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.24097 of 2019

Date:06.11.2019

Between:

O.Praveen Kumar

..Appellant

And

Union of India & others

..Respondents

Counsel for the Appellant : Mr.K.R.K.V. Prasad

Counsel for the respondents : Mr.G.Praveen Kumar
SC for Central Government

The Court made the following:

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

The present Writ Petition is filed seeking the following relief:

> "... calling for the order dated 08.04.2019 in O.A.No.21/458/2017 and order dated 19.07.2019 in R.A.No.021/00023/2019 in O.A.No.021/00458/2017 on the file of the Central Administrative Tribunal, Hyderabad and quash and set aside the said orders, along with the order No.C-13/4-A(OPK)/APGDC dated 10.02.2017 of the Disciplinary Authority and order No.C-94-S/4-A/(OPK)/SZ dated 19.05.2017 of the Appellate Authority and direct the respondents to refund the amounts recovered from the pay of the petitioner by virtue of the said penalty orders and grant all consequential benefits to the petitioner as if no penalty was imposed vide the aforesaid orders dated 10.02.2017 and 19.05.2017 ..."

2) The brief facts of the case are that the petitioner, while working as Plane Tabler Grade-II in the respondent-Organization, was entrusted with levelling work at Machilipatnam to assist the survey work. While conducting the survey, the digital levelling machine which was under the custody of the Surveyor was lost; a Police complaint was lodged regarding the missing of the digital levelling machine. The Police, after due investigation, on 08.02.2012 reported that the machine was not detectable. Subsequently, the department constituted a Fact Finding Committee, which investigated into the matter and submitted its report on 22.12.2011. Thereafter, the Director, The Andhra Pradesh Geo-Spatial Data Centre, had issued a memo dated 12/13.03.2013 directing the petitioner to credit a sum of Rs.1,20,000/- in 40 equated instalments @ Rs.3000/-

per month. Thereafter, the petitioner has made several representations to the Department about his innocence. He pleaded that he was not responsible for the loss of the machine. But they did not heed to his request and ordered for recovery of Rs.1,20,000/- in forty (40) equal monthly instalments @ Rs.3,000/- per month from April, 2013. Aggrieved thereby, the petitioner approached the Tribunal vide O.A.No.607/2013 wherein the recovery was stayed, and the department was directed to conduct a regular enquiry in accordance with law. Thereafter, an enquiry was conducted without furnishing the relevant documents, or producing any witnesses stated in the charge sheet. Simply relying on the report submitted by the said Enquiry Committee, on 18.03.2016 the Disciplinary Authority imposed a penalty of recovery of Rs.1,20,000/-. In the appeal filed by the petitioner, the Appellate Authority vide order dated 07.06.2016, has set aside the punishment, and directed the Disciplinary authority to conduct enquiry from the stage of supplying of documents, calling the witnesses, providing personal hearing to the applicant in the presence of the gazetted officer. Thereafter, a fresh enquiry was instituted and *ex-parte* proceedings were issued on 21.09.2016 concluding that the Enquiry report submitted by the Enquiry Officer on 30.12.2015 is final as the applicant did not appear on certain dates. Based on the inquiry report, a penalty of Rs.1,20,000/- was imposed on 10.02.2017, which was upheld by the Appellate Authority vide order dated 19.05.2017. Aggrieved, the petitioner preferred O.A.No.458/2017 before the learned Tribunal.

3) The Tribunal after going through the record held as under:

> In the instant case charge sheet was issued, inquiry was conducted twice, and after considering the representations of the applicant by the disciplinary and the Appellate authorities respectively, penalty of recovery of Rs.1,20,000/- was imposed. Respondents did give ample opportunities to the applicant to clear himself but he could not and there is nothing malafide noticed in the decision of the respondents.

4) Heard Sri K.R.K.V. Prasad, the learned Counsel appearing for the petitioner, and Sri G.Praveen Kumar, the learned Standing Counsel for the Central Government.

