

*IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH*

WRIT PETITION No.34428 of 2017

Between:

L.Sreeramulu,
S/o Reddanna

... Petitioner

And

Divisional Forest Officer,
Wild Life Division, Rajampet,
Kadapa District and three others.

... Respondents

JUDGMENT PRONOUNCED ON 13.10.2017

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SRI JUSTICE K.VIJAYA LAKSHMI

1. Whether Reporters of Local newspapers : No
may be allowed to see the Judgment?
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? : Yes
3. Whether Their Lordships wish to
see the fair copy of the Judgment? : Yes

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE K.VIJAYA LAKSHMI

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

AND

HON'BLE SRI JUSTICE M.S.K.JAISWAL

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> Head Note:

! Counsel for the Petitioner: Mr. P.V.Krishnaiah

^ Counsel for the Respondents: GP for Services (AP)

? Cases Referred:



HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
HON'BLE SMT JUSTICE K.VIJAYA LAKSHMI

WRIT PETITION No.34428 of 2017

Date:13.10.2017

Between:

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And:

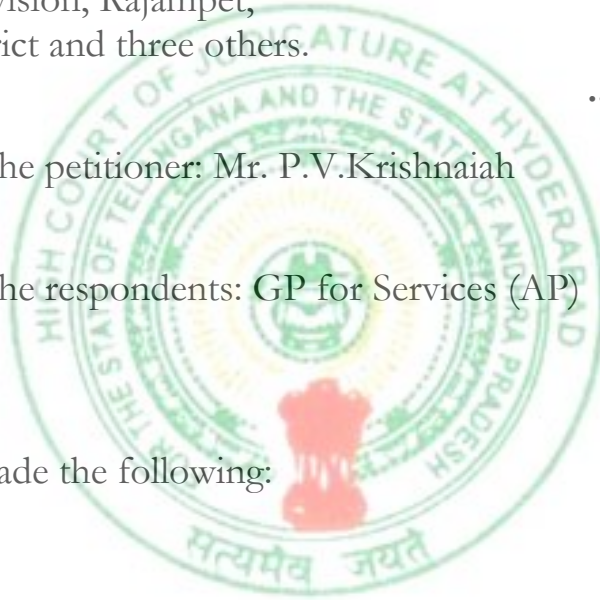
Divisional Forest Officer,
Wild Life Division, Rajampet,
Kadapa District and three others.

....**Respondents**

Counsel for the petitioner: Mr. P.V.Krishnaiah

Counsel for the respondents: GP for Services (AP)

The Court made the following:



ORDER: *(per Hon'ble Sri Justice C.V.Nagarajuna Reddy)*

Feeling aggrieved by order, dated 03.8.2017, in Original Application No.1254 of 2017 on the file of the Andhra Pradesh Administrative Tribunal at Hyderabad (for short 'the Tribunal'), the applicant therein filed this Writ Petition.

The petitioner is a Forest Section Officer under suspension. A charge memo was issued to him on 29.10.2016 by respondent No.1. Questioning the charge memo, he filed the afore-mentioned O.A. The main plank on which the petitioner has filed the afore-mentioned O.A. was that respondent No.1-disciplinary authority has no jurisdiction to appoint an Inquiry Officer even before receiving the written statement of defence from him and that his action is contrary to Rule-20 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (for short "the Rules").

It was the pleaded case of the respondents before the Tribunal that on receipt of the charge memo, the petitioner made a representation, dated 11.11.2016, to the Divisional Forest Officer, Wild Life Division, Rajampet, requesting for permission to peruse the record and that the said Officer has, accordingly, granted permission. It was their further pleaded case that on perusal of the record, the petitioner has informed the personnel that all those records are available with him and by saying so, he declined to give

a certificate of perusal of record; that as he has not submitted his written statement of defence, a notice was issued to him on 20.02.2017 by respondent No.1 asking him to submit his written statement of defence; and that as he has not responded to the said notice, respondent No.1 appointed the Sub-Divisional Forest Officer, Kodur as Inquiry Officer and the Forest Range Officer, Sanipaya Range as Presenting Officer, by proceedings, vide Proc.No.776/2016/S4, dated 13.3.2017.

The Tribunal disagreed with the plea of the petitioner that the disciplinary authority cannot appoint an enquiry officer before receiving the written statement of defence. Alternatively, it has concluded that though the petitioner was afforded an opportunity to submit his written statement of defence, he failed to do so and therefore, respondent No.1 was justified in appointing an Inquiry Officer. While dismissing the said O.A., the Tribunal, however, directed that the petitioner shall be supplied with the copies of the documents relevant in the inquiry as sought for by him, and as undertaken by the respondents themselves in paragraph-11 of the counter-affidavit, and receive the written statement of defence from the petitioner during the inquiry.

We have heard Mr. P.V.Krishnaiah, learned counsel for the petitioner and the learned Government Pleader for Services (Andhra Pradesh).

As regards the findings of the Tribunal on the interpretation of Rule-20 of the Rules, Sub-Rules-(3) to (6) of the said Rule to the extent they are relevant are reproduced hereunder:-

(3) Where it is proposed to hold an inquiry against a Government servant under this Rule and Rule-21, the Disciplinary Authority or the Controlling Authority who is not designated as Disciplinary Authority and who is subordinate to the Appointing Authority can draw up or cause to be drawn up-

(i) The substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge.

(ii) A statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain-

(a) A statement of all relevant facts including any admission or confession made by the Government Servant.

