

THE HON'BLE SRI JUSTICE G.CHANDRAIAH

AND

THE HON'BLE SRI JUSTICE U.DURGA PRASAD RAO.

W.P.NOS. 1356 and 1366 OF 2016

COMMON ORDER (Per the Hon'ble Sri Justice G.Chandraiah)

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Heard the learned Government Pleader for Services-I for the State of Andhra Pradesh and the learned Senior Counsel Sri K.G.Krishna Murthy for the contesting respondent No.1 in both the writ petitions.

2. Since the issue involved in both the writ petitions is connected and arises out of the common order dated 28.10.2015 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad in O.A.Nos.6102 and 6103 of 2015, both the writ petitions are heard analogously and are being disposed of by this common order.

3. The contesting respondents in both the writ petitions have been working as Joint Sub Registrar - I and Sub Registrar Grade-II (Mv. & Audit), in Registration and Stamps Department. They were charged with tampering of official receipt and embezzlement of Government monies. Regular department enquiry was conducted and based on the report of the enquiry officer, the disciplinary authority i.e., the Deputy Inspector General of Registrations and Stamps Department – 1st respondent, before imposing punishment, through letters dated 30.12.2013 and 17.1.2014 submitted the proposals to the Government – 3rd respondent, for advice of the Vigilance Commission for concluding disciplinary proceedings. At that stage, challenging the said letter and the Government Memo No.23012/Vig-VI(1)/2012-6 dated 9.12.2013, which required the disciplinary authority to send the proposals to the Government for seeking advice of the Vigilance Commission, the 1st respondent in both the writ petitions, filed O.As. alleging that the disciplinary authority has to act independently and cannot seek the orders of the Government with regard to quantum of punishment to be imposed. The respondents also produced letter of the Government of Andhra Pradesh, Revenue (Vigilance-II) Department in Memo No.23012/Vig.II(2)/2012-9 dated 13.10.2015, where under, in respect of the respondent – Hari Prasad, the Government have agreed with the proposal sent by the Disciplinary authority. By the impugned common order, the

Tribunal considering Rule 21(4) and (5) of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (for short ' C.C.A. Rules') held that the disciplinary authority has to apply its mind independently based on the material and evidence produced in the case and as the disciplinary authority sought instructions about the penalty to be imposed, the same is *ex facie* illegal and accordingly set aside the said impugned letters and the memo dated 9.12.2013 and directed the disciplinary authority to consider all the material including the evidence produced during the enquiry and come to an independent decision on the penalty to be imposed under Rule 21(4) and (5) of C.C.A Rules. Aggrieved by the order of remand, the Government filed the present writ petitions.

4. The learned Government Pleader submitted that the applicants before the Tribunal challenged the letters, which are internal correspondence between the disciplinary authority and the Government and they cannot be challenged and therefore, O.As. are not maintainable. Referring to proviso to sub rule 5 of Rule 21 of CCA Rules, she submitted that the disciplinary authority has to take the advice of the Commission and such advice is required to be considered before imposing punishment on the Government servant. She stated that through the impugned letters, the disciplinary authority submitted the proposals to the Government for seeking the advice of the Vigilance Commission and the disciplinary authority passed the orders imposing the punishment of dismissal from services on the respondents, independently and hence the same cannot be found fault with. She submitted that as the O.As. were allowed at the admission stage, there was no sufficient opportunity to bring to the notice of the Tribunal and therefore, sought this court to set aside the impugned common order.

5. On the other hand, the learned Senior Counsel Sri K.G.Krishna Murthy appearing for the contesting respondents in both the writ petitions supporting the impugned common order submitted that the disciplinary authority has to act independently and it cannot seek the advice of the Government, which is the revisional authority under Rule 40 of C.C.A. Rules. He submitted that in the present case, the revisional authority agreed with the proposal sent by the disciplinary authority. He contended that if the revisional authority agrees with the disciplinary authority it would infringe upon the disciplinary authority's jurisdiction and would vitiate the proceedings. He stated that this would also be

amounting to revisional authority acting as a disciplinary authority and thereby denying the right of appeal and revision to the Government Servant. In support of his contention, the learned Senior Counsel relied on the judgment of the Apex Court reported in ***SURJIT GHOSH v. CHAIRMAN & MANAGING DIRECTOR***^[1]. The learned counsel submitted that under the Right to Information Act, such letters can be obtained and in the present case, the impugned letters are addressed based on a memo dated 9.12.2013, which is issued by the Principal Secretary to Government asking the disciplinary authority to refer the matter to Government for seeking the advice of the Andhra Pradesh Vigilance Commission in respect of both the charged officers and the Government agreed with the proposals sent by the disciplinary authority and as they are in the nature of affecting the rights of the applicants without opportunity, they are amenable to challenge. With these submissions, he sought to dismiss the writ petitions.

