya Sagar, learned senior counsel representing Smt. K.Udaya Sri, learned counsel for the appellants, would concede that the disciplinary proceedings initiated in January, 2008, against the respondent and others were in relation to events dating back to May, 2003. He would however point out that the respondent never raised an objection with regard to the delay so called at any stage during the enquiry proceedings and that it is too late in the day for him to claim prejudice. Learned senior counsel would point out that in **BANI SINGH¹** the delay was nearly 10 to 12 years and the Supreme Court therefore categorized the same as inordinate.

We find merit in the submission of the learned senior counsel that the attack on the ground of the so called delay is of no avail to the respondent in the present case. Apart from the fact that he did not choose to raise an objection in this regard during the disciplinary proceedings, even in the affidavit filed in support of the writ petition he did not demonstrate as to how any prejudice was caused to him owing to the lapse of five years. It is not his case that any particular witness or material evidence, which would have been helpful to his defence, was not available owing to the passage of time. In the absence of demonstrable prejudice, the delay of five years in itself cannot be said to be inordinate whereby the disciplinary proceedings would stand vitiated.

Significantly, in **GOVERNMENT OF ANDHRA PRADESH V/s. V.APPALASWAMY^[4]**, the Supreme Court held that disciplinary proceedings can be quashed where, by reason of the delay, the employer condoned the lapses on the part of the employee, or where the delay caused prejudice to the employee. According to the Supreme Court, such a case of prejudice has to be made out by the employee before the enquiry officer. In the present case, the respondent did not even raise an objection during the disciplinary proceedings as to any prejudice being caused to him, let alone demonstrating it.

We therefore concur with the learned Judge that the delay in the present case is not fatal.

As regards the second issue, it may be noticed that the procedure to be followed in disciplinary proceedings by the appellant organization is governed by the A.P.S.E.B. Employees Discipline and Appeal Regulations. Regulation 10 deals with the procedure for imposing penalties and Clause 2(a) thereof

states that in every case where it is proposed to impose on a member of a service any of the penalties specified in items (iv), (vi), (vii) and (viii) in Regulation 5, the authority competent to impose the penalty shall appoint an Enquiry Officer, who shall be superior in rank to the person on whom it is proposed to impose the penalty, or shall itself hold an enquiry either *suo motu* or on a direction from a higher authority. In every such case, the grounds on which it is proposed to take action shall be reduced to the form of definite charge or charges, which shall be communicated to the person charged, together with a statement of the allegations on which each charge is based and any other circumstance which is proposed to be taken into consideration while passing orders in the case. Dismissal from service is the punishment specified under Regulation 5(viii).

The aforestated provision does not spell out in clear terms as to who should frame the charge(s). The language therein appears to give discretion to the disciplinary authority to either frame the charge(s) or delegate the function to the enquiry officer, in the event such enquiry is not being held by the disciplinary authority itself. A Division Bench of this Court in **CH.APPALA REDDY²** interpreted this provision to mean that the disciplinary authority must appoint an enquiry officer only when it proposes to impose the penalty indicated in the clauses mentioned in Regulation 5 and such proposal to impose a penalty can emerge only after ascertaining the views or obtaining the explanation from the employee concerned. Reliance was placed on **STATE OF PUNJAB V/s. V.K.KHANNA^[5]** in this regard and it was held that appointment of an enquiry officer even before a show-cause notice or charge-sheet is served upon the employee is unknown to service jurisprudence.

The aforestated Division Bench judgment did not *per se* deal with the issue as to whether an enquiry officer can frame the charges instead of the disciplinary authority. It merely held to the effect that appointment of an enquiry officer must be preceded by at least a show-cause notice or charge-sheet. This judgment therefore does not lay down any *ratio* on the competence of an enquiry officer to frame charges instead of the disciplinary authority. Significantly, the learned Judge, who presided over the Division Bench which decided this case, also presided over the Larger Bench of five Judges in **K.SWARNA KUMARI V/s. GOVERNMENT OF ANDHRA PRADESH^[6]**.

Therein, it was held, upon construction of Rule 20(3) of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991, that the disciplinary authority may either draw up the articles of charge or cause them to be drawn up and that framing of charges by the enquiry officer would not vitiate the disciplinary proceedings. The Larger Bench also upheld the applicability of the prejudice doctrine in the context of disciplinary proceedings held in violation of the principles of natural justice or the rules.

We are therefore of the opinion that **CH.APPALA REDDY²** is not an authority on the validity of framing of charges by an enquiry officer instead of the disciplinary authority. Further, as already pointed out *supra*, Regulation 10(2)(a) is not absolute in this regard and is therefore amenable to the interpretation that framing of charges can also be undertaken by an enquiry officer instead of the disciplinary authority. The only *ratio* which flows from **CH.APPALA REDDY²** is that appointment of an enquiry officer by the disciplinary authority must be preceded by issuance of at least a show-cause notice to the employee. This aspect is not raised in the present case and therefore, this judgment is of no avail to the respondent.

