

THE HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
AND
THE HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.469 of 2018

ORDER: (Per the Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present petition, the petitioners have challenged the order dated 12.09.2016 passed in O.A.No.2195 of 2015 by the Andhra Pradesh Administrative Tribunal, Hyderabad, whereby the application filed by the first respondent under Section 19 of Administrative Tribunals Act, 1985, against the order dated 06.08.2005 and memo dated 06.10.2006, was allowed.

2. The brief facts are that the first respondent herein is the wife of Mr.Mohd. Shafiuddin, delinquent officer, who expired after the proceedings mentioned above were issued. It is stated that while the husband of first respondent was working as Forest Section Officer, Kodishella Section of Pasra Range of Warangal North Division, a charge memo dated 25.07.1998 was issued to him by the 4th respondent in the O.A., i.e., the Divisional Forest Officer, Warangal, alleging withdrawal of an amount of Rs.35,000/- from the account of Vana Samrakshnana Samithi, Oddugudem, and misappropriation of the Government amount without carrying out the work. It is stated that the basis for the charge is the report of the Sub-Divisional Forest Officer, Mulug dated 10.07.1998 along with the statement recorded by him on 09.07.1998 and the list of witnesses was given in Annexure-III i.e., Sri G. Gurunathudu, Sub-Divisional Forest

Officer, Mulug and Sri R. Mohan Rao, Forest Range Officer, I/c Range Pasra. The delinquent officer has submitted his explanation denying the charge. The enquiry officer has conducted enquiry on different dates by marking the documents referred in Annexure-II, but no witness was examined as per Annexure-III and only recorded the statement of Sri Sela Saraiah, s/o. Jogaiah, R/o.Oddugudem, Chair Person of VSS Oddugudem on 13.03.2001 and finally, the enquiry officer found that the charge framed against the husband of the first respondent was held proved.

3. After considering the rival contentions of the parties, the Tribunal held that no opportunity was given to the delinquent officer for proving his guilt and consequently, set aside the proceedings in G.O.Ms.No.86 dated 06.08.2005 and memo No.9332/For.IV/2005-5 dated 06.10.2006.

4. Learned Government Pleader for Services-II, State of Telangana, appearing on behalf of the petitioners, has drawn the attention of this Court to paragraph No.10 of the findings recorded by the Divisional Forest Officer, dated 21.03.2001, whereby it is stated as under:

“Vide this office reference even no., dated 10.02.2001 while fixing the oral enquiry on 19.02.2001, a notice was issued to d/FSO and sent to the Range Officer, Bhupalpalli North to serve at residential address of the d/FSO as he is absconding from duty with effect from 01.09.2000 and his whereabouts are not known. The Range Officer, Bhupalpalli North, has submitted a report dated 08.03.2001 that the notices dated 10.02.2001 was pasted on the door of H.No.3-15, Parkal, under cover of panchanama as the d/FSO was not available.”

Learned counsel further submits that the conclusion arrived at by the Tribunal is contrary to law and the order impugned deserves to be set aside.

5. The fact remains is that the Divisional Forest Officer, who is the disciplinary authority, has conducted enquiry by issuing notices and by examining Sri Sela Saraiah, s/o. Jogaiah, Chair Person of VSS Oddugudem on 13.03.2001 and came to the conclusion that the charge framed against the delinquent officer was held proved.

6. Vide order impugned, the Tribunal observed that the enquiry was conducted without examining the witnesses as per Annexure-III. The delinquent officer was not available and behind his back, the enquiry officer conducted enquiry by considering the statement of Sri Sela Saraiah and gave a finding that the charge was held proved. A perusal of the enquiry report establishes that the document mentioned in Annexure-II of Article of charge was not marked and the Sub-Divisional Forest Officer was also not examined. Unless the said document is marked in the enquiry, by examining the same thoroughly, it cannot be taken into consideration and the enquiry officer also has not taken into consideration the said documents. The enquiry officer has not examined the witnesses mentioned in Annexure-III to prove the guilt of the delinquent officer, but examined the VSS Chair Person, who is not a witness in Annexure-III, and that he has not given an opportunity to cross-examine Sri Sela Saraiah, however, came to the conclusion that the charge against the delinquent officer was held proved.

7. It is pertinent to mention here that on the notice issued by the petitioners along with the enquiry officer, the delinquent officer has not submitted his reply as he was in NIMS Hospital for Coronary Artery Disease TVD and thereafter, the impugned proceedings were issued dismissing the delinquent officer. Challenging the same, the delinquent officer filed a review petition before the Government. The Government without considering the contentions of the delinquent officer rejected the same.

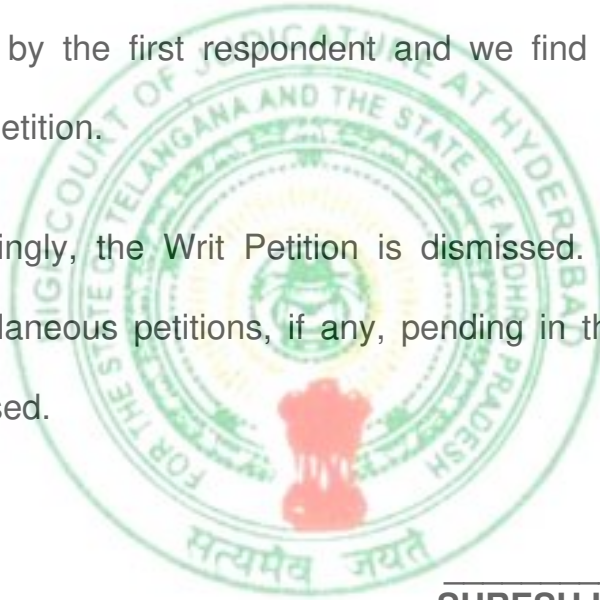
8. It is to be noted that the petitioners without giving any opportunity to the delinquent officer in cross-examining the said Forest Range Officer and other witnesses, who were mentioned in Annexure-III. proceeded with the enquiry and held the charge as proved. Thus, the enquiry officer has not followed Rule 20 of CCA Rules and consequently, the entire enquiry vitiates and imposing punishment on the delinquent officer also vitiates. Consequently, the punishment imposed against the delinquent officer was rightly set aside by the Tribunal.

9. In addition to above, the Tribunal observed that though the Forest Range Officer Sri V. Venkateswara Rao was given with charge memo as that of the delinquent officer, the petitioners have not conducted common enquiry under Rule 24 of CCA Rules. When it is a common charge but conducted a separate enquiry and that the charge against the said Forest Range Officer was dropped on the ground that he was busy with other work and as it is a Naxalite area, he could not go there and further that he has believed the words and

proceeded with and approved the bills. The Tribunal further observed that the Forest Range Officer, who is responsible for execution of the work and who has approved the same against him, the charge was dropped. Therefore, the action of the petitioners in dropping action against the Forest Range Officer and imposing major punishment on the husband of the first respondent on the same charge is illegal and arbitrary.

10. In view of the facts recorded above and the legal position, we are of the considered opinion that the Tribunal has rightly allowed the OA filed by the first respondent and we find no merit in the present writ petition.

11. Accordingly, the Writ Petition is dismissed. No order as to costs. Miscellaneous petitions, if any, pending in this petition shall stand dismissed.



SURESH KUMAR KAIT, J

ABHINAND KUMAR SHAVILI, J

14th June, 2018

sj