

* HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

+ Writ Petition No.2388 of 2010

% Date: 21-8-2018

S.V.R. Nagesh S/o Rama Rao, Aged 38 years,
Occ: Junior Assistant (Under Removal),
I Addl. Junior Civil Judge's Court, Bhimavaram,
West Godavari District, R/o 5-97, Chanikyapuri Colony,
R.R. Pet, Eluru, West Godavari District
... Petitioner
Vs.

\$ 1. The High Court of A.P., Rep. by its Registrar (Admn.),
High Court Bldgs., Hyderabad
2. The District Judge, West Godavari Dist. at Eluru
... Respondents

! Counsel for Petitioner: Dr. K.Lakshmi Narasimha
Counsel for Respondents: Mr. S.Sri Ram, Standing Counsel

< Gist:

> Head Note:

? Cases referred:

1. (2015) 15 SCC 184
2. (1972) 3 SCC 542
3. (2010) 2 SCC 497
4. (1983) 1 SCC 124
5. (1991) 2 SCC 283
6. (2015) 5 SCC 549
7. (1986) 3 SCC 454
8. (2003) 3 SCC 583
9. (1996) 3 SCC 364

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.2388 of 2010

Order: (per V.Ramasubramanian, J.)

The petitioner who was imposed with the penalty of compulsory retirement, pursuant to disciplinary proceedings, has come up with the above writ petition challenging the order of penalty.

2. Heard Dr. K.Lakshmi Narasimha, learned counsel for the petitioner and Mr. S.Sri Ram, learned Standing Counsel for the Registry.

3. The petitioner was initially appointed as an Examiner in the year 1993 and was promoted as Junior Assistant in the year 1998. When he was working as Junior Assistant in the First Additional Junior Civil Judge's Court, Bhimavaram, he was issued with a show cause notice dated 16-9-2008, alleging that he had created four fake orders by forging the initials of the Presiding Officer, on the withdrawal petitions arising under the Motor Vehicles Act, 1988. The incident referred to in the show cause notice allegedly happened when the petitioner was working in Eluru.

4. Not satisfied with the explanation given by the petitioner to the show cause notice, a charge memo dated 04-10-2008 was issued under Rule 20 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991. The petitioner submitted explanation to the charge

memo on 23-10-2008. But an enquiry followed and the petitioner made a request to permit him to engage an Advocate to defend himself and also to permit him to peruse the records. While rejecting his request for permission to engage a counsel, the petitioner was permitted to take the assistance of any Government servant and he was also directed to approach the First Additional District Judge for permission to scrutinise the records. It is relevant to note that the disciplinary proceedings were initiated against the petitioner only on a complaint given by the First Additional District Judge, to whom the petitioner was referred for the perusal of the records.

5. Aggrieved by such an action, the petitioner made a representation on 21-11-2008 to the Registry of the High Court. But the Registrar (Vigilance), by an office memorandum dated 25-11-2008 directed the petitioner to approach the District Judge, if he had any grievance in this regard.

6. In the enquiry, a Senior Assistant working in the office of the First Additional District Judge was examined as P.W.1, the First Additional District Judge was examined as P.W.2 and a Stenographer working in the office of the First Additional District Judge was examined as P.W.3. The petitioner examined a Junior Assistant working in the office of the First Additional District Judge as D.W.1.

7. When the enquiry was in progress, the petitioner was served with another charge memo dated 10-12-2008. The Enquiry Officer clubbed the said charge memo also in the same proceedings.

8. Thereafter, the Enquiry Officer submitted a report dated 23-12-2008 holding the charges proved. The enquiry report was forwarded to the petitioner and the petitioner made his representation. Thereafter, a show cause notice dated 06-01-2009 was issued proposing a penalty. The petitioner submitted a representation, after which the Disciplinary Authority passed an order dated 17-01-2009 imposing the penalty of removal from service. The appeal filed by the petitioner on 04-02-2009 was partly allowed by the proceedings of the High Court dated 04-12-2009, modifying the penalty of removal from service, into one of compulsory retirement. It is against the said order that the petitioner has come up with the above writ petition.

