

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.20487 of 2005

ORDER:

Challenging the order dated 11.09.2004 passed by the 2nd respondent, as confirmed by the 1st respondent in appeal by order 17.05.2004, imposing punishment of recovery of an amount equivalent to stoppage of one increment with cumulative effect besides recovery of 1/3rd cost of the aluminium scrap of 20,636 kgs., alleged to have been misappropriated in the District Stores, Kurnool District, the present Writ Petition is filed.

2. The facts in issue are as under:

Petitioner was appointed as a Lineman on 13.07.1964. He was promoted at regular intervals and at the time of retirement on 30.06.2002, he was holding the post of D.E. (Electrical) Kurnool. During his service, he was transferred as A.D.E. (Stores), Kurnool in the year 1997. He worked there upto the end of the year 2000, except for the period 14.01.1998 to 06.12.1998 during which time he was on leave. While things stood thus, a charge sheet came to be issued to the petitioner on 16.09.2002, i.e., after his retirement, by the Chief Engineer (Electrical) alleging that the petitioner has not arranged weighment at the time of annual verification of stores and he has not arranged weighment before issuing clearance certificate. An enquiry officer was appointed under Regulation 10(2)(a) of Andhra

Pradesh State Electricity Board Employees Discipline and Appeal Regulations (for short "the Regulations") vide Memo dated 24.07.2002 and letter dated 19.11.2002 to enquire into the allegations of misappropriation of company's material. The petitioner submitted detailed explanation to the said charge sheet. After considering the explanation of the petitioner, a well-reasoned order came to be passed by the enquiry officer who is the Chief Engineer (Electrical), holding that the involvement of the petitioner in misappropriation of aluminium scrap weighing 20,636 kgs., is not proved. However, it has been held that petitioner has shown gross negligence in performing his duties as A.D.E. (Stores). The said findings were never challenged by the petitioner. But, however, A.P. Transco., took up the matter in appeal and a notice came to be issued on 29.05.2003 calling upon the petitioner as to why suitable disciplinary action should not be taken against him for the irregularities committed by him. A detailed explanation came to be submitted by the petitioner on 05.06.2003, which was rejected by the authorities vide order dated 11.09.2003, imposing punishment of recovery of an amount equivalent to stoppage of one increment with cumulative effect besides recovery of 1/3rd of the cost of aluminium scrap of 20,636 kgs. The petitioner was directed to show cause as to why the above punishment should not be imposed on him for the above irregularities, to which petitioner submitted a detailed explanation on 24.09.2003. Ultimately, the 2nd respondent passed an order dated 11.09.2004 imposing punishment of

recovery of an amount equivalent to stoppage of one increment with cumulative effect and recovery of 20% of the market value of aluminium burnt scrap amounting to Rs.2,63,258/-. Challenging the same, the petitioner preferred an appeal before the 1st respondent, which was rejected by an order dated 17.05.2005. Aggrieved by the same, the present Writ Petition came to be filed.

3. By an order dated 19.09.2005, this Court ordered interim suspension to the extent of recovery of the amount from the petitioner. Counter-affidavit has been filed along with a petition to vacate the interim order, disputing the averments made in the affidavit filed in support of the Writ Petition. It is specifically contended that the authorities have imposed the punishment in accordance with the procedure and the rules prescribed, and, as such, the same are not in violation of any provision of law or in any violation of principles of natural justice. It is stated that imposition of punishment cannot be said to be disproportionate to the irregularity committed by the petitioner and as all the authorities have held against the petitioner, the Writ Petition is liable to be dismissed.

4. Learned counsel for the petitioner mainly submits that though the enquiry officer gave a report in favour of the petitioner after considering all the material placed before him, the respondents-authorities erred in rejecting the same. He further submits that the authorities erred in not issuing any notice to the petitioner before

arriving at a tentative opinion, while disagreeing with the opinion recorded by the enquiry officer. Apart from the above, learned counsel would submit that the authorities erred in imposing two punishments, which is in violation of Regulation 5. It is further urged that as per Regulation 9, the proceedings ought to have been initiated within a period of 3 years from the date of alleged misappropriation, but, in the instant case, proceedings were initiated after the retirement of the petitioner in the year 2002, which is beyond the period prescribed under the Regulations.

5. The same is opposed by the learned standing counsel for the respondents, contending that there are no laches on the part of the respondents and the action was taken after affording the petitioner with a reasonable opportunity and as such no interference is called for with the impugned orders.

