

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.23971 of 2010

Date: 13.06.2017

Between:

K.Bhaskar Rao S/o late Yasaiah, Aged 39 years,
LDC in AP GENCO, r/o. D.No.8-2-90/1,
Sanjeevaiah Colony, Gattayigudem,
New Paloncha, Khammam District and another.

.....Petitioners

and

The Andhra Pradesh Power General Corporation
Limited, Vidyuth Soudha, Hyderabad, rep.by its
Managing Director and others.

.....Respondents



The Court made the following:

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ORDER:

Alleging that by making false claim that petitioner was adopted by ex-employee, he secured employment on compassionate grounds as dependent of ex-employee, petitioner was dismissed from service by order dated 17.10.2008, impugned in this writ petition.

2. Late K.Yasaiah was an employee of Andhra Pradesh Power Generation Corporation Limited [presently Telangana State Power Generation Corporation (TS GENCO)]. He died on 21.12.1995. First petitioner applied for providing employment on compassionate grounds claiming as dependent of ex-employee. He claimed that he was adopted by late K.Yesaiah on 12.02.1985 by observing customs of the community. It appears, since there was no registered adoption deed showing adoption of the 1st petitioner as son by late ex-employee, petitioner was asked to secure appropriate documents in support of his claim. Petitioner instituted O.S.No.103 of 1996 in the Court of Principal District Munsif, Kothagudem, Khammam District arraying wife of late ex-employee – 2nd petitioner herein, as sole defendant. The defendant did not enter appearance and not opposed the claim and suit was decreed *ex parte*. Based on the decree of the civil Court, first petitioner applied for family member certificate and Mandal Revenue Officer issued legal heir certificate on 15.11.1996 showing petitioners herein as legal heirs of late Yesaiah. Based on the said document, first petitioner applied for provision of employment on

compassionate grounds. The application of the 1st petitioner was processed and 1st petitioner was appointed as Lower Division Clerk (LDC) by order dated 22.08.1997 and on the same day, he joined service.

3. While so, petitioner was served memo dated 06.05.2004 by the Special Officer, Vigilance and Security, directing the petitioner to furnish original adoption document of 1985. Thereafter, petitioner received memo dated 09.04.2004 from the Assistant Divisional Engineer (ADM), Paloncha, informing the petitioner that he was appointed as Enquiry Officer to enquire into the allegations leveled against him. Along with the memo, statement is enclosed containing charge, which reads "it is alleged that Sri K.Bhaskar, LDC, has produced false adoption documents to the department and got employment in APGENCO".

4. It appears petitioner appeared before the Enquiry Officer on 24.07.2004. The signature of the petitioner was obtained on questionnaire and based on the replies furnished by the petitioner to the questions and after going through the documents listed out in the enquiry report including report of the Forensic Science Laboratory (FSL), the enquiry officer submitted his report vide his letter dated 16.07.2005 holding the charge as proved. Enclosing copy of the report of the enquiry officer, show cause notice was issued to the petitioner on 19.10.2005 calling upon him to submit explanation as to why punishment of dismissal from service should not be imposed. Petitioner submitted detailed explanation on 05.11.2005. He raised several objections on the manner in which enquiry was conducted. He submitted another representation

dated 17.01.2006 explaining prejudice caused to him on account of false report and findings of the enquiry officer. Further show cause notice was issued on 11.12.2007 calling upon the petitioner to submit his explanation as to why he should not be dismissed from service. The report of the enquiry officer and report of FSL are enclosed to the said show cause notice. First petitioner submitted his detailed explanation on 31.12.2007. However, even before final order was passed, petitioner filed W.P.No.22328 of 2008 challenging the validity of the Memos dated 25.04.2007 and 11.08.2008. By order dated 14.10.2008, this Court passed interim orders to continue the petitioner in service. The said writ petition was disposed of by order dated 01.07.2010 holding that writ petition was premature as no final orders were passed as a consequent to the show cause notice issued. After disposal of the writ petition, petitioner was served with order dated 17.10.2008 imposing punishment of dismissal from service.

5. Heard learned counsel Sri Siva for Sri Pradeep Kumar, counsel for petitioner on record and Smt Deepthi, learned standing counsel for APGENCO.

