

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

W.P.No.679 OF 2009

ORDER

Heard learned counsel appearing for the petitioner and learned Standing Counsel appearing for the respondent-Company.

The petitioner was appointed on 17.07.1989 in the erstwhile APSEB and consequent upon formation of DISCOMs, he opted to work in the 1st respondent-Company. However, based on the news published in the newspaper on 15.05.2001, a preliminary enquiry was conducted by the Inspector of Police, Vigilance & APTS, Srikakulam, who submitted a report on 23.09.2002. Based on the said report, the petitioner was kept under suspension with effect from 30.4.2003. An enquiry officer was appointed on 17.5.2003 and he framed five charges *vide* proceedings dated 13.6.2003. The petitioner submitted his explanation on 25.6.2003. The enquiry officer submitted a report dated 31.10.2003 stating that four charges framed against the petitioner were proved,

and the petitioner was asked to submit his explanation *vide* Memo dated 4.12.2003, for which, he submitted his explanation on 16.12.2003. Being not satisfied with the explanation submitted by the petitioner, the 2nd respondent issued a Memo on 17.12.2004 imposing punishment of stoppage of two increments without cumulative effect besides treating the period of suspension as 'EOL' limiting the salary and emoluments already drawn during the suspension period. Aggrieved by the same, the petitioner preferred an appeal before the 1st respondent on 10.8.2008, and the same was rejected on 21.10.2008 on the ground that it was time barred. Challenging the order passed by the appellate authority and that of the 2nd respondent imposing the punishment, the present writ petition was filed.

Learned Standing Counsel, by filing a copy of the enquiry report, drew attention of this Court to the procedure followed during the process of enquiry and submitted that in the absence of any procedural irregularity, when a finding was recorded on the basis of the evidence available on

record, the impugned order does not warrant any interference.

Learned counsel appearing for the petitioner, on the other hand, submitted that the alleged complainants spoke in favour of the petitioner and in spite of the same, the charges were held proved without any material on record, and hence, the enquiry report and the consequential punishment, is bad in law.

I have carefully perused the enquiry report and the charges levelled against the petitioner, which are as follows:

“Charges framed against Sri M.B.Suresh Kumar,
Ex.Assistant Divisional Engineer/Peration/
Sompeta:

CHARGE-I:

Sri M.B.Suresh Kumar, Ex. Assistant Divisional Engineer/Operation/Sompeta demanded Rs.5,000/- when Sri T.Tata Rao of Mamidipalli Village, who approached him along with Sri S.Lokanadham, Private Electrician, regarding extending supply to his house with 2 poles. The consumer has paid Rs.3,000/- and Rs.2,000/- to the Assistant Divisional Engineer/Sompeta in 2 instalments during 6/01. The Assistant Divisional Engineer informed that he will give the poles and materials and asked the consumer to arrange laying of line. Accordingly, the Assistant

Divisional Engineer has given the materials at Sompeta for the work and the consumer got the work done through Private Electrician. Smt T.Hymavathi w/o Tata Rao stated in corroboration with Sri Tata Rao. The service to the consumer was released with SC No.377.

The Assistant Divisional Engineer has sanctioned the estimate for the above work vide Dr.No.83/01-02 and paid Rs.3850/- on 16.8.01. Thus the Delinquent has demanded and collected Rs.5,000/- from the Consumer, paid Rs.3850/- to the company account and mis-appropriated the balance amount of Rs.1150/- duly cheating the consumer.

CHARGE-II

Sri M.B.Suresh Kumar, Ex.Assistant Divisional Engineer/Operation/Sompeta has demanded Rs.4000/- when Sri G.Rama Rao of Mamidipalli Village approached him for laying of poles in his house at Mamidipalli along with Sri S.Trinadh and Sri S.Lokanadham. After the Consumer has paid Rs.4,000/- to the Assistant Divisional Engineer the poles and materials were issued to the Consumer at Sompeta, who gotS.Lokanadham, Private Electrician. Sri S.Lokanadham Private Electrician stated that he has erected the poles as instructed by the Assistant Divisional Engineer. The Assistant Divisional Engineer/Sompeta informed that 2 poles are available at the house of Sri G.Rama Rao, but record was not available in the office.

Thus, the Assistant Divisional Engineer has demanded and accepted Rs.4,000/- unauthorisedly

issued poles to the consumer and got them erected through Private Electrician duly misappropriating the amount given by Consumer causing loss to the company.

CHARGE-III

Sri M.B.Suresh Kumar, Ex.Assistant Divisional Engineer/Operation/Sompeta has demanded and accepted Rs.2,000/- as bribe from Sri K.Mohana Rao for releasing supply to their Mineral Water Plant/Sri Jagannadh Industries at Pedapadmapuram Village in Miliyaputhi Mandal. The consumer in his statement expressed fear that any harm would be done by the Assistant Divisional Engineer as he gave statement against him. The application for the service was registered, the estimate was sanctioned by the Assistant Divisional Engineer vide ADR.No.50/2K-01, the consumer has paid necessary charges on work order was also issued by the Assistant Divisional Engineer. The Assistant Divisional Engineer got the work executed by Private Worker and the consumer paid Rs.1,000/- to him.

Thus the Assistant Divisional Engineer has demanded and accepted bribe of Rs.2,000/- from consumer for extending supply and also got the work executed by Private Electrician due to which the consumer has spent Rs.1,000/- extra.

