T.M. Mani Kumar Vs Registrar (Administration), High Court of A.P. and Another

Court: Andhra Pradesh High Court

Date of Decision: Oct. 7, 2005

Acts Referred: Constitution of India, 1950 â€" Article 14, 15, 16, 21, 309

Citation: (2005) 6 ALD 346 : (2006) 1 ALT 489

Hon'ble Judges: Bilal Nazki, Acting C.J.; G. Yethirajulu, J

Bench: Division Bench

Advocate: V. Mallik, for the Appellant; C.V. Nagarjuna Reddy, for the Respondent

Final Decision: Dismissed

Judgement

G. Yethirajulu, J

1. This writ of mandamus is filed by an Ex-Attender of the Unit of the District Judge, Guntur, praying to declare that the Order of the District

Judge, Guntur, dated 4.4.2002 and the proceedings of the High Court of Andhra Pradesh, dated 28.8.2003 dismissing him from service as illegal,

arbitrary and violative of the principles of natural justice and contrary to the law laid down by the apex Court.

2. The averments made by the petitioner in the affidavit filed in support of the writ petition are briefly as follows: The petitioner worked as an

Attender in the Unit of the District Judge, Guntur, with effect from 17. 6.1996. In the year 1999 he was transferred from Guntur to Gurajala. On

his representation that his wife is a heart patient, who requires necessary treatment at Guntur, the District Judge transferred him from Gurajala to

Guntur and posted him to the Court of the Special Judicial Magistrate of First Class for Prohibition and Excise Offences, Guntur, through the

proceedings dated 3.7.2000. He was again disturbed and transferred to Gurajala through the proceedings dated 2.12.2000. He filed Writ Petition

No. 24144 of 2000 questioning the order of transfer and the Hon''ble High Court while dismissing the writ petition, observed that the District

Judge, Guntur, may consider the representation of the petitioner on its own merits. In pursuance of the order of the High Court, the petitioner

submitted a representation on 11.6.2001 and the District Judge, Guntur, through the proceedings dated 1.9.2001 again transferred him to Guntur

and posted to II Additional Junior Civil Judge"s Court, Guntur. When the petitioner was asked to attend duties at the residence of II Additional

Junior Civil Judge, Guntur, he filed Writ Petition No. 83 of 2002 seeking declaration that he should be allotted duties in fair and just manner. The

High Court dismissed the said writ petition on 11.2.2002 with costs, observing that the disciplinary proceedings pending against the petitioner shall

be concluded on their own merits uninfluenced by the observations made by the High Court. The petitioner was issued a charge-sheet dated

3.7.2001 with three charges and an Enquiry Officer was appointed. The petitioner was issued another charge-sheet on 8.10.2001 with one charge

and another enquiry was also ordered. The petitioner requested the District Judge, Guntur, to appoint an Enquiry Officer of higher rank than the

Junior Civil Judge, but, the said request was rejected by the District Judge. After conclusion of the enquiries, the District Judge, Guntur, issued

show-cause notices dated 1.3.2002 proposing to dismiss him from service under each enquiry. Despite his explanation, the District Judge, Guntur,

passed a common final order on 4.4.2002 and issued the proceedings imposing the penalty of removal from service. The petitioner preferred an

appeal before the High Court on 13.5.2002 and the High Court rejected the appeal on 28.8.2003. The petitioner, being aggrieved by the order of

removal, filed the present writ petition, alleging that the District Judge while imposing the penalty of removal from service violated the principles of

natural justice and the order of the District Judge is contrary to law laid down by the Supreme Court. The District Judge did not give any reasons in

the show-cause notice for disagreeing with the finding of the Enquiry Officer. The petitioner, therefore, urged to protect his rights available under

Circular dated 24.2.1992 of the High Court and the order of the High Court dated 18.2.1998 in W.P. No. 33020 of 1997. The penalty of

removal from service is shockingly disproportionate to the gravity of misconduct. Therefore, it is liable to be set aside. Hence, the writ petition.

