(2010) 12 AP CK 0011

Andhra Pradesh High Court

Case No: Writ Petition No. 24585 of 2000

M. Yadagiri		APPELLANT
	Vs	
The Chairman and Managing Director, Singareni Collieries Co. Litd. and Another		RESPONDENT

Date of Decision: Dec. 2, 2010

Acts Referred:

- Conduct, Disciplinary and Appeal Rules - Rule 5.1, 5.5
- Constitution of India, 1950 - Article 311(1)

Hon'ble Judges: L. Narasimha Reddy, J

Bench: Single Bench

Advocate: Aka Venkataramana, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

The Petitioner joined the service of the Singareni Collieries Company Limited (for short ''the Company''), as Assistant Engineer, in the year 1975. He was promoted as Executive Engineer in the year 1980, and Divisional Engineer, in the year 1984. The 1st Respondent, i.e. the Disciplinary Authority, issued a charge-sheet dated 27-04-1993, alleging that the Petitioner recommended allotment of coal to some fictitious industries, and that he has flouted the norms in vogue, for allotment of coal. The instances of such recommendations and allotment were furnished. The Petitioner submitted his explanations on 23-07-1993 and 22-08-1993, denying the allegations. An Enquiry Officer was appointed and he filed the report dated 16-11-1998. He held that the charges levelled against the Petitioner are not proved.

2. The 1st Respondent issued memo dated 23-04-1999, differing with the findings of the enquiry officer, and holding that the charges framed against the Petitioner, that

he acted in a manner prejudicial to the interests and image of the Company, and his negligence in performance of duties; that attract Rule 5.5 of Conduct, Disciplinary and Appeal Rules, (for short ''the Rules''); are proved. He has however taken the view that the charge, that the Petitioner acted dishonestly under Rule 5.1 of the said Rules; was not established. On the next day, the 1st Respondent issued a show cause notice to the Petitioner, on the basis of his findings on the memo dated 23-04-1999. The Petitioner submitted his explanation on 03-05-1999. Taking the same into account, the 1st Respondent imposed the punishment of removal from service, through order dated 23-11-2000. Hence, this writ petition.

3. The Petitioner contends that the order, imposing the punishment of removal from service is patently illegal and the prescribed procedure was not followed. By referring to certain orders passed by the Respondents, in relation to the punishment imposed for charges of similar nature, he contends that the Respondents acted in a discriminatory manner. On merits his contention is that the charges against him are not serious in nature, and by just imagining certain facts, as to the speculative business in coal, the Company has framed charges against him and imposed the punishment.

4. On behalf of the Respondents, a detailed counter-affidavit is filed. Most of it is devoted to informing the Court, of its limitations, which, of late, has become a matter of course, for the Company. Not withstanding the fact that it is a Company established by the Government of Andhra Pradesh, it keeps on taking exception to the maintainability of the writ petitions against it, on the ground that it is a body corporate. The Respondents contend that the prescribed procedure was followed in removing the Petitioner from service and that no illegality has taken place. As regards the contention of the Petitioner about discrimination, the Respondents contend that it is their prerogative to choose punishment, to be inflicted on the employees, depending on their subjective satisfaction.

5. Sri Aka Venkataramana, learned Counsel for the Petitioner submits that his client rendered unblemished service for decades together, and a charge-sheet was issued, at the fag end of service by imagining several things to themselves. He contends that it is just unimaginable as to how the charge, alleging theft, fraud or dishonesty, on the part of the Petitioner could have been framed, when it is not even alleged that the firms, to which coal was allotted, did not receive it. Learned Counsel submits that the allotment of coal was strictly in the realm of the Commissioner of Industries (for short ''the Commissioner''), and that the Petitioner strictly followed such allotments. He contends that the mere fact that the letters of allotment were found to have been forged cannot be a ground to accuse the Petitioner of the irregularities.

6. Learned Counsel further submits that, after thoroughly considering the evidence on record, the enquiry officer found that the charges are not proved, and surprisingly, the 1st Respondent reversed the findings on the charges referable to

Rule 5.5, without issuing any notice to the Petitioner. Learned Counsel submits that the notice dated 23-04-1999, requiring the Petitioner to explain as to why the proposed punishments shall not be imposed; is almost perfunctory, since the findings of the enquiry officer were already reversed. He further submits that the punishment imposed against the Petitioner is totally disproportionate, particularly when the Company itself has chosen to impose moderate punishments upon the employees, against whom charges under identical provision were held to have been proved.

7. Learned Standing Counsel for the Respondents, on the other hand, submits that though the enquiry officer submitted his report, holding that the charges are not proved, it is always competent for the 1st Respondent to come to a different conclusion on the same material. He contends that it is only for the sake of convenience, that an enquiry officer is appointed, and it is always the prerogative of the enquiry officer to conduct enquiry and record findings. It is also pleaded that failure to issue notice before disagreeing with the findings of the enquiry officer is not fatal to the proceedings, and the Petitioner has to plead and prove prejudice on account of the same. Learned Counsel further contends that the charges framed against the Petitioner are serious in nature and the punishment imposed against him cannot be reviewed, much less, be treated as disproportionate.

