***IN THE HIGH COURT OF JUDICATURE AT HYDERABAD FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

***THE HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

**and**

***THE HON'BLE SRI JUSTICE M. GANGA RAO**

**+Writ Petition No.11892 of 2014**

Between:

#K. R. Suryanarayana, S/o late KVN Sharma,
Aged about 47 years, Senior Assistant, Office of
Commissioner for Commercial Taxes, M.J. Road,
Nampally, Hyderabad, resident of Flat No.302,
RQ Residency, Door No.8-3-169/27-28,
Siddharatha Nagar, Hyderabad.

… Petitioner

Vs.

#The Commissioner of Commercial Taxes,
Government of Andhra Pradesh, Nampally,
Hyderabad and 2 others

.. Respondents

! Counsel for the Petitioner : Mr. O. Manohar Reddy,

^ Counsel for the respondents : G.P. for Services-I (AP)

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? Cases referred:

**HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN**

**AND**

**HON'BLE SRI JUSTICE M. GANGA RAO**

**Writ Petition No.11892 of 2014**

**ORDER:** ***(V. Ramasubramanian, J)***

Aggrieved by the dismissal of his Original Application by the Andhra Pradesh Administrative Tribunal, challenging an order of penalty, the petitioner working as a Senior Assistant in the Department of Commercial Taxes, has come up with the above writ petition.

2. Heard Mr. O. Manohar Reddy, learned counsel appearing on behalf of the learned counsel for the petitioner and the learned Government Pleader for Services (A.P.).

3. The petitioner was appointed as a Junior Assistant on 14-02-1985 on compassionate grounds. He was later promoted as Senior Assistant on 30-04-1994. He was subsequently transferred to the Head Office in the year 1996.

4. While the petitioner was working as Senior Assistant in the Head Office, a pseudonymous complaint dated 24-09-2003 was received to the effect that the petitioner claimed to have passed the departmental test in Local Audit Fund, with a bogus certificate. On the basis of the said complaint, the Secretary to the Commercial Taxes was appointed as the Enquiry Officer by the proceedings dated 13-10-2003. By the said memo the Enquiry Officer himself was directed to frame charges.

5. Accordingly, a charge memo was issued on 16-01-2004 and an enquiry followed. The Enquiry Officer submitted a report on 11-08-2004. It was a very peculiar report whereby the Enquiry Officer fixed responsibility both on the petitioner and another employee for a wrong entry made in the Service Register of the petitioner as though he had passed the departmental tests. Even while holding so, the Enquiry Officer recommended for necessary disciplinary action to be taken against both of them on the ground that both of them were jointly responsible for the fraudulent entry made in the Service Register.

6. Therefore, another enquiry followed in July, 2006 and the second Enquiry Officer submitted a report on 13-03-2008.

7. Enclosing a copy of the enquiry report dated 13-03-2008, the Commissioner of Commercial Taxes sent a communication dated 10-04-2008 calling upon the petitioner to submit his further representation.

8. After the petitioner submitted his further representation, the Commissioner of Commercial Tax passed a final year imposing the penalty of stoppage of four increments with cumulative effect upon the petitioner.

9. After more than two years of the said order, the petitioner filed two Original Applications in O.A.No.9361 and 9364 of 2012 on the file of the Andhra Pradesh Administrative Tribunal. His prayer in the first Original Application was to consider his case for promotion to the post of Superintendent, without reference to the departmental proceedings initiated under memo dated 18-12-2007. The relief

sought in the second Original Application was to set aside the order of penalty dated 10-12-2009. By a final order dated 22-07-2013, the Tribunal dismissed both the Original Applications. Thereafter, the petitioner filed two applications for review in Rev.M.A.No.3147 and 3252 of 2013. Both the Review Applications were dismissed by the Tribunal by an order dated 31-12-2013.

8. Aggrieved by the dismissal of only one Original Application and the Review Application thereon, the petitioner has come up with the above writ petition. The present writ petition, to be precise, arises out of the dismissal of O.A.No.9364 of 2012 and Review M.A.No. 3258 of 2013. They relate to the penalty of the stoppage of four increments with cumulative effect.

9. In other words, the petitioner has not chosen to challenge the rejection of his claim promotion to the post of Superintendent made in O.A.No.9361 of 2012. Hence, we are now concerned in this writ petition only with the disciplinary proceedings that culminated in an order of penalty of stoppage of four increments with cumulative effect.

