**(2013) 11 AP CK 0029**

**Andhra Pradesh High Court**

**Case No:** Writ Petition No. 32390 of 2013

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| Government of Andhra Pradesh and Another | APPELLANT |
| Vs | |
| N. Stayanarayana and Others | RESPONDENT |

**Date of Decision:** Nov. 19, 2013

**Citation:** (2014) 2 ALD 488 : (2014) 1 ALT 209

**Hon'ble Judges:** R. Subhash Reddy, J; A. Shankar Narayana, J

**Bench:** Division Bench

**Advocate:** G. Venkateshwarlu, Counsel, for the Respondent

**Judgement**

@JUDGMENTTAG-ORDER

R. Subhash Reddy, J.

This Writ Petition is filed by the respondents in O.A. No. 7268 of 2010 filed before the Andhra Pradesh Administrative Tribunal, Hyderabad, aggrieved by the order, dated 03.04.2013, passed in the said O.A. In the aforesaid O.A. the first respondent/applicant questioned the Charge Memo bearing No. 7474/L2/98-1, MA, dated 13.05.1998 and the consequential punishment orders issued vide G.O.Ms. No. 671, dated 06.09.2007 and rejection orders in Memo No. 7474/L2/98, dated 01.07.2008 passed by the first petitioner herein.

2. While the first respondent/applicant was working as Manager in Nizamabad Municipality, which was subsequently upgraded as Municipal Corporation, disciplinary proceedings were initiated against him and a Charge Memo. dated 13.05.1998 was issued by framing the following two charges:

Charge No. 1: The Manager, Nizamabad has regularised and absorbed the NMRs against the post of Electrician, Fitter and Work Inspector, contrary to the instructions of the Government and the Commissioner and Director of Municipal Administration.

Charge No. 2: The Manager, Nizamabad has misused the office and allowed the NMRs to get their pay fixed in the scale of pay attached to the said posts and draw arrears.

3. The first respondent submitted his explanation to the above said charges on 13.07.1998, denying the allegations leveled against him. Dissatisfied with the explanation submitted by the first respondent, a regular enquiry was conducted by the Commissioner of Inquiries on the charges framed against him. The inquiring authority has submitted his report on 16.08.2005, the relevant portion of which is extracted hereunder:

Analysis and assessment:

The root question first is whether C.O. was the Manager of Nizamabad Municipality in 1989 in which year the NMRs namely; the Electrician, the Fitter and the Work Inspector were regularised and absorbed against the said posts. As per the version of the C.O. and as verified from records, the C.O. was not the Manager of Nizamabad Municipality and therefore, he cannot be found guilty of Charge No. 1. Therefore, I find that there is no necessity to discuss the details regarding Charge No. 1.

So far as Charge No. 2 is concerned, it is found that the entire responsibility for allowing the NMRs to get their pay fixed in the scale of pay attached to the said posts and draw arrears has been shown against the C.O. viz., the Manager. I have perused the concerned file and the noting thereon regarding this issue. It is true that the Manager has given positive recommendations for pay scales for the said NMRs and payment of arrears. After getting the note of the Manager vetted by the Auditors only, the Municipal Commissioner has passed the orders for fixing pay scales etc., for the said NMRs. But C.O. has mentioned that whereas the concerned clerk, the Municipal Commissioner and the Auditors are not given any charge memos. he has only been isolated for the same.

I feel that so far as the concerned clerk is concerned, he merely did his duty in the note by submitting the facts and requesting for orders. I do not see how he is guilty for placing the facts and asking for instructions. It is at the level of the Manager that recommendation was given and it is the Municipal Commissioner who has passed the final order getting the issue cleared by the Auditors only. I agree with the contention of the C.O. that he alone is not responsible but that the Municipal Commissioner/concerned auditor/auditors are also equally responsible. Therefore, in the fitness of things, charges should also have been framed against the Municipal Commissioner and the concerned auditors.

Findings:

I find that Charge No. 2 is only partially proved against the C.O. Finding him guilty alone would be to judge his omission & commission out of context. He was not the

final authority for final approval/order. For the sake of justice, it would not be proper to punish him alone. I recommend that charges should also be framed against the Municipal Commissioner who passed the order on the recommendation of the Manager and also the concerned auditors to clear the proposal as processed by the C.O. in the file.

4. From a perusal of the report submitted by the enquiry officer, it is to be noticed that Charge No. 1 is not proved and Charge No. 2 is partially proved against the first respondent. The enquiry officer recommended not to punish the first respondent inasmuch as he was not the final authority to extend the pay scale to the NMRs and also on the further ground that no action was taken against the Auditors and the Municipal Commissioner who passed orders on the recommendations of the Manager i.e. first respondent herein.

5. Based on the enquiry report, a further show cause notice was issued for which the first respondent filed his explanation. Not being satisfied with the said explanation, the disciplinary authority has passed final orders on 06.09.2007 in G.O.Ms. No. 671, Municipal Administration & Urban Development (L2) Department, imposing punishment of 20% cut in his pension permanently.

6. Thereafter, the first respondent made a representation to the Government for payment of interest at 9% on the gratuity amount and also for payment of pension in full from the date of his retirement. The said request was rejected vide order, dated 01.07.2008 issued in Memo. No. 7474/L2/98 MA. Questioning the Charge Memo dated 13.05.1998 and the consequential orders imposing punishment of 20% cut in the pension and further rejection order, dated 01.07.2008 issued in Memo. No. 7474/L2/98 MA, the first respondent/applicant has approached the Tribunal by way of filing O.A. No. 7268 of 2010.

