

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No.9751 of 2010

Date: 05.12.2017

Between :

M.Simhadri Raju s/o. M.Surayanrayana Raju,
Aged 65 years, occu: Retd. Chief Engineer (Electrical),
A.P.E.P.D.C.L./AP Transco, R/o.H.no.55-14-20,
APSEB Colony, Seethammadhara, Visakhapatnam.

.... Petitioner

And

The Chairman & Managing Director, AP Transco,
Vidyut Soudha, Hyderabad and others.

.... Respondents



The Court made the following:

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ORDER:

Petitioner retired from service on attaining the age of superannuation as Chief Engineer (Electrical) in A.P.Transco on 31.08.2002. It appears in the year 2001, Vigilance enquiry pointed out involvement of 11 Officers including the petitioner in purchasing certain items required by the employer at far higher than the market rates. Thereafter, the committee was constituted to verify the difference in price and reasonableness of the rates on the purchase order. Having found that the rates as indicated in the purchase order are far in excess from the market rate, disciplinary action was initiated appointing the then Director (Projects) of AP Transco as Enquiry Officer by order dated 28.6.2003 against all 11 Officers including the petitioner. The disciplinary proceedings resulted in imposing punishment of 10% cut in pension and recovery of proportionate loss caused to the employer i.e., 1,47,887.38 Ps., by order dated 09.08.2008. Aggrieved by the said order of the disciplinary authority, petitioner preferred appeal on 22.11.2008 before the Board of the respondent Corporation. The appeal was rejected and communicated to the petitioner vide Memo dated 26.03.2010. This Memo is under challenge in this writ petition. The relevant facts as noted above, are not in dispute.

2. The disciplinary proceedings are challenged on the ground that disciplinary proceedings ought not to have been initiated against retired employee, more particularly after one year of retirement. The disciplinary authority has not considered the

explanation offered by the petitioner and mechanically passed the order awarding the punishment. Learned counsel for petitioner made elaborate submissions on merits, with reference to evolution of the evidence by the disciplinary authority, findings recorded by the disciplinary authority on the allegations made and the decision of the disciplinary authority in imposing the punishment. He has primarily contended that against the order of disciplinary authority, appeal lies to the Board, whereas, the appeal preferred by the petitioner was considered by the very same authority and on that ground alone the punishment is liable to be set aside. In support of said contention, reliance is placed on the decision of this Court in W.P.No.8130 of 2010 dated 19.4.2010.

3. In W.P.No.8130 of 2010, one of the contentions urged before this Court was that the same authority, who imposed penalty, also considered the appeal and passed orders on the appeal filed by the petitioner and on that ground alone the disciplinary proceedings are vitiated. Sri V.Venkateswar Rao, petitioner therein, is also implicated on the same allegations as petitioner in the present petition. Learned counsel for respondents submitted that the same authority passed orders in the appeal. Having regard to the said submission, the order of the appellate authority was set aside with direction to 1st respondent to dispose of the appeal preferred by the petitioner on 08.12.2008 afresh.

4. In the instant case, it was contended on behalf of the respondents that the decision was actually taken by the Board of Directors, but the same was communicated by the Joint Managing Director.

5. Having regard to these submissions, original records concerning decision on the appeal preferred by the petitioner were called. Record is produced.

6. A bare perusal of the record would disclose that it is a running file dealing with disciplinary actions against the petitioner and other officers and at various stages. In the consideration of disciplinary proceedings, the file has been in circulation to hierarchy of Officers, i.e., Director/Vigilance, Chief General Manager, Joint Managing Director and Chairman and Managing Director, as the case may be and their approval was sought on the proposals made by the Office at every stage. File was circulated in the similar manner, even when the punishment was imposed initially and on appeal. It thus appears from the record, the matter was not considered by the Board of Directors, but appeal was also similarly processed by the Office as was done at various stages of disciplinary action and on the note put up by the Office, file was circulated to various authorities and after obtaining signatures of the authorities, leading up to CMD, the order was communicated by the Joint Managing Director. In order words, the appeal was not considered by the Board of Directors as required. Thus, the view taken by this Court in W.P.No.8130 of 2010 applies to the present case also and no material is shown to this Court to take a different view.

7. Writ petition is liable to be allowed on the ground that appeal is not considered by the appellate authority and the order in the appeal preferred by the petitioner is liable to be set aside on that ground alone. Learned standing counsel sought to remand the

matter for decision by the Board on the appeal preferred by petitioner.

8. On instructions, learned standing counsel submits that consequent to the setting aside the order by this Court, allowing W.P.No.8130 of 2010, the punishment imposed was not enforced. He also submits that no further decision is taken by the appellate authority even though the Court granted liberty to take a decision and the matter stands at the same stage.

9. It seen that W.P.No.8130 of 2010 was allowed on 19.04.2010, by granting liberty to take a decision on appeal, but so far no decision is taken. It is more than 7½ years from the date of disposal of the said writ petition. In the instant case, disciplinary action pertains to the period before 2001 and petitioner retired from service, on attaining the age of superannuation, on 31.08.2002. Thus, the issue relates to more than 16 years. Having regard to these facts, this Court is not inclined to remit the matter for consideration by the appellate authority afresh. Writ petition is allowed accordingly and the respondents are directed to grant all the benefits as payable to the petitioner.

Miscellaneous petitions if any pending shall stand closed.
There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

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TvK/kkm

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