10. The main grounds on which Mr. O. Manohar Reddy, learned counsel for the petitioner, assailed the order of penalty before the Tribunal and before this Court are:

(1) that the appointment of the Enquiry Officer even before the framing of the charges and allowing the Enquiry Officer himself to frame charges is contrary to Rule 20 of the Andhra Pradesh Civil Services (Conduct, Classification and Appeal) Rules;

(2) that after the Enquiry Officer originally appointed, submitted a report without recording any finding of guilt on the charges, there was no question of appointing another Enquiry Officer;

(3) that the findings of the Enquiry Officer were perverse in as much as the person on whose evidence the petitioner was found guilty, made three different statements at three different points of time; and

(4) that in the light of the admitted fact that the petitioner would not stand to benefit by having a false entry in his Service Register as though he had passed the departmental tests, a penalty of stoppage of four increments with cumulative effect was not warranted at all.

11. On the first contention, it is true that a charge memo should normally precede the appointment of an Enquiry Officer. The Scheme of Rule 20 of the Andhra Pradesh Civil Services (CCA) Rules, contemplate a series of steps in the procedure for imposing major penalties. Under sub-rule (2) of Rule 20, the disciplinary authority, if he is of the opinion that there are grounds for enquiring into the truth of any imputation of misconduct against a Government servant, he may himself enquire into it or appoint an authority to enquire into it. But the moment it is proposed by the disciplinary authority to hold an enquiry, the disciplinary authority, either by himself or by an authority subordinate to the appointing authority should have definite articles of charge drawn up against the delinquent. This is under sub-rule (3). Sub-rules (4) and (5)

contemplate a procedure for service of the articles of charges and the filing of a written statement of defence by the delinquent. It is only thereafter that the disciplinary authority should, under sub-rule (7), forward the entire records to the enquiring authority to enable him to commence the enquiry.

12. But in this case, the disciplinary authority, namely the Commissioner of Commercial Taxes, by his proceedings dated 13-10-2003, appointed an Enquiry Officer and directed the Enquiry Officer to frame charges. Therefore, the contention of the learned counsel for the petitioner is that the procedure followed by the respondents was not in tune under Rule 20.

13. But a careful look at Rule 20 (3) would show that two different authorities are empowered under sub-rule (3) to do any one of the two things mentioned therein. The two different authorities mentioned in sub-rule (3) are (i) the disciplinary authority and (ii) the Controlling authority, who is not designated as the disciplinary authority and who is subordinate to the appointing authority.

14. The two things that the aforesaid two authorities are empowered to do under sub-rule (3) are (i) to draw up or (ii) cause to be drawn up definite articles of charges. ***The words found in sub-rule (3) are "draw up or cause to be drawn up"***.

15. Therefore, the Disciplinary Authority or the Controlling authority named under sub-rule (3) is empowered either to draw up the articles of charges by himself or to have the articles of charges drawn up. It necessarily means that it can be drawn up by some one else.

16. Therefore, there was nothing wrong in the Commissioner of Commercial Taxes authorizing the Secretary to frame charges.

17. The only mistake committed in this case is in the sequence of events. It would have been better if the appointment of the Enquiry Officer followed the framing of the charges. But the mere violation of the sequence in which things ought to have been done, would not vitiate the enquiry. This is due to two reasons viz., (a) that no prejudice has been caused to the petitioner; and (b) that in any case the disciplinary authority have the power under sub-rule (3) to have the charges drawn up by someone else. Hence, the first contention was rightly rejected by the Tribunal.

18. The second contention of the learned counsel for the petitioner is that the first Enquiry Officer submitted a report without recording a positive finding as to whether the charges were proved against the petitioner or not. Therefore, the only thing that the disciplinary authority could have been done is to accept the report and drop further proceedings or to take a different view after issuing a show cause notice. Instead, another Enquiry Officer was appointed and he proceeded with the enquiry. This, it is contended by the learned counsel for the petitioner, is contrary to law.

19. It is seen from the enquiry report dated 11-08-2004 submitted by the first Enquiry Officer that was undertaken by the first Enquiry Officer was a full pledged enquiry. In the enquiry, two persons by name J.V. Chalapathi Rao and M. Koteswara Rao were examined apart from the writ petitioner. It became an obvious and an admitted fact that the entry regarding the pass in the departmental

test was not made by the petitioner himself in his Service Register. But the fact that there was an entry found in the Service Register was quite clear.

