

**HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)**

**FRIDAY, THE THIRTIETH DAY OF DECEMBER
TWO THOUSAND AND TWENTY TWO**

PRESENT

THE HONOURABLE SRI JUSTICE T.VINOD KUMAR

WRIT PETITION NO: 17107 OF 2021

Between:

G.Vidyanand Reddy, S/o. Satyanarayana Reddy, Age 41 years, Working as Forest Section Officer, Gudihutnoor, Echoda Range and Division Adilabad District.

...PETITIONER

AND

1. The State of Telangana, rep. by its Special Chief Secretary, Environment, Forests, Science And Technology Department T.S. Secretariat, Hyderabad.
2. The Principal Chief Conservator of Forests, (HoFF) AmayaBhavan, Hyderabad.
3. The Conservator of Forests, Adilabad Circle, Adilabad.
4. The Forest Divisional Officer, Adilabad

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue a Writ, Order or direction more in the nature of Mandamus declaring the orders passed by respondent Rc.No.484/2021/M2A dt.25.03.2021 rejecting petitioner case for promotion to the post of Deputy Range Officer without finalizing the Articles of Charges issued on 25/02/2017 in spite not proving the Charges in the guise of the reopening of the said disciplinary proceedings by orders dated 29.05.2020 as illegal, arbitrary and violates Article 14, 16 and 21 of the Constitution of India and contrary to the Division bench Judgment 2010 (4) ALT 374 and contrary to the law lay down by the Hon'ble Apex Court reported in 1995 (2) SCC 570 State of Punjab and others v/s Chaman Lal Goyal and consequently declare that the petitioner is entitle for notional promotion on par with his juniors to the post of Deputy Range Officer with all consequential benefits.

IA NO: 1 OF 2021

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to issue an interim direction directing the respondents to consider the case of the petitioner for promotion to the post of Deputy Range Officer without reference to Articles of charges dated 25/02/2017 pending disposal of the Writ Petition.

Counsel for the Petitioner: SRI P.V.RAMANA

Counsel for the Respondents: GP FOR SERVICES I

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE T.VINOD KUMAR

WRIT PETITION No.17107 of 2021

ORDER:

1. This Writ Petition is filed questioning the action of the respondents in not considering the case of the petitioner for promotion to the post of Deputy Range Officer, on the ground of reopening of disciplinary case, *vide* orders of the Conservator of Forests (the 3rd respondent) dt.29.05.2020 and issuing further direction to the Forest Divisional Officer, Adilabad (the 4th respondent), for conducting fresh enquiry and rejecting the petitioner's case for promotion to the post of Deputy Range Officer, *vide* orders dt.25.03.2021, without finalizing the articles of charge issued on 25.02.2017, as illegal, arbitrary, violative of Articles 14, 16 and 21 of the Constitution of India and also to the law laid down by the Hon'ble Supreme Court in the case of **State of Punjab v. Chamanlal Goel**¹ and the judgment of the Division Bench of the High Court as reported in the case of **The Government of AP v. A. Rajeswara Reddy**², with a consequential relief to declare that the petitioner is entitled for notional promotion on par with his juniors to the post of Deputy Range Officer.

¹ [(1995) 2 SCC 870]

² 2010 (4) ALT 374

2. Heard Sri P.V.Ramana, learned counsel for the petitioner, and learned Government Pleader for Services I appearing on behalf of the respondents and perused the record.

3. It is the case of the petitioner that he was initially appointed as Junior Assistant on 31.05.2001, which post was converted as Forest Section Officer on 24.10.2008; that next promotion from the post of Forest Section Officer is to the post of Deputy Range Officer; and that for the purpose of granting promotion as Deputy Range Officer, each circle is considered as a unit.

4. Petitioner contends that while he became eligible for being considered to the post of Deputy Range Officer, the 4th respondent had issued a charge memo dt 25.02.2017, containing articles of charge for improper utilization of funds, in violation of Government Order etc.

5. Petitioner further contends that he had submitted his reply dt.28.10.2017 to the said articles of charge, denying the charge and bringing to the notice of the disciplinary authority that the alleged improper utilization of funds related to a period prior to petitioner joining in the section i.e., before 08.12.2015.