In so far as the third issue is concerned, it is relevant to note that the dismissal order dated 23.12.2010 clearly mentioned that the respondent was provided with the remedy of appeal against the same before the Board of Directors of the appellant organization. Sri M.Pitchaiah, learned counsel, would however state that the Regulations do not speak of any such appeal being available to the respondent against the order of the Chairman & Managing Director of the organization, who was himself the prescribed appellate authority.

It is no doubt true that as per Annexure-I, Schedule-I, to the A.P.S.E.B. Employees Discipline and Appeal Regulations, which specifies the competent authorities to impose penalties, as against the post of Additional Assistant Engineer, the post held by the respondent, the competent authority to impose the penalty of dismissal from service is the Chief Engineer and the appellate authority is the Chairman & Managing Director of the organization.

However, Sri G.Vidya Sagar, learned senior counsel, would point out that the Northern Power Distribution Company of Andhra Pradesh Limited had issued revised regulations, amending the list of competent authorities, under N.O.O.(CGM-HRD) Ms.No.386 dated 18.03.2010, making the Chairman &

Managing Director of the organization the disciplinary authority in so far as an Additional Assistant Engineer is concerned. He would state that it was because of this amendment that the Chairman & Managing Director of the organization, the second appellant herein, passed the order of dismissal dated 23.12.2010 against the respondent. N.O.O.(CGM-HRD) Ms.No.386 dated 18.03.2010 does not indicate as to who is the appellate authority against such an order of dismissal passed by the Chairman & Managing Director. However, the original schedule of authorities in terms of Regulation 7(a) of the A.P.S.E.B. Employees Discipline and Appeal Regulations, relating to competent and appellate disciplinary authorities, clearly provides that as against an order passed by the Chairman & Managing Director an appeal would lie to the DISCOM Board. That is perhaps the reason why the dismissal order dated 23.12.2010 informed the respondent of his right of appeal to the Board. Learned senior counsel would also point out that under N.O.O.(CGM-HRD) Ms.No.189 dated 26.07.2011, the regulations were further revised clarifying beyond doubt that the disciplinary authority for the purpose of dismissal from service in so far as an Additional Assistant Engineer is concerned is the Chairman & Managing Director and against the order passed by him, an appeal would lie to the DISCOM Board. He would therefore assert that the dismissal order dated 23.12.2010 informing the respondent that an appeal was available to him before the DISCOM Board was valid and the finding of the learned Judge to the contrary, basing upon the unamended regulations, cannot be sustained.

The regulations placed on record support the submissions of the learned senior counsel in this regard. This being the situation, when the revised regulations posited that the Chairman & Managing Director of the organization would be the disciplinary authority for the purpose of dismissing the respondent from service and he was informed that the appellate authority against such an order would be the Board of Directors of the organization, he was not denied the remedy of appeal in effect. The learned Judge was perhaps not informed about the amended regulations on this aspect. In such a situation, the *ratio* laid down in ***M. KURMI NAIDU***³ would be attracted and the respondent cannot make out a case that he was denied the right of appeal. We are therefore of the opinion that the findings of the learned Judge on the second and third issues were not borne out either on facts or in law. As regards the finding on the first

issue, we have already indicated our concurrence with the learned Judge on this aspect.

On the aforestated analysis, we find that no relief could have been granted to the respondent on the obtaining facts and he should have been relegated to the remedy of appeal before the Board of Directors of the appellant organization. It is relevant to note that he was allowed three months to avail the said appellate remedy under the dismissal order dated 23.12.2010. He filed the subject writ petition in January, 2011, well within the time stipulated. That being so, he would still be at liberty to avail the appellate remedy and canvass the correctness of the dismissal order on facts and in law before the appellate authority.

We make it clear that we have not ventured into the merits of the charges leveled against the respondent or the findings thereon, which led to his ultimate dismissal from service. All issues are therefore left open to be considered by the appellate authority in the event the respondent chooses to avail the said remedy.

We therefore allow the writ appeal setting aside the order dated 22.09.2015 in W.P.No.1119 of 2011 and dismiss the writ petition. The respondent is however given liberty to avail the appellate remedy provided to him under the regulations, and in terms of the dismissal order dated 23.12.2010, in accordance with law. The appellate authority shall be mindful of the time consumed in pursuit of this litigation while determining the limitation for entertaining the appeal.

Pending miscellaneous petitions shall stand closed in the light of this final order. No order as to costs.

SANJAY KUMAR, J

DR. B.SIVA SANKARA RAO, J

15th JULY, 2016

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[\[1\]](#) 1990 (SUPP) SCC 738

[\[2\]](#) 2005 (3) ALD 525 (DB)

[\[3\]](#) (2006) 8 SCC 62

[\[4\]](#) (2007) 14 SCC 49

[\[5\]](#) AIR 2001 SC 343

[\[6\]](#) 2006 (2) ALD 585 (LB)