9. Assailing the entire disciplinary proceedings which culminated in the order of removal from service, but which got modified in appeal into one of compulsory retirement, it is contended by Dr. K.Lakshmi Narasimha, learned counsel for the petitioner, that the entire proceedings were vitiated by the infraction of statutory rules and that therefore they are liable to be set at naught. The list of procedural irregularities, according to the learned counsel for the petitioner, is:

(i) The charge memo dated 04-10-2008 was not accompanied by the copies of the documents listed in Annexure-II to the charge memo and hence there was a violation of Rule 20(4) of the A.P. Civil Services (CCA) Rules;

(ii) The request of the petitioner to be represented by a legal practitioner was rejected, despite the fact that the Presenting Officer was a legally qualified person and it is in violation of Rule 20(5)(b) and (c) of the Rules,;

(iii) The Enquiry Officer permitted P.Ws.1 and 2, in the course of chief-examination, to produce 16 documents marked as Exs.A-1 to A-16, though they were not included in Annexure-II to the charge memo and the same violated Rule 20(11);

(iv) The Enquiry Officer permitted the examination of a new witness as P.W.3, though he was not cited as a witness in Annexure-III to the charge memo;

(v) The Enquiry Officer did not even verify the signature of the petitioner to see whether he could have faked judicial orders nor did he send the signature to the handwriting expert and this resulted in the Enquiry Officer going only by the *ipse dixit* of the Judicial Officer;

(vi) The Enquiry Officer committed a grave irregularity in clubbing the 2nd charge memo, though the same was issued almost towards the closure of the enquiry on the 1st charge memo; and

(vii) The Appellate Authority dismissed all the contentions raised in the appeal without applying his mind to the issues raised by the petitioner.

10. In support of his first contention that the non-supply of the copies of the documents and statements of witnesses listed in the charge memo vitiated the enquiry, Dr. K.Lakshmi Narasimha, learned counsel for the petitioner, relied upon the following decisions:

(i) ***Pawan Kumar Agarwala v. SBI***¹,

(ii) ***C.L. Subramaniam v. Collector of Customs, Cochin***² and

(iii) ***G.Vallikumari v. Andhra Education Society***³.

11. In support of his contention that the rejection of the request for engaging the services of a legally trained person, vitiated the enquiry, especially when the Presenting Officer was a legally trained person, the learned counsel for the petitioner, placed reliance upon the following decisions:

(i) ***Board of Trustees, Port of Bombay v. Dilipkumar Raghavendranath Nadkarni***⁴,

(ii) ***J.K. Aggarwal v. Haryana Seeds Development Corporation Ltd.***⁵ and

(iii) ***Ramesh Chandra v. Delhi University***⁶.

¹ (2015) 15 SCC 184

² (1972) 3 SCC 542

³ (2010) 2 SCC 497

⁴ (1983) 1 SCC 124

⁵ (1991) 2 SCC 283

⁶ (2015) 5 SCC 549

12. In support of his contention that whenever allegations of forgery are made, a comparison of the signatures is necessary, the learned counsel for the petitioner relied upon the following decisions:

- (i) ***Sawai Singh v. State of Rajasthan***⁷ and
- (ii) ***Lalit Popli v. Canara Bank***⁸.

13. We have carefully considered the submissions of the learned counsel for the petitioner. Before dealing with those submissions, it may be necessary to have an understanding of the nature of the charges framed against the petitioner. Hence, the charges under both the charge memos are extracted as follows:

“Charge memo 1

Article: “That Sri S.V.R. Nagesh, while functioning as Junior Assistant, I Addl. District Court, W.G., Eluru has created fake orders by forging the initials of the officer on permission petitions in I.A.No.1232/2008 in M.V.O.P. No.826/2004, I.A.No.1233/2008 in M.V.O.P.No.579/2005, I.A.No.1250/2008 in M.V.O.P.No.322/2006 and I.A.No.1252/2008 in M.V.O.P.No.509/2007 on the file of I Addl. District Court, W.G., Eluru and also mislead the District Judge, W.G., Eluru, to cancel the F.D.Rs., basing on the fake orders, dated 03-4-2008 on the above numbered petitions, which amounts to misconduct for violating the legitimate duty casts upon you which if proved and established, punishable under CCA Rules.”

