

**HONOURABLE SRI JUSTICE SURESH KUMAR KAIT
&
HONOURABLE SRI JUSTICE ABHINAND KUMAR SHAVILI**

WRIT PETITION No.40722 OF 2017

ORDER: (per Hon'ble Sri Justice Abhinand Kumar Shavili)

1. This writ petition is filed seeking to issue a writ of Certiorari calling for the records relating to and connected with the order dated 10.5.2017 in O.A.No.4336 of 2015 on the file of the A.P. Administrative Tribunal, Hyderabad, and to quash the same.

2. Heard the learned Government for Services (Andhra Pradesh) and Sri P.V. Ramana, learned Counsel for the respondent.

3. Brief facts of the case are as follows:

(i) The respondent-applicant was initially appointed as Assistant Conservator of Forests by direct recruitment on 12.4.1999 and he was further promoted as Deputy Conservator of Forests on 6.9.2011. While he was working as Divisional Forest Officer, Social Forestry, Adilabad from January, 2007 to July, 2009, certain works were executed under World Bank Aided A.P. Community Forest Management Project in Adilabad Social Forestry Range of Social Forestry, Adilabad Division by one A. Rajalingam, Forest Section Officer and In-charge Forest Range Officer. The respondent-applicant was responsible for the maintenance of the works.

(ii) While so, the 2nd petitioner herein issued Articles of Charge in Rc.No.14265/2009/P.4, dated 14.10.2009 under Rule 20 of the A.P. Civil Services (CC & A) Rules to the respondent-applicant alleging that he had not supervised the works resulting in excess expenditure of Rs.97,115/- and he allowed the staff to book the expenditure without executing the works. The respondent-applicant filed his reply denying the charge levelled against

him. Subsequently, the Chief Conservator of Forests, Nizamabad was appointed as Enquiry Officer. After considering the enquiry report, the 1st petitioner passed orders dated 12.12.2012 imposing punishment of Censure besides recovery of Rs.24,729/- towards 25% of the loss caused to the Government. Challenging the same, the respondent-applicant filed O.A.No.4336 of 2015 before the Tribunal on the following grounds:

- a) Even though A. Rajalingam, against whom the Vigilance Enforcement pointed out lapses, was imposed fine of 75% of total amount of loss of Rs.97,115/-, he was let off without recovery of the said amount only on the ground that he was going to retire on 31.8.2007. No action was taken against A. Rajalingam.
- b) The 1st petitioner passed the punishment order against the applicant without considering his objections.
- c) No presenting officer was appointed and no witness was examined on behalf of the disciplinary authority in the enquiry.
- d) The Vigilance Report, which was the basis for framing charge, was shown in the list of documents. But the same was not produced and the author of the report was not examined.
- e) The decision of the disciplinary authority in passing the order of the punishment was not independent and that the disciplinary authority was influenced by the remarks of the Principal Chief Conservator of Forests, which were not made available to the respondent-applicant.
- f) The enquiry officer instead of finding as to whether there is any sufficient material connecting the charged officer with the misconduct alleged against him, went on the hypothesis that the charged officer has to disprove the allegation made against him.

- g) The approach of the enquiry officer in relying upon the material gathered during the course of investigation, amounts to violation of principles of natural justice.

(iii) The Tribunal after considering the material on record, set aside the punishment order passed by the 1st petitioner dated 12.12.2012. Aggrieved by the same, the petitioners filed the present writ petition.

4. (i) It is the case of the writ petitioners-department that the responsibility of 100% Check measuring lies on the authority, who is immediate superior to the officer, who recorded the measurements and in the present case A. Rajalingam, Forest Section Officer, who was in-charge of the Range recorded measurements and that it was the responsibility of the respondent-applicant to check measure the entire work for which measurements were recorded by the said Range In-charge. The Vigilance report discloses that the respondent-applicant failed to do his duty resulting in excess expenditure of Rs.97,115/-, and in such a situation, the Government issued a Memo dated 22.11.2005 for recovery of the loss of amount while fixing proportionate responsibility.