20. It also became evident in the course of the enquiry that a pass in the Local Audit departmental test was not necessary for the petitioner to gain promotion to the next higher post of Superintendent, though it was necessary for further higher promotion to the post of ACTO. But in the year 2003, the Rules got amended making him ineligible for the post of ACTO.

21. Therefore, it was recorded in the enquiry report dated 11-08-2004 (a) that the petitioner did not make the enquiry and (b) that he would not have stood to any benefit in the immediate future by the said entry.

22. Mr. M. Koteswara Rao, who was working as Junior Assistant at that time admittedly made the entry. But he deposed that he did not remember the person at whose instance, the entry was made. He said that he would have written the entry either at the behest of the Head Clerk Mr. J.V. Chalapathi Rao or at the behest of the writ petitioner herein.

23. In the light of the above, the Enquiry Officer, in his report dated 14-06-2004 recorded his conclusions as follows:

> "CONCLUSION:
>
> **Responsibility of C.T.O:** The then CTO Sri K. Suryanarayana cannot be found fault with for the pass entry as the forensic department concluded that it was not his signature which confirms to the veracity of his statement.
>
> **Responsibility of Head Assistant:** Since the forensic expert could not confirm whether the side initial for the entry was that of Sri Chalapathi Rao, the then H.A., or not, and since the individual had denied it as his

side-initial, he cannot be found fault with directly for the said pass entry. However, his responsibility is there to a limited extent (a) How was the entry made in the S.R., which was under his safe custody and (b) Had he taken a little care while side initialing subsequent entries in the S.R., of the D.O., the fraudulent entry could have been detected then and there and appropriate and timely action could have been immediately thereafter.

**Responsibility of Sri M. Koteswara Rao, Jr. Asst. and responsibility of Sri K.R. Suryanarayana, D.O.:** It is confirmed that the entry is made by Sri Koteswara Rao with his own Hall ticket number in the S.R. of Sri K.R. Suryanayrana, the D.O. According to his own deposition, he made it at the request of Sri K.R. Suryanarayana. Since Suryanarayana would be the only beneficiary from the pass entry, the statement of Sri Koteswara Rao derives definite credibility. Therefore, **considering the overall circumstantial evidence as aforesaid, it is concluded that Sri Suryanarayana had get the entry made into his S.R. through Sri Koteswara Rao for his future benefit and therefore, both employees have to be held responsible for the fraudulent entry. Sri Koteswara Rao cannot escape responsibility as he entered his own Registered Number with which he passed the exam in another employee's S.R.**

However, the entry is made subsequent to the D.Os promotion as Sr. Asst. and is also not a prerequisite for such a promotion and therefore, he the D.O., had not derived benefit of promotion through the fraudulent pass entry so far. However, the pass entry would have benefited at the time of future promotion as ACTO.

I, therefore, recommend that necessary disciplinary action be taken against the D.O., Sri K.R. Suryanarayana and also against Sri Koteswara Rao, who are jointly responsible for the fraudulent pass entry in the S.R. of the delinquent, as per rules, in the light of the above findings."

24. The conclusion reached by the first Enquiry Officer, which we have extracted above, shows that the Enquiry Officer came to the positive conclusion that the petitioner as well as Koteswara Rao were responsible. But instead of closing the report with an observation that the charge was proved, the Enquiry Officer went on a tangent as seen from the above extract.

25. When this enquiry report dated 11-06-2004 was furnished to the petitioner with a direction to submit his further representations,

he made a representation dated 03-09-2004 claiming that he did not have the opportunity to cross-examine the witness. This necessitated the disciplinary authority to ask another Enquiry Officer to summon the witness Mr. M. Koteswara Rao, for the purpose of cross-examination by the petitioner. The second Enquiry Officer permitted the petitioner to cross-examine M. Koteswara Rao and thereafter gave a brief two pages report dated 13-02-2008 confirming the findings recorded in the first Enquiry Report.

26. It is true that technically the disciplinary authority could have accepted the report of the first Enquiry Officer and proceeded further. But a second Enquiry Officer was appointed for the limited purpose of enabling the petitioner to cross-examine the witness M. Koteswara Rao. The petitioner accepted the appointment of the second Enquiry Officer, had the witness summoned and also cross-examined him. Therefore, it is not now open to him to question the appointment of the second Enquiry Officer, as the same was done only to benefit him.