“Charge memo 2

Article: “That Sri S.V.R. Nagesh, while working as Junior Assistant, I Addl. District Court, W.G., Eluru has created fake orders by forging the initials of the officer on the following petitions in

⁷ (1986) 3 SCC 454

⁸ (2003) 3 SCC 583

I.A.No.1120/2008 in M.V.O.P.No.347/2008, Order dated 18-3-2008

I.A.No.1784/2007 in M.V.O.P.No.37/2001, Order dated 22-10-2007

I.A.No.1078/2008 in M.V.O.P.No.708/2002, Order dated 13-3-2008

I.A.No.1083/2008 in M.V.O.P.No.430/2001, Order dated 14-3-2008

I.A.No.1149/2008 in M.V.O.P.No.595/2002, Order dated 26-3-2008

I.A.Nos.147 & 148/2008 in M.V.O.P.No.398/1993

I.A.Nos.155 & 156/2008 in M.V.O.P.No.259/1996

I.A.Nos.1034 & 1035 in M.V.O.P.No.709/2005

I.A.Nos.1036 & 1037/2008 in M.V.O.P.No.715/2005

I.A.No.1048/2008 in M.V.O.P.No.493/2003

I.A.No.1150/2008 in M.V.O.P.No.398/1993, Order dated 26-3-2008

I.A.No.1151/2008 in M.V.O.P.No.889/2004, Order dated 26-3-2008

I.A.No.1153/2008 in M.V.O.P.No.669/1994, Order dated 26-3-2008

I.A.No.1154/2008 in M.V.O.P.No.100/2002, Order dated 26-3-2008

I.A.No.1231/2008 in M.V.O.P.No.648/2005, Order dated 03-4-2008

I.A.No.1235/2008 in M.V.O.P.No.231/2006, Order dated 03-4-2008

on the file of I Addl. District Court, W.G., Eluru, and also mislead the Presiding Officers including the District Judge, W.G., Eluru, basing on the respective fake orders referred above which amounts to misconduct for violating the legitimate duty casts upon you which if proved and established, is punishable under APCS (CCA) Rules.”

14. It may be seen from the charges extracted above that the first charge related to the creation of fake orders on 03-4-2008. In fact, the first charge memo dated 04-10-2008 was preceded by a show cause notice dated 16-9-2008, calling upon the petitioner to show cause as to why

disciplinary proceedings should not be initiated against him for creating fake orders on 03-4-2008.

15. To be precise, as per the first charge memo, the date on which the fake orders were allegedly created was 03-4-2008. Admittedly, the petitioner was transferred from Eluru to Bhimavaram on 01-4-2008. Therefore, the petitioner came up with an explanation that as on the date of his transfer, more than 100 petitions relating to permission for cancellation of Fixed Deposit Receipts and cheque petitions were pending and that the Presiding Officer directed him to put up all the petitions for orders, so that he could be relieved after orders were passed on the said petitions. Therefore, it was his defence that during the period from 02-4-2008 to 04-4-2008, he got typed the orders for cancellation of the F.D. Receipts and placed 25 to 30 petitions and about 30 to 35 exhibits per day for initials and signatures. From the explanation that the petitioner offered to the show cause notice issued before the framing of the charges, it is clear that the acts of misconduct committed by the petitioner were on 03-4-2008, that was after his transfer to another place. Even according to him, he was instructed by the Presiding Officer to put up all the petitions for orders before he could be relieved and hence he put up 25 to 30 petitions per day for orders.

16. But the number of petitions in respect of which the allegation of forgery is made, are only 4 under the 1st charge

memo and 16 under the 2nd charge memo. Under the 2nd charge memo dated 10-12-2008, 16 items are listed, out of which only two relate to the date 03-4-2008. It means that all the 30 to 35 petitions placed every day during the period from 02-4-2008 to 04-4-2008 were not made the subject matter of the charge. In other words, there is no charge that the petitioner forged the signatures and created fake orders in all the 30 to 35 petitions placed by him for orders before the Presiding Officer on 03-4-2008. Therefore, there is no reason for the Presiding Officer viz., the First Additional District Judge to implicate the petitioner falsely in such a serious charge of forgery and faking judicial orders.

