

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No. 14902 of 2005

ORDER:

This writ petition is filed seeking to issue a writ of mandamus declaring the memo dated 07.10.2003 issued by the 1st respondent as illegal and arbitrary. A consequential direction is also sought to the respondents to restore the increments deferred vide the said memo and treat the period of suspension as on duty duly granting all consequential benefits.

Heard Sri K. Vasudeva Reddy, learned counsel for the petitioner, and Sri N. Siva Reddy, learned standing counsel for the respondents.

It has been contended by the petitioner that while he was working as Additional Assistant Engineer (Operation) at Bellary Road Section, the respondents had issued a memo dated 13.05.2002 asking for explanation with regard to certain lapses, for which he submitted explanation. Not being satisfied with his explanation, the 3rd respondent issued a show-cause-notice dated 05.06.2002, for which also he submitted explanation on 20.06.2002. Without considering the same, the 2nd respondent straight away imposed punishment of withholding of two increments without cumulative effect. Aggrieved thereby, he preferred an appeal before the 5th respondent. When the appeal is pending, the 5th respondent issued a memo dated 15.03.2003 placing him under suspension and appointing an enquiry officer on the same set of allegations. The enquiry officer framed charges vide charge memo dated 29.04.2003, and after conducting enquiry, submitted a report holding that the charged are proved. Thereafter, the 1st respondent imposed

punishment of stoppage of three increments with cumulative effect vide memo dated 07.10.2003. The same is challenged in the present writ petition.

Learned counsel for the petitioner has contended that the enquiry officer cannot issue the charge memo and the appellate authority without giving any opportunity cannot enhance the punishment which was already imposed by the disciplinary authority. He further contended that the issue raised in this writ petition is squarely covered by a judgment rendered by a Division Bench of this Court in **Ch. Appala Reddy Vs. Eastern Power Distribution Company of A.P.Ltd.**¹, wherein it is held as follows:

“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 (1 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 in such an event, an element of bias exists vis-a-vis the Enquiry Officer.

7. The appointing authority would be in 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 misconduct, 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 manor penalty.

8. All these steps can emerge only when a show cause notice or charge sheet is given by the appointing authority is given by the appointing authority. Such a course was, admittedly, not followed in this case. As observed earlier, initiation of disciplinary proceedings against the appellant commenced with the

¹ 2005 (3) ALT 632 (D.B)

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.

9. We accordingly allow the writ appeal and set aside the order of the learned single judge. We allow the writ petition and set aside the proceedings challenged in it. However, we leave it open to the second respondent to issue a show cause notice to the appellant and thereafter take further steps, in accordance with law.”

On the other hand, learned standing counsel for the respondents has contended that the appellate authority has rightly enhanced the punishment exercising its power and no illegality or irregularity has been committed by the appellate authority and there are no merits in the writ petition and the same is liable to be dismissed.

Having considered the rival submissions made by the learned counsel on either side and perused the record, this Court is of the considered opinion that the enquiry officer cannot issue the charge memo and the impugned order dated 07.10.2003 is also not a speaking order. In view of the same and as per the law laid down by a Division Bench of this Court in ***Appala Reddy case*** referred to supra, the impugned order is liable to be set aside.

Accordingly, the writ petition is allowed and the impugned order dated 07.10.2003 issued by the 1st respondent is set aside with all consequential benefits. However, liberty is given to the respondents to

initiate disciplinary action against the petitioner, in accordance with law, if they intend to do so.

Consequently, miscellaneous petitions, if any, pending in the writ petition shall stand closed. No order as to costs.

ABHINAND KUMAR SHAVILI, J

23rd October, 2018

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HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI



Writ Petition No. 14902 of 2005
(allowed)

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