

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION Nos.34848 & 40867 of 2016

COMMON ORDER:

Since the order impugned in both the Writ Petitions is one and the same, they are being disposed of by this common order.

2. Heard party-in-person and the Government Pleader for Services appearing for respondents.

3. Petitioner is a Deputy Executive Engineer against whom a charge memo was issued vide Memo No.Rc/ENC/H2/14171566/2014 dt.28.08.2015 by the 2nd respondent.

4. Annexure-III to the charge memo referred to a letter No.EE/PJP/DD1/AB/EC1/42, dt.02.08.2014 of the Executive Engineer, PJP Dam Division No.1, Revulapally and Annexure-IV mentioned among the list of witnesses, Executive Engineer, PJP Dam Division No.1, Revulapally.

5. Alleging that the Enquiry Authority i.e., the 1st respondent has permitted one G.Ravinder to be examined as a witness on behalf of the Presenting Officer who was not named as a witness in the charge memo, that he opposed examination of said witness, and that even the statement of the said witness was not furnished to him, petitioner has filed these Writ Petitions contending that there has been gross violation of principles of natural justice in the conduct of the

disciplinary enquiry and the departmental proceedings pursuant to the charge memo should be quashed.

6. The Government Pleader for Services appearing for respondents states that the said G.Ravinder, against whom the petitioner is making an allegation, was in fact mentioned by designation in Annexure-IV since he was the then Executive engineer, PJP Dam Division No.1, Revulapally and the author of the letter dt.02.08.2014 referred to in Annexure III and merely because he was not mentioned by name in Annexure-IV but by designation, the petitioner cannot claim any prejudice and seek to stall the disciplinary proceedings. He also contended that it is not for the charged officer to dictate to the employer as to which witness should be examined to prove the charges leveled, and at best the petitioner can only seek an opportunity to cross-examine the witness. He assures that the copy of the statement of the witness, G.Ravinder, will be furnished to the petitioner and the petitioner will be permitted to cross-examine the said witness within a period of two(02) weeks after furnishing of the copy of the statement of the said witness to the petitioner.

7. I find considerable force in the contention of the Government Pleader for Services.

8. Merely because the witness was not indicated by name in Annexure-IV to the Charge Memo and was shown only by

designation, petitioner cannot claim that he is a new witness, when it is not in dispute that it is the said G.Ravinder, who was the then Executive engineer, PJP Dam Division No.1, Revulapally, who was the author of the letter No.EE/PJP/DD1/AB/EC1/42, dt.02.08.2014, which is referred to in Annexure III to Charge Memo. At best, petitioner has only a right to cross-examine the said witness and he cannot dictate to the employer which witness the employer should examine to prove the charges leveled against him.

9. Therefore, I see no reason to quash the charge memo dt.28.08.2015 or the enquiry conducted pursuant thereto on the above grounds raised by the petitioner.

10. However, in the interest of justice, 1st respondent shall furnish to the petitioner the statement of the witness, G.Ravinder, within a period of one week from the date of receipt of a copy of this order and within two (02) weeks of the receipt of the statement of the said witness, the petitioner shall cross-examine the said witness, who shall be produced by the respondents to undergo cross-examination on a date fixed by the 1st respondent. In default of the petitioner cross-examining the said witness within the time aforesaid-mentioned after receiving the statement of the witness, it is open to the 1st respondent to proceed ex-parte.

11. The Writ Petitions are disposed of accordingly. There shall be no order as to costs.

12. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

09th December, 2016

Note: Issue C.C. in three (03) days.

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