6. Learned counsel for petitioner made the following submissions:

(i) The disciplinary proceedings are liable to be set aside on the sole ground that mandatory procedure as required by the APSEB Employees Discipline and Appeal Regulations are not followed. Learned counsel submitted that the charge framed by the enquiry officer was not supported by the imputations; charge itself is vague; no enquiry as required by the regulations was

conducted. The relevant documents in support of the charge leveled against him were not listed out and documents were not supplied. No oral enquiry was conducted. The enquiry officer obtained the signature of the petitioner on plain papers and has written in his own hand writing the questions and answers thereon as if answers were given by the petitioner. Enquiry officer report is based on the documents which were never supplied to him; more particularly the findings of the enquiry officer is on the ground that copy of adoption deed was referred to FSL to verify the authenticity of the signature of the late employee and FSL found that the signature of ex-employee was not tallying with the signature as per the service records and, therefore, the adoption deed is fabricated one, whereas FSL report was not furnished to the petitioner in advance.

(ii) Learned counsel further submitted that even though specific objection was raised in his explanation to the show cause issued after the report of the enquiry officer, the disciplinary authority has not considered his objection. Petitioner was issued further show cause notice enclosing copy of the report of the enquiry officer and FSL report. The record would therefore disclose that documents relied by the enquiry officer were not marked in enquiry and were not supplied to the petitioner before relying on those documents. The findings recorded by the enquiry officer are without material brought on record and without putting the petitioner on notice on the relevant issues. The enquiry officer acted also as presenting officer. The findings of the enquiry officer would show that he acted with predetermined notion of guilt.

(iii) He would further submit that petitioner is entitled to supply copy of the report of enquiry officer and to an opportunity to explain against findings recorded by the enquiry officer before disciplinary authority comes to a conclusion in imposing punishment, whereas even before the report is furnished to the petitioner, the disciplinary authority has already come to a conclusion that punishment of dismissal should be imposed against him. By following this procedure, the substantive right of the petitioner to have an opportunity to counter the findings of the enquiry officer even before provisional conclusion is arrived at by the disciplinary authority is denied and submission of explanation after decision is already arrived at by the disciplinary authority would amount to post decisional hearing and the same is not permissible. In view of the principle laid down by the Supreme Court in the case of **Managing Director, ECIL, Hyderabad v. B.Karunakar**¹, the entire procedure followed is liable to be set aside.

(iv) He would further submit that disciplinary authority has to independently act with reference to taking disciplinary action, whereas in the instant case, disciplinary authority sought to the opinion of his superior authority, i.e., Managing Director and acted in terms of the directions issued thereon. The fact that second show cause notice was issued enclosing the copy of FSL report, based on the directions issued by the Managing Director on 15.11.2007 amply demonstrate that the disciplinary authority was not acting independently. He further submitted that the disciplinary authority has also consulted the concurrence

¹ AIR 1994 SC 1074

committee and only after the concurrence committee clearance, final orders are passed. No outside agency could influence the decision making of process of the disciplinary authority and on that ground alone the disciplinary action is vitiated.

(v) Further the composition of concurrence committee would show that it comprises of two Superintendent Engineers and Deputy Secretary (Establishment) who are subordinate to the disciplinary authority. It shows the disciplinary authority surrendered to the whims of the committee comprising his subordinates. Subordinates to him cannot advise on what disciplinary action he should take and on that ground alone the entire action is liable to be set aside.

(vi) As the procedural infirmities pointed above go to the root of the matter and petitioner is denied reasonable opportunity at every stage, the entire disciplinary action is liable to be set aside.

(vii) In support of his contention that disciplinary authority cannot fall back on advise/cannot consult outside agency, learned counsel placed reliance on the decisions of the Supreme Court in **Nagaraj Shivarao Karjagi v. Syndicate Bank, Head Office, Manipal and another**² and **Commissioner of Police, Bombay v. Gordhandas Bhanji**³.

7. No counter is filed. However, extensive submissions are made by the learned standing counsel and has also produced the records concerning the disciplinary action. In support of her submissions made, she has also filed written brief.

