

(2013) 07 AP CK 0030

Andhra Pradesh High Court

Case No: Writ Petition No. 17646 of 2009

The Government of A.P. and The
Engineer-in-Chief (R and B)

APPELLANT

Vs

K. Sayoji Rao

RESPONDENT

Date of Decision: July 26, 2013

Acts Referred:

- Administrative Tribunals Act, 1985 - Section 19
- Constitution of India, 1950 - Article 309

Citation: (2013) 6 ALD 550 : (2013) 6 ALT 239

Hon'ble Judges: R. Subhash Reddy, J; A.V. Sesha Sai, J

Bench: Division Bench

Advocate: J.R. Manohar Rao, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

A.V. Sesha Sai, J.

This writ petition is filed by the respondents in O.A. No. 6345 of 2008, aggrieved by order dated 16.12.2008, passed in the said O.A. by the Andhra Pradesh Administrative Tribunal, Hyderabad. In the aforesaid application filed before the Tribunal u/s 19 of the Administrative Tribunals Act, 1985, the respondent/applicant, who is a retired Assistant Executive Engineer in the Transport, Roads and Buildings Department, has questioned the final order imposing punishment in the disciplinary proceedings, vide G.O.Ms. No. 187, Transport, Roads and Buildings (Vig. II) Department, dated 10.07.2008. On the proven misconduct, the Government has passed the above orders in exercise of powers under Rule 9 of the Andhra Pradesh Revised Pension Rules, 1980, withholding total pension and DCRG (Death cum Retirement Gratuity).

2. Necessary facts in brief, are as under:

In the disciplinary proceedings initiated against the respondent/applicant, the following charge is levelled against him, vide Charge Memo dated 02.01.1996, issued by the 2nd petitioner herein:

That the said Sri K. Sayoji Rao, Assistant Executive Engineer (R&B), while functioning as Assistant Executive Engineer (R&B) in R&B Sub-Division, Vuyyuru and while maintaining the Toll gate at K.M. 28/4 on Vijayawada-Machilipatnam road for the new bridge on Pulleru Canal in Vuyyuru, Krishna District, during the period of the its departmental maintenance from 1.4.1995 to 30.6.95, committed irregularities as detailed in Annexure-II, resulting in the loss of Government money, and also violated Article-4 of the A.P. Finance Code (Volume-I) and Rule 3(1) of A.P. Civil Services (Conduct) Rules, 1964.

The imputations of the charge of misconduct read as under:

As per the observations of the Director General, Vigilance and Enforcement Department, Sri K. Sayoji Rao, AEE (R & B) committed the following irregularities at the toll gate on at K.M. 28/4 on Vijayawada-Machilipatnam Road for the new bridge on Pulleru Canal in Vuyyuru, Krishna District, during its departmental maintenance from 01.04.95 to 30.06.95, which resulted loss to Government money.

1. A separate guard was posted daily at K.C.P., main gate with a separate toll gate collection receipt book for collection of toll fee from the vehicles proceeding directly to the K.C.P., for lifting of sugar and molasses. As the regular toll gate is located 1 K.M., away from the bridge towards Machilipatnam, separate arrangements were made for collection of toll fee from vehicles reaching the K.C.P. gate directly, but the said collections are not accounted for. A perusal of daily toll collection sheet maintained at K.C.P. gate reveals that the daily collections there ranges from Rs. 250-500. However, whatever collections made from 01.04.95 to 04.08.95 at the K.C.P., main gate estimated to around Rs. 60,000/- have been misappropriated.
2. As the toll free accounts manipulated, the toll ticket counter-foil books, daily collection sheets were obtained, and on perusal of the records showed that three toll gate books of same serial numbers with the same denomination were issued during April/May 1995 and a random check of ticket books issued on 14.5.95, disclosed that Rs. 500/- collected that day was not accounted for in any records maintained in the toll gate and sub-division office.
3. As per the records Rs. 24,000/- was collected during 6/95 to 8/95 on the above toll gate and the amount was not accounted for and not remitted to the Sub-Treasury. As per the records, there are no orders for collection of Rs. 100/- p.m., from the local lorries/mini lorries which is highly irregular.
4. Only five guards were being posted for each shift at each point, but the bills were claimed for 42 guards per day i.e. 14 guards per shift at both the points during the months of April and May 95. For subsequent months, bills were not prepared for

