HON'BLE SRI JUSTICE SURESH KUMAR KAIT
AND
HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.18898 OF 2009

ORDER: (ORAL)

(per Hon'ble Sri Justice Suresh Kumar Kait)

Vide the present petition, the petitioners have assailed the order dated 22.12.2008 passed in O.A No.738 of 2005 by the Andhra Pradesh Administrative Tribunal at Hyderabad (for short "the Tribunal"), whereby the application filed under Section 19 of the Administrative Tribunals Act 1985, by the 1st respondent has been allowed. Consequently, G.O.Rt.No.430, Finance (Admn.I - Vig.) Department, dated 23.02.2004 of the 1st petitioner has been set aside.

2. The 1st respondent is retired as Joint Director, Treasuries and Accounts. While he was working as a District Treasury Officer, on certain irregularities regarding admissions of bogus financial assistance claims of certain ineligible widows of aided teachers, a disciplinary case was initiated against him. The following charges were framed against the 1st respondent vide Memo dated 26.08.1993.

> "**CHARGE-I** : That he had issued Treasury Certificates/Last Pension Payment Certificate from the Dist., Treasury as against the provisions contained in G.O.Ms No.175 Fin & Plg. (FW-Pen I) Deptt., dt.23.07.1981;
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> **CHARGE-II** : That he did not maintain any correspondence/ files regarding receipt, processing and forwarding of applications for Financial Assistance pensions and

he did not scrutinize the application in Annexure-II contrary to the instructions contained in G.O.Ms.No.175 Fin. & Plg. (FW-Pen I) Deptt., dt 23.07.1991;

CHARGE-III : That he did not make any cross entries against the original P.P.O., in the Dist., Treasury records either while issuing Treasury Certificates or while forwarding both halves of P.P.Os to the Sub-Treasury concerned which resulted in issue of two or three bogus F.A. P.P.Os against one pensioner;

CHARGE-IV : That he had given both halves of P.P.Os to the Messengers and outsiders without making any dispatch entries on the Office copies of the Proceedings;

CHARGE-V : That on account of his negligence, government has suffered heavy monetary loss;"

3. Accordingly, the 1st respondent had submitted his explanation on 27.10.1994. Thereafter, the Government, having not satisfied with the explanation, appointed one Sri M. Brahmayya, Director of Treasuries and Accounts as a common enquiry officer vide G.O.Rt.No.1040 Finance, dated 20.06.1996 and directed him to conduct enquiry. The said enquiry officer conducted enquiry and submitted his report on 03.05.1997 holding charges 1 and 2 as proved out of five charges. While the matter stood thus, the 1st respondent retired from service on attaining the age of superannuation on 31.08.1993. Thereafter, the 1st petitioner took steps under Sub-Rule (1) of Rule-9 of A.P. Revised Pension Rules of 1980 and sought explanation of the 1st respondent. Accordingly, the 1st respondent submitted his explanation. The 1st respondent being a gazetted officer, concurrence of APPSC was sought and a punishment of 50% cut in pension was

imposed on the 1st respondent, which was assailed by the 1st respondent in O.A before the learned Tribunal.

4. After considering the rival contentions of the parties, the learned tribunal allowed O.A. and set aside the proceedings of the 1st petitioner.

5. The present petition is filed on the ground that the 1st respondent along with some other officials of Education Department and Treasuries and Accounts Department, was responsible for certain fraudulent drawls under the scheme of Financial Assistance Pension Scheme of the government. A large scale embezzlement of government funds by drawing financial assistance in the names of fake pensioners had taken place. Common disciplinary proceedings were initiated against all the accused officers as per the provisions of old rules of APCS (CC&A) Rules 1963. By the time of completion of preliminary enquiries and issuing charge memo, the old rules were repealed and new Rules of 1991 were brought into. As per the provisions contained in Rule 45 of new Rules the proceedings initiated shall be continued and brought into the frame work of new rules as far as possible. Accordingly, disciplinary proceedings against the 1st respondent were brought into new rules after issuing of the charge memo by the Inquiring Authority.

6. Learned counsel appearing on behalf of the petitioners submits that in the inquiry proceedings the 1st

respondent was provided with every reasonable opportunity and allowed to permit his representation on the findings of the inquiry. Thereafter, he was awarded with the punishment duly complied with the provisions of the rules. He further submits that, in the said disciplinary proceedings, the 1st petitioner being the competent disciplinary authority has awarded a punishment of 50% cut in his pension. However, the learned tribunal has failed to appreciate the fact that the disciplinary proceedings were initiated under APCS (CC&A) Rules, 1963 and brought into the frame work of new rules as per the provisions contained in Rule 45 of new rules and that the enquiry officer is competent to issue charge memo under the old rules of 1963. Therefore, the learned tribunal ought to have considered the fact that the delay caused in the proceedings was due to the involvement of officials of Education Department and Treasuries and Accounts Department and also due to involvement of large number of employees and that it took considerable time to initiate action and conduct the inquiry proceedings thereon. Accordingly, the learned Tribunal ought not have re-appreciated the evidence and sit in the appeal in respect of charges, findings and decision of the competent authority contrary to the settled position of law.