² (1991) 3 SCC 219

³ AIR 1952 SC 16

7.1. Learned standing counsel would submit that petitioner secured employment as LDC by claiming as adopted son of late employee and but for the said claim, he would not have been appointed on compassionate grounds. Later, it was brought to the notice of the competent authority that the adoption deed, based on which claim was made, was not actually executed by late employee and it was fabricated only to gain employment. It is emphasized that if what is contended by the petitioner that late employee adopted him is true, the adoption deed would have been registered as required. The school records continuously reflected the name of the natural father of the petitioner, even after the date of adoption and upto 1996 when he obtained Bachelor Degree. This could not have been possible if petitioner was adopted by ex-employee.

7.2. She would further submit that in the service records of late employee, there is no mention made of adoption and even after the date of alleged adoption declaration was filed by the employee showing only his wife. She would further submit that petitioner also accepted that there was a difference in signature found on the adoption deed and in all other service records and, therefore, it gives credence to the contention that adoption never took place and false claim was made.

7.3. She further submitted that petitioner obtained *ex parte* decree from Civil Court arraying wife of late employee as sole defendant and based on the said decree, claim is set up for provision of compassionate appointment, whereas even the decree was based on the adoption deed, whereas the adoption deed itself was obtained by fraud. Thus, no weight can be given to said

decree. Since there is no other material to show that petitioner was adopted, the action to dismiss the employee was validly taken.

7.4. In the facts of the case, it cannot be said that petitioner was denied of reasonable opportunity. The only allegation against petitioner was that he produced false adoption deed to claim as if he was adopted by late employee and thereon, he secured employment and, therefore, the burden was on the petitioner to prove that adoption was made validly. No evidence was let in by the petitioner in support of his claim.

7.5. She would further submit that no material is brought on record to show how prejudice was caused to him merely because report of the enquiry officer was furnished along with show cause notice. Learned counsel justifies the manner in which enquiry was conducted and final orders are passed.

8.1 Whenever disciplinary action is taken against an employee, it would result in severe civil and evil consequences on the employee, as in this case, losing his employment and all other service benefits enjoyed by the employee till the order of dismissal was passed. While taking disciplinary action, the disciplinary authority acts as quasi-judicial authority.

8.2. It is elementary principle of any disciplinary auction that the charge must be specific and shall contain all details; the list of relevant documents on which charge leveled is enclosed to the charge sheet and all the documents on which reliance is placed should be supplied; opportunity should be afforded to the delinquent employee to rebut the allegations and to express his

stand on various documents relied upon by the prosecution. The employee is also entitled to lead his oral and documentary evidence in support of his claim. After recording the evidence and after affording due opportunity to make submissions, the enquiry officer should draw his report analyzing the evidence on record. The findings of the Enquiry Officer shall be the basis for further action.

8.3. After enquiry is completed, if such enquiry is not conducted by the disciplinary authority, report of the enquiry officer becomes the basis for the disciplinary authority to take further action. At this stage, disciplinary authority can agree with the findings of the enquiry officer and proceed further if such findings are against the employee. If the findings are in favour of the employee, disciplinary authority can still disagree with the findings, can order for further enquiry or if sufficient material is available on record, record tentative findings on the charges and call for explanation of the employee. As held by the Supreme Court in **B.Karunakar** (supra), valuable right is vested in the employee to know the findings of the enquiry officer and to offer his explanation on various findings of the enquiry officer before disciplinary authority takes a final decision. Supreme Court held that employee is entitled to supply copy of report of the enquiry officer and opportunity to submit his explanation before the disciplinary authority takes a decision.

8.4. As held by the Supreme Court in two decisions relied by the learned counsel for petitioners, authority vested with power to take a decision, more particularly in disciplinary matters, shall have to independently consider the material on record and come to

independent conclusion on the delinquency alleged and appropriate disciplinary action be taken. There can be no interference in the decision making process of disciplinary authority by superior authority or an outside agency.

8.5. The employee is governed by A.P.State Electricity Board Employees Conduct Regulations, which are adopted by respondent company. Detailed procedure is laid down in the conduct regulations as to how and in what manner disciplinary action should be taken and concluded. Regulation-10 prescribes procedure before imposing major punishment. It mandates holding of enquiry on charge leveled against an employee and to afford due opportunity during the course of enquiry.

