

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION Nos.7673 AND 7680 OF 2008

COMMON ORDER:

These two writ petitions are being disposed of by this common order as they relate to the orders of punishment imposed against the petitioners pursuant to the enquiry conducted and arising out of the same cause of action.

The petitioners were working as Seed Officers in the respondent Corporation at the relevant time. They were kept under suspension initially by orders dated 19.01.2002 and later on Charge Memos were issued on 16.02.2002 alleging that they did not ensure quality as per the prescribed standards in respect of 17 trucks of Groundnut seed, which was dispatched to Ananthapur District, that led to criticism from the farming community, peoples' representatives and print media. Thus, their acts amounted to neglect of duties under Rule 4(ii) of the Disciplinary and Appeal Rules for the Employees of APSSDC, 1976. The petitioners submitted their explanations separately and enquiry officer was appointed. The order of appointment of the enquiry officer was passed by the Managing Director and Disciplinary Authority appointing himself as the enquiry officer. The enquiry officer submitted his report and the same was communicated to the petitioners. The enquiry officer held that the charges levelled against the petitioners were not proved and it could be seen from the report of the enquiry officer dated 31.03.2005. The petitioners submitted their representations on the enquiry report on 24.10.2005. The respondent Corporation, by orders dated 18.04.2007, imposed the penalty of stoppage of two increments with cumulative effect with effect from 01.01.2008 and 01.01.2009. Challenging the same, the present writ petitions were filed.

A counter affidavit was filed stating that as per the original Rules and as amended by the Board in its 95th Meeting held on 11.11.1994, the Board is the Disciplinary Authority in respect of Manager/Assistant Manager category to impose major penalty. No joint enquiry was conducted, but separate enquiries were conducted against ten officers. Since the Board was the Disciplinary Authority at that point of time and the Officers would be deprived of availing the remedy of Appeal, the Rules were amended in 147th Meeting held on 26.03.2007 making the Managing Director as Appointing and Disciplinary Authority in respect of Managers and Assistant Managers. After submission of the enquiry report holding that the charges against the petitioners were not proved, the Managing Director addressed a letter on 04.04.2005 to the Government seeking advice on the findings of the Enquiry Officer. The Government advised to disagree with the findings of the enquiry officer and impose penalty of stoppage of two increments with cumulative effect. The respondent Corporation issued disagreement memo on 22.09.2005 and forwarded the representations of the petitioners dated 04.10.2005 to the Government by letter dated 19.1.2005 and 07.03.2006 stating that the charges were framed against the petitioners and others based on the Vigilance Report dated 09.01.2002. The Government vide its letter dated 03.11.2006 advised the respondent Corporation to reject the further explanations from the petitioners and initiate action by imposing the penalty as directed. After considering the said advice, the major penalty of stoppage of two increments was imposed on the petitioners. It is also stated that the Disciplinary Authority and Enquiry Authority roles were played by the Managing Director.

It is clear from the above facts that at the time of initiation of enquiry, the Managing Director was the Disciplinary Authority and the Enquiry Authority and he chose to conduct enquiry on his own without

appointing any other enquiry officer. He conducted the enquiry and submitted his report holding that the charges against the petitioners were not proved. At that stage, he could have taken a decision on his own, but after communicating the copy of the enquiry report, he received representations/explanations from the petitioners. He sent the enquiry report along with the representations/explanations to the Government seeking advice, which he ought not to have done. Later on, he imposed the punishment on the petitioners on the dictates of the Government and though it is stated in the counter affidavit that the Disagreement Memo was issued on 22.09.2005, a reading of the Memo shows that strangely he disagreed with his own findings. When the Managing Director, as the Enquiry Authority held that the charges against the petitioners were not proved, he could not have issued a Memo contrary to the findings recorded by him. Even assuming that the findings were not correct, the Board was not involved in the entire issue, but he sought instructions from the Government and passed the impugned orders. The Managing Director as the Disciplinary Authority has not exercised his independent mind, but he acted on the dictates of the Government. When the report held that the charges against the petitioners were not proved, it is not proper on the part of the Managing Director of the respondent Corporation to come to a different conclusion and support the same stating that he is acting in two different capacities as Enquiry Officer and the Disciplinary Authority. It is well known in service law that the Disciplinary Authority himself can be the Enquiry Authority, but it does not mean that the Disciplinary Authority can apply two states of mind on the same issue. As the Enquiry Authority, when he came to the conclusion that the charges were not proved, as the Disciplinary Authority he cannot take any contrary view. In view of the same, the impugned orders were set aside and the writ petitions are allowed.

Now it is submitted by the learned counsel for the petitioners that the petitioners retired from service. If that is so, the pay of the petitioners shall be recalculated and any retiral benefits shall be recalculated on the basis of the pay fixed after recalculation.

The writ petitions are accordingly allowed. Consequently, miscellaneous petitions, if any pending, in these writ petitions, shall stand closed. There shall be no order as to costs.

A.RAMALINGESWARA RAO, J

26.12.2017
pln