7. It is pertinent to mention here that the enquiry officer recorded its finding as under:

> "that though treasury certificate issued by the Treasury is one vital document for issuance of sanction of financial assistance the pension sanctioning authority, the DRO cannot issue sanction order exclusively basing on the such a certificate, as the certificate does not contain the details of the widow of the deceased pensioner. The sanctioning authority has to verify the details furnishing in other enclosure of the application besides the LTA certificate or the widowhood certificate, as enclosure 6(E) and 6(F). In the available records, no original certificates are seen. This means that the pension sanctioning authority has not exercised any independent checks and issued 2 to 3 persons against a single pension payment order. It cannot be said that the failure of the charged officer to make cross entries itself to issue of 2 to 3 PPOs, hence the charge is not proved."

8. On a perusal of the aforesaid finding arrived at by the enquiry officer in respect of charges 3, 4 and 5. The enquiry officer could not have held the charges 1 and 2 as proved. Once charges 3, 4 and 5 were held as not proved, the charges 1 and 2 must fall to the ground. Unfortunately, the enquiry officer has held that the charges 1 and 2 proved cannot be sustained in the eye of law in view of categorical findings arrived at by the enquiry officer in respect of charges 3, 4 and 5.

9. It is pertinent to mention here that in para-5 of G.O.Rt.No.430, dt. 23.02.2004, it is stated as under :

> "Sri Ramakrishna Reddy, formerly District Treasury Officer, in his explanation 6th mentioned above, that he is ready to receive any kind of punishment on the guilty of, if any proved, for which if he is really responsible. Though he is eligible but due to the cheating played by the Accountant only he was involved. If the accountant is really found guilty and since his duty whenever he signed the certificate, the accountant could not have deceived

him for his vested and immoral interest. The accountant is enjoying the government money even though he was responsible for the entire tragedy of involving all the district officers worked during the period. The rules and circumstances on which the accountant was re-employed and working as legal government servant."

10. The explanation referred to in the impugned G.O.Rt.No.430 was relating to the explanation offered by Sri Ch. Hanman Singh who submitted his explanation on 12.03.1998, whereas the 1st respondent had submitted his explanation on 06.03.1998 but not on 12.03.1998 as cited as reference No.6 in the impugned GO. Thus, it is clear that the petitioners have mechanically proceeded to inflict major punishment of 50% cut in pension without application of mind.

11. Moreover, it is an admitted fact that the petitioners have initiated action after advent of APCS (CC&A) Rules, 1991. Rule-20 of the APCS (CC&A) Rules is very clear with regard to the framing of charges that the delinquent officer should be able to know the lapse on his part and also on the material on which charge is based. The charge memo essentially should contain substance of imputation of mis-conduct or mis-behaviour, statement of imputation of mis-conduct or mis-behaviour in support of each Article of charge. After charge sheet is drawn up and communicated to the delinquent officer, the question of appointment of enquiry officer arises under Rule-20 (2). In the case in hand, so called

charge memo dated 26.08.1993 wherein charges are framed by the enquiry officer is not consistent with Rule-20 of APCS (CC&A) Rules.

12. In a case reported in **CH.APPALA REDDY VS. EASTERN POWER DISTRIBUTION COMPANY OF A.P. LTD., VISAKHAPATNAM AND OTHERS**[1] , wherein this Court has held as under:

> "6. In any disciplinary proceedings, the necessity to appoint an Enquiry Officer arises only when the appointing authority points out certain acts of indiscipline on the part of the delinquent employee and the explanation offered by the employee is not satisfactory. On the other hand, where the explanation is found to be satisfactory, the necessity to proceed further does not arise or remain. In V.K. Khanna's case (supra), the Supreme Court reinstated this position of law and held that appointment of an Enquiry Officer even before a show-cause notice or charge-sheet is served upon an employee is unknown to service jurisprudence. It was further observed that on such an event, an element or bias exists vis-à-vis the enquiry Officer.
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> 7. The appointing authority would be in a position to apply his mind to the facts of the case only when he calls upon an employee to explain as to the acts of mis-conduct, noticed by him. Depending on his satisfaction, on consideration of the explanation, he may have to choose either to proceed further or to drop the proceedings. Even in a case, where he proposes to proceed further, but his inclination is only to impose a minor penalty, the necessity to appoint an Enquiry Officer may not arise. Conversely, the need to appoint an Enquiry Officer would arise if only the appointing authority is not satisfied with the explanation offered by the employee and that he proposes to inflict a major penalty.
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> 8. All these steps can emerge only when a show-cause notice or charge-sheet is given by the appointing authority. Such a course was, admittedly, not followed in this case. As observed

