HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE THE CHIEF JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

Writ Petition No.7224 of 2014

Date : 06.11.2019

Between:

The Government of A.P.
and others ...Petitioners

And

M.Venkanna & others
...Respondents

Counsel for the Petitioners : Learned Government Pleader for Services-II

Counsel for the respondents : Sri Sivaraju Srinivas

The Court made the following:

ORDER: (Per the Hon'ble Sri Justice A.Abhishek Reddy)

Aggrieved by the order, dated 01.03.2013, passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, in allowing O.A.No.2172/2008, the present Writ Petition is filed by the Government.

2) The brief facts of the case are that while respondent No.1-the applicant was working as Deputy Mandal Revenue Officer, Bayyaram, a charge memo, dated 13.05.2002, was issued to him framing two charges, to which, the applicant submitted an explanation denying the said charges. The Disciplinary Authority, not being satisfied with the explanation submitted by the first respondent, decided to conduct a common enquiry under Rule 24 of Andhra Pradesh Civil Services (Classification, Control & Appeal) Rules, 1991 (for short 'CCA Rules, 1991'), against the first respondent herein and two others. The first respondent was the Charged Officer No.2 in the common enquiry and the matter was entrusted to the Commissioner of Enquiries, who after conducting the enquiry, had submitted a report holding the charges against the charged employees as 'proved'. On the basis of the report submitted by the Commissioner of Enquiries, the Disciplinary Authority issued a show cause notice, dated 20.01.2005; the first respondent gave his reply on 04.06.2005. Thereafter, the Government issued the impugned G.O.Ms.No.838, Revenue (Vigilance-II) Department, dated 19.06.2007, dismissing the first respondent from service, besides ordering the recovery of an amount of Rs.3,92,780/-. Aggrieved by the same, the first respondent

herein instituted O.A.No.2172 of 2008 before the Tribunal questioning the said G.O. as illegal, arbitrary, and to set aside the same with a consequential direction to pay all the terminal benefits to him. During the pendency of the said O.A., the first respondent died and his wife and two sons, being the legal representatives of the first respondent, were brought on record as respondent Nos.2 to 4 in the said O.A.

3) The Tribunal, after going through the record, found that the enquiry was not conducted in consonance with the CCA Rules, 1991, more specifically Rules 20 and 21 thereof. The Tribunal also found fault with the order of the Disciplinary Authority on the ground that neither any witness was examined, nor any documentary evidence was marked during the enquiry by the Enquiry Officer. Consequently, the first respondent had lost his right to cross-examine the witness, and to elicit the truth. The Tribunal also found that out of the six release orders, only two were signed by the first respondent, and the quality of the rice was correctly written by the first respondent in those two release orders. The Tribunal held that the Enquiry Officer by neither examining any witness, nor adducing any documentary evidence. Thus, the Enquiry Officer has denied reasonable opportunity to the first respondent to defend his case. Hence, the Tribunal held that the impugned order was liable to be set aside; accordingly, it has set aside the same, and further directed to release the retirement benefits to the legal heirs of the deceased employee.

4) Heard the learned Government Pleader for Revenue for Services-II, and Sri Sivaraju Srinivas, the learned counsel for the respondents.

5) It is the contention of the learned counsel for the writ petitioner that reasonable opportunity was given to the first respondent to participate in the enquiry conducted in accordance with the rules; in fact, the employee was assisted by a lawyer during the enquiry. He further contends that the first respondent having participated in the enquiry, respondent Nos.2 to 4 now cannot turn around and allege that the enquiry conducted was not in accordance with law, or that no reasonable opportunity was given to the respondent No.1 to defend his case.