17. In the initial stages of the enquiry, it was not even the case of the writ petitioner that he was being fixed due to any enmity. However, while cross-examining P.W.1, the petitioner made a suggestion that P.W.1 became inimically opposed to him. The reason stated by the petitioner was that the parties to a claim petition in M.V.O.P.No.194/1999 were related to P.W.1 and that when P.W.1 requested the petitioner to verify the cheque petition the petitioner refused to oblige, on account of which P.W.1 bore grudge against him.

18. But the above stand taken by the writ petitioner is hardly convincing. Assuming that P.W.1 bore grudge against the writ petitioner, there was no reason why the First Additional District Judge should toe the line of P.W.1. As could be seen from the sequence of events, the disciplinary

proceedings were triggered by a letter written by the First Additional District Judge, Eluru, to the District Judge on 15-9-2008. This letter which was marked as Ex.A-11 contained a statement to the effect that the First Additional District Judge verified all the orders in the withdrawal petitions, purported to have been passed on 03-4-2008 and found that those orders were fake with forged initials. Therefore, a mere allegation that P.W.1 who was only a Senior Assistant was inimically opposed to the petitioner, may not be sufficient to come to the conclusion that the whole process initiated by the Judicial Officer was vitiated by *mala fides*. In fact, the petitioner is not pitching his defence on *mala fides*. There is no reason why the District Judicial Administration should fix the petitioner on false charges.

19. It is too long in the day to reiterate that what is important to see in a departmental enquiry is preponderance of probability and not proof beyond doubt. Judicial review is confined in such cases only to – (i) infraction of statutory rules, (ii) violation of the principles of natural justice, (iii) findings being completely perverse which no reasonable man can come to and (iv) proportionality of penalty.

20. Realising this shortcoming in the scope of judicial review, the learned counsel for the petitioner made submissions predominantly on the violation of the procedure established by statutory rules. Therefore, we shall see

whether the contentions revolving around the violation of statutory prescriptions could be sustained or not.

21. The first contention of the learned counsel for the petitioner is that the documents listed in Annexure-II to the charge memo were not supplied to the petitioner and that therefore there was a violation of Rule 20(4) of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991.

22. Under Rule 20(4) of the Rules as they stood before the amendment of the Rules in the year 1991, the Disciplinary Authority was required to deliver to the delinquent, a copy of the articles of charges, the statement of imputations of misconduct and a list of documents and witnesses by which each article of charge was proposed to be sustained. But the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1963 were superseded by the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991, issued under G.O.Ms.No.487, GAD, dated 14-9-1992. Under Rule 20(4) of these Rules, issued in the year 1991, the Disciplinary Authority is obliged to deliver to the delinquent a copy of the articles of charges, the statement of imputations of misconduct and a list of documents and witnesses and also the copies of the documents and statements of witnesses. Therefore, it is clear that as per Rule 20(4) as it stands today,

the Disciplinary Authority is obliged to supply copies of documents and statements of witnesses.

23. In Annexure-II to the charge memo dated 04-10-2008, only two documents were listed viz., (i) the report submitted by the First Additional District Judge on 15-9-2008 and (ii) the District Court's official memorandum dated 16-9-2008. The grievance of the petitioner is that these two documents were not furnished to him.

24. But unfortunately for the petitioner, he did not ask for copies of these documents, in his reply dated 23-10-2008 to the charge memo. As can be seen from the provisions of Rule 20(5), the object of furnishing copies of the documents and statements of witnesses to the delinquent is to ensure that he makes up his mind whether to plead guilty or not. The petitioner was clear in his mind that he was not guilty. Therefore, he submitted an explanation dated 23-10-2008 denying the charges and came up with his own version of the case. He neither asked for the copies of those documents nor pleaded his inability to give an explanation to the charges, in the absence of the copies of the documents.