27. The second Enquiry Officer was also not obliged to give a detailed report, since the original report found the petitioner guilty and no material came out of the cross-examination of Koteswara Rao to take a different view. Hence, the second contention of the petitioner cannot also be accepted.

28. The third contention is that the findings of the Enquiry Officers' were perverse, in that the witness made three different statements at three different points of time.

29. It is true that Mr. M. Koteswara Rao made different statements at different points of time. This is the reason why the first Enquiry Officer fixed the responsibility even upon him and recommended disciplinary action against him. The discrepancies in the statements of M. Koteswara Rao have been analyzed by the Enquiry Officer. Once the discrepancies are noted and thereafter the Enquiry Officer comes to a particular conclusion, then there is no question of perversity of findings. Therefore, the third ground is also to be rejected.

30. As a matter of fact, the disciplinary authority, in his final order dated 10-12-2009 had specifically dealt with this aspect. The relevant portion of the order of the disciplinary authority reads as follows:

> "A single charge was framed against the individual which was that he did not pass Local Fund Audit Test Paper-IV but obtained entry in his SR fraudulently by forging the signature of the DCTO for his personal gain. The enquiry was conducted as per due procedure and based on the report of the Forensic Lab, it is confirmed that the signature of the DCTO was forged but who did this was not established conclusively and definitely. No definite opinion was given on the initial of Sri Chalapathi Rao, Sr. Asst. also. The main basis of the conclusion of the enquiry report was the deposition of Sri M. Koteswara Rao, Sr. Asst who mentioned that he made the entry on the request of Sri Chalapathi Rao and Sri K. R. Suryanarayana in the first instance and alter said he made the entry on the request of Sri K.R. Suryanarayana only and again changed his stand and later in the statement recorded in August 2006, he stated that he had made the entry on the request of Sri Chalapathi Rao and Sri K.R. Suryanarayana. He also recognized the side initials as that of Sri Chalapathi Rao. Therefore, it is clear that the Junior Assistant recognized the initials of Sri Chalapathi Rao whereas Chalapathi Rao denied it and the Forensic Experts not confirming, the Enquiry Officer concluded that the responsibility of Sri Chalapathi Rao, Sr. Asst. is fixed to a limited extent i.e. he should have kept the SR in safe custody and when he made subsequent entries he could have noticed the fraudulent entry in SR."

31. In the light of the above, it can hardly be said that the enquiry report and the final order are vitiated by perversity.

32. The fourth ground of attack revolves around the fact that the petitioner did not stand to benefit by the entry made in his Service Register. But this is a point duly taken note by the disciplinary authority, to impose the penalty in question. In the penultimate paragraph, the disciplinary authority took note of this fact. The relevant portion of the final order of the disciplinary authority reads as follows:

> """Therefore, since Sri K.R. Suryanarayana through his cross-examination did not establish the falsehood of the deposition of Sri M. Koteswara Rao. The case has to be based on the deposition of Sri M. Koteswara Rao only which leads to the culpability of Sri K.R. Suryanarayana and therefore he has to be punished accordingly. Considering the fact that it is a circumstantial evidence and that he did not obtained any undue benefit out of this SR entry, but would have derived benefit only in future for promotion as ACTO and the forgery is not established definitely, the ends of justice would be met by imposing a major penalty."

33. One more fact, which the A.P. Administrative Tribunal, put against the petitioner was that though the order of penalty was passed on 10-12-2009, the petitioner chose to challenge the same only in the year 2012. The petitioner contended before the Tribunal that the order of penalty was not communicated to him. But the Tribunal pointed out in para-19 of its judgment that the order of penalty dated 10-12-2009 was communicated by the registered post on 01-01-2010. The Tribunal also reasoned that from January, 2010, the petitioner would not have received his actual increments because of the order of penalty. Therefore, there is no way the petitioner could plead ignorance about the final order till the year

2012. If so viewed, the challenge of the petitioner in the year 2012, to the order of penalty dated 10-12-2009, was also barred by limitation.

34. Therefore, taking into account all the above, we are of the considered view that the judgment of the Tribunal does not warrant interference. Hence, the writ petition is dismissed.

As a sequel thereto, miscellaneous petitions, if any, pending shall stand closed.

**V. RAMASUBRAMANIAN, J**

**M. GANGA RAO, J**

Date: 05-12-2017

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