6. In the present case, the charges and the report of the enquiry officer are not under challenge and the only dispute is with regard to exercise of jurisdiction by the disciplinary authority while considering the report of the enquiry officer and in imposing appropriate punishment. The relevant rule under CCA Rules is sub rule 5 of Rule 21. For ready reference, the same is extracted as under:

Rule 21. Action in the inquiry report:--

(5) If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in clauses (vi) to (x) of Rule 9 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government servant.

7. In the present case, the disciplinary authority proposed to impose major penalty on the applicants. As per the proviso to sub rule 5 of Rule 21, the disciplinary authority sent the proposals to the Government for seeking the advice of the Vigilance Commission. Based on the advice of the Commission, the disciplinary authority, exercising the jurisdiction independently, has to pass orders, imposing appropriate penalty. The applicants produced memo

No.23012/Vig.II(2)/2012-9 dated 13.10.2015, in respect of one of the contesting respondents, where under the Special Chief Secretary to Government, Government of Andhra Pradesh Revenue (Vigilance-II) Department, intimated the disciplinary authority that Government agreed with the proposals of the disciplinary authority and asked the disciplinary authority to take action under intimation to Government. The copy of the said letter is also marked to the Vigilance Commission. The relevant portion of the order is extracted as under for ready reference:

**“GOVERNMENT OF ANDHRA PRADESH
REVENUE (VIGILANCE-II) DEPARTMENT**

Memo.No.23012/Vig.II(2)/2012-9

Dated:13.10.2015

Sub: Public Services – Registration & Stamps – disciplinary proceedings initiated against Sri M.Hari Prasad, Joint Sub Registrar-II and other, Registrar Office (Original Branch), Tirupathi, Chittoor District for Tampering of Government records and embezzlement of Government money – Regular enquiry conducted – Regular Enquiry Officer report submitted – Disciplinary Authority submitted proposals to seek the advice of A.P. Vigilance Commission – Government agreed with the proposals of the Disciplinary Authority – Regarding.

Ref: 1) From DIG, R & S, Chittoor, Lr.No.E/190/2012, dt. 17.1.2014;
From the C & IG R & S, A.P. Lr. No.X4/8492/2012 dt. 3.2.2014.

2)

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The attention of the Director & Inspector General, Registration & Stamps, A.P., Hyderabad / the Deputy Inspector General, Registration and Stamps, Chittoor is invited to the references cited and he is informed that Government after careful examination of the matter and after following due procedure, have agreed with the proposal of the Disciplinary Authority i.e, the Deputy Inspector General, Registration and Stamps, Chittoor to impose a punishment of Dismissal from service against Sri M.Hari Prasad, former I/C Joint Sub Registrar –II, Registrar Office (Original Branch), Tirupathi under Rule 9(x) of A.P.Civil Services (Classification, Control and Appeal) Rules, 1991.

The Deputy Inspector General, Registration and Stamps, Chittoor is requested to take immediate necessary action accordingly under intimation to Government.

AJEYA KALLAM

SPECIAL CHIEF SECRETARY TO GOVERNMENT”

8. A reading of the above proceedings would indicate that the Government agreed with the proposal of the disciplinary authority, though the impugned letter was sent to the Government for seeking the advice of the Vigilance Commission. The Government under Rule 40 is the Revisional Authority. If the Government Servant is aggrieved with the order of the disciplinary authority, his remedies are appeal and the revision. In the present case, the revisional authority agreed with the view of the disciplinary authority, and this act of the Government negated the remedy of the applicants. Therefore, this would amount to violation of principles of natural justice. The Apex Court in Surjit Ghosh case (supra), considering the facts and

circumstances therein where the appellate authority acted as disciplinary authority and imposed punishment, held that in departmental enquiries if the appellate authority acts as disciplinary authority, it amounts to discrimination and it also amounts to denial of right of appeal and also the review to the employee. The relevant facts and the conclusion of the Apex Court at paragraphs 5 and 6 is extracted as under:

5. Some grievances have been made by the appellant in the present appeal touching upon the illegalities in the conduct of the proceedings such as that (a) the disciplinary proceedings were initiated by an incompetent disciplinary authority in breach of Regulation 8(2)(iii) read with Regulation 3(g) of the Regulations; (b) the statement of witnesses recorded earlier were not supplied to him in breach of Regulation 8(10)(b)(iii) and (c) he was denied opportunity to explain circumstances appearing against him in evidence in breach of Regulation 6(17) of the Regulations. However, it is not necessary to go into the merits of the said grievances since we are of the view that one of the objections taken by the appellant to the dismissal, viz., that the appellant was deprived of an opportunity to prefer an appeal provided under the Regulations, goes to the root of the dismissal order. The undisputed facts relating to the said grievance of the appellant are that the disciplinary action was taken against him by the Deputy General Manager. As the Regulations stood then, the disciplinary authority for officers in Grades E, D, C and B (excepting Divisional Managers in Grade B) was the Divisional Manager/AGM (Personnel) and the appeal against their order lay to the Deputy General Manager or any other officer of the same rank. Against the order of the Deputy General Manager, the review lay to the General Manager. It is not disputed that the appellant was an officer in Grade D. Hence in his case, as per the said Regulations, the disciplinary authority was either the Divisional Manager or the AGM (Personnel) and if the action was taken by either of them, he had an opportunity to appeal to the Deputy General Manager or any other officer of the same rank, and thereafter he had a further right of review to the General Manager. However, since the action against him was taken by the Deputy General Manager although the Divisional Manager and AGM (Personnel) were available for taking the action, the appellant was denied the right of an appeal and also the right of a review which lay only against the appellate order. The impugned order of dismissal passed by the Bank, therefore, suffers from an inherent defect.

6. The respondent-Bank in its submission contended that although it is true that the Deputy General Manager had acted as the disciplinary authority when he was in fact named under the Regulations as an appellate authority, no prejudice is caused to the appellant because the Deputy General Manager is higher in rank than the disciplinary authority, viz., the Divisional Manager/AGM (Personnel). According to the Bank, it should be held that when the order of punishment is passed by a higher authority, no appeal is available under the Regulations as it is not necessary to provide for the same. It was also contended that there is no right to appeal unless it is provided under the Rules or Regulations. Although the argument looks attractive at first sight, its weakness lies in the fact that it tries to place the Rules/Regulations which provide no appeal on par with the Rules/Regulations where appeal is provided. It is true that when an authority higher than the disciplinary authority itself imposes the punishment, the order of punishment suffers from no illegality when no appeal is provided to such authority. However, when an appeal is provided to the higher authority concerned against the order of the disciplinary authority or of a lower authority and the higher authority passes an order of punishment, the employee concerned is deprived of the remedy of appeal which is a substantive right given to him by the Rules/Regulations. An employee cannot be deprived of his substantive right. What is further, when there is a provision of appeal against the order of the disciplinary authority and when the appellate or the higher authority against whose order there is no appeal, exercises the powers of the disciplinary authority in a given case, it results in discrimination against the employee concerned. This is particularly so when there are no guidelines in the Rules/Regulations as to when the higher authority or the appellate authority should exercise the powers of the disciplinary authority. The higher or appellate authority may choose to exercise the power of the disciplinary authority in some cases while not doing so in other cases. In such cases,

the right of the employee depends upon the choice of the higher/appellate authority which patently results in discrimination between an employee and employee. Surely, such a situation cannot savour of legality. Hence we are of the view that the contention advanced on behalf of the respondent-Bank that when an appellate authority chooses to exercise the power of disciplinary authority, it should be held that there is no right of appeal provided under the Regulations cannot be accepted.

9. From a reading of the above excerpts of the judgment of Apex Court it is clear that an employee cannot be deprived of substantive right of appeal and if the appellate authority or the higher authority against whose orders there is no appeal, exercises the powers of the disciplinary authority, it results in discrimination against the employee concerned. Therefore, in our considered view, the Government agreeing with the view of the disciplinary authority before imposing the punishment and asking the authority to impose punishment, amounts to discrimination, as it rendered the right of revision available under the statute futile. There is also no further remedy to the contesting respondents.

10. Further though the impugned letters are alleged to be internal correspondence, they are based on the Government memo dated 9.12.2013, which required the disciplinary authority to send the proposals to the Government for seeking advice of the Vigilance Commission and at that stage itself, Government agreed with the proposals sent by the disciplinary authority and this has affected the appellate and revisional remedies available to the applicants under the Statute and also infringed on the independent exercise of jurisdiction by the disciplinary authority. Therefore, we are of the view that they are amenable to jurisdiction of the Tribunal for considering their legality and the objection of the learned Government Pleader appearing for the writ petitioners in this regard, cannot be sustained.

11. The Tribunal after considering the entire material on record and hearing the learned Government Pleader for the Department and also the learned counsel for the applicants, had prima facie come to the conclusion that the disciplinary authority has not acted independently and therefore, remitted the matter for fresh consideration exercising the independent jurisdiction of the disciplinary authority. In these circumstances, the argument of the learned Government Pleader for the writ petitions, that O.As., were allowed at the stage of admission without opportunity, also cannot be sustained.

12. Having regard to the facts and circumstances, we do not find any

reason to interfere with the impugned common order of the Tribunal and the writ petitions are devoid of any merits and the same are dismissed at the stage of admission. No costs.

13. Miscellaneous petitions pending if any, shall stand closed.

G.CHANDRAIAH,J

U.DURGA PRASAD RAO,J

DATE:01--02—2016

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[\[1\]](#) (1995)2 SCC 474