25. It is only after an Enquiry Officer was appointed and the petitioner was summoned to appear before him that he submitted two representations dated 11-11-2008 seeking – (i) permission to engage a lawyer and (ii) permission to peruse the records. The relevant portion of the petitioner's

representation dated 11-11-2008, seeking copies of the records is reproduced as follows:

“I further submit that in the above Departmental Enquiry, the main and material allegation is “making fake orders by forging initials of presiding officer”. To peruse the variations and relevant information from the records relating to O.Ps which had been dealt with by me and by my successor in the court of Hon’ble I Addl. District Court, Eluru, during the tenure of Hon’ble I Additional District Judge, West Godavari, Eluru Sri T.Baktavatsalam and to send for such records before the Hon’ble Enquiry Officer-cum-Judge, Family Court, Eluru and to defend the allegations made against me and to prove my genuineness before Hon’ble Enquiry Officer.

In the above circumstances, I pray your Esteemed Authority may kindly be pleased to grant permission to peruse the records which had been dealt by me and by my successor.”

26. In response, the petitioner was advised by the District Judge by his proceedings dated 14-11-2008, to make the requisition before the First Additional District Judge for perusal of records. Instead of approaching the First Additional District Judge, for perusal of records, the petitioner made a representation to the Registrar (Vigilance) of this Court, about two grievances viz., the rejection of his request for engaging an Advocate and his request for perusal of records. The Registrar (Vigilance) sent a reply dated 25-11-2008 asking the petitioner to approach the District Judge, if he had any grievance.

27. Therefore, the petitioner ought to have approached the First Additional District Judge for perusal of the records

and in case the same had been denied, he could have approached the District Judge or the Registrar (Vigilance) with a grievance that the First Additional District Judge was not allowing him to peruse the records. The petitioner did not do either of the same. On the contrary, he participated in the enquiry and effectively cross-examined the witnesses. In any case, nothing really turned on the two documents listed in Annexure-II to the charge memo. The documents listed in Annexure-II to the charge memo were – (i) the report of the First Additional District Judge dated 15-9-2008 sent to the District Judge and (ii) the District Court's official memorandum dated 16-9-2008. The 1st document was marked as Ex.A-11. It was just a report on which nothing turned except that the disciplinary proceedings were directed to be initiated pursuant to the same. The 2nd document viz., the District Court's official memorandum dated 16-9-2008 was nothing but the show cause notice issued to the petitioner before the issue of the charge memo. The petitioner already submitted his reply to the show cause notice on 19-9-2008. Therefore, it is clear that the petitioner was already in possession of one of the two documents listed in Annexure-II to the charge memo and nothing turned on the 2nd document. Hence, the petitioner cannot make much ado about the infraction of Rule 20(4).

28. The 2nd grievance of the petitioner is about the rejection of his request to engage an Advocate. Rule 20(5)(c) of

the Rules enables the Disciplinary Authority to permit a delinquent to take the assistance of any other Government servant, but not to engage a legal practitioner unless the Presenting Officer was one such or the Disciplinary Authority, having regard to the circumstances so permits. Rule 20(5)(c) reads as follows:

“On the day so fixed, the disciplinary authority shall serve copies of the orders appointing the inquiring authority and the Presenting Officer on the Government servant and inform him that he may take the assistance of any other Government servant to present the case on his behalf, but he may not engage a retired Government servant or a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is one such, or, the disciplinary authority, having regard to the circumstances of the case, so permits:

Provided that no Government servant dealing in his official capacity with the case of inquiry relating to the person charged or any officer to whom an appeal may be preferred shall be permitted by the inquiring authority to appear on behalf of the person charged before the inquiring authority:

Provided further that the Government servant may take the assistance of any other Government servant posted at any other station, if the inquiring authority having regard to the circumstances of the case and for reasons to be recorded in writing, so permits.

Note (1):- The Government servant shall not take the assistance of any other Government servant who has pending two disciplinary cases on hand in which he has to give assistance.

Note (2):- The Government servant may also take the assistance of a retired Government servant to present the case on his behalf, subject to such conditions as may be specified by the Government from time to time by general or special order in this behalf.”

29. It is seen from the representation dated 11-11-2008 made by the petitioner that he sought permission to engage a lawyer, on the ground that both the witnesses, one of whom was an Additional District Judge, were legally qualified and that the Administrative Officer appointed as Presenting Officer was also a law graduate. This factual aspect was never refuted by the District Judge. However, the request of the petitioner was rejected.