6. Petitioner also contends that the 4th respondent being the disciplinary authority on considering the defence statement and by

causing discreet enquiry, declared the charge made against the petitioner as not proved and dropped further proceedings, *vide* orders dt.24.02.2020.

7. It is further contended that upon dropping of the disciplinary proceedings by the 4th respondent, the 3rd respondent in purported exercise of power under Rule 18 R/w Rule 40(1)(iv)(c) of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (for short, 'the Rules'), *vide* order Rc.No.531/P&E/2016/MI dt.29.05.2020 reopened the said proceedings, and remitted the matter back to the 4th respondent to make further enquiry and take necessary action; and that in furtherance thereof, the 4th respondent issued proceedings dt.03.06.2020 for conducting further enquiry as per the direction of the 3rd respondent.

8. Petitioner also contends that by the proceedings dt.03.06.2020, the 4th respondent had not only reopened already concluded disciplinary proceedings, but had also kept them pending for an abnormally long period, and showing the pendency of the disciplinary proceedings as a ruse, the respondents are not considering and are in fact denying granting of promotion to the Petitioner to the post of Deputy Range Officer.

9. Petitioner also contends that aggrieved by the non-consideration of his case for promotion by the Respondents on the ground of reopening and pendency of the disciplinary proceedings, he had approached this Court by filing W.P.No.4799 of 2021 and this Court by its order dt.01.03.2021, had directed the respondents to consider the Petitioner's case for promotion to the post of Deputy Range Officer as per G.O.Ms.No.257 dt.10.06.1999; that pursuant to the said direction by this Court, the petitioner had approached the Respondent and submitted a representation for consideration of his case in terms of G.O.Ms.No.257; that the 3rd respondent by order dt.25.03.2021, rejected the same holding that in terms of G.O.Ms.No.257, the disciplinary authority would have a period of two years to complete the disciplinary proceedings; and that as the said proceedings were reopened on 03.06.2020, the authority has time till 02.06.2022 i.e., when the period of two years would be completed and that the request of the petitioner cannot be considered as on the date of filing of the said representation. Aggrieved thereby, the present Writ Petition is filed.

10. Petitioner contends that the articles of charge issued pertain to a period prior to the year 2015; and that the disciplinary proceedings which were initiated in the year 2017, were dropped after a detailed enquiry by the 4th respondent, *vide* proceedings dt.24.02.2020, and

under the guise of the same having been reopened, the respondents cannot take shelter under G.O.Ms.No.257 dt 10.06.1999 as if the proceedings are being initiated afresh for the first time. Moreover, as the petitioner was issued with articles of charge and an enquiry officer was appointed, the disciplinary proceedings ought to have been completed within a period of three to six months on the basis of classification of either being a simple or a complicated case as specified in G.O.Ms.No.679, GA(Ser.C) Department dt.01.11.2008.

11. Petitioner further contends that by keeping the disciplinary proceedings pending and without concluding the same since 2017, either within a period of two years in terms of G.O.Ms.No.257 or within a period of six months in terms of G.O.Ms.No.679, the non-consideration of the case of the petitioner for promotion to the next post even on adhoc basis is clearly without authority of law.

12. Counter-affidavit on behalf of the respondents is filed.

13. By the counter-affidavit filed, the respondents while not denying the factual aspects of the petitioner joining the service in the year 2001, it is stated that articles of charge as issued to the petitioner involved "neglect of duty, violation of Government Orders issued in G.O.Ms. No. 13 EFS&T (For.III) Dept., dated 12.02.2002, G.O.Ms. No. 4 EFS&T (For.III) Dept., dated 12.02.2004, and the Article 257 and

section 84(2) of A.P Forest Department Code, violation of accounting procedure laid down in G.O.Ms.No.2, EFS&T (For.III) Dept, dt. 07.01.2004 and also the executive instructions by the PCCF AP Hyderabad, resulting in misappropriation of funds of Government to a tune of Rs.13,51,052/- and violation of A.P. Forest Department Code, 1993, Articles 3 (1),(2),(3) & (4) and Section 176 of the Financial Code.

