

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION NO.3932 OF 2007

ORDER:

1. This writ petition is filed seeking to issue a writ of Mandamus declaring all the proceedings including the proceedings under Memo No.HRD/DC/PO II/F.No.59/01/D.No.3101/06, dated 23.12.2006 passed by the 2nd respondent commencing from the Charge Memo.FA & CCA/Peshi/D.No.55/03, dated 29.1.2003 of the 3rd respondent, as illegal and arbitrary, and consequently to nullify the same.

2. Heard Sri D. Linga Rao, learned Counsel for the petitioner and Sri M. Ravindra, learned Standing Counsel for the respondents.

3. It is the case of the petitioner that disciplinary proceedings were initiated against him while he was working as Lineman, during the year 2001, and the 5th respondent placed the petitioner under suspension w.e.f.13.7.2001 contemplating to initiate disciplinary action. The 2nd respondent appointed the 3rd respondent as enquiry officer to enquiry into the allegations of Revenue Journal scam along with others by framing definite charges. Basing on the said appointment order, the 3rd respondent, who is the enquiry officer, issued charge sheet to the petitioner on 29.1.2003 framing the

charges, and thereafter, conducted enquiry. On the basis of the report of the enquiry officer, the 2nd respondent imposed punishment of reduction of pay to the minimum of time scale of the cadre and stoppage of two increments with cumulative effect besides treating the suspension period as EOL (which is not countable for pension) limiting the pay and allowances to the subsistence allowance already drawn during the period of suspension. Aggrieved by the same, the present writ petition has been filed.

4. The learned Counsel for the petitioner contended that on the very same set of allegations, the respondents initiated criminal proceedings against the petitioner and the competent Criminal Court in C.C.No.437 of 2002 was pleased to acquit the petitioner on 12.2.2013 and in pursuance of the acquittal of the petitioner in Criminal Case, the 1st respondent issued proceedings dated 22.4.2013, and that it is always open for the disciplinary authority to initiate action, but while deciding as to whether disciplinary action can be taken or not, the disciplinary authority should have taken into account the memo dated 22.4.2013 and pass orders.

5. The principal contention raised by the learned Counsel for the petitioner is that the enquiry officer cannot issue charge sheet and it is for the disciplinary authority to issue charge sheet, and only

after submitting the explanation, the disciplinary authority either drops or continues the disciplinary proceedings by appointing enquiry officer, but in the instant case, the disciplinary authority appointed the enquiry officer and the enquiry officer issued the charge sheet to the petitioner and thus, the right of the petitioner for submitting explanation to the disciplinary authority was denied. The learned Counsel for the petitioner contended that the issue whether the enquiry officer can issue charge sheet or not was considered by this Court in W.P.No.25454 and 25480 of 2010 and this Court vide order dated 6.9.2011 was pleased to pass the following order:

“It is the appointing authority, that can initiate proceedings against an employee for any acts of misconduct or indiscipline. Such proceedings commence with the issuance of a charge-sheet, or charge memo. In certain organizations, disciplinary authorities are also provided for, separately.

Whenever a charge-sheet is issued, either by the appointing authority or the disciplinary authority, the employee would have an opportunity to submit explanation. In case the employee admits the allegations made against him, the concerned authority can straightaway impose the punishment. It is only when the allegations are denied by the employee, that the necessity to conduct departmental or disciplinary enquiry, and appointment of an enquiry officer, for that purpose, would arise. The function of an enquiry officer is to hear the version of the organization and the employee, and submit a report, recording his findings on the charges. In the instant case, the enquiry officer was appointed, even before any charges were framed against the petitioners, and they have submitted their explanations. In fact, the enquiry officer himself framed the charges.

A Division Bench of this Court, of which, I happened to be a member, in **Ch. Appala Reddy v. Eastern Power Distribution Company of A.P. Limited and others (W.P.No.491 of 2005, dated 13.4.2005)**, held that such a course is impermissible in law. The said judgment squarely applies to the facts of the case.