3. The District Judge, Guntur, as the second respondent, filed a detailed counter denying the allegations made by the petitioner contending that the

petitioner was not inclined to attend the duty at the residence of the officer. He refused to attend the residential duty on the pretext that it is not part

of the official duty of Attender. The petitioner was not amenable to any advices, orders and instructions etc. He was exhibiting his belligerent

attitude in not attending to his duties as Attender. Therefore, the question of his continuing as such would not arise. The petitioner has no respect

for the institution or devotion to duty. He was highly indisciplined and disobedient. There are no mitigating circumstances to take a lenient view in

this matter which tantamount to conduct abhorrent of a Government Servant. After making the above observations and considering the gravity of

the misconduct, the District Judge, Guntur, awarded the punishment of removal from service, though it is a fit case for dismissal from service, which

is likely to jeopardize his chances of employment somewhere.

4. In the administrative appeal preferred by the appellant, the High Court was fully convinced that the District Judge, Guntur, was justified in

imposing the punishment of his removal from service. There are no grounds to interfere with the order of the District Judge, Guntur. The writ

petition is, therefore, liable to be dismissed with costs.

5. In the light of the contentions of the respective parties, the point for consideration is:

whether the order of the District Judge, Guntur, dated 4.4.2002, removing the petitioner from service and confirmed by the High Court through the

Order dated 28.8.2003 is illegal, arbitrary and violative of principles of natural justice? And whether it is liable to be set aside?

6. Point: The petitioner was appointed as an Attender in the unit of second respondent in the year 1996 on compassionate grounds on account of

the medical invalidation of his father while in service. His father died subsequently and the petitioner was appointed as an Attender with effect from

17.6.1996. The petitioner started asserting his rights from the date of his transfer from Guntur to Gurajala. He filed Writ Petition No. 23144 of

2000 questioning the order of transfer dated 2-12-2000 before the High Court. In the affidavit filed in support of the writ petition, the petitioner

alleged as follows:

(1) Ever since he took charge in the Court of the Special Judicial Magistrate of First Class for Excise and Prohibition Offences, Guntur, the

Presiding Officer was ill-treating and causing extreme mental agony on one pretext or the other because the Presiding Officer belongs to superior

caste and he belong to scheduled caste.

(2) The Presiding Officer issued a memo on 17.7.2000 arbitrarily and illegally attributing absence from duty.

(3) The Presiding Officer in the memo dated 17.7.2000 alleged that he refused to get cinema tickets as instructed by him, but fetching of cinema

tickets is not his duty.

(4) The Presiding Officer issued another Memo dated 21.7.2000 alleging that he absconded from duty from 1.15 p.m. to 1.50 p.m. and caused

inconvenience to the functioning of the Court.

(5) The Presiding Officer issued another memo dated 28.7.2000 alleging that he was responsible along with two other attenders for the missing of

a calling bell.

(6) The Presiding Officer issued another memo, dated 7.8.2000 alleging that he did not keep the scooter outside and did not clean it by attributing

disobedience, but it is not part of the duty of the petitioner.

(7) The Presiding Officer required him to water the garden and when he refused, a memo dated 19.9.2000 was issued though it is not his duty as

per the Circular dated 24.2.1992 issued by the High Court.

(8) Since the petitioner was not surrendering to the Presiding Officer, he brought illicit and unjustified pressure on the District Judge and as a result

of it, the District Judge issued the proceedings dated 2.12.2000 transferring him from Guntur to Gurajala.

(9) It is unjust to victimize the petitioner by abusing the powers vested in the District Judge and the Magistrate.

(10) The petitioner is denied equality before Law and equal protection of Law on the ground of caste, which is violative of Articles 14, 15, 16 and

21 of the Constitution of India.

7. In Writ Petition No. 83 of 2002, which was filed challenging the action of II Additional Junior Civil Judge, Guntur, in exclusively allotting the

petitioner daily guard duty at night at his residence, the petitioner alleged as follows:

(1) Allotment of daily duty at night at the residence of II Additional Junior Civil Judge is an act of victimization on account of the petitioner refusing

to work at the residence of the Presiding Officer during day time.