7. The Tribunal, by the impugned order, recorded a finding that the enquiry report was not served on the first respondent as required under the Rules. Further, the Tribunal also recorded a finding that there was inordinate and unexplained delay on the part of the petitioners in concluding the enquiry proceedings and also on a further ground that as the petitioners have adopted predetermined and discriminatory manner in conducting the disciplinary proceedings against the first respondent, allowed the O.A. with a direction to release the pensionary benefits due to the first respondent/applicant within eight weeks from the date of receipt of the order.

8. In this Writ Petition, it is contended by the learned Government Pleader appearing on behalf of the petitioners that the enquiry report was furnished to the first respondent/applicant and the same was also acknowledged by him. In spite of the same, the Tribunal has erroneously recorded a finding that the enquiry report was not served on him. He further submitted that in view of the steps taken in initiating the disciplinary proceedings, it cannot be said that there was delay on the

part of the petitioners so as to annul the very order of punishment imposed on the first respondent in the disciplinary proceedings. He further submitted that as the first respondent has misguided the higher officers i.e. Commissioner in getting the pay fixed with regard to the NMRs and as the said charge was held proved partly, orders were issued imposing punishment of 20% cut in pension. In that view of the matter, the petitioners have not adopted any pick and choose method in prosecuting the disciplinary proceedings against the first respondent/applicant.

9. On the other hand, the learned counsel for the first respondent/applicant submitted that the applicant was not the competent authority for fixation of pay of NMRs. He further submitted that as the concerned clerk has put up the note, he forwarded the same and ultimately orders were issued by the then Commissioner, who is the competent authority. It is further submitted that the charges framed against the first respondent were vague and that there was abnormal delay on the part of the petitioners in concluding the disciplinary proceedings. He further submitted that in the absence of any motive for such recommendation of pay scales to NMRs, it cannot be said that there is misconduct on the part of the first respondent so as to impose the punishment of 20% cut in pension permanently.

10. So far as the first submission of the learned Government Pleader with regard to furnishing of enquiry report is concerned, from the record it is to be seen that the enquiry report was furnished to the first respondent and the same was acknowledged by him. In that view of the matter, it cannot be said that the petitioners have violated the Rule 21(2) of the APCS (CC & A) Rules, 1991.

11. With regard to the second contention advanced by the learned Government Pleader, it is to be noticed that charge memo itself was dated 13.05.1998 though the incident relates to the year 1988-89. So, the very disciplinary proceedings were initiated nearly after a decade of the alleged incident. There is no explanation at all to explain such inordinate delay in initiating the disciplinary proceedings against the first respondent. Even after the enquiry officer was appointed, there was a delay of six years in completing the enquiry. The enquiry was finally completed and the enquiry report was submitted on 16.08.2005.

12. Nextly, it is to be noticed that in the enquiry report, the enquiry officer, analysing the evidence on record, in clear terms, recorded a finding that the then Municipal Commissioner and the Auditors concerned are also equally responsible for fixation of pay to the NMRs. In the enquiry report it is further stated that the first respondent/applicant is not the final authority for approval and he had only recommended for fixation of pay to the NMRs, as such it is not proper to punish him alone. Despite such report, it appears, no steps have been taken to frame charges against the then Municipal Commissioner and the Auditors concerned, who approved the pay fixation for the NMRs. In the absence of indicating any motive for such recommendation, the charge to the extent it is proved can be said to be a negligence in discharge of his duties, but cannot be said to be a misconduct so as to

the punish him by imposing punishment of 20% cut in the pension permanently.

13. At the same time, there is no explanation at all from the side of the petitioners for not taking action against either the Auditors or the Municipal Commissioner in spite of specific finding recorded by the enquiry officer in his enquiry report, dated 16.08.2005. It is well settled that even in departmental enquiry proceedings also, the concept of equality as enshrined in Article 14 of the Constitution of India, can be applied to judge whether the authorities have acted fairly or not and whether they have adopted any discriminatory attitude in taking disciplinary action against the first respondent/applicant alone and for not taking any action against the Auditors and the then Municipal Commissioner, who ultimately passed orders accepting the recommendations made by the first respondent/applicant.

14. The Hon''ble Supreme Court in Man Singh Vs. State of Haryana and Others, has held as under:

We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair-minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equals have to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of "fair play" and reasonableness.

15. By applying the aforesaid judgment of the Hon''ble Supreme Court, we are of the view that it is a clear case where the first respondent/applicant was imposed punishment in the disciplinary proceedings in a discriminatory manner, without initiating any proceedings against either the Auditors concerned or the then Municipal Commissioner of the Municipality. In that view of the matter, in the absence of any valid explanation for the inordinate delay caused in concluding the proceedings, and also on account of arbitrary action taken against the first respondent/applicant, which is discriminatory on the part of the petitioners, we are of the view that it is not a fit case to interfere with the order passed by the Tribunal, quashing the order of punishment issued by the petitioners, vide G.O.Ms. No. 671, dated 06.09.2007. For the aforesaid reasons, this Writ Petition is dismissed as devoid of merit. However, if any amount of pension is withheld pursuant to the final orders passed in the disciplinary proceedings, the same shall be paid to the first respondent/applicant within a period of two months from the date of receipt of this order. No order as to costs. As a sequel, pending miscellaneous applications, if any, shall stand closed.