payment to the Guards till 05/08/95. It was not observed any procedure in the selection of Guards and the employment of Guards but was entrusted to a labour contractor and the contractor in turn sent the Guards. The reasons for engaging 42 persons for the toll gate without proper orders is irregular.

3. Respondent herein has filed explanation denying the aforesaid charge. Thereafter, Government has issued orders in G.O.Rt. No. 753, dated 22.07.1996, appointing an inquiry officer to conduct inquiry on the charge framed against the respondent/applicant. The inquiry officer who conducted inquiry, has submitted his report dated 27.09.2009, basing on which, respondent/applicant was issued the Memo, dated 01.02.2001, alongwith inquiry report, to which, the applicant has submitted his explanation. After filing of such explanation, no orders are passed, but when his case was not considered for promotion on the ground of pendency of disciplinary proceedings, the respondent herein has approached the Tribunal by filing O.A. No. 2818 of 2002, which was disposed of by order dated 08.03.2002, with a direction to the respondents therein, who are the petitioners herein, to finalise the disciplinary proceedings against the respondent within a period of two months from the date of receipt of said order.

4. Thereafter, petitioners herein have issued orders in G.O.Rt. No. 1056, dated 23.09.2002, appointing another inquiry officer to conduct further inquiry. Paragraphs 4 and 5 of the said G.O. read as under:

4. The Government observed that the enquiry report is based on the explanations furnished by the Charged Officers and perfunctory. One of the C.Os., Sri K. Sayoji Rao, AEE (R&B) contended that he was looking after the toll gate from 1.4.95 to 30.6.95. The charge relates to toll collection made from 4/95 to 8/95. Moreover, the Charged Officer was not given any opportunity to give a statement or to appear before the Inquiring Authority which is not in conformity into the APCS (CCA) Rules, 1991. The E.O., has not made any effort to elicit from Sri K. Sayoji Rao, AEE (R&B) as to how Sri K. Sayoji Rao, AEE (R&B) to give a statement before the E.E. (R&B) regarding collection and it was contended that he was no longer in-charge of toll date during the relevant period. It would be unfair to impose punishment on perfunctory findings of Enquiry Officer.

5. Government have decided that further enquiry is needed. Now, therefore, under Rule 21(1) of A.P.C.S. (CCA) Rules, hereby appoint Sri N. Venkaiah, E.E., I/c (R&B) Nalgonda as Enquiry Officer to proceed to hold the further enquiry according to the provisions of Rule 20 giving ample opportunity to the Charged Officers to defend their case.

5. The 2nd inquiry officer, who conducted inquiry, has submitted his report on 28.10.2002. Based on the same, petitioners have issued Memo dated 20.01.2004, in Memo No. 1998/S.I. 2/95-21, which is stated to be revised show cause notice, calling for explanation from the respondent. For the said show cause notice, the

respondent herein has filed his explanation, but the petitioners, not satisfied with the same, have passed orders in G.O.Ms. No. 187, dated 10.06.2008, imposing the punishment of withholding of total pension and DCRG of the applicant. When such order is questioned before the Tribunal, the Tribunal, by impugned order, has set aside the order of punishment, mainly on the ground that the 2nd inquiry report was prepared without examining any independent witness and without marking any documents, but it is prepared by solely relying on the statement of one Sri J. Pitchi Reddy, the then Executive Engineer, who was a co-delinquent officer. In the order, the Tribunal has held that the respondent herein was not given an opportunity to cross-examine Sri J. Pitchi Reddy, whose statement was made basis to record findings against the respondent/applicant. Thus, holding that there is no evidence in support of the charge levelled against the respondent and that the charge relate to the year 1995 and the respondent/applicant was put to mental agony for no reason, and further observing that the order of punishment was imposed without any basis, has set aside the order imposing punishment on the respondent.