6. As seen from the record, an enquiry officer was appointed to go into the allegations made against the petitioner. After calling for the explanation from the petitioner, the enquiry officer submitted a report dated 19.02.2003, holding that the charge is not proved, but however observed that the petitioner has shown gross negligence in performing his duties as A.D.E. (Stores). Not being satisfied with the report of the enquiry officer, the Corporation, while arriving at a tentative opinion in disagreeing with the findings of the enquiry officer, issued notice dated 29.05.2003, directing the petitioner to

submit explanation as to why suitable disciplinary action should not be taken against him for the irregularities committed by him. A detailed explanation came to be submitted by the petitioner on 05.06.2003. The said explanation was rejected by the authorities vide order dated 11.09.2003, holding that the petitioner is not the physical custodian and imposed punishment of recovery of an amount equivalent to stoppage of one increment with cumulative effect besides recovery of 1/3rd of the cost of aluminium scrap of 20,636 kgs. The petitioner was directed to show cause as to why the punishment should not be imposed on him for the above irregularities, for which petitioner submitted a detailed explanation on 24.09.2003. The same was rejected by the 2nd respondent, vide order dated 11.09.2004, imposing punishment of recovery of an amount equivalent to stoppage of one increment with cumulative effect and recovery of 20% market value of aluminium burnt scrap amounting to Rs.2,63,258/- from the petitioner. Challenging the same, the petitioner preferred an appeal before the 1st respondent, which was rejected on 17.05.2005.

7. The first issue that falls for consideration is, Whether a notice is to be issued to the Delinquent Officer at the stage when the authority arrives at a tentative opinion while disputing the finding of the Enquiry Officer?

8. The next issue that falls for consideration is whether the authority was justified in imposing punishment twice and whether the

authorities are right in ordering recovery when the employee retired from the service?

9. It is further urged that since the employee/writ petitioner retired in the year 2002 itself, the respondents are precluded from taking any steps beyond a period of three years as per regulation 9 of the Pension Code. It is further urged that no deductions can be made from the gratuity amount in view of the provisions of the Employees Gratuity Act.

10. Insofar as the first argument is concerned, as to whether any notice is required to be issued to the petitioner while arriving at a tentative opinion in disagreeing with the opinion of the Enquiry Officer, the learned counsel for the petitioner mainly relied upon paragraph 14 of the Division Bench judgment of this Court in *Member Secretary, Punishing Authority, APSEB, Vidyut Soudha and others v. G.Amruthaiah*¹. In order to appreciate the findings arrived at, it would be useful to refer to the facts in the said case. It was a case where the disciplinary authority while disagreeing with the findings of the Enquiry Officer failed to give any notice to the delinquent. Under those circumstances, a learned Single Judge of this Court, relied upon a judgment of the Apex Court in *Punjab National Bank v. Kunj Behari Misra*² and held that it would be most unfair and iniquitous

¹ 2001(4) ALT 35 (D.B.)

² AIR 1998 SC 2713

that where charged officer succeeded before the Enquiry Officer is deprived of representing before the disciplinary authority.

10.1. Infact, the Apex Court in **Yoginath D.Bagde v. State of Maharashtra**³ held as under :

"29. We have already extracted Rule 9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, which enables the disciplinary authority to disagree with the findings of the enquiry authority on any article of charge. The only requirement is that it shall record its reasoning for such disagreement. The rule does not specifically provide that before recording its own findings, the disciplinary authority will give an opportunity of hearing to a delinquent officer. But the requirement of "hearing" in consonance with the principles of natural justice even at that stage has to be read into Rule 9 (2) and it has to be held that before the disciplinary authority finally disagrees with the findings of the enquiry authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority do not suffer from any error and that there was no occasion to take a different view. The disciplinary authority, at the same time, has to communicate to the delinquent officer the "Tentative" reasons for disagreeing with the findings of the enquiry authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the findings of "not guilty" already recorded by the enquiring authority was not liable to be interfered with."

