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Andhra Pradesh High Court

Case No: Writ Petition No. 3815 of 2000

Bodepati Venkaiah		APPELLANT
	Vs	
A.P. Power Transmission Corporation, Hyd. and Others		RESPONDENT

Date of Decision: April 12, 2002

Acts Referred:

- Andhra Pradesh State Electricity Board Employees Discipline and Appeal Regulations, 1970 - Regulation 7

Citation: (2002) 4 ALD 306

Hon'ble Judges: P.S. Narayana, J

Bench: Single Bench

Advocate: K.G. Krishnamurthy, for the Appellant; S. Ravindranath, SC for A.P. TRANSCO, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P.S. Narayana, J.

The writ petition is filed for writ of mandamus or any appropriate writ declaring the action of the Member-Secretary, A.P.S.E.B./1st respondent herein contained in proceedings No.CE/ENQ/ DM.XX/1750-Q2/91-22 dated 16.1.1997 purporting to impose punishment of compulsory retirement on the petitioner in exercise of disciplinary power pursuant to the charge-sheet dated 6.11.1993, as arbitrary and without jurisdiction and consequently direct the respondents to reinstate the petitioner in service as Helper/ALM with all consequential benefits including arrears of wages and grant such other suitable relief.

2. The facts in brief are as follows:

3. The petitioner joined the service of the then A.P.S.E.B as Helper in the year 1984 and ha worked as Helper in piduguralla Section under the control of Divisional Electrical Engineer, Operation, Narsaraopet from 1985 to 1992. It is further stated that the duty of the Helper is to assist the Lineman and Helper does not have the authority either to disconnect the service connection or install a service connection and he has to execute the directions of the lineman and the Assistant Engineer/Sub-Engineer. It is further stated that the 1st respondent had appointed the Superintending Engineer (Enquiries), Hyderabad as Enquiry Officer to enquire into the allegations and that the said Enquiry Officer had framed a charge and to the charge-sheet dated 6.11.1993, the petitioner submitted an explanation on 31.1.1994 denying the charges and that the Enquiry Officer after conducting an enquiry had submitted a report to the effect that the charges are proved. The Member-Secretary, A.P.S.E.B had issued a show-cause notice dated 15.4.1995 proposing to impose the punishment of removal from service and that the petitioner-submitted an explanation to the said show-cause notice. Subsequent thereto, the Member-Secretary, A.P.S.E.B., had issued the impugned proceedings dated 16.1.1997 purporting to impose punishment of compulsory retirement on the petitioner.

4. A counter-affidavit is filed on behalf of the respondents. A specific stand was taken that the contention of the petitioner that he was deprived of right of appeal against the punishment of compulsory retirement is not correct since in his letter dated 9.11.1998 addressed to the Divisional Engineer, the petitioner had stated that he was relieved from his duties from 31.1.1997 as per the punishment orders. It was also stated that the petitioner had further appealed against the punishment orders dated 16.1.1997 to the Chairman of the erstwhile A.P.S.E.B and his appeal was rejected by the Board vide memo No.CE/DC/DM.V/ 1750-C2/91-23, dated 9.3.1998. It was further stated that the petitioner had committed a crime i.e., fixing of meter unauthorisedly for dismantled S.C. No.246 of one Sri Sesharathnam of Piduguralla in consultation with Sri Gopalakrishna Murthy who was also punished simultaneously. In the counter-affidavit the details relating to the enquiry, the issuance of a show-cause notice relating to the proposed punishment of removal, calling for explanation and the other aspects relating to the imposition of punishment had been narrated in detail. It was also specifically stated that the case had been enquired by the Superintending Engineer (Enquiries) Hyderabad and a detailed enquiry report was furnished to the Member-Secretary, Hyderabad, who was higher officer in erstwhile A.P.S.E.B, and based on the enquiry report in respect of the petitioner, necessary disciplinary proceedings had been initiated by the Member-Secretary, Hyderabad under A.P.S.E.B Discipline and Appeal Regulations and the action had been taken. It was also stated that finally the petitioner had appealed to the Chairman against the said orders issued by the Member-Secretary, Hyderabad and the appeal was examined and rejected by orders dated 9.3.1998 and the same was communicated to the petitioner.

5. A reply affidavit was filed narrating several factual details and explaining as to why such punishment cannot be imposed.

6. An additional counter-affidavit was filed on behalf of the respondents taking a specific stand that the present writ petition is filed as against the orders of compulsory retirement dated 16.1.1997 and the writ petitioner is a workman as defined under Industrial Disputes Act, 1947 (for short ''the ID Act'') and hence he has an effective alternative remedy to move the appropriate Labour Court or Industrial Tribunal and hence the writ petition is liable to be rejected.