[1] 2005 (3) ALD 525 (DB)

earlier, initiation of disciplinary proceedings against the appellant commenced with the appointment of an Enquiry Officer and the ratio laid down by the Supreme Court gets attracted to the facts of the case. The Regulation 10(2)(a), upon which, reliance is placed by the respondents, does not salvage the situation. On the other hand, the Regulation does not support the course of action, adopted by the respondents. In clear terms, it mandates that the appointing authority shall appoint an Enquiry Officer only when he proposes to impose the penalty indicated in certain clauses. The proposal to impose such a penalty can, invariably, emerge only after ascertaining the views or obtaining the explanation from the employee concerned. Viewed from any angle, the order challenged in the writ appeal, cannot be sustained."

13. The case in hand is covered by Rule 20 of APCS (CC&A) Rules. Rule 20(5) (a) and (b) reads as follows:

"5(a) : 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, to, if it considers it necessary so to do, 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 his 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;

(b) If no written statement of defence is submitted by the government servant, the disciplinary authority may itself inquire into the articles of charge or may, if it considers it necessary to do so, appoint, under sub-rule (2) an inquiring authority for the purpose."

14. It is not in dispute, the charge memo has been issued by the enquiry officer. In view of the rules mentioned above, the impugned order does not stand on its feet.

15. It is an admitted fact that charges 3, 4 and 5 as not proved. If those charges are not proved, then the charges 1 and 2 cannot be proved against the 1st respondent. There is no charge quantifying the loss. The charges are not supported by any statement of facts or imputations. In the absence of specific charge and in the absence of any specific finding by the enquiry officer, the petitioners ought not have fastened the liability of loss to the tune of Rs.11,60,000/- to the 1st respondent. The disciplinary proceedings being quasi judicial proceedings, has to be afforded a reasonable opportunity to the delinquent officer by framing a definite specific charge.

16. Accordingly, the learned tribunal opined that there is no specific charge of loss to the Government. The Government has arbitrarily fastened the liability on the 1st respondent. Further, the petitioners have traversed beyond the scope of enquiry without framing a specific charge and held that the 1st respondent is responsible for loss of Rs.11,60,000/-. When there was no charge to that effect, the disciplinary authority ought not to have introduced the same at the stage of final show cause notice. This amounts to denial of valuable right of reasonable opportunity to the 1st respondent.

17. The Hon'ble Supreme Court in a case reported in **M.V.BIJLANI vs. UNION OF INDIA AND OTHERS**[2] held as under:

> "14. From a perusal of the enquiry report, it appears to us that the disciplinary authorities proceeded on a wrong premises. The appellant was principally charged for non-maintenance of ACE-8 Register. He was not charged for theft or misappropriation of 4000 kg of telegraph copper wire or mis-utilisation thereof. If he was to be proceeded against for mis-utilisation or misappropriation of the said amount of copper wire, it was necessary for the disciplinary authority to frame appropriate charges in that behalf. Charges were said to have been framed after receipt of a report from CBI (Anti-Corruption Bureau). It was, therefore, expected that definite charges of mis-utilisation/ misappropriation of copper wire by the appellant would have been framed. The appellant, therefore, should have been charged for defalcation or mis-utilisation of the stores he had handled if he was to be departmentally proceeded against on that basis. The second charge shows that he had merely failed to supervise the working of the line. There was no charge that he failed to account for the copper wire over which he had physical control."

18. The learned tribunal perused the enquiry report, which revealed that the findings given by the enquiry officer are incongruous in nature. The enquiry officer, having held the charges 3, 4 and 5 as not proved, could not have held charges 1 and 2 as proved. Further, Rule 23 (1) cast a duty on the enquiry officer to prepare his report by giving findings on each Article of charge and the reasons therefore, which is absent in the present case.

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[2] 2006 (3) SLR 105

19. The petitioners have taken into consideration the explanation submitted by one Sri Ramakrishna Reddy on 12.03.1998. The same has been mentioned in reference No.6 in the impugned G.O., whereas the 1st respondent has submitted his explanation on 06.03.1998. Therefore, it cannot be said that the petitioners have applied their mind and consider the explanation submitted by the 1st respondent.

20. In view of the above discussion and legal position, we find no illegality or perversity in the order dated 22.12.2008 passed in O.A.No.738 of 2005 by the learned Tribunal.

21. Finding no merit in the instant petition and the same is accordingly dismissed. There shall be no order as to costs.

Miscellaneous Petitions, if any pending, shall stand closed.

SURESH KUMAR KAIT, J.

ABHINAND KUMAR SHAVILI, J.

Date : 21-02-2018
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