The second defect is that the 2nd respondent did not furnish any reasons, whatever, in support of his conclusions. An elaborate order, running into four closely typed pages was passed. Till the end of the order, it is only narration of facts and reproduction of contentions of the parties.

The disciplinary authority is under obligation to furnish the reasons in support of his conclusion. It reflects non-application of mind, or non-furnishing of reasons.

Thirdly, the Regulation do not provide for the punishment of reduction of pay to the minimum of time scale. As though that is not sufficient, the punishment of withholding of increments was imposed.

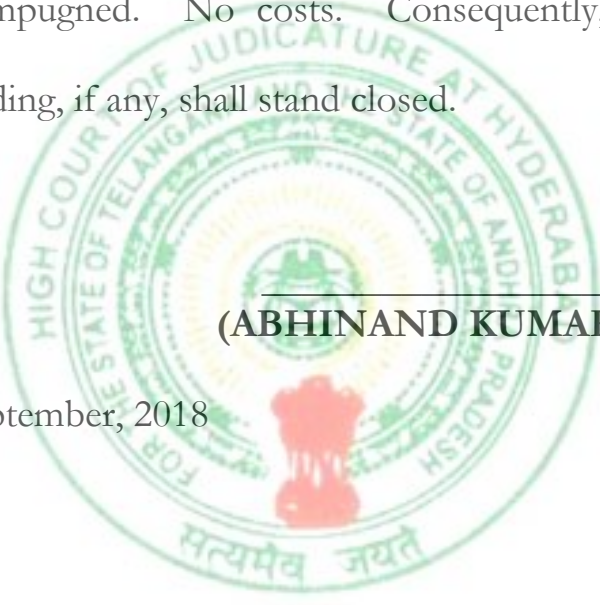
For the foregoing reasons, the writ petitions are allowed and the orders challenged therein are set aside. It is left open to the respondents to initiate disciplinary proceedings against the petitioners in accordance with law. The petitioners shall be entitled to be paid their regular salary, without any reduction, from October, 2011 onwards.

The punishment imposed against the petitioners was enforced, *vis-à-vis* the petitioner in W.P.No.25480 of 2010. The manner in which the amount withheld from his salary would depend upon the outcome of the disciplinary proceedings, that may be initiated. The decision, whether or not to initiate disciplinary proceedings against the petitioners shall be taken, within a period of one month from the date of receipt of a copy of this order, and if they are initiated, they shall be concluded within a period of four months thereafter.”

6. Further, the learned Counsel for the petitioner contended that the orders passed in W.P.No.25454 and 25480 of 2010 dated 6.9.2011 were also confirmed by the Division Bench of this Court in W.A.No.1090 of 2011 and 29 of 2012, vide judgment dated 24.1.2012. The learned Counsel for the petitioner contended that this writ petition is also identical and therefore, this petition may also be disposed in terms of the above cited judgment.

7. The learned Standing Counsel for the respondents has not disputed about the judgments rendered by this Court. Therefore, the Court is of the view that this writ petition can be disposed of by setting aside the order of punishment passed by the 2nd respondent vide Memo No.HRD/DC/POII/F.No.59/01/D.No.3101/06, dated 23.12.2006.

8. Accordingly, the Writ Petition is disposed of setting aside the order of punishment passed by the 2nd respondent vide Memo No.HRD/DC/PO II/F.No.59/01/D.No.3101/06, dated 23.12.2006. However, it is left open to the disciplinary authority to initiate disciplinary proceedings against the petitioner in accordance with law, within a reasonable period of time. The petitioner is also entitled to regular salary without any reduction, from the date of enforcement of the punishment imposed under the memo impugned. No costs. Consequently, miscellaneous petitions pending, if any, shall stand closed.


(ABHINAND KUMAR SHAVILI, J)

Dated: 7th September, 2018

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Dated: 7.9.2018

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