(2) The refusal of the petitioner to work at the residence of the Presiding Officer during day time was based on the Circular in ROC No. 216/92-

CI, dated 24.2.1992, issued to all the lower Courts on the administrative side by the High Court.

(3) The work at the residence of the Presiding Officer is not one of the eleven legitimate duties of the Court Attender, therefore, allotment of night

duty to the petitioner at the residence of the Presiding Officer would amount to victimization.

(4) The Court Attenders can be asked to do only legitimate work at the residence of the Presiding Officer, such as to guard the Court property at

night as clarified by the High Court in Circular dated 24.2.1992.

(5) The list of legitimate duties enumerated in G.O. Ms. No. 565 G.A.D. (Ser. B), dated 24.10.1992 does not include any day time work

whatsoever at the residence of the Presiding Officer.

(6) The petitioner''s protest for allotting day time work at the residence of the Presiding Officer was construed as an act of insubordination and

disciplinary proceedings have been initiated against him.

8. In the above back ground of asserting of rights by the petitioner, it is essential to consider ""the merits of the departmental enquiry and the legality

of the order of removal passed by the District Judge. The following are the articles of charge framed against the petitioner in the first enquiry.

Charge No. 1: That you while functioning as Attender in Special Judicial Magistrate of First Class for Prohibition and Excise Offences Court,

Guntur, during the period July, 2000 to December, 2000 used to absent yourself from duties and submitting casual leaves without obtaining prior

permission and caused lot of inconvenience to the functioning of the Court and thereby committed misconduct in the discharge of your official

duties.

Charge No. 2: That you while functioning as Attender in Special Judicial Magistrate of First Class for Prohibition and Excise Offences Court,

Guntur (during the period 7/2000 to 12/2000) have entered the chambers of the Presiding Officer on 18.10.2000 at 5.00 p.m. and demanded to

grant casual leave as of right and shouted vulgarly in the presence of staff members as and thereby committed gross disobedience, insubordination

and dereliction of duties in the discharge of your official duties as Attender and thereby committed misconduct.

Charge No. 3: That you while functioning as Attender in the Court of Special Judicial Magistrate of First Class for Prohibition and Excise

Offences, Guntur, during the period 7/2000 to December, 2000 have committed in the discharge of your official duties as detailed hereunder--

(1) Unauthorised absence from duty i.e. Court hall duty from 1.15 p.m. to 1.50 p.m. on 21.5.2000;

(2) You are not vigilant thereby the calling bell was not found from 25.7.2000 morning;

(3) Absented from official duty as Attender from 3.00 p.m. to 5.00 p.m. on 18.9.2000;

(4) Failed to do the duties entrusted to you;

And thereby you have committed misconduct.

9. The following is the article of charge framed against the petitioner in the second enquiry:

That you Sri T.M. Mani Kumar, while functioning as Attender, in the Court of II Additional Junior Civil Judge''s Court, Guntur, joined duty on

18.9.2001 at 5.30 p.m. Attender and started dictating terms to the Presiding Officer stating that you will not attend any domestic work in the

residence of the Officer and in your explanation also you have stated as follows:

On the contrary, entrusting domestic work to attenders is abuse of authority and violation of law and human rights. Extracting labour by force,

threats and undue influence amounts to forced labour and violative of the Constitution of India. I submit that I know the latest position only through

the said circular. If there is any circular to its contrary which ordains that I should do domestic work in the residence of the Judicial Officers--.

And that the aforestated conduct by you being a Government Servant amounts lack of obedience and dictating terms to the Presiding Officer and

thereby you are disobedient, indiscipline and lack of devotion to duty in the discharge of your official duties as Attender and thereby committed

misconduct.

10. In the first enquiry, the Enquiry Officer found the petitioner guilty of Charge No. 2 and exonerated him for the Charges 1 and 3. The second

respondent differed with the view expressed by the Enquiry Officer regarding Charge No. 1 and held Charge No. 1 also proved against him along

with Charge No. 2 and a show-cause notice was issued directing the petitioner to explain as to why he shall not be imposed the punishment of

dismissal from service for Charges 1 and 2 proved against him. The petitioner gave his explanation denying the commission of any misconduct.