CHARGE-IV

Sri M.B.Suresh Kumar, Ex.Assistant Divisional Engineer/Operation/Sompeta has taken away the 3 IIP pump-set of Sri U.Papa Rao of Tallabhadra Village in his jeep when the consumer is not available in house and kept it in his office. The Assistant

Divisional Engineer has not returned the pump-set when Sri V.Madhava Rao of Tallabhadra went to his office on the same day and requested for returning the motor. The pump set was returned after the Sarpanch of the Village and MLA/Sompeta interfered.

Thus the Assistant Divisional Engineer has acted high handily and acted beyond the rules stipulated resulting in unnecessary inconvenience to Sri V.Papa Rao.

CHARGE-V

Sri M.B.Suresh Kumar, Ex.Assistant Divisional Engineer/Operation/Sompeta has sent telegram dt.18.11.99 to Divisional Engineer/Operation/Tekkali that paid vouchers of Rs.2.5 lakhs of special temporary advance for rectification of cyclone damager were stole away. The Assistant Divisional Engineer also lodged police complaint on 19.11.99. The Assistant Divisional Engineer has sent another telegram to Divisional Engineer stating that the missing vouchers were traced out. The Assistant Divisional Engineer has submitted the closed temporary advance on 30.12.99 to Division Office.

The above establishes the negligence on the part of the Assistant Divisional Engineer towards important financial matters and the gross negligence resulted in financial irregularity. The submission of the vouchers traced on 20.11.99 to the Division Office on 30.12.99 establishes that the tracing out of vouchers is only an after thought to avert disciplinary action and the vouchers were fabricated subsequently by the delinquent.

CHARGE-VI

Sri M.B.Suresh Kumar, Ex.Assistant Divisional Engineer/Operation/Sompeta has failed in discharging his duties and failed in exercising proper control over his subordinate staff due to which the 6 Nos Transformers sanctioned in 2000-01 in Sompeta Section were executed after delay of more than 1 year. The Assistant Divisional Engineer has allowed for execution of the works without drawl of major materials by mis-utilising the materials drawn for other works violating the rules. The Assistant Divisional Engineer also allowed the Assistant Engineer to execute the works on lapsed Work Orders without obtaining balance Work Orders as per rules. He also failed in ensuring that the bill for labour was claimed after completion of work. Also the Additional Assistant Engineer/Kaviti has exerted 11 No's works after delay of more than 1 year intentionally. The works were also got executed by the villagers instead of through department. The Assistant Divisional Engineer also allowed the Additional Assistant Engineer to execute the works on lapsed Work Orders without obtaining balance Work Order violating the rules. All the above works are Consumer interested and profit oriented works to the company. The negligence of the Assistant Divisional Engineer has resulted in delayed execution of the works in Sub-Division.

Thus the Assistant Divisional Engineer has failed to exercise efficient control and supervision on his subordinate staff resulting in general inefficiency in his Sub-Division.”

Out of the above charges, only charge No.2 was not proved and charge No.5 was held partly proved. It is well established that in departmental enquiries even if a single charge is proved, the disciplinary authority is empowered to impose appropriate punishment.

A perusal of the above charges clearly shows that the allegations relate to demand of money from the consumers and in such circumstances, there may not be any direct eye witnesses. The enquiry officer submitted a report containing 35 pages clearly giving the details, the questions put to the witnesses, and the answers furnished by them, based on which, he gave his opinion. A perusal of the enquiry report does not show that it is a perverse one. This Court cannot sit in appeal over the findings recorded by the enquiry officer, which are based on evidence.

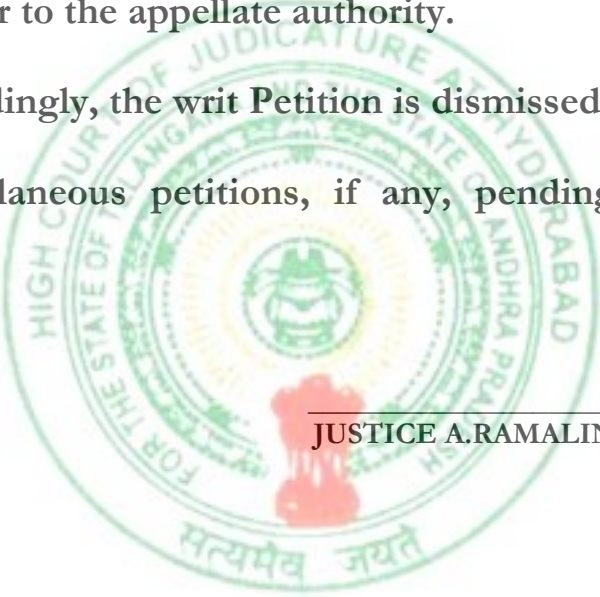
In the circumstances, this Court is not inclined to interfere with the punishment imposed against the petitioner, order of the 2nd respondent dated 17.12.2004 and dismissal of the appeal by the 1st respondent on the ground that the

appeal was time barred. Though the appeal should have been filed within three months, no plausible explanation was submitted by the petitioner for its delayed submission.

In view of the same, this Court has no alternative except to confirm the order of the appellate authority despite the request of the learned counsel for the petitioner for remand of the matter to the appellate authority.

Accordingly, the writ Petition is dismissed. No costs.

Miscellaneous petitions, if any, pending shall stand closed.



JUSTICE A.RAMALINGESWARA RAO

26th July, 2017
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