30. Therefore, Dr. K.Lakshmi Narasimha, learned counsel for the petitioner, placed reliance upon three decisions of the Supreme Court, one in *Dilipkumar Raghavendranath Nadkarni*, another in *J.K. Aggarwal* and the third in *Ramesh Chandra* (cited supra).

31. In *Dilipkumar Raghavendranath Nadkarni*, the Supreme Court was concerned with the case of an employee of the Bombay Port Trust. The service conditions of the employees of the Bombay Port Trust were governed by the Bombay Port Trust Employees' Regulations, 1976. Regulation 12(8) of those Regulations contained almost similar wordings as Rule 20(5)(c) of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991. But there are two distinguishing features between the said case and the case on hand. In the case before the Supreme Court, the Court was concerned with a workman category employee to whom the Labour Law applied. We are concerned in this case with a Government servant. The strict parameters that

we apply under the Labour Law, need not necessarily apply in service jurisprudence. The 2nd distinction is that the expression used in Rule 20(5)(c) is “legal practitioner”. The Presenting Officer in this case was working only as an Administrative Officer in the Court. It may be true that he had a Degree in Law. ***But there is always a distinction between a person merely qualified with a Degree in Law and a person who is a legal practitioner.*** A practitioner of law stands on a different footing than a person merely holding a Law Degree. Therefore, the decision in *Dilipkumar Raghavendranath Nadkarni* cannot be applied.

32. In *J.K. Aggarwal*, the Supreme Court started the discussion with a note of caution pointing out that the right of representation by a lawyer may not in all cases be held to be part of natural justice. In *J.K. Aggarwal*, the Supreme Court was concerned with Rule 7(5) of the Haryana Civil Services (Punishment and Appeal) Rules, 1952, which made a distinction between the cases where the charges were likely to result in the dismissal of the employee from the service of the Government and other cases. But the Rules with which we are concerned in this case do not make such a distinction.

33. In *Ramesh Chandra*, the person appointed as the Enquiry Officer was not only a retired Judge of the High Court, but was also a lawyer for the University before his elevation as a Judge. Therefore, the Court *prima facie* opined that such a person ought not to have been appointed as an

Enquiry Officer, as there was a possibility of allegations of likelihood of bias being made. It was in that context that the Supreme Court held in paragraph-70 of the report that if any person who is or was a legal practitioner including a retired Hon'ble Judge is appointed as an Enquiry Officer, the denial of assistance of a legal practitioner to the charged employee would be unfair.

34. The refusal of the Disciplinary Authority to permit the petitioner to engage an Advocate, cannot be put on the ground of violation of natural justice, since there is a statutory rule in place governing or regulating or restricting such a right. Therefore, we have to test the argument not on the question of infraction of the principles of natural justice but on the question of interpretation of the rule. ***The rule in this case is quite clear. The emphasis is not on the qualification of a Degree in Law but on the practice of Law.*** It is not the case of the petitioner and it cannot be the case of the petitioner that the Presenting Officer in this case was a legal practitioner. He was only a judicial ministerial servant. Therefore, we are of the considered view that the 2nd contention cannot also be accepted.

35. The 3rd contention of the learned counsel for the petitioner is that the Enquiry Officer allowed P.Ws.1 and 2 to mark 16 documents as exhibits, though they were not included in Annexure-II to the charge memo. The Enquiry Officer also permitted the examination of P.W.3, whose name

did not figure in the list of witnesses in Annexure-III to the charge memo. Reliance is placed in this regard upon Rule 20(11).

36. Rule 20(11) of the A.P. Civil Services (CCA) Rules stipulates that the inquiring authority, in his discretion, may allow the Presenting Officer to produce evidence not included in the list given to the Government servant. But in such cases, the Government servant will be entitled to have a copy of the list of further evidence and the adjournment of the enquiry for three clear days. The inquiring authority is also obliged to give the delinquent an opportunity of inspecting such documents before they are taken on record. Rule 20(11) reads as follows:

“(11)(a) If it appears necessary before the closure of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the presenting officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or recall and re-examine any witness.