14. By the counter-affidavit, the respondents also contend that the disciplinary case against the petitioner was directed to be reopened by the 3rd Respondent in exercise of the powers conferred under rule 18(2) read with sub-rule(1)(iv)(c) of Rule 40 of the Rules, whereby the said authority was of the view that the disciplinary authority while dropping the charges against the petitioner *vide* proceedings dt.25.02.2020, did not discuss about the payment of a sum of Rs.2,80,000/- to M/s. Kannam Agro Private Limited under the signature of the petitioner on the voucher; that as the enquiry authorized in 2017, was not conducted keeping in view the irregularities which were duly supported by documentary evidence, the 3rd Respondent remitted the matter back to the disciplinary authority to cause further enquiry and take necessary action as per the rule; that the 4th respondent by proceedings dt.03.06.2020 informed to the

petitioner about the reopening of the disciplinary case and that the disciplinary case is at enquiry stage.

15. The respondents by the counter-affidavit would further contend that though the period of irregularities pertain to 2015, however, as the same was pointed out during inspection done in the year 2017, the articles of charge were framed against the petitioner for irregularities committed by him and disciplinary action was initiated, *vide* proceedings dt.25.02.2017; that, though in terms of circular Memo No.35676/Ser.C/98-1, GA(Ser.C) Department dt.01.07.1998, the enquiry initiated in simple cases is to be completed within three months and in complicated cases, the enquiry should be completed within five or six months, as the petitioner submitted his defence statement on 26.10.2017, after eight months from the date of issuance of the articles of charge on 25.02.2017, the petitioner himself is responsible for the delay, thus, the respondent authorities are not responsible for the delay in concluding the proceedings. It is also contended that the disciplinary authority after considering the defence offered, conducted a discrete enquiry and issued the proceedings dt.24.02.2020 and thus, no fault can be found with the action of the respondents.

16. By the counter-affidavit, it is also contended that since the said order passed by the 4th respondent was found to be improper, the 3rd respondent had remitted the matter back to the 4th respondent and directed for reopening the same; pursuant to which, the 4th respondent had reopened the same on 03.06.2020 by stating the reasons therein; and that since the disciplinary proceedings on reopening is pending enquiry, the case of the petitioner for promotion was not considered.

17. Petitioner filed a reply to the counter-affidavit filed by the respondents, wherein it is contended that the reopening of the entire issue by the 3rd Respondent particularly with a direction for conducting fresh enquiry, is contrary to Rule 21 of the Rules. It is contended that the respondents cannot make use of the said reopening proceedings as an excuse to deny grant of promotion to the petitioner.

18. I have taken note of the respective contentions urged.

19. The fact of the petitioner joining the service of the respondents in the year 2001 and the next promotion to which the petitioner would become eligible is Deputy Range Officer, is not in dispute. It is also an admitted fact that the petitioner was issued with articles of charge initially in the year 2017, to which he had submitted his reply, though after a period of eight months, as contended in the counter-affidavit. Even thereafter the respondents took more than two years to complete

the proceedings by conducting enquiry. It is only on 24.02.2020, the 4th respondent issued proceedings dropping the charge against the petitioner. Thus, the entire proceedings from the issue of articles of charge, till the date of the order dropping the articles of charge issued against the petitioner took three long years.

20. Though by proceeding dt.24.02.2020, the 4th respondent dropped the articles of charge against the petitioner as not proved, the said order did not find acceptance with the 3rd respondent, as the said authority was of the view that enquiry officer did not take into account the documentary evidence found while passing the order and thus directed the 4th Respondent to reopen the matter and pass orders afresh. The said action of the 3rd respondent is purportedly in exercise of power under Rule 18(2) of the Rules. Rule 18 of CCA Rules deals with authorities, who are vested with the power to reopen cases. The said Rule is extracted below for better understanding:

Lower authority not to reopen case: higher authority can exercise power

18. (1) Where in any case a higher authority has imposed or declined to impose a penalty under rule 11, 12 or 14 a lower authority shall have no jurisdiction to proceed under these rules in respect of the same case.

(2) Where in any case a lower authority has imposed a penalty or exonerated a member of a service, it shall not debar a higher authority from exercising his powers under these rules in respect of the same case.

The order of such higher authority shall supercede any order passed by a lower authority in respect of the same case.