(ii) The enquiry officer conducted enquiry and submitted a report. The report of the Enquiry Officer and the defence of the respondent-applicant were submitted to the Government and then, the Government asked to send proposals regarding further action/quantum of penalty proposed to be imposed on the respondent-applicant. The respondent-applicant was made responsible to pay 25% i.e., Rs.24,279/- of the amount involved. As regards the balance amount i.e., Rs.72,836/-, proposals were submitted to the Government in Principal Chief Conservator of Forests Ref.No.48852/2010/K II/1, dated 6.7.2012 with a request to consider the same to be written off as A. Rajalingam, Forest

Section Officer-cum-In charge Forest Range Officer retired on superannuation on 31.8.2007. The Government issued orders to write off the balance proportionate loss of Rs.72,896/- against A. Rajalingam as he retired from service and as his benefits were already released. Insofar as the respondent-applicant is concerned, penalty of Censure was imposed besides recovery of proportionate loss of Rs.24,729/-.

(iii) The respondent-applicant knowing the fact that A. Rajalingam was about to retire on 31.8.2007, he had not taken any action to check measure before issuing the No dues certificate. Further, the respondent-applicant without taking any action against the erring official initiated action against the incumbent officer. The respondent-applicant approached the Tribunal questioning the punishment after lapse of three years, by which time the punishment had already been worked out. The respondent cannot escape on the ground that no amount was recovered from the retired person.

(iv) The Tribunal failed to appreciate all the facts and that all the prosecution witnesses supported the case of the disciplinary authority.

5. (i) The respondent-applicant filed a counter-affidavit reiterating the contentions raised before the Tribunal and stating that the Tribunal considered all the factual and legal aspects and set aside the order passed by the 1st petitioner. It is further stated that in the enquiry report, in one column, the explanation of the respondent-applicant was extracted and in another column, analysis by the enquiry officer was recorded in single sentence, and that the finding given by the Enquiry Officer is illegal and arbitrary. It is also stated that after submitting the report, when the respondent-applicant was asked to submit his objections, he submitted his objections and thereafter, the matter was referred to the Government and

thereafter, on 6.7.2012, the Principal C.C.F. sent proposals for imposing penalty of 'Censure' besides recovery of proportionate loss and the Government passed orders on 12.12.2012, and that the respondent passed the orders being influenced by the remarks of the Principal CCF and it amounts to illegality.

(ii) The works recording authority is the Forest Section Officer. In the present case, the next higher authority for 100% check-measurement is the Forest Range Officer and that the respondent-applicant being Division Head has to conduct 10% test checking of the works executed. One Rajalingam was continued as In-charge of Forest Range Officer though he was Forest Section Officer and he executed the entire work and retired from service duly handing over the Section to one Rahamtullah and since he had not taken care for maintaining the works, there was sufferance and therefore, the respondent-applicant took action against the said Rahamtullah. There is no supervisory failure on the part of the respondent-applicant.

6. The learned Government Pleader for Services on behalf of the petitioners contends that the respondent-applicant had not check-measured all the works for which the Forest Section Officer, A. Rajalingam is In-charge Forest Range Officer, who was going to retire on 31.8.2007, and that two different officers above the respondent-applicant submitted their reports and one officer stated that there was no deviation in the works executed and check-measured whereas another officer stated that there was deviation. She further contends that the respondent-applicant being aware that the Forest Section Officer was about to retire on 31.8.2007, he had not taken any action to check-measure before issuing 'no due certificate'. She further contends that in criminal proceedings, the burden of proving

the guilt of the accused is on the prosecution whereas in disciplinary proceedings, the burden of proving that the allegation made by the disciplinary authority is false, is on the charge officer. But the Tribunal erred in finding that in the enquiry that it is for the disciplinary authority to prove the charge against the charged officer. She further contends that the respondent-applicant kept quiet for three years after issuing the punishment order and thereafter, he questioned the punishment and that the Tribunal erred in setting aside the order of the 1st petitioner.