(b) In such case the Government servant shall be entitled to have a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned.

(c) The inquiring authority shall give the Government servant an opportunity of inspecting such documents before they are taken on the record.

NOTE:- New evidence shall not be permitted or called for and witness shall not be recalled to fill up any gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.”

37. In this case, the chief-examination of P.W.1 took place on 22-11-2008. Through him, Exs.A-1 to A-15 were marked. From the proceedings recorded on that date, it is not known whether the petitioner objected to the inquiring authority taking these documents on record.

38. In any case, the cross-examination of P.W.1 took place only on 06-12-2008. This was after about 14 days of the date of chief-examination. The Rules provide for a time gap of three days for the production of additional evidence. The petitioner has had a time gap of 14 days. It is not reflected from the records whether he made any request during this period of 14 days, for the supply of the copies of these documents. It is also not the case of the petitioner that during this period of 14 days from 22-11-2008 to 06-12-2008, he made any request for supply of the copies of the documents.

39. A perusal of the cross-examination of P.W.1 by the writ petitioner shows that he cross-examined P.W.1 on every one of these documents. He put questions to P.W.1 about Exs.A-3, A-6, A-8 and A-10. He also put questions to P.W.1 about Exs.A-2, A-5, A-7 and A-9. Therefore, the purpose sought to be achieved by Rule 20(11) had actually been achieved. In fact, P.W.1 was cross-examined only partly on 06-12-2008. The cross-examination continued on 16-12-2008. Therefore, we do not think that a grievance can be made out with regard to Rule 20(11).

40. The chief-examination of P.W.2 also took place on 22-11-2008 and through him Ex.A-16 was marked. He was cross-examined on 06-12-2008 specifically on Ex.A-16.

41. P.W.3 was examined in chief on 10-12-2008, only for the purpose of corroborating the making of Ex.A-16. He was cross-examined by the petitioner on the same day without any demur or request for postponement. Hence, the petitioner does not appear to have suffered any prejudice on account of the violation of Rule 20(11).

42. The next contention of the learned counsel for the petitioner is that the Inquiring Authority did not even care to verify the signatures of the petitioner nor did he send the signatures on the withdrawal petitions for examination by a handwriting expert. The argument of the learned counsel for the petitioner is that a charge of forgery was treated so lightly.

43. But unfortunately for the petitioner, this argument cannot hold water. Only in cases where a person disputes his own signatures in a document, the same can be sent for examination by the handwriting expert, to test whether the signatures were his or not. There is no possibility in Forensic Science for verifying whether X signed as Y. In this case, the allegation is that the petitioner faked judicial orders as though they were passed and signed by P.W.2. A reference of Exs.A-1 to A-15 to the handwriting expert would have merely shown whether the signatures contained therein were that of the First Additional District Judge (P.W.2) or not.

No handwriting expert will be able to find whether it was the petitioner or someone else who put the signatures of the First Additional District Judge. Therefore, if at all, the analysis of the signatures and the examination by Forensic expert could have lead to only one conclusion namely that the signatures contained in Exs.A-1 to A-15 were not that of the First Additional District Judge. No amount of Forensic examination can find out as to who forged someone else's signature.

44. In this case, the First Additional District Judge examined as P.W.2 has categorically stated that the signatures contained in Exs.A-1 to A-15 were not his. It was not even the case of the petitioner that all the signatures contained in Exs.A-1 to A-15 were similar. Even according to the petitioner, there were variations and those variations were attributed by the petitioner to the huge number of signatures that the First Additional District Judge was required to put on a single day. This explanation was not accepted by the Enquiry Officer and we find no perversity in such finding.

45. Another contention of the learned counsel for the petitioner is that in the course of the enquiry, a 2nd charge memo was issued and the same was also clubbed together in the same enquiry. Such a procedure, according to the learned counsel, is unknown to law and hence the whole proceedings are vitiated.

46. But as we have pointed out earlier, the 1st charge memo was dated 04-10-2008. It accused the petitioner of

creating fake orders by forging the initials of the Presiding Officer on permission petitions in 4 motor accident claim petitions. The 2nd charge memo was dated 10-12-2008 and the only article of charge framed therein was that the petitioner created fake orders by forging the initials of the officer on about 16 petitions. The articles of charges under both the charge memos have already been extracted by us in one of the preceding paragraphs.