11. In the second enquiry, the Enquiry Officer submitted a report holding that the charge was proved against the petitioner. The second respondent

accepted the same, found the petitioner guilty of the charge and issued show-cause notice to the petitioner to explain as to why he shall not be

dismissed from service for the charge held proved against him by supplying a copy of the report of the Enquiry Officer. The petitioner submitted his

final explanation, which is also reproduction of the explanation given in the first enquiry. The District Judge passed a common order by considering

the material covered by both the enquiries.

12. The District Judge, Guntur, in the final order observed that after posting of the petitioner in the Court of II Additional Junior Civil Judge,

Guntur, by transferring him from Gurajala, he started dictating terms to the Presiding Officer. He made it clear that he would not attend to duties as

residential attender, which was mentioned by the Presiding Officer of the said Court while addressing Ex.P-1 letter to the second respondent on

19.9.2001, which reads as follows:

I submit that till 6.30 a.m. today i.e., 19.9.2001 I was under strong belief and impression that I can adjust with any staff member or any staff

member can adjust with me, vice-versa, but the same is proved to be false, when Mr. T.M. Mani Kumar of this Court, who joined duty at 5.30

p.m. on 18.9.2001 (Yesterday) came into my office room while I was busy with my record and started dictating terms to me, that he will not

attend any domestic work in the residence of the Officer.

I further submit that 1 am seriously apprehending that his presence at my residence may also have serious implications in my regular judicial work.

It is under these circumstances, I am compelled to bring it to the notice of the Hon''ble District Court, as the individual has exhibited his disinterest

to attend the residential duties.

13. The Special Judicial Magistrate of First Class for Prohibition and Excise Offences, Guntur, under whom the petitioner worked also complained

in his letter dated 16.4.2001, which reads as follows:

First I intend to submit a brief back ground of the situation prevailing in the Court and tenacious atmosphere being created by the said Attender

(charged employee) both at my residence and office causing mental agony to me and my family members thereby rendering judicial work

impossible.

The said attender Sri T.M. Mani Kumar right from the time he was posted in my Court has been encouraging indiscipline among the other

attenders and my elderly Counselling and oral instructions to desist him from such things did not yield any expected result.

14. In the explanation dated 1.10.2001 given by the petitioner in the second enquiry, he stated as follows:

I submit that I work according to law. I submit that if the principle of rule-of-law, the much eulogized principle of modern governance is to be

honoured, one should come to terms with the fact that domestic work in the residences of Judicial Officers is not part of official duty of attenders.

It becomes violation of human rights of the attenders if we are entrusted with any domestic work. There was, hither to, resistance from the A.P.

Judicial Class IV Employees Association in this regard.

I submit that I would not like to violate any law nor I would like it to be violated by any one to the detriment of my human rights. I submit that I

hope that my self-respect is to be respected by non-entrustment with jobs other than those, which form part of my official duty.

I submit that refusal to do domestic work in any case is not dereliction of duty or disobedience. However, it is acting lawfully, legally and in the

legitimate spectrum but not outside. On the contrary, entrusting domestic work to the attenders is abuse of authority and violation of law and

human rights. Extracting labour by force, threats and undue influence amounts to forced labour and violative of the Constitution of India.

15. In the Order dated 11.2.2002 in W.P. No. 83 of 2002 at para. 11, the High Court observed as follows:

It is thus seen that for the sake of administrative convenience, the petitioner herein was asked to attend to night duty only which is in accordance

with the circular issued by the High Court referred to supra. Therefore, the contention of the petitioner that the action of the 1st respondent in

allotting to daily night duty at the residence of the Presiding Officer is unlawful and would amount to victimization is wholly baseless and incorrect

and far from truth. In our opinion, the petitioner is liable to be proceeded against departmentally for insubordination and dereliction of duty.

16. In the first enquiry, P.W.1 to P.W.4 were examined and Ex.P.1 to Ex.P.46 were marked on behalf of the Disciplinary Authority and on behalf

of the petitioner, D.W.1 was examined and Exs.D.1 to Ex.D.7 were marked. In the second enquiry, P.W.1 was examined and Ex.P.I to Ex.P.5

were marked on behalf of the Disciplinary Authority. No oral or documentary evidence was adduced by the petitioner.