(b) A list of documents by which and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the article of charge, the statement of imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and copies of the said documents and statements of the said witnesses and shall require the Government servant to submit within such time not exceeding 10 working days, a written statement of his defence and to state whether he desires to be heard in person. If the charges officer desires to be heard in person, personal appearance may be allowed before the disciplinary authority on such day and at such time not exceeding ten working days.

(5) (a)(i) **On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted or, if it considers it necessary to do so, appoint under Sub-Rule-(2) an Inquiring Authority for the purpose** and where all the articles of charge have been admitted by the Government servant in the written statement of defence, the disciplinary authority shall record its findings on each charge after, taking such evidence as it may think fit and shall act in the manner laid down in Rule-21.

(ii) On the date fixed for appearance, the Government servant who desired to be heard in person shall submit the written statement of his defence. He shall be questioned whether he pleads guilty to the charges or not and if he pleads guilty to all or any of the article of charges, the disciplinary authority shall record findings of guilty in respect to those articles of charge to which the Government servant pleads guilty and obtain the signature of Government servant thereon. Where Government servant admits all the articles of charge, the disciplinary authority shall record its findings on each article of charge after taking such evidence as it may think fit and shall act in the manner laid down in Rule-21. **When Government servant pleads not guilty to all or any of the article of charges or refuses or omits to plead, the disciplinary authority shall record the plea and obtain the signature of the Government servant thereon and may decide to hold the inquiry itself or if it considers it necessary to do so, appoint under Sub-Rule-(2) an Inquiry Authority for the purpose.**

(a) If no written statement of defence is submitted by the Government servant, the disciplinary authority may itself inquire into articles of charge or may, if it considers it necessary to do so, appoint, under Sub-Rule-(2) an Inquiring Authority for the purpose.

(6) Where the Government servant to whom a copy of the articles of charge has been delivered does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the Disciplinary Authority or otherwise fails or refuses to comply with the provisions of this rule, the Disciplinary Authority may decide to hold the inquiry *ex parte* or if it considers necessary so to do, appoint an Inquiry Authority for the purpose.

(Emphasis is ours)

On a proper understanding of the above reproduced Rule, it is evident that the disciplinary authority has to necessarily wait for receipt of the written statement of defence from the charged officer before deciding as to whether it may itself inquire into such of the articles of charge as are not admitted or, if it considers it necessary to do so, appoint an Inquiring Authority for the purpose.

The obvious reason for envisaging further action only after receiving the written statement of defence from the charged officer is to enable the disciplinary authority to consider the version of the charged officer before deciding as to whether further action in pursuance of the charge memo is warranted or not, instead of proceeding further on the opinion formed unilaterally before considering the version of the charged officer.

On a combined reading of Sub-Rules-(3) to (6) of Rule-20 of the Rules, this Court has no hesitation to hold that the disciplinary authority is bound to consider the written statement of defence of the charged officer before appointing an Inquiry Officer for holding the inquiry. To this extent, we hold that the finding of the Tribunal is incorrect.

As regards the alternative finding of the Tribunal, though the learned counsel for the petitioner submitted that his client had been making representations to supply the documents to enable him to submit the written statement of defence, no material has been filed in support thereof. The petitioner has not disputed that after waiting for more than two months, respondent No.1 has addressed letter, dated 20.02.2017, calling upon him to submit the written statement of defence. As the written statement of defence was not submitted by the petitioner, respondent No.1 has appointed an Inquiry Officer for holding an inquiry. Indeed, Sub-Rule-(6) of

Rule-20 of the Rules, as extracted above, envisages a situation such as this, where the Government servant, to whom a copy of the articles of charge has been supplied, does not submit the written statement of defence on or before the date specified for the purpose or does not appear before the disciplinary authority or otherwise fails or refuses to comply with the provisions of Rule-20, the disciplinary authority may decide to hold the inquiry *ex parte* or if it considers necessary to do so, appoint an Inquiry Officer for that purpose. Therefore, the action of respondent No.1 in appointing the Inquiry Officer is in conformity with Sub-Rule-(6) of Rule-20 of the Rules.

Learned counsel for the petitioner submitted that, as directed by the Tribunal in the impugned order, his client may be furnished with the documents requested for by him in his representation, dated 11.11.2016 and he may be permitted reasonable time to submit his written statement of defence.

Learned Government Pleader has submitted that, as stated in the counter-affidavit before the Tribunal, the subordinates of respondent No.1 have visited the house of the petitioner as many as four times with a request to receive the documents, but the petitioner was unavailable. However, the Tribunal itself has given a direction to respondent No.1 to furnish the relevant documents to

the petitioner and also receive the written statement of defence from him in the course of the inquiry.

In the light of the above, respondent No.1 is directed to ensure that the documents sought for by the petitioner in his representation, dated 11.11.2016, are furnished to him as soon as possible. If within four weeks of receipt of the documents, the petitioner files his written statement of defence, the same shall be received by the Inquiry Officer. It is made clear that if the petitioner fails to avail the opportunity of receiving the documents, a notice shall be issued by respondent No.1 to that effect, and he shall thereafter proceed with further inquiry without waiting for the filing of written statement of defence by the petitioner.

Subject to the above observations and directions, the Writ Petition is disposed of.

As a sequel, WPMP.No.42803 of 2017 stands disposed of as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

JUSTICE K.VIJAYA LAKSHMI

13th October 2017

Note:

LR copies to be marked.

B/o

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