10.2. Similarly, in **Punjab National Bank v. Kunj Behari Misra**⁴, the Apex Court held as under :-

³ 1999 SCC (L&S) 1385

⁴ AIR 1998 SC 2713

"12. It is not in dispute that the disciplinary proceedings against a delinquent employee have to be conducted in terms of the A.P. State Electricity Board Employees' (Discipline and Appeal) Regulations, 1970, as also the A.P.S.E. Board Revised Conduct Regulations, 1986, ('Conduct Regulations' for the sake of brevity) which is statutory in nature. Regulation 10 of the Conduct Regulations provides for the procedure for imposing penalties. Detailed provisions have been laid down therein as to the mode and manner in which a disciplinary proceedings shall be conducted. The appellants herein are bound to comply with the requirements laid down therein. It may be that in a given situation non-compliance of one or the other procedure may not be insisted upon, if it is found that there has been a substantial compliance. But, it is another thing to say that there shall be no compliance of the principles of natural justice. Principles of natural justice, as explained by the Apex Court in Kumaon Mandal Vikas Nigam Ltd., vs. Girja Shankar Pant postulates that at every stage requirements thereof should be complied with. By reason of the report of the Enquiry Officer, the delinquent employee derived a right of being considered for exoneration from the charges at the hands of the disciplinary authority. The disciplinary authority, undoubtedly, is entitled to differ with such findings, but, before it arrives at a conclusion that the findings arrived at by the Enquiry Officer are not correct and/or perverse, an opportunity of hearing must be given to the delinquent employee. There cannot be any doubt whatsoever that if at that stage the principles of natural justice are not complied with, the delinquent employee will suffer a great prejudice. This aspect of the matter is squarely covered by a decision of the Apex Court in Punjab National Bank's case (supra) wherein it had been categorically held:

"18..... It is the disciplinary authority which can impose the

penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not to be granted. It will be most unfair and iniquitous that where the charged officers succeed before the inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation the charged officer must have an opportunity to represent before the Disciplinary Authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of inquiry as explained in Karuakar's case (1994 AIR SCW 1050)

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file representation before the disciplinary authority records its findings on the charges framed against the officer"

10.3. Both the judgments nowhere prescribe giving of notice prior to forming a tentative opinion on the findings of the Enquiry Officer. In the instant case, while giving an opinion about the findings of the Enquiry Officer, the authority issued notice to the petitioner, who submitted his explanation on 05.06.2003 and 24.09.2003. Therefore, the argument of the learned counsel for the petitioner that no notice was given by the discipline authority, while differing with the view of the Enquiry Officer, cannot be accepted.

11. The second argument, which was advanced by the learned counsel for the petitioner is that there cannot be two punishments for the same offence in view of regulation 5 of A.P. State Electricity Board Employees Discipline and Appeal Regulations. It is his case that while stopping the increments, the authorities have also imposed a punishment of recovery of 20% of loss caused, which is urged to be contrary to the regulation 5. In order to appreciate the same, it

would be useful to refer to Section 5 of the Regulations, which is as under:-

"5. Penalties:

The following penalties, may, for a good and sufficient reasons or for any misconduct specified in regulation 6 and as hereinafter provided, be imposed upon the employees of the Board, namely:

(i) Censure

(ii) Fine, (to be imposed only in case of employees in Class-IV service) Note: The penalty shall be subject to the provisions of the payment of wages, act., in respect of those to whom that Act applies.

(iii) Withholding of increments or promotion.

(iv) Reduction to a lower rank in the seniority list or to a lower post or time scale not being lower than that to which he was directly recruited, whether in the same class of service, or in another class of service, or to a lower stage in a time scale.

(v) (a) Recovery from pay of an employee of the whole or any part of the pecuniary loss caused to the Board by reason of the negligence, misconduct, or disobedience to lawful orders, of an employee in the discharge of his duties.

(b) Recovery from pay to the extent necessary of the monetary value equivalent to the amount of reduction to a lower stage in time scale ordered where such order cannot be given effect."

11.1. A reading of the said provision clearly discloses that under 5(iii), the Board has got power to withhold increment or promotion. Similarly, Clause 5(v)(a) of the Regulation prescribes recovery from the pay of an employee, whole or any part of the pecuniary loss caused to the Board by reason of the negligence, misconduct, or disobedience to lawful orders, of an employee in the discharge of his

duties. In the instant case, the fact finding body found, that the petitioner was negligent in his duties, which resulted in loss to an extent of Rs.2,63,258/-. Since the negligence was attributed not only against the petitioner but also against other co-employees, 20% of the loss caused was directed to be recovered from the petitioner. Infact the learned counsel for the respondent would submit that the loss caused was distributed in the ratio of 40:40:20. Therefore, this Court is of the view that there is nothing wrong in recovery of the loss caused along with stoppage of increments.