17. In the first enquiry, the first charge relates to the absence of the petitioner from duty and submitting casual leave application without obtaining

prior permission and causing lot of inconvenience to the functioning of the Court. The Presiding Officer of the Excise Court as P.W.1 stated that

the petitioner used to absent himself from duties particularly while working at the residential bungalow and was sending leave applications

subsequently. The petitioner used to apply for earned leave frequently. The Enquiry Officer by taking into consideration the evidence of P.W.1 in

the cross-examination and by taking into consideration the sanctioning of various leaves by the District Judge concluded mat the first charge

levelled against the petitioner failed. Regarding the second charge that the petitioner entered the chamber of the Presiding Officer on 18.10.2000 at

8.00 a.m. and demanded to grant casual leave as of right and shouted vulgarly in the presence of staff members, the Enquiry Officer relied on the

evidence of P.W.1 to P.W.4 and Ex.P.36 to Ex.P.42. The Presiding Officer as P.W.1 stated that the Head Clerk placed the casual leave

application of the petitioner for 19.10.2000 and it was rejected by the Presiding Officer on the ground that there was shortage of men and the

presence of the petitioner was required to attend the Court duty. While he was attending the other administrative work and in the presence of

P.W.2 to P.W.4, the petitioner entered his chamber and demanded to grant casual leave on 19.10.2000 or else his application may be forwarded

to the District Judge, Guntur; that he informed the petitioner that the casual leave cannot be granted due to shortage of men and asked him to leave

the chamber. Immediately, the petitioner uttered ""You do like this, I will do whatever that is possible for me"" in the presence of the other staff

members. He thought that the said act of the petitioner amounts to disobedience and gross insubordination. He recorded the statements of P.W.2

to P.W.4 and issued show-cause notice to the petitioner calling for his explanation, but the petitioner denied the said incident in his explanation. He

waited till December, 2000 expecting change in the attitude of the petitioner, but there was no change, therefore, he submitted a confidential letter

dated 2.12.2000 to the District Judge, Guntur along with the casual leave application of the petitioner dated 18.10.2000 for orders. The Enquiry

Officer observed that the evidence of P.W.1 inspired confidence in him, that the evidence of P.W.1 to P.W.4 clearly established that the

delinquent uttered the words as mentioned above pointing out P.W.1. The Enquiry Officer further observed that the evidence of the petitioner as

D.W.1 appears to be unreliable and untrustworthy and further observed that had P.W.1 shouted at the petitioner, he would have taken the matter

to the District Judge informing about the incident. On the other hand, P.W.1 reported the incident to the District Judge by forwarding the leave

application. Therefore, the defence of the petitioner that the Presiding Officer shouted at him has no legs to stand. The Enquiry Officer after taking

into consideration the totality of the circumstances found the petitioner guilty of charge No. 2 and submitted the report to the District Judge.

18. The District Judge after perusal of the report of the enquiry officer accepted the report in respect of charge No. 2, but differed with the view

expressed by the enquiry officer in respect of charge No. 1 and found the appellant guilty of charge No. 1 on the basis of the material available on

record.

19. The appellant contended that when the disciplinary authority finds that the reasons assigned by the enquiry officer is neither cogent nor based

on evidence it can record its own reasons and hold that the delinquent is guilty of charge levelled against him and a duty is cast upon the disciplinary

authority to record its reasons to facilitate the appellant to show-cause or to appeal against the conclusions. Since the disciplinary authority did not

assign any reasons, the appellant was denied reasonable opportunity with regard to finding on charge No. 1. The learned Counsel for the appellant

in support of the above contention relied on a judgment of the Supreme Court in Yoginath D. Bagde Vs. State of Maharashtra and Another, ,

wherein the Supreme Court while dealing with Article 309 of the Constitution of India observed in paragraphs 28 and 31 as follows:

28. In view of the provisions contained in the statutory rule extracted above, it is open to the disciplinary authority either to agree with the findings

recorded by the enquiring authority or disagree with those findings. If it does not agree with the findings of the enquiring authority, it may record its

own findings. Where the enquiring authority has found the delinquent officer guilty of the charges framed against him and the disciplinary authority

agrees with those findings, there would arise no difficulty. So also, if the enquiring authority has held the charges proved, but the disciplinary

authority disagrees and records a finding that the charges were not established, there would arise no difficulty. Difficulties have arisen in all those

cases in which the enquiring authority has recorded a positive finding that the charges were not established and the delinquent officer was

recommended to be exonerated, but the disciplinary authority disagreed with those findings and recorded its own findings that the charges were

established and the delinquent officer was liable to be punished. This difficulty relates to the question of giving an opportunity of hearing to the

delinquent officer at that stage. Such an opportunity may either be provided specifically by the rules made under Article 309 of the Constitution or

the disciplinary authority may, of its own, provide such an opportunity. Where the rules are in this regard silent and the disciplinary authority also

does not give an opportunity of hearing to the delinquent officer and records findings different from those of the enquiring authority that the charges

were established, ""an opportunity of hearing"" may have to be read into the rule by which the procedure for dealing with the enquiry authority''s

report is provided principally because it would be contrary to the principles of natural justice if a delinquent officer, who has already been held to

be ""not guilty"" by the enquiring authority, is found ""guilty"" without being afforded an opportunity of hearing on the basis of the same evidence and

material on which a finding of ""not guilty"" has already been recorded.

31. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the enquiry officer

into the charges leveled against him but also at the stage at which those findings are considered by the disciplinary authority and the latter, namely

the disciplinary authority forms a tentative opinion that it does not agree with the findings recorded by the enquiry officer. If the findings recorded

by the enquiry officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an

opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at

this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the

disciplinary authority has proposed to disagree with the findings of the enquiry officer. This is in consonance with the requirement of Article 311(2)

of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been

informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not

taken in the matter, the enquiry shall be deemed to be pending. Mere submission of the findings to the disciplinary authority does not bring about

the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the

disciplinary authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the

delinquent. That being so, the ""right to be heard"" would be available to the delinquent upto the final stage. This right being a constitutional right of

the employee cannot be taken away by any legislative enactment or service rule including rules made under Article 309 of the Constitution.

20. The learned Counsel for the respondent relied on a judgment of a Division Bench of this Court in Sri Visakha Grameena Bank, Srikakulam v.

Karumetta Jagannadham, 2001 (2) ALD 422 (DB), wherein the Division Bench held as follows:

Having regard to a catena of decisions of the Apex Court there cannot be any doubt whatsoever that when a delinquent officer is charged with

various misconducts, the question as to what should be the quantum of punishment would depend upon the gravity of each charge and finding

thereupon. However, if the disciplinary authority imposes a punishment having regard to the cumulative effect of all the charges levelled against the

delinquent officer, in the event one of the charges fails, the order of punishment has to be set side. However, in the event, the gravity of each charge

levelled against the delinquent officer is such that it would entail punishment of dismissal on each count, the same cannot be interfered with.

21. There is no dispute about the legal position. By keeping the above position in view, we wish to mention that the circumstances are different in

the case on hand.

22. In charge No. 1, there was an allegation that the appellant absented himself from duties during the period from July, 2000 to December, 2000

without prior permission and submitted casual leaves resulting in lot of inconvenience to the functioning of the Court. The enquiry officer observed

that the evidence placed by the department did not establish charge No. 1 against the appellant. The District Judge issued a show-cause notice to

the appellant on 1-3-2002 along with the copy of the enquiry report proposing to impose punishment on the appellant. In the said notice, the

District Judge mentioned that he satisfied with the reasoning given by the enquiry officer in regard to charge No. 2 and enquiry report was

accepted in this regard. He further observed that the enquiry officer is not correct in holding the petitioner not guilty in regard to charge No. 1. The

very applying leave frequently without prior permission disturbing the functioning of the Court work when the services of the appellants are

essential, would itself sufficient to hold that charge No. 1 is proved and the contrary finding in this regard is set aside. The District Judge

accordingly found the appellant guilty of charges 1 and 2. After receipt of the said notice, the appellant gave an explanation pleading not guilty, but

he did not raise any objection whether the reasons given by the District Judge are not sufficient to set aside the finding of the enquiry officer. The

District Judge categorically observed that the applying of frequent leaves without prior permission itself amounts to disturbing the functioning of the

Court and that itself is sufficient to hold that charge No. 1 is proved.

23. After perusing the record, we are convinced that the District Judge gave the reasons in disagreeing with the finding of the enquiry officer in

respect of charge No. 1 and we do not find force in the contention of the appellant that he was not provided opportunity with regard to the said

finding. Had there been any objection for the appellant, he would have raised it in his explanation, but the silence on the part of the appellant would

indicate that he had no grievance in that regard.

24. Since the Disciplinary Authority accepted the report of the Enquiry Officer that Charge No. 3 was not proved against the petitioner, we do not

find it necessary to refer to the findings of the Enquiry Officer regarding charge No. 3.

25. In the second enquiry the charge against the petitioner was that on 18.9.2001 the petitioner came to the office room of the Presiding Officer at

his residence and started dictating terms to the Presiding Officer that he will not attend any domestic work in the residence of the Presiding Officer

and in pursuance of that the Presiding Officer reported to the District Judge that the petitioner exhibited his disinterest to attend the residential

duties. The Enquiry Officer after considering the evidence observed that the act of the petitioner amounts to disobedience and dictating terms to the

Presiding Officer and it amounts to an act of disobedience and the Circular dated 24.2.1992 issued by the High Court has no relevancy to the facts

of the case. Ultimately, the Enquiry Officer found the petitioner guilty of the charge and submitted report to the District Judge.

26. After perusal of the enquiry report, the District Judge accepted the same and issued a final show notice to the appellant on 1-3-2002 as to why

he shall not be dismissed from service. After receipt of the explanation to the final show-cause notice from the appellant, the learned District Judge

passed a common final order in respect of both the cases. The District Judge after finding the appellant guilty of the charges separately in both the

enquiries issued separate show-cause notices in respect of each enquiry by observing that the charges proved against the appellant in each enquiry

attracts major punishment of dismissal from service. Therefore, the appellant is not only liable under first enquiry, but also liable under second

enquiry for the punishment of removal from service independently, which was imposed on the appellant through the common order.

27. It is pertinent to refer to the observations of the learned District Judge in the final order dated 4-4-2002 about the conduct of the appellant,

which reads as follows:

From the aforestated reports, it is clear that the charged employee is not amenable to any advices, orders and instructions etc. He is continuing his

belligerent attitude in not attending to his duties. This I feel is height of arrogance, and insubordination. He has no respect for the institution or

devotion to duty. He is highly indisciplined and disobedient. It is patently clear that he does not want to Work as an attender, which he thinks, it

demeans his prestige or status. He is earning salary without attending to his duties, which 1 feel not justified. No misplaced sympathies in his case.

There are no mitigating circumstances to be considered in this case. Any leniency in this regard would tantamount to conduct abhorrent of a

Government servant. Though it is a fit case for dismissal from service, considering the age, education etc., I do not want to jeopardize his chances

of employment elsewhere. I feel removal from service, though not dismissal, would meet the ends of justice. When he does not want to work as an

Attender, there is no meaning in continuing him in service. His services were most unsatisfactory. It is not safe to retain him in service. His attitude

and conduct are repugnant to conduct Rules. Since the charges against the employee in both the enquiries are proved and considering the gravity

of the misconduct, and absolutely as no chance of his change of attitude, he is awarded punishment of removal from service with effect from today

i.e., 4-4-2002.

Against the final order of the District Judge, the appellant approached the High Court, through an administrative appeal and the appeal was also

dismissed by confirming the order of the District Judge observing that the order needs no interference.

28. We do not find any illegality in the orders of the respondents and after considering the totality of the circumstances we find no grounds to

interfere with the impugned orders.

29. In the result, the writ petition is dismissed as devoid of merits. No order as to costs.