5) It is the contention of the learned Counsel for the petitioner that no opportunity was given to the petitioner after the matter was remitted back by the appellate authority. On 07.06.2016, the Appellate Authority has set aside the initial order of recovery of Rs.1,20,000/- imposed by the Disciplinary Authority on 18.03.2016, and directed the Disciplinary Authority to conduct the enquiry from the stage of supply of documents, calling of witnesses cited in the charge-sheet, and providing personal hearing to the applicant in the presence of gazetted officer. But the same was not done; the Disciplinary Authority has simply relied on the report submitted by the Inquiry Authority, dated 30.12.2015, and passed orders on 21.09.2016. As a matter of fact, the Inquiry Officer was not even present when the matter was taken up on 20.09.2016, as he was busy in a meeting held by CST & MP Cooperative Society. The Enquiry Officer, without taking into account any new evidence, has

simply relied on the evidence produced in the first enquiry. Even the petitioner was not given an opportunity to cross-examine the witnesses. The Tribunal, without taking into consideration all these aspects, has dismissed the O.A. as well as the Review Application filed by the petitioner. Hence, the learned counsel requested this Court to set aside the order of the Tribunal as well as that of the Disciplinary Authority.

6) Per contra, the learned Standing Counsel for the Central Government has vehemently argued that *in spite* of providing number of opportunities to the petitioner, he has not availed the same. He has been using dilatory tactics to scuttle the enquiry itself. The order of the Tribunal is perfectly inconsonance with the law laid down by this Court, as well as the Hon'ble Supreme Court. In fact, there are no procedural lapses which warrant any interference by this Court. Hence, the Tribunal has rightly dismissed the O.A. as well as the Review Application filed by the petitioner while duly taking into account the dilatory tactics adopted by the petitioner. Thus, he requested this Court to dismiss the writ petition.

7) After hearing the learned Counsels for both the parties as well as perusing the record, it is seen that though notices of hearing were given after the matter was remanded, the Enquiry Officer met on 08.09.2016 and at the request of the petitioner, the matter was adjourned to 15.09.2016. Thereafter, on 15.09.2016, the petitioner was absent, and the matter was adjourned to 21.09.2016. Then, on 21.09.2016, the Enquiry

Officer set the petitioner *ex-parte*, proceeded further with the matter and submitted his report. But, as seen from the record, on 20.09.2016 itself, the petitioner has addressed a letter to the Superintending Surveyor/Enquiry Authority to grant him ten (10) days time for getting a defence assistant. It is also seen that admittedly, the Enquiry Officer, without adverting to the letters, dated 16.09.2016 and 20.09.2016 addressed by the petitioner, has concluded the enquiry and submitted the Enquiry Report. Even on the crucial date on which the Enquiry Officer was supposed to meet, he was in a meeting held by CST & MP Staff Co-operative Credit Society Limited, which was held on 21.09.2016 at 15.00 hours at the "Survey of India Auditorium". Thus, the Enquiry Officer did not give the petitioner the opportunity to cross-examine the witnesses on which they were relying on.

8) Considering the above facts and circumstances of the case, we are of the opinion that the ends of justice would be met if the order of the Tribunal as well as the Disciplinary Authority are set aside, and the matter is remitted back to the Enquiry Officer.

9) For the reasons stated above, the writ petition is hereby allowed. The order, dated 08.04.2019, and the order dated 19.07.2019 are set aside. Consequently, the recovery order dated 10.02.2017 is also set aside. The case is remanded back to the Enquiry Officer for completing the enquiry within a period of three months from the date of receipt of a copy of this order,

after affording reasonable opportunity to the petitioner. The petitioner is directed to co-operate with the Enquiry Officer. In case the Enquiry Officer finds the petitioner is again using dilatory tactics to prolong the enquiry, the Enquiry Officer shall be free to proceed *ex-parte* against the petitioner.

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