6. In this writ petition, it is contended by the learned Government Pleader appearing for petitioners that as the 1st inquiry officer has not followed the prescribed procedure and did not record proper findings, another inquiry officer was appointed, which is in accordance with the procedure contemplated under the A.P. Civil Services (Classification, Control and Appeal) Rules, 1991. It is submitted that as the 2nd inquiring authority has conducted independent inquiry, it cannot be said that such report is prepared without any basis.

7. On the other hand, it is submitted by Sri J.R. Manohar Rao, learned counsel appearing for respondent that after submission of inquiry report by the 1st inquiry officer, a memo dated 01.02.2001, was issued alongwith the inquiry officer's report dated 27.09.1999, and inspite of filing explanation by the respondent/applicant to the said memo, no orders were passed thereafter. It is submitted that only when he filed O.A. No. 2818 of 2002 before the Tribunal as his case was not considered for promotion, and when directions were issued by the Tribunal for completion of inquiry within two months, orders were issued in G.O.Rt. No. 753, dated 22.07.1996, appointing another inquiry officer. It is submitted that as per the A.P. Civil Services (CCA) Rules, 1991, no such power is conferred on the petitioners herein, to appoint another inquiry officer. It is further submitted that the 2nd inquiry officer has not conducted any independent inquiry and no witness was examined by giving opportunity to the respondent/applicant, but he recorded findings against the respondent, solely basing on the inquiry conducted by the 1st inquiry officer. It is submitted that when the 1st inquiry report was not accepted by the disciplinary authority, there is no basis for imposing punishment on the respondent/applicant based on the 2nd inquiry report, which itself is prepared without following the procedure contemplated under law. The learned counsel, in support of his contentions, has relied on the judgments of this Court in [B. Balakishan Reddy Vs. Andhra Pradesh State Electricity Board](#), and in R. Rama Rao V. A.P. State Agro

Industries Development Corporation Ltd. & another 1997 (5) ALD 325 and on the judgment of Supreme Court in [K.R. Deb Vs. The Collector of Central Excise, Shillong](#), 7.

8. Having heard learned counsel for the parties, we have also perused the material on record and also gone through the judgments relied on by both sides.

9. Initiation of disciplinary proceedings against Government servants is governed by the provisions under the A.P. Civil Services (Classification, Control and Appeal) Rules, 1991, which are framed in exercise of powers under proviso to Article 309 of the Constitution of India. In this case, inquiry officer was appointed pursuant to the orders of Government, at first instance, vide G.O.Rt. No. 753, dated 22.07.1996. When the said inquiring authority has conducted inquiry and submitted his report, Government, acting upon the same, issued the show cause notice, dated 01.02.2001, along with the inquiry report dated 27.09.2009, to which, the applicant has submitted his detailed explanation. Nearly for three long years thereafter, no steps have been taken by the petitioners herein and no reasons are given to explain such delay. When his case was not considered for promotion, respondent/applicant himself has approached the Tribunal by filing O.A. No. 2818 of 2002, in which, directions were issued for completion of inquiry within a period of two months from the date of receipt of the order. Instead of passing appropriate orders based on the explanation offered by the respondent pursuant to the show cause notice, the 1st petitioner has chosen to issue orders in G.O.Rt. No. 1056, dated 23.09.2002, ordering further departmental inquiry by appointing another inquiry officer, in exercise of powers under Rule 21 of the A.P. Civil Services (CCA) Rules, 1991. A perusal of the order shows that the Government itself has held that the earlier inquiry is perfunctory. It is categorically stated in the said order that the charged officer was not given any opportunity either to give a statement or to appear before the inquiring authority, as such, same is not in conformity with A.P. Civil Services (CCA) Rules, 1991. While recording so, the Government has appointed another inquiry officer, namely, Sri N. Venkaiah, E.E., I/c. (R&B) Nalgonda, to conduct further inquiry. Pursuant to the same, the 2nd inquiry officer has conducted further inquiry and submitted his report. Though the charge is one as per the charge memo, the 2nd inquiry officer has submitted his report, recording findings on each imputation, by treating the same as separate charge. On imputations 1 and 4, the 2nd inquiry officer himself has recommended for dropping the proceedings, and on imputations 2 and 3, findings are recorded against the respondent herein, merely depending upon the earlier inquiry conducted by the 1st inquiry officer. A perusal of the inquiry report makes it clear that no independent inquiry is conducted by giving opportunity to the respondent herein, in accordance with the procedure contemplated under Rule 20 of the A.P. Civil Services (CCA) Rules, 1991. As per said Rules, there is no special provision empowering the authorities to appoint another inquiry officer after submission of inquiry report by the previous inquiry officer. In the judgment relied on by the learned counsel for respondent in the case of K.R.