21. A reading of sub-rule(2) of Rule 18 of the Rules indicates that it contemplates a situation where a higher authority who is not in agreement with the order passed by the lower authority of either imposing a penalty or exonerating a member, can pass an order by himself. When such an order is passed, the same would then supersede the lower authority.

22. However, in the facts of the present case, as noted hereinabove, the 3rd respondent being the higher authority, did not pass an order by himself arriving at a conclusion with respect to the petitioner committing any violation as per the articles of charge issued to him. On the other hand, the 3rd respondent by proceeding dt.29.05.2020, finding that the enquiry officer in furtherance of the articles of charge issued on 25.02.2017, had conducted the enquiry without discussing the payment of Rs.2,80,000/- made to the firm Kanname Agro Private Limited and also in the defence submitted by the petitioner there was no mention regarding the said amount, held that irregularities of grave nature had occurred. Therefore the 3rd Respondent was of the view that the enquiry was conducted in a casual way and remitted the case back to the disciplinary authority with a direction to reopen the said case and take necessary action by

making further enquiry based on the documentary evidence. However, such a power as resorted to by the 3rd respondent is neither specified nor contemplated under Rule 18(2) of the Rules. As noted above, if the higher authority was not satisfied with the order of the disciplinary authority, he is bestowed with the power to reopen the case, consider the material on record, the explanation offered and pass an order by himself. But the 3rd respondent could not record a finding and remit it to the disciplinary authority with a direction to reopen the case and conduct fresh enquiry in terms of the findings recording by him.

23. Further, reference to Rule 40 of the Rules by the 3rd respondent authority in the proceedings dt.29.05.2020 is also misplaced, inasmuch as the sub-rule(1) thereof deals with power of revision to be exercised under clause (i) by the Government and authorities as specified in clause (ii) to (iv) when a revision petition is preferred by the Government servant aggrieved by the action of the disciplinary officer, but does not contemplate or provide for where proceedings against a Government servant have been dropped.

24. In the facts of the present case, since the disciplinary authority dropped the proceedings initiated against the petitioner *vide* proceedings dt 24.02.2020, there could not have been any application filed by the petitioner seeking revision against the said proceedings, for

the 3rd respondent to remit the case back to the disciplinary authority i.e., the 4th Respondent in terms of sub-clause (c) of clause (iv) of sub-rule (1) of Rule 40 of the Rules. Thus, the reference to Rule 40(1)(iv)(c) of the Rules by the 3rd respondent in the proceedings dt.29.05.2020, in the view of this Court, is totally misplaced.

25. Insofar as the power to reopen in terms of Rule 18(2) of the Rules is concerned, as noted hereinabove, though the 3rd respondent is conferred with such power, the said authority is required to pass an order by himself, when he is in disagreement with the order passed by the disciplinary authority. As the 3rd respondent did not pass an order by himself after putting the petitioner on notice, to arrive at a different conclusion from that of the disciplinary authority, the proceedings dt.29.05.2020 in purported exercise of power under Section 18(2) cannot be said to be a valid exercise of power by the 3rd respondent.

26. The above conclusion arrived at by this Court gets support from Rule 40(1)(iv)(c) of the Rules, which provides that in a situation as in the facts of the present case, only when the 3rd respondent in exercise of powers under rule 18(2) of the Rules, passes an order recording his reasons and conclusions, a government servant would have a right to seek revision by approaching the appropriate authority in terms of Rule 40 of the Rules. Therefore, Rule 40 is a remedy available to a

government servant aggrieved by an order under Rule18(2), and the said rule cannot be pressed into service by the Respondent authorities to further their cause, as has been done in the present case.

27. Thus, the proceedings dt.29.05.2020 by which the 3rd respondent remitted the matter back to the 4th respondent, directing him to reopen the disciplinary proceedings against the petitioner in pursuance of articles of charge dt.25.02.2017, cannot be held to be valid.

28. Even assuming that the power to reopen would also take within its ambit, the power to remit back a matter for fresh consideration, it is to be noted that, the disciplinary authority would have to proceed on the articles of charge which formed basis for the proceedings originally initiated. Thus, in the facts of the present case after remitting and reopening the matter, proceedings would have to be conducted afresh on the articles of charge as issued to the petitioner on 25.02.2017. Further, the 4th Respondent was then required to proceed by considering the defence submitted by the Petitioner in October, 2017 and not by considering proceedings as being initiated afresh.