12. The third ground urged by the learned counsel for the petitioner is that under Section 9 of the A.P. Pension Code, the proceedings cannot be initiated beyond the period of three years. According to him, since the offence is said to have taken place during the year 1997, initiation of proceedings beyond the period of three years is illegal. It is to be noted that as per Charge No.1, the Divisional Engineer investigated the matter in detail and submitted a report, in which he found alluminium scrap of 9,152 kgs was not entered in stores ledger. Similar such verifications were conducted in the year 1998-99 and 1999-2000. The stock verification conducted by the Accounts Officer during the said period and during the tenure of the petitioner, did not verify the aluminium scrap with reference to ledger balance. Basing on the report of the Divisional Engineer, proceedings came to be initiated in the year 2002. It

appears that the alleged misappropriation came to light pursuant to a detailed enquiry conducted by the Divisional Engineer/M&P/Kurnool, after the petitioner was transferred from the said station and immediately thereafter a charge-sheet was issued to the petitioner on 16.09.2002. Therefore, it cannot be said that proceedings came to be initiated beyond the period of three years. Hence, the argument of the learned counsel for the petitioner that in view of Section 9 the proceedings are barred by limitation, cannot be accepted.

13. The fourth ground urged by the learned counsel for the petitioner is with regard to recovery being made by retaining the gratuity amount to be paid to the petitioner. In support of the same, he relies upon the judgment of this court in W.P.No.276 of 2003 dated 13.04.2015. In the said case, the 3rd respondent therein filed an application before the second respondent claiming gratuity for the service rendered for 9 years and 7 months. The second respondent therein, by his order dated 16.03.2002, allowed the claim of the 3rd respondent to an extent of Rs.20,815/-. Challenging the order of 2nd respondent, the petitioner preferred an appeal under the provisions of Payment of Gratuity Act, 1972, before the 1st respondent, who confirmed the order of 2nd respondent. The first and second appellant authorities rejected the claim of the petitioner. Aggrieved by the same, a writ petition was filed. The question that fell for consideration was "Whether the 3rd respondent has misappropriated

the money of the petitioner (Hospital) so as to forfeit the gratuity amount of the 3rd respondent or not? Dealing with the said aspect, the Court said that the employer is not entitled to forfeit the gratuity of the employee unless the employee has caused damage or loss to the employer. The said findings were arrived at basing on the judgment of the Apex Court in **Jaswant Singh Gill v. Bharat Coking Coal Ltd. and others**⁵. Apart from that the Court also held that principles of natural justice mandate that employer to give notice to the employee before forfeiting the gratuity, which is a statutory right of an employee. Since it is not a case of misappropriation and as no notice was given to the petitioner, the acts of the respondent were held to be unsustainable.

14. Admittedly in the instant case, the Corporation suffered a loss due to the acts of the petitioner in giving clearance certificate without weighing and without assessing shortage of 20,636 kgs., of aluminium scrap. The petitioner and two others were found responsible for the said loss by the Corporation. Such being the position, the judgment of the learned Single Judge which is relied upon by the learned counsel for the petitioner may not come to his rescue. As stated above, it was a case where there was no misappropriation and hence it was held that the employer was not entitled to forfeit the gratuity of the employee. Insofar as the non-

⁵ AWC 2007(5), 5227

observance of principles of natural justice is concerned the Karnataka High Court in **Bharath Gold Mines Ltd. v. Regional Labour Commissioner (Central)**⁶ held that before the amount of gratuity is directed to be forfeited, an opportunity of hearing must be given. It is now urged by the learned counsel that without issuing any notice the entire gratuity amount has been withheld. The same is disputed by the standing counsel for the respondent/corporation.

15. Therefore, there is any amount of doubt as to whether the amount sought to be recovered was adjusted towards amount due. If the gratuity amount is not returned to the petitioner or if no order has been passed with regard to payment of gratuity, the petitioner herein shall submit an application seeking release of the same, in which event the authority shall pass orders in accordance with law. If the gratuity amount is sought to be attached as alleged, a notice shall be given and then appropriate order be passed in accordance with law.

16. With the above observation, the Writ Petition is disposed of. No costs. As a sequel to it, miscellaneous petitions pending, if any, shall stand closed.

C. PRAVEEN KUMAR, J

Dt: 10.04.2017.
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⁶ 1986 Lab IC 1976