6) Per contra, the learned Counsel appearing for the respondent, while supporting the order of the Tribunal, has vehemently argued that the enquiry conducted was not in accordance with the rules and procedure. For, the Enquiry Officer simply proceeded by accepting the Presenting Officer's version. For, neither any witnesses were examined, nor the respondents were given an opportunity to cross-examine the other co-delinquents. Simply basing on the report of the Enquiry Officer, the disciplinary authority without adverting to the explanation given by the respondent, has passed the order, which was impugned in the O.A. Hence, the Tribunal, after taking into account the procedural lapses committed by the disciplinary authority as well as the Enquiry Officer, has set aside the order of dismissal. Thus, there is nothing perverse or illegal

about the same, which warrants any interference by this Hon'ble Court and requested for dismissal of the writ petition.

7) It is well accepted principle of law that during the course of an enquiry, every reasonable opportunity should be given to the charged officer to cross examine the witness, and to also confront the witness with any contra evidence. It is seen from the record that in this particular case, no witness was examined on behalf of the department. Basing only on the report submitted by the Revenue Divisional Officer (who was also not examined), the charged officer was found guilty by the Enquiry Officer. The role of an Enquiry Officer in any enquiry is *akin* to that of a quasi-judicial authority. Hence, the Enquiry Officer cannot align with the department. Instead, he has to act independently. Being an independent adjudicator the Enquiry Officer has to examine the evidence presented by the department and give sufficient opportunity to the charged officer to cross-examine the witness, and then to conclude that the evidence adduced by the department is sufficient to hold that the charges are proved against the delinquent employee. However, the basic requirement of the above procedure contemplated under Rule 20 of the CCA Rules, 1991, has not been followed in this case. For, no reasonable opportunity of cross-examining the witness or being heard was given to the first respondent. In the absence of the same, the fundamental principle of natural justice have been violated; the enquiry cannot be said to be a fair and reasonable one.

8) We are fortified by the judgment of the Hon'ble Supreme Court in STATE OF UTTAR PRADESH AND OTHERS v. SAROJ KUMAR SINHA[1], which reads as under:-

> *27. A bare perusal of the aforesaid sub-rule shows that when the respondent had failed to submit the explanation to the charge-sheet it was incumbent upon the inquiry officer to fix a date for his appearance in the inquiry. It is only in a case when the government servant despite notice of the date fixed failed to appear that the Inquiry Officer can proceed with the inquiry ex parte. Even in such circumstances, it is incumbent on the inquiry officer to record the statement of witnesses mentioned in the charge-sheet. Since the government servant is absent, he would clearly lose the benefit of cross-examination of the witnesses. But nonetheless in order to establish the charges the Department is required to produce the necessary evidence before the inquiry officer. This is so as to avoid the charge that the inquiry officer has acted as a prosecutor as well as a judge.*
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> *28. An inquiry officer action in a quasi-judicial authority is in the position of an independent adjudicator. He is not supposed to be a representative of the department/disciplinary authority/Government. His function is to examine the evidence presented by the Deparrtment, even in the absence of the delinquent official to see as to whether the unrebutted evidence is sufficient to hold that the charges are proved. In the present case, the aforesaid procedure has not been observed. Since no oral evidence has been examined the documents have not been proved, and could not have been taken into consideration to conclude that the charges have been proved against the respondents.*
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> *29. Apart from the above, by virtue of Article 311(2) of the Constitution of India the department enquiry had to be conducted in accordance with the rules of natural justice. It is a basic requirement of the rules of natural justice that an employee be given a reasonable opportunity of being heard in any proceedings which may culminate in punishment being imposed on the employee.*
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> *30. When a departmental enquiry is conducted against the government servant it cannot be treated as a casual exercise. The enquiry proceedings also cannot be conducted with a closed mind. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government*

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[1] (2010) 2 SCC 772

servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service.

9) For the aforesaid reasons and considering the fact that the charged officer i.e. respondent No.1 died after his superannuation on 30.06.2007, the order of the Tribunal in setting aside G.O.Ms.No.838, dated 19.06.2007, cannot be said to be illegal. Therefore, we see no merit in the writ petition; the same is, accordingly, dismissed.

The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

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RAGHVENDRA SINGH CHAUHAN, HCJ

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A.ABHISHEK REDDY, J

6th November, 2019
smr / sur