7. The learned Counsel for the respondent-applicant while reiterating the grounds in the counter-affidavit contends that the person viz., A. Rajalingam, against whom the Vigilance and Enforcement pointed out lapses was permitted to retire from service on the ground that he was going to retire, even though there are serious allegations against him and that the act of the petitioners in letting him scot-free would amount to discrimination and arbitrariness. He further contends that no witness was examined to prove the documents relied upon by the disciplinary authority and no evidence was produced and that there was no independent evidence in support of the disciplinary authority in the enquiry, and that placing reliance on the evidence collected during the investigation by the investigating officer, the enquiry officer conducted enquiry and submitted his report and that the criminal proceedings and disciplinary proceedings are distinct and separate and that the outcome of one cannot be dependant on the other. Further, he submits that punishment imposed is Censure along with Recovery of amount and that the implementation of one limb of the punishment cannot be construed as that of implementation of the entire order and therefore, merely on the ground that one limb of the punishment order worked out by the time of approaching the Tribunal,

it cannot be said that there was delay. The Tribunal considered all the aspects and has rightly set aside the order of the 1st petitioner.

8. We have considered the rival submissions made by the parties. The learned Tribunal had allowed the O.A. by passing a detailed order, wherein the learned Tribunal has taken into consideration the aspects viz., no witnesses were examined during the course of enquiry and no evidence was adduced by the department to prove the guilt of the respondent.

9. As can be seen from the material on record, it is evident that no Presenting Officer was appointed in the present case. The Enquiry Officer himself acted as Presenting officer as well as Enquiry Officer. The learned Tribunal has also given a specific finding that no witnesses were examined and no documents were relied upon during the course of enquiry. But the enquiry officer relying upon the preliminary enquiry report, has come to a conclusion that the charges levelled against the respondent-applicant have been proved. More over, as can be seen from the record, it is obvious that the disciplinary authority without considering the explanation submitted by the respondent, mechanically imposed the punishment against the respondent. On this count also, the Tribunal found fault with the disciplinary authority in imposing punishment on the respondent.

10. Yet another aspect in the instant case is that the disciplinary authority has merely relied upon the remarks of Principal Chief Conservator of Forest while imposing punishment on the respondent-applicant. However, surprisingly the said report of Principal Chief Conservator of Forest was not furnished to the respondent-applicant.

11. The failure to appoint the presenting officer, examine the witnesses and supply the documents to the respondent-applicant amounts to not

only denial of the opportunity to the respondent-applicant but also violation of the principles of natural justice. In non-compliance of such mandatory exercise, the disciplinary authority ought not to have relied upon the remarks of the Principal Chief Conservator of Forest.

12. It is also apparent from the report of the enquiry that another person, who was also charged for the same set of allegations, i.e., Sri A. Rajalingam, Forest Section Officer, on whom pecuniary liability was fastened to the extent of 75%, was let off without imposing any punishment on the ground that he was about to retire on the attainment of the age of superannuation on 31.08.2017, whereas the respondent-applicant, on whom pecuniary liability was fastened to the extent of 25% was subjected to punishment. Therefore, the said exercise adopted by the disciplinary authority is nothing but discriminatory.

13. The Tribunal had considered all the aspects in detail and passed a reasoned order by setting aside the order of punishment imposed by the 1st petitioner on the respondent-applicant. We find no illegality or perversity in the order passed by the learned Tribunal in O.A.No.4336 of 2015 dated 10.05.2017.

14. Accordingly, the Writ Petition is dismissed. No costs. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

JUSTICE SURESH KUMAR KAIT

JUSTICE ABHINAND KUMAR SHAVILI

Dated: 1st March, 2018.
Nn.

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(Order delivered by AKS,J)



1/03/2018

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