8. The Petitioner was serving as a Divisional Manager in the area work shop, Manugur, in 1993. There was heavy demand by industries for supply of coal, and the production was not commensurate with the demand. The Commissioner of Industries was conferred with the power to allot coal to the industries or other consumers. The Company had the monopoly of supply of coal in the State. The Petitioner was In-charge of issuing release order, in accordance with the allotment made by the Commissioner. A charge memo dated 27-04-1993 was issued to the Petitioner, alleging that he released coal in favour of certain firms, and letters of allotment were found to have been forged. On the basis of the allegations, the Petitioner was accused of committing misconduct under Rules 5.1 and 5.5 of the Rules. Rule 5.1 deals with the cases of theft, fraud and dishonesty, and Rule 5.5 is about acting in a manner prejudicial to the interests or image of the Company. The Petitioner submitted a detailed explanation stating that he has allotted coal strictly in accordance with the allotment made by the Commissioner of Industries.

9. After conducting detailed enquiry, the enquiry officer submitted a report. In the course of discussion, he stated that the actual mischief has taken place, when the letters of allotment issued by the Commissioner were directly produced, instead of their being received, in the post; and on account of the failure in sending of monthly reports to the office of Commissioner and District Industries Centers, a lapse on the part of the dispatch clerk. The person, who was guilty of bringing the fake allotment letters, was also named. Ultimately, the enquiry officer observed as under:

To prove a misconduct under Company''s Conduct & Discipline Rules No. 5.1 and 5.5, the presence of mens-rea i.e. a guilty mind is a must, and that has to be proved by the Prosecution by showing some deliberate acts of the accused which it failed to do. Hence, it is held that the charges leveled against Sri M. Yadagiri are not proved.

10. On receiving the report, the 1st Respondent has undertaken an exercise of his own. On 27-04-1999 he passed a detailed order recording his findings on the charges. He totally disagreed with the findings of the enquiry officer, and ultimately observed as under:

"Hence, taking into consideration the evidence on record, Shri M. Yadagiri was held guilty of the charge of acting in a manner prejudicial to the interest and image of the company by negligence in performance of his duties, under Rule 5(5) of CD&A Rules.

The charge of acting dishonestly under Rule 5(1) of Conduct, Discipline and Appeal Rules is, however, hardly established.

11. On the next day, the 1st Respondent addressed a letter to the Petitioner enclosing copy of the report dated 14-11-1998 and his findings dated 23-04-1999 and left it open to the Petitioner to make a representation within seven days. It is relevant to extract the said letter, in its entirety, so that its purport can be properly understood:

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Ref. No. C28/1/100                                          Date 24-4-1999.
Shri M. Yadagiri,                                           CONFIDENTIAL
Divnl. Enginer (E&M),
Central Workshop,
Kothagudem.
              Through Addl.CE. (P Hs & P Ss)
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        Sub: Supply of copies of enquiry report and Findings
             Recorded by C & M.D., Disciplinary Authority,
             Basing on the evidence on record - Reg.
        Ref: 1. Charge sheet No. C28/795 dt.27.4.1993.
             2. Office Order No. C28/2386 dt.23.11.93.
             3. Office Order No. C28/1885 dt.2.12.95.
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Reference above, please find enclosed copies of (1) Enquiry Report dated 14.11.98, consisting of 9 pages submitted by the Enquiry Officer, vide letter dated 16.11.98 and (2) Findings dated 23.4.99 recorded by C& M.D., Disciplinary Authority, basing on the evidence on record.

You may, if you so desire, make representation against the Enquiry Report submitted by the Enquiry Officer and findings recorded by C & M.D., within 7 days

from the date of receipt of this letter.

Sd/-
DIRECTOR (PA&W)

The Petitioner submitted a representation on 03-05-1999, pointing out as to how the findings recorded by the enquiry officer do not warrant any interference. It is also important to note here that, neither in the charge-sheet nor in the letter dated 24-04-1999 any punishment was proposed to the Petitioner. After the Petitioner submitted his representation, dated 03-05-1999, to the letter dated 24-04-1999, the 1st Respondent passed the impugned order, imposing the punishment of removal from service.

This Court is of the view that the 1st Respondent committed a basic flaw in differing with the report of the enquiry officer, without issuing any notice to the Petitioner. It is competent for a disciplinary authority, i.e. the 1st Respondent herein, to conduct departmental enquiry by himself. It is almost for the sake of convenience, that an enquiry officer is appointed. If the disciplinary authority itself conducts the enquiry and records its findings on the charges, the same can be taken into account, in the matter of imposing punishment. Where, however, a different person is appointed as an enquiry officer, the disciplinary authority cannot differ with the findings recorded by the Enquiry Officer, straight away. If it feels that the material on record warrants a different conclusion, than the one, arrived at by the enquiry officer, it must issue notice to the charged employee, requiring him to explain as to why the findings recorded by the enquiry officer be not differed.

In a way, it can be said that the law in this regard has taken turns in the recent past. In State Bank of India, Bhopal, v.SS. Koshal 1994 Supp (2) SCC 468, the Hon''ble Supreme Court took the view that, it is not necessary for a disciplinary authority to issue notice to a charged officer, in case, it intends to differ with the findings of the enquiry officer. The relevant paragraph reads as under:

Para-6: So far as the second ground is concerned, we are unable to see any substance in it. No such fresh opportunity is contemplated by the regulations nor can such a requirement be deduced from the principles of natural justice. It may be remembered that the Enquiry Officer''s report is not binding upon the disciplinary authority and that it is open to the disciplinary authority to come to its own conclusion on the charges. It is not in the nature of an appeal from the Enquiry Officer to the disciplinary authority. It is one and the same proceeding. It is open to a disciplinary authority to hold the inquiry himself. It is equally open to him to appoint an Enquiry Officer to conduct the inquiry and place the entire record before him with or without his findings. But in either case, the final decision is to be taken by him on the basis of the material adduced.

However, one year thereafter, the Supreme Court has struck a different note, in Ram Kishan Vs. Union of India and others, This very question was considered by a

Three-judge Bench of the Supreme Court, in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, Their Lordships referred to the following passage from its own judgment, in State of Assam and Another Vs. Bimal Kumar Pandit, It reads, "We ought, however, to add that if the disciplinary authority differs from the findings recorded in the enquiry report, it is necessary that its provisional conclusions in that behalf should be specified in the second notice. It may be that the report makes findings in favour of the delinquent officer, but the dismissing authority disagrees with the said findings and proceeds to issue the notice under Article 311(2). In such a case, it would obviously be necessary that the dismissing authority should expressly state that it differs from the findings recorded in the enquiry report and then indicate the nature of the action proposed to be taken against the delinquent officer. Without such an express statement in the notice, it would be impossible to issue the notice at all.

12. It was ultimately held that the judgment in SS. Koshal''s case (1 supra) cannot be said to have laid down the correct law. The law as stands now is that, in case the disciplinary authority intends to differ with the findings recorded by an enquiry officer, it is incumbent upon him to state his provisional conclusion and require the charged officer to explain as to why a view, different from the one, taken by the enquiry officer, be not taken on the charges. There is no denial of the fact that such a notice was not issued in this regard. The 1st Respondent has, on his own accord, and straightaway, differed with the findings of the enquiry officer. What all he forwarded to the Petitioner through his covering letter dated 24-04-1999 was, the copy of the proceedings, through which he differed with the findings of the Enquiry Officer and recorded his own findings. This does not accord with the law, laid by the Supreme Court.

13. Learned Standing counsel for the Respondents submits that the Petitioner must plead and prove prejudice on account of his not being issued show cause notice, before the 1st Respondent differed with the findings of the enquiry officer. In a way, the submission is made by drawing analogy, from the principle laid down by the Supreme Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., That was a case, in which, the complaint was about non-furnishing of report of the enquiry officer. It was observed that failure to furnish a copy of the report of the enquiry officer, by itself, does not lead to any prejudice, in as much as the employee is aware of the entire proceedings of the enquiry, including the findings, which are generally mentioned in the show cause notice, proposing punishment. On that basis, it was held that in case a prejudice on account of the failure to furnish the report is proved, the proceedings must start from the stage of supply of the report. Such is not the case here. For all practical purposes, the departmental enquiry was treated as an empty formality, and the 1st Respondent recorded his own findings. It is not only contrary to the principles of natural justice, but also is opposed to the law, laid down by the Supreme Court. Hence, the impugned order is liable to be set aside, on this ground alone.

14. Even otherwise, the 1st Respondent was not at all justified in inflicting the punishment of removal upon the Petitioner. The enquiry officer categorically held that the Petitioner is not guilty of charges framed against him. While expressing his serious reservations about those findings also, the 1st Respondent categorically held that the Petitioner is not guilty of acts of dishonesty or theft, etc., referable to Rule 5.1 of the Rules. The Petitioner has cited many instances, where several employees, who were charged with acts of misconduct, referable to Rule 5.5, were let off with moderate punishments. The only answer given by the Respondents is that they have the prerogative and discretion to do whatever they intend. The Petitioner rendered unblemished service for several decades. At a time when he was about to retire, the 1st Respondent has acted with utmost prejudice, and removed the Petitioner from service. The findings recorded by the 1st Respondent, apart from being contrary to law, are perverse, since they are not based on record. It is not even alleged that the Company has sustained any loss, or supplied coal at a price, other than the one, fixed by it, much less that the Petitioner has derived any benefit.

15. For the foregoing reasons, the writ petition is allowed, and the impugned order is set aside. The Petitioner shall be entitled to all the consequential benefits. There shall be no order as to costs.