47. There was virtually no difference between the only article of charge framed under the first charge memo dated 04-10-2008 and the only article of charge framed under the second charge memo dated 10-12-2008. While the 1st charge memo related to 4 petitions on which initials of the Presiding Officer were allegedly forged, the 2nd charge memo related to 16 other petitions. Thus, there was no difference between the charges under both the charge memos. Forging the initials of the Presiding Officer and creating fake orders was the only charge under both the charge memos.

48. In any case, it is seen from the memorandum of appeal dated 04-02-2009 filed by the petitioner against the order of removal from service imposed by the Disciplinary Authority that the petitioner himself requested the Disciplinary Authority to club the charge under the 2nd charge memo. Paragraph-6 of the memorandum of appeal dated 04-02-2009 filed by the petitioner reads as follows:

“6. I submit that basing on the Enquiry Officer’s report, the Disciplinary Authority issued a notice dated 24-12-2008 directing me to make final representation. Accordingly, I submitted final representation dated 31-12-2008. It is pertinent to mention here that after completing the enquiry, the Disciplinary Authority issued another charge memo dated 10-12-2008 alleging that in respect of 16 M.V.O.P. applications, a similar misconduct was committed by me. Since, already enquiry was completed, I requested the Disciplinary Authority to club the subsequent charge memo with that of earlier charge memo and to apply the same analogy.”

49. Therefore, it may not be open to the petitioner now to raise an objection to the clubbing of the charges.

50. As we have pointed out earlier, the charge against the petitioner was very serious in nature. We do not find any perversity in the findings recorded by the Enquiry Officer. There is no doubt that there was some small infraction of the statutory rules such as non supply of copies of the documents listed in the charge memo. But the infraction did not cause any prejudice to the petitioner, as he had effectively participated in the enquiry and cross-examined the witnesses with focus. A perusal of the cross-examination shows that there was effective cross-examination. Therefore, as pointed out by the Supreme Court in ***State Bank of Patiala v. S.K. Sharma***⁹, any and every violation of a facet of natural justice or of a rule incorporating such facet may not make the final orders altogether void. Hence, we find no reason to interfere with the impugned orders. As a matter of fact, the Appellate

⁹ (1996) 3 SCC 364

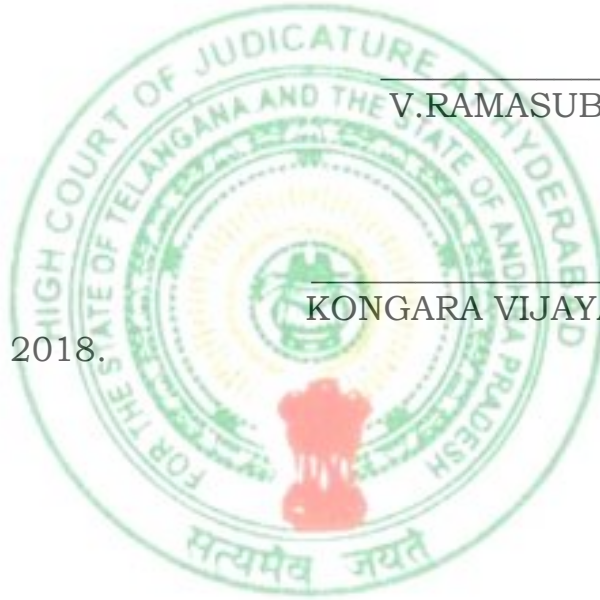
Authority has been kind enough to modify the order of removal from service into one of compulsory retirement. The petitioner was appointed in 1993 and the order of removal from service was passed on 17-01-2009. Therefore, this is not a case where our interference under Article 226 of the Constitution of India is warranted. Hence, the writ petition is dismissed.

The interlocutory applications, if any, pending in this writ petition shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

KONGARA VIJAYA LAKSHMI, J.

21st August, 2018.
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HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Petition No.2388 of 2010



21st August, 2018.
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