29. Further, a conspectus reading of G.O.Ms.No.257 dt.10.06.1999 and G.O.Ms. No. 679 dt 01.11.2008 would show that, the former Government Order stipulates that in case of charge sheets pending for

more than a period of 2 years, the name of such person against whom disciplinary proceedings are pending maybe be considered for promotion on ad-hoc basis. Such a period of 2 years in terms of G.O.Ms.No. 257 is calculated from the date of the first meeting when the disciplinary authority had conducted the proceedings, while the latter government order i.e., G.O.Ms.No. 657 comes into play after commencement of the disciplinary proceedings and fixes a time period of 3 to 6 six months for completion of the enquiry by the enquiry officer.

30. In the facts of the present case, as the articles of charge were issued, the petitioner having submitted his defence and the enquiry officer having been appointed, the 3rd respondent authority ought to have completed the enquiry within the time frame as prescribed in terms of G.O.Ms.No.679, GA(Ser.C) Department dt.01.11.2008. The relevant clause of the said G.O. reads as under:

"On allegation made against the Government employee, disciplinary cases are initiated in accordance with the rules in force and wherever necessary, enquiry authorities are appointed to enquire into articles of charge against such employees. Instructions were issued for completion of the enquiry and normal of three months and six months is allowed in simple and complicated cases respectively."

2. several representations have been received from employees association that there are abnormal delays in completion of enquiries and this is causing lot of frustration among the employees. Government have

reviewed the issue and decided to issue further instructions in the matter.

3. Government directed that the disciplinary cases initiated against the Government employees shall be completed (*emphasis supplied by this Court*) as expeditiously as possible and the existing instructions read above shall be adhered to. The departments of Secretary shall review status position of the pending disciplinary cases, all the employees with which they are concerned, and submit a note to the Chief Secretary to Government as per instructions in force. It is also the responsibility of the enquiring authority to complete the enquiry as per the allowed time. The competent authority after receipt of the enquiry report shall conclude the disciplinary proceedings within six months of its initiation and in case of abnormal delay in conducting the disciplinary proceedings; action shall be initiated against the concerned enquiring authority."

31. From the above said G.O., it would be clear that wherever disciplinary proceedings are initiated against the Government servant and an enquiry officer is appointed to enquire into articles of charge, the same is required to be completed within a period of three months or six months, depending upon the gravity of the charge. The said G.O. in para 3 makes reference to the existing instructions issued in this regard and one such instruction referred to therein is circular Memo No.35676/Ser.C/98, GA (Ser.III) Department, dt.01.07.1998. It is to be noted that it is the same circular memo to which reference has been made by the respondents in their counter, to claim that the enquiry initiated is to be completed within a period of three months or six months, as the case may be. If the respondents are making a reference to the said circular, which now forms part of G.O.Ms.No.679,

it is not known how the respondent authorities have been dragging the matter by keeping the enquiry initiated against the petitioner pending since 2017, or even after the 3rd respondent remitting the matter back to the 4th respondent on 29.05.2020.

32. Further, the stand of the respondents in the impugned proceedings dt.25.03.2021 while rejecting the representation of the petitioner pursuant to the order of this Court in W.P.No.4799 of 2021 on the ground that the authority has two year's time in terms of G.O.Ms.No.257 dt.10.06.1999, as the said period had not expired, in the considered view of this Court, is wholly misplaced, for the reason that the period of two years would be applicable from the date of initiation of disciplinary proceedings at the first instance and not when the matter is remitted back.