7. Sri. K.G.K. Krishna Murthy, learned Counsel representing the writ petitioner had strenuously contended that the jurisdiction or the competency of the authority to inflict such a punishment on the petitioner is raised in the present writ petition and hence though the petitioner is a workman, in such circumstances of the case, the petitioner need not be driven to a Labour Court or Industrial Tribunal and the writ petition is perfectly maintainable and cannot be thrown out on the ground of alternative remedy. The learned Counsel had further contended that the order of punishment was issued by the Member-Secretary of erstwhile A.P.S.E.B., who is the appellate authority, and since the appellate authority had exercised the power of inflicting the punishment, the substantive right of the petitioner to prefer an appeal is lost and on this ground alone, the writ petition is bound to succeed. The learned Counsel also had taken me through several other factual details which had been narrated in para 6 of the affidavit filed in support of the writ petition and also in the reply affidavit. Learned Counsel had also further contended that even otherwise the punishment inflicted on the petitioner is highly disproportionate to the proved misconduct. The learned Counsel placed strong reliance on Shyam Sunder Vs. Govt. of A.P. and others,

8. Sri Ravindranath, learned Standing Counsel representing the respondents on the contrary had contended that the contention that the power to inflict punishment cannot be exercised by higher authority or an appellate authority cannot be sustained in the light of the specific provision i.e., Regulation 7(e) of A.P.S.E.B. Employees Discipline and Appeal Regulations (in short hereinafter referred to as "Regulations" for the purpose of convenience). Learned Counsel had drawn my attention to the category of employees, the disciplinary authority and also the powers which can be exercised by the respective authorities. Learned Counsel further would maintain that the decision in Surjit Ghosh Vs. Chairman and Managing Director, United Commercial Bank, and others, in fact was referred to in a subsequent decision in Balbir Chand Vs. Food Corporation of India Ltd. and others, and in view of the ratio laid down in the subsequent decision of the Apex Court, it cannot be said that the appellate authority cannot exercise such power of inflicting punishment at all. Learned Counsel had drawn my attention to the judgment dated 8th October, 2001 of the Division Bench of this Court in W.A. No. 1507 of 2001 and had also brought to my notice that the said matter was carried to Supreme Court of

India and in fact an interim stay had been granted. Learned Counsel had further contended that several factual aspects which had been raised by the writ petitioner cannot be gone into by the writ Court and the petitioner being a workman within the meaning of the provisions of the ID Act, the remedy of the petitioner is to invoke the jurisdiction of the concerned Industrial Tribunal or Labour Court. Learned Counsel had placed reliance on 1997 (1) ALD 186 in this regard.

9. Heard the Counsel at length and also perused the material available on record.

10. The impugned proceedings dated 16.1.1997 was issued by the Member-Secretary. The charge framed as against the petitioner reads as follows:

"Sri B. Venkaiah, while working as Helper in Piduguralla Section reported to have indulged in clandestine activities and failed to inform about dismantlement of SC No.246 and subsequently fixing of the meter to Brindavan Lodge. It depicts active connivance on the part of the staff which constitutes misconduct on the part of Sri B. Venkaiah, Helper as per A.P.S.E.B (Revised) Conduct Regulations."

As can been seen from the impugned order dated 16.1.1997, the enquiry report and other details had been discussed at paragraphs 2, 3 and 4 and ultimately the impugned order was made. In the said impugned order, it was also specified that one appeal against the order would lie to the Chairman, A.P.S.E.B. within three months vide Regulation 18 of the Regulations from the date of receipt of the order. It is also brought to my notice that the appeal also was rejected after extracting the grounds by an order dated 9.3.1998. The operative portion of the order reads as follows:

"The A.P.S.E.B has carefully examined the appeal of Sri B. Venkaiah, Ex-Helper (now ALM) and observed that there are no extra points for considering the appeal. Accordingly, the appeal of Sri B. Venkaiah, Ex-Helper (now ALM) is rejected."

As already referred to supra, the principal contention raised by the petitioner is that since the appellate authority had exercised the power of inflicting punishment, the substantive right of petitioner to prefer an appeal had been lost and hence the impugned order is bad. In Surjit Ghosh Vs. Chairman and Managing Director, United Commercial Bank, and others, , while dealing with the disciplinary proceedings and exercise of powers by higher authority it was held that exercise of powers by authority higher than disciplinary authority can be discriminatory. On the strength of this decision of the Apex Court, it was strenuously contended that the impugned order is liable to be quashed on this ground alone. In Balbir Chand Vs. Food Corporation of India Ltd. and others, it was observed as follows:

"The learned Counsel for the petitioner has raised the contention that since the petitioner was required to be dismissed by the disciplinary authority, namely Zonal Manager, who alone is competent to remove him, the order of dismissal passed by the Managing Director is bad in law. In support thereof, he placed