

**HONOURABLE THE CHIEF JUSTICE
SRI THOTTATHIL B. RADHAKRISHNAN**

AND

HONOURABLE SRI JUSTICE A. RAJASHEKER REDDY

WRIT PETITION No.1148 OF 2019

ORDER: (ORAL) (Per Hon'ble the Chief Justice Sri Thottathil B.Radhakrishnan)

We have heard learned counsel for the petitioner and learned counsel appearing for the respondents - establishment.

2. The writ petitioner while working as Stenographer, Grade - I, under the control of respondent No.2 was subjected to a regular departmental enquiry. The enquiry officer, Principal District Munsif, conducted the enquiry and concluded the report holding the delinquent guilty of some of the charges. Respondent No.2, Principal District and Sessions Judge, acted on that enquiry report and imposed major penalty. This is under challenge specifically on the plea that in terms of Rule 21 of The Telangana Civil Services (Classification, Control and Appeal) Rules, 1991 (for short 'the Rules'), the delinquent was entitled to a copy of the enquiry report and an opportunity to make a representation, before the disciplinary authority concluding on the guilt of the delinquent.

3. The learned counsel appearing for the respondents pointed out that the materials on record do not show that the disciplinary authority has disagreed with the enquiry authority and, therefore, there was no requirement to serve the delinquent with the copy of the

enquiry report since according to him, on a strict construction of Sub-Rule (2) of Rule 21 of the Rules, the requirement to serve copy of the enquiry report becomes mandatory only when the disciplinary authority disagrees with the findings of the enquiry authority. To buttress this observation, certain observations made by a Division Bench of this Court in **Managing Director, ECIL, Hyderabad v. B. Karunakar**¹ has been referred to.

4. The learned counsel for the petitioner in answer to the response of the respondents, referred to different Sub-Rules in Rule 21 of the Rules to canvass for the position that the sequence of contents of Sub-Rules in Rule 21 of the Rules provide intrinsic statutory materials to clearly show as to how an enquiry should progress and the proceedings should conclude. He points out that there is a classic distinction to be maintained as between enquiries conducted by the enquiry authorities, who are not by themselves the disciplinary authorities.

5. The fact of the matter remains that respondent No.2 is the disciplinary authority. The enquiry was conducted by the Principal District Munsif. The enquiry report, therefore, is one which is a material, which the disciplinary authority has to consider after its making by the enquiry authority. The commencement of enquiry till the imposition of punishment is not a continuing activity at the hands of one officer; the enquiry gets concluded at the hands of the enquiry

¹ (1993) 4 SCC 727

authority, the findings in the enquiry report becomes the subject matter of consideration by the disciplinary authority. That authority has to apply the mind to the materials on record and to consider whether the findings of the enquiry authority are to be accepted. In the initial stage of that process, the disciplinary authority carries with him the power to disagree with the findings of the enquiry authority. Therefore, if the disciplinary authority chooses to disagree on any of the findings of the enquiry authority, it becomes incumbent on the disciplinary authority to notify to the delinquent the grounds on which the disciplinary authority proposes to disagree with the enquiry authority. In such situations, it goes without saying that the delinquent will not be able to respond even to such a notice, if the enquiry report is not given to him along with the notice of the disciplinary authority regarding its intention and grounds on which it intends to disagree with the findings of the enquiry authority. To that extent, the learned counsel for the respondents is justified in saying that it is *sine qua non*. In such cases, copy of the enquiry report has to be necessarily served on the delinquent.

6. The question, therefore, would be whether the delinquent is entitled to a copy of the enquiry report in other cases?

7. As already indicated, if the disciplinary authority is, himself or herself, conducting the enquiry, it goes without saying that the enquiry culminating into the imposition of punishment becomes a continuous process in the hands of the enquiry officer. Therefore, no

dichotomy about quality of the enquiry authority and the disciplinary authority can be traced out to find out whether they have to be again reconciled. However, when the enquiry authority and the disciplinary authority are two different individuals, the consideration of enquiry report by the disciplinary authority would get its sanctity on the basis of clear terms of Sub-Rule (2) of Rule 21 of the Rules as well as the other Sub-Rules of Rule 21 of the Rules in the backdrop of Article 14 of the Constitution of India only if the enquiry report is served on the delinquent and affording him an opportunity to respond to the findings of the enquiry authority.

8. It has to be remembered that enquiries are jurisprudentially classified into two categories; (i) those which are conducted by the disciplinary authority itself, would fall as one lot; and (ii) those cases where enquiry authority carrying out the enquiry and whose report will be subjected to consideration by the disciplinary authority, would fall in the second group. Bearing this distinction, which is inexcusable, Their Lordships of the Hon'ble Supreme Court held in **Union of India v. Mohd. Ramzan Khan**² that eligibility of a delinquent to be served with a copy of the enquiry report when the enquiry authority and the disciplinary authority are two different persons, is not taken away even by the 42nd Amendment of the Constitution. This position is affirmed by the Constitution Bench in **Karunakar's** case (supra 1). With this firm position, it was

² AIR 1991 SC 471

absolutely essential that the delinquent - writ petitioner ought to have been served with the copy of the enquiry report on which the disciplinary authority acted. The impugned proceedings, as it stands, therefore, infracts the statutory rules. It also infracts the rule of fair hearing. It is also, therefore, arbitrary and violative of Article 14 of the Constitution. Contextually, it also impinges on Article 16 of the Constitution. We may indicate that the decision in **Karunakar's** case (supra 1) rendered by a Division Bench of this Court was a case where the enquiry was conducted and the enquiry report was served on the delinquent and the delinquent in that case has submitted his explanation. These facts are available from the precedents cited. We will, therefore, not be justified in culling out a particular expression or sentence in one part of that judgment, which will tend to indicate that Sub-Rule (2) of Rule 21 of the Rules would operate only in cases where the disciplinary authority proceeds to disagree with the findings of the enquiry authority. Such a view would be in violation of the law laid down by the Apex Court in the decisions referred supra and would obliterate the fundamental rights under Articles 14 and 16 of the Constitution.

9. For the aforesaid reasons, the impugned proceedings are quashed to the extent they relate to the action taken by the disciplinary authority without serving a copy of the enquiry report on the delinquent. It is ordered that the disciplinary authority will be at liberty to proceed from the stage of availability of the enquiry report,

but shall not conclude the proceedings against the delinquent without serving him a copy of the enquiry report and affording opportunity to make representation as enjoined by law.

10. The Writ Petition is ordered accordingly. No order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any pending, stand closed.

THOTTATHIL B. RADHAKRISHNAN, CJ

A. RAJASHEKER REDDY, J

February 5, 2019.

PV/LRKM