Deb (3 supra), the Hon"ble Supreme Court, while considering the similar question, has held that if there is any defect in the inquiry conducted by the inquiry officer, the disciplinary authority can direct the inquiry officer to conduct further inquiry in respect of that matter, but it cannot direct a fresh inquiry to be conducted by some other officer. Though reliance is placed on Rule 21 of the A.P. Civil Services (CCA) Rules, 1991, a perusal of the said Rule also makes it clear that the disciplinary authority, by recording reasons, is empowered to remit the matter to the inquiry officer for further inquiry, but there is no express Rule empowering appointment of another inquiry officer after submission of inquiry report by the previous inquiry officer. In view of the language used in Rule 21 of the Rules, it is clear that only when the 1st inquiry officer ceases to hold office either on account of resignation or transfer out of the Unit or for any other good reason, another inquiry officer can be appointed, otherwise, the matter is to be remitted only to the officer who conducted the inquiry earlier. Therefore, the above judgment relied on by the learned counsel for respondent fully supports his case. Further, in B. Balakishan Reddy's case (1 supra), a Division Bench of this Court has held that if the inquiry report does not suffer from any basic infirmity, and in the absence of any provision in the Rules empowering the disciplinary authority, it is not permissible to appoint another inquiry officer. This judgment also supports the case of respondent herein.

10. Thus, by applying the ratio laid down in the above judgments, we are of the view that in this case, the very action of Government in not passing orders for a period of about three years after submission of 1st inquiry report, and further, issuing orders in G.O.Rt. No. 753, dated 22.07.1996, appointing another inquiry officer to conduct further inquiry, is illegal and without any authority of law. In any event, it is also to be noticed that even the 2nd inquiry officer has not conducted the inquiry in conformity with the procedure contemplated under Rule 20 of the A.P. Civil Services (CCA) Rules, 1991. The 2nd inquiring authority, by merely referring to the earlier inquiry report of the 1st inquiry officer and without examining the independent witnesses by giving opportunity to cross-examine them, has submitted the inquiry report. In that view of the matter, we are also of the view that no evidence is placed before the inquiring authority and in the absence of any validly acceptable evidence, such report cannot be made basis for imposing the punishment of withholding total pension and DCRG. Unless the inquiry is conducted in total conformity with the procedure contemplated under law, it is not permissible to the disciplinary authority to impose any punishment on the delinquent/employee. Therefore, we are in agreement with the findings recorded by the Tribunal for setting aside the order of punishment imposed on the respondent/delinquent. For the aforesaid reasons, we do not find any merit in this writ petition so as to interfere with the order of the Tribunal. The writ petition is accordingly dismissed and the petitioners are given two months time to release all the pensionary benefits to the respondent, in accordance with the directions issued by the Tribunal in the impugned order. No costs. Miscellaneous applications, if any, pending in this writ petition, shall stand closed.