8.6. Relevant portion of Regulation reads as under:

10. Procedure for imposing penalties:

(1) xxxx

(2)(a). “He shall be required, within a reasonable time, to file a written statement of his defence and to state whether he desires an oral enquiry or to be heard in person or both. The person charged may, for the purpose of preparing his defence be permitted to inspect and take extracts from such official records as he may specify, provided that the enquiry officer may, for reasons to be recorded in writing refuse such permission, if in his opinion, such records are not relevant for the purpose or it is against public interest to allow access thereto. On receipt of the statement of defence within the specified time or such further time as may have been given, an oral enquiry shall be held if such an enquiry is desired by the person charged or is decided upon by the enquiry officer or is directed by the competent authority. At that enquiry, oral evidence shall be heard as to such of the allegations as are not admitted and the persons charged shall be entitled to cross examine the witnesses, to give evidence in person

and to have such witnesses called as he may wish, provided that the enquiry officer may, for special and sufficient reason to be recorded in writing, refuse to file, call a witness. After the oral enquiry is completed, the person charged shall be entitled to file. If he so desires, any further written statement of his defence. If no oral enquiry is held and the person charged desires to be heard in person, a personal hearing shall be given to him. The enquiry officer shall, on completion of the enquiry or the personal hearing of the person charged or both, forward the proceedings of the enquiry to the authority competent to impose the penalty unless he is himself such an officer.”

9. I have gone through the Record of disciplinary action. The record discloses that charge was noted on a spreadsheet. It does not contain imputation of misconduct. It does not contain list of documents sought to be relied on to sustain the charge. Though Regulation-10 mandate holding of detailed enquiry and mandates oral enquiry, no such oral enquiry was held. Statement of petitioner was recorded in question- answer format, whereas petitioner categorically denies recording of answers in his presence. Crucial document against petitioner is FSL report. This document was not furnished to petitioner prior to or during the enquiry. Crucial material relied by enquiry officer to sustain the charge not furnished to petitioner.

10. The enquiry officer disregards the decree obtained by the petitioner on the ground that it is an *ex parte* decree and that wife of the late employee did not contest the suit, whereas no further opportunity was given on this aspect by the enquiry officer; report of the enquiry officer was furnished along with show cause notice

calling upon the petitioner to submit his explanation; the FSL report was furnished along with second show cause notice.

11. It is thus clear that the enquiry was not conducted in accordance with conduct regulation and as per settled principles of law. The violations noticed are far and wide, go to the root of the matter and vitiate the entire process.

12. The specific allegations made by the petitioner in his explanation that enquiry officer was biased, that no proper enquiry was conducted, that enquiry officer has written the questions and answers in his own hand writing on a blank signed papers and that enquiry officer was acting with predetermined notion of guilt in a biased manner were not dealt with by disciplinary authority while passing final orders.

13. Disciplinary authority must assign reasons in support of its decision. He must consider the objections raised by delinquent employee against show cause notice and deal with them in his order. The objections raised by petitioner touch upon all aspects of disciplinary action. He raised plea of enquiry officer as biased and acted unfavourable to him. Those objections ought to have been dealt with before passing final orders dismissing him from employment. Thus, the order of punishment is liable to be set aside on this ground also.

14. It is not in dispute that there is decree by a civil Court which held first petitioner as adopted son of late employee and the Mandal Revenue Officer issued legal heir certificate which still holds the field. It appears wife of late employee – 2nd petitioner

herein also gave declaration stating that the 1st petitioner was adopted by her and her husband while he was alive. No opportunity was afforded to petitioner to controvert the findings in FSL report. No reasons are forthcoming as to why this report was not furnished to petitioner during the enquiry, more so when the same was the basis for initiation of disciplinary action and when employer treats it as a crucial document to sustain the charge. These aspects are not reflected in the order of the disciplinary authority.

15. Having regard to the serious infirmities noticed above, the order of punishment assailed in this writ petition cannot be sustained. It is accordingly set aside. Writ Petition is allowed.

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

JUSTICE P.NAVEEN RAO

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