

HON' BLE SRI JUSTICE SURESH KUMAR KAIT
&
HON' BLE SRI JUSTICE U. DURGA PRASAD RAO

W.P. Nos. 22884 and 22890 of 2009

COMMON ORDER:- (ORAL)

(Per Hon' ble Sri Justice Suresh Kumar Kait)

Inasmuch as the questions of fact and law involved in these two writ petitions are one and the same, therefore, these matters are taken up together for disposal by this common order.

While W.P.No. 22884 of 2009 is filed against the common order dated 16.10.2008 in O.A.No.7889 of 2008, W.P.No. 22890 of 2009 is filed against the same order in O.A.No. 7912 of 2008 passed by the Tribunal, whereby the O.As. filed by the respective respondents herein were allowed.

The brief facts of the case are that the respondents – applicants in the two writ petitions, who have been working as Assistant Executive Engineers, were furnished with Charge Memos dated 17.03.1999 wherein the charge framed against them is as follows:

“Charge No. 1:-

That he failed to initiate any action against the builders for deviations made to the sanctioned plan when he worked as Town Planning Supervisor / Town Planning and Building Overseer at Kurnool Municipal Corporation and was responsible for inaction and also for cropping up of buildings with violations” .

The respondents submitted their explanation to the Charge Memos, and the disciplinary authority, being not satisfied with their explanation, appointed Enquiry Officer, who after conducting enquiry, submitted his report dated 20.11.2002 holding that charges leveled against them are not proved. However, the disciplinary authority, vide Memo dated 24.03.2005, called for explanation from the respondents by furnishing the Enquiry Officer's report on the factors which are disagreed with the Enquiry Officer's report and to show cause as to why the respondents should not be punished. Accordingly, they submitted detailed explanation, and thereafter, an order was passed against the respondents imposing punishment of stoppage of two annual grade increments with cumulative effect.

The case of the respondents before the Tribunal was that the petitioner-Government should have heard the respondents while differing with the report of the Enquiry Officer, who had exonerated them from the charges, by following the principles of natural justice and in accordance with the law laid down by the Courts in the case of *Yoginath D. Bagde v. State of Maharashtra and Another*¹ wherein it is held as follows:

“Service law – departmental enquiry – enquiry report – findings favourable to charged employee – Law laid down in PUNJAB

¹ AIR 1999 SC 3734

NATIONAL BANK V. KUNJ BEHARI MISRA (1998) 7 SCC 84 regarding giving opportunity to charged officer before reversing findings of the Enquiry Officer – Held – requirement of affording opportunity of hearing as laid in Kunj Behari Misra case, being in consonance with Art.311(2) and being a constitutional right to be heard, has to be read into a rule which does not make specific provision to this effect - Disciplinary authority before forming its final opinion to convey to the charged employee its tentative reasons for disagreeing with the findings. If the enquiry officer's show cause notice issued in the present case to appellant with regard to proposed punishment, held, did not meet the requirement of law because final decision to disagree with the enquiry officer had already been taken before issuing the show cause notice – post – decisional hearing, further held, though available in certain cases, was of no avail – opportunity of hearing may either be provided specifically by rules made under Art.309 or disciplinary authority may on its own provide such an opportunity.

Where rules are silent on this aspect and disciplinary authority also does not give an opportunity of hearing to the delinquent officer and records finding different from those of the Inquiring authority that the charges were established, “an opportunity of hearing” may have to be read into the rule by which the procedure for dealing with the Inquiring authority's report is provided, principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to be “not guilty” by Inquiring authority, is found “guilty” without being afforded an opportunity of hearing on the basis of the same evidence and material on which a finding of “not guilty” has already been recorded.

The respondents further relied upon the judgment of the Supreme Court in *Ranjit Singh v. Union of India*² wherein it is held as under:

“Constitution of India, Articles 16 and 311 – Central Civil Services (Conduct) Rules, 1964, Rule 3 – Disciplinary proceedings –

² 2006(3) SLR 82 SC

Dismissal from service – Opportunity of hearing – CBI inquiry against appellant for possessing assets disproportionate to the known sources of income – In departmental proceedings Enquiry Officer exonerated the appellant – Disciplinary authority differed with the findings of enquiry officer – Punishment of the findings of enquiry officer – Punishment of dismissal imposed – No opportunity of being heard given – Order of termination, set aside.”

In view of the above submission of the respondents and the legal position as cited supra, the learned Tribunal opined that it is clear that the disciplinary authority is bound to hear the delinquent officer while deferring with the Enquiry Officer's report by following the principles of natural justice and only taking the explanation and passing order is not in accordance with the law laid down by the Apex Court as cited above.

The learned Government Pleader for Services appearing on behalf of the petitioners submits that the respondents were working in Town and Country Planning Department, therefore, their appointments are governed by Rule 21 of A.P. Civil Services (Classification, Control and Appeal) Rules, 1991 (for brevity “the Rules”). He further submits that judgments of the Supreme Court as relied upon by the respondents are not applicable to cases on hand for the reason that the decision taken in *Yoginath D. Bagde's* case is related to the Central Government whereas the cases of the respondents in the present writ petitions are governed by Civil Services Code.

Sub-rules 2 and 5 of Rule 21 of the Rules, 1991 are extracted as under:

“(2) The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority a copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation of submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.

(5) If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is of the opinion that any of the penalties specified in clauses (vi) to (x) of Rule 9 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed.”

As per the above rule position, the petitioners are not supposed to give personal hearing to the respondents, and accordingly, the disciplinary authority issued show cause notices to the respondents differing with the enquiry officer's report and the respondents filed their explanation thereto, and after considering the same, punishment was imposed.

The learned counsel for the respondents has relied upon the Common Order dated 22.11.2013 passed by this Court in W.P.Nos. 19242 and 19297 of 2009 wherein the respondents

therein were also working as Town Planning Supervisors in Visakhapatnam and Madanapalli Municipalities respectively. This Court, in the above referred writ petitions, while recording that identical situation arose in O.A.Nos. 7912 and 7889 of 2008, which are under challenge in the present writ petitions, held that the case of the respondents in W.P.Nos.19242 and 19297 of 2009 differed with the report of the enquiry officer and charges framed against them were proved and consequently punishment was imposed. Whereas in the instant cases, the disciplinary authority, while differing with the enquiry officer's report, issued show cause notices to the respondents under Section 21 of the Rules, 1991 and sought explanation thereto and after considering their explanation, imposed punishment. Thus, the facts in W.P.Nos. 19242 and 19297 of 2009 are different from the facts and circumstances of the cases on hand.

We find, by virtue of Sub-rules (2) and (5) of the Rules, the petitioner –disciplinary authority is not duty bound to give personal hearing and the only requirement mentioned therein is that the disciplinary authority while differing with the enquiry officer's report shall issue show cause notice and after considering explanation shall impose punishment. The said procedure has been adopted by the petitioners in the present cases.

In view of the above, we have no hesitation to say that the facts in W.P.Nos. 19242 and 19297 of 2009 are totally different from those of the present writ petitions. Moreover, this Court, in the aforesaid writ petitions relied upon the orders passed in O.A.Nos.7889 and 7912 of 2008 which are under challenge in the present writ petitions.

In view of the above discussion and statutory provision, the writ petitions are allowed setting aside the impugned Order dated 16.10.2008 in O.A.Nos.7889 and 7912 of 2008 passed by the Tribunal. No order as to costs.

As a sequel, Miscellaneous Petitions, if any pending, shall stand disposed of as infructuous.

11.07.2017

SURESH KUMAR KAIT, J

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U.DURGA PRASAD RAO, J