33. In the facts of the present case, the time frame prescribed under G.O.Ms.No.257 dt.10.06.1999, would start to run from the initiation of proceedings at the first instance by issuing Articles of charge i.e., from 25.02.2017. The disciplinary authority having dropped the same vide his order dt. 24.02.2020, which by itself is beyond two years, the respondents cannot now seek to rely on the time period prescribed, when the matter is remitted back and reopened. Once the disciplinary authority had passed an order i.e., on 24.02.2020, the 3rd

respondent not being satisfied with the said order, chooses to exercise powers conferred on him under Section 18(2) of the Act and remit the matter back to the disciplinary authority, for reopening and taking further action, in the considered view of this Court, would not once again grant/confer fresh period of two years therefrom, as it would have to be treated as continuation of the initial proceedings. If the said stand of the respondents that, on the matter being remitted back the authority would get a fresh lease of life of two years, is accepted, then every time the higher authority without passing an order by himself remits the matter back to the disciplinary authority, the same would amount to granting extension of time by the higher authority, in absence of any specific power being conferred to that effect under the Rules. Thus, the stand of the respondents if accepted would mean that the respondent authority would be permitted to do indirectly what it cannot do directly, which course of action is not permitted in law.

34. Thus, the stand of the respondents in the impugned proceeding that the authority has two years time from the date of reopening the case cannot be countenanced. More so, having regard to the fact that the articles of charge having been issued earlier and the defence statement thereto being submitted, the disciplinary authority is only required to proceed from the stage of conducting enquiry by considering the statement of defence and cannot assume as if he has

to start from the scratch i.e., by issuing articles of charge and calling upon the Government servant to file his defence statement once again. Thus, on the matter being remitted back the disciplinary authority would be required to act within the time frame in terms of G.O.Ms.No.679 i.e. a period of three months or six months depending upon the nature of the case either simple or complicated.

35. In the facts of the present case, since more than a year has elapsed from the date of reopening of the case, *vide* proceedings dt.03.06.2020, the respondent authorities cannot make use of the pendency of the said proceeding as a ruse for non-consideration of the case of the petitioner for grant of promotion in the panel year during 2021 or any time thereafter.

36. Further, it is also to be seen that, the respondents are surprisingly silent in their counter-affidavit as to when the petitioner would become eligible for grant of promotion even though a reference was made in para 5 of the counter to circular Memo dt.01.07.1998, which has been referred to G.O.Ms.No.679 dt.01.11.2008. Thus, the respondents being clear of the timeline prescribed in the circular Memo No.35676 as referred to in G.O.Ms.No.679 for completion of disciplinary proceedings read in thereunder, along with the time frame prescribed under G.O.Ms.No.257 dt 10.06.1999 as commencing from

25.02.2017, the non-consideration of the case of the petitioner for grant of promotion, in the panel year beyond the period prescribed under the respective Government Orders, cannot be held to be valid.

37. In view of the same, this Court is of the considered view that the respondents are required to consider the case of the petitioner for grant of promotion to the post of Deputy Range Officer, at least on adhoc basis, notwithstanding the pendency of articles of charge in terms of proceedings dt.25.02.2017.

38. Accordingly, the Writ Petition is allowed and the order of the 3rd Respondent dt.29.05.2020 in Rc.No.531/P&E/2016/M1 is set-aside. The respondents are directed to include the name of the petitioner in the list of the eligible candidates for promotion to the post of Deputy Range Officer, for the current panel year i.e., for the year 2022-2023.

39. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

**SD/-T.SRINIVAS
DEPUTY REGISTRAR**

//TRUE COPY//

SECTION OFFICER

To

1. The Special Chief Secretary, Environment, Forests, Science And Technology Department T.S. Secretariat, Hyderabad, State of Telangana.
2. The Principal Chief Conservator of Forests, (HoFF) ArnayaBhavan, Hyderabad.
3. The Conservator of Forests, Adilabad Circle, Adilabad.
4. The Forest Divisional Officer, Adilabad.
5. 11 LR Copies.
6. The Under Secretary, Union of India Ministry of Law, Justice and Company Affairs, New Delhi.
7. The Secretary, Telangana Advocates Association Library, High Court Buildings, Hyderabad.
8. Two CCs to GP FOR SERVICES I, High Court for the State of Telangana, at Hyderabad. [OUT]
9. One CC to SRI P.V.RAMANA, Advocate [OPUC]
10. Two CD Copies

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HIGH COURT

DATED:30/12/2022

ORDER

WP.No.17107 of 2021



ALLOWING THE WRIT PETITION
WITHOUT COSTS.

23
[Signature]
06/01/2023