

The Union of India and The Commodore, Chief Staff Officer (P and A) Disciplinary Authority Vs DNN Kumar and Central Administrative Tribunal

Court: Andhra Pradesh High Court

Date of Decision: Oct. 4, 2013

Citation: (2013) 6 ALD 516 : (2014) 1 ALT 120

Hon'ble Judges: L. Narasimha Reddy, J; Challa Kodanda Ram, J

Bench: Division Bench

Advocate: Ponnam Ashok Goud, Assistant Solicitor General, for the Appellant; Siva, for the Respondent

Final Decision: Disposed Off

Judgement

@JUDGMENTTAG-ORDER

L. Narasimha Reddy, J.

The 1st respondent (for short the respondent") was working as Store Keeper in the Indian Navy at

Visakhapatnam. A charge memo was issued to him on 29.12.2000, framing three articles of charges. He submitted an explanation denying the

charges. Not satisfied with that, the disciplinary authority i.e., the 3rd petitioner herein, appointed Sri D. Muni, CTO (A&E), CINA (V) as an

Inquiry Officer. After conducting enquiry, the Inquiry Officer submitted a report on 30.06.2003, holding that the charges framed against the

respondent are proved. The respondent submitted a representation, stating that the enquiry was not conducted, in accordance with the relevant

provisions of law. He pleaded that apart from the witnesses that were examined by the Presenting Officer, the Inquiry Officer has summoned some

of the ship"s representatives as additional witnesses and he has straight away examined them. The 3rd petitioner verified the entire file and found

that apart from the irregularity pointed out by the respondent, there were certain other deficiencies, such as, failure to maintain daily order sheets,

recording of rulings on objections, non-marking of documents, etc. On that basis, the 3rd petitioner passed an order, dated 06.04.2004, directing

further enquiry, in terms of Rule 15(i) of CCS (CC & A) Rules, 1965.

2. The 2nd Inquiry Officer submitted a report on 14.05.2007 "confirming" that all the charges framed against the respondent are proved. Taking

the same into account, the 3rd petitioner passed an order, dated 17.12.2008, imposing the penalty of reduction by three lower stages, for a period

of three years in the existing pay scale. The appeal preferred by the respondent was rejected by the Appellate Authority on 23.06.2010.

Therefore, he filed O.A. No. 1212 of 2010 before the Central Administrative Tribunal, Hyderabad Bench, the 2nd respondent (for short the

Tribunal"). He pleaded that the 3rd petitioner was not satisfied with the conducting of enquiry by the 1st Inquiry Officer and, accordingly, the 2nd

Inquiry Officer was appointed and, still, the same mistakes have crept into the report. It was urged that the 2nd Inquiry Officer committed nothing

more than confirming the findings recorded by the 1st Inquiry Officer. The petitioners opposed the O.A., by filing a reply.

3. Through its order, dated 27.11.2012, the Tribunal allowed the O.A. and set aside the order of punishment. Hence, this Writ Petition.

4. Heard Sri Ponnamm Ashok Goud, learned Assistant Solicitor General, appearing for the petitioners, and Sri Siva, learned counsel for the

respondent.

5. As many as three charges were framed against the respondent, and not satisfied with the explanation submitted in reply thereto, the 3rd

petitioner appointed an Inquiry Officer. A detailed enquiry, no doubt, was conducted. However, the Inquiry Officer has taken certain steps, which

do not accord with law. He summoned some of the witnesses whose names were not mentioned in the list of witnesses, and he even proceeded to

examine them, on his own accord. The procedure prescribed for maintenance of records or marking of documents was not followed. When a

report was submitted on 30.06.2003, the respondent pointed out the defects in the procedure followed by the Inquiry Officer. The 3rd petitioner

acted in a very objective and fair manner and directed further enquiry. A different Inquiry Officer was appointed for this purpose.

6. In the course of further enquiry, two more witnesses were examined. However, the 2nd Inquiry Officer, for all practical purposes, has taken the

report of the 1st Inquiry Officer, as the basis. In relation to charge No. 1, in para 2, he treated PE 1 to PE 11/Page 126 to 136 of the initial inquiry

report as relevant. In para 3, he observed:

The earlier Inquiring Authority has verified the total gate passes prepared by the necessary group during the period from 1st January, 1998 to

February, 2000 in the presence of PO and DCS and found that gate passes were not prepared for the items listed in the eleven issue

vouchers listed in the charge memo (Line No. 12 to 16 of Page 16 of initial inquiry report is relevant). DCS as incharge of necessary group is

responsible for preparation of gate passes for the items of the necessary group, issued to ships.

7. In relation to charge No. 2, he observed

On physical verification of stock verification register by the earlier Inquiring Authority and Presenting Officer, it was found that monthly physical

stock mustering was not carried out by the DGS for five months (Nov Dec 1998, Jan, Feb 1999 and Feb 2000) (Answer to Q. No. 68/Page 96

in the earlier Inquiry Report). The DGS has signed on the page (Page 96) confirming the data recorded on it.

8. Similarly, for charge No. 3, reference was made in every paragraph of the discussion. In the rest of the report also, extensive reference was

made to the report of the 1st Inquiry Officer. The findings were not recorded charge-wise. He summed up his findings as under:

In view of the factual position as explained above, I confirm that all the charges framed against Sri D.N.N. Kumar, Store Keeper, by BVO (V),

while functioning as in-charge NCC Group BVY(V) are proved.

9. The Tribunal took note of these deficiencies and found that the orders impugned in the O.A. are liable to be quashed and, accordingly, allowed

the O.A.

10. If a report of the Inquiry Officer is found to be defective or not satisfactory, it should not lead to the setting aside the order of punishment

passed by the disciplinary authority, based on such report. The inexperience or improper approach, on the part of the Inquiry Officer, should not

lead to a situation of wiping away of the charges as well. The efforts should be to ensure that a proper enquiry is conducted. This becomes clear, if

one takes into account, the principle laid down by the Hon"ble Supreme Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.,

. The Inquiry Officer does nothing more than assist the disciplinary authority, in analyzing the charges and recording a finding. If there is any lapse

on the part of the Inquiry Officer, the same can be rectified. As a matter of fact, in the present case, the disciplinary authority noticed certain

deficiencies in the Inquiry Report submitted in the year 2003.

11. Therefore, we partly allow the Writ Petition, set aside the order of the Tribunal, in so far as it quashed the order, dated 17.12.2008, passed by

the disciplinary authority; and remand the matter to the disciplinary authority. The 3rd petitioner is entitled to appoint an Inquiry Officer for

conducting a fresh enquiry into the charges framed against the respondent and further proceedings shall be taken, in accordance with law,

depending upon the findings of the Inquiry Officer. The entire exercise shall be completed, within a period of four (4) months, from the date of

receipt of a copy of this order. There shall be no order as to costs. The Miscellaneous Petitions, if any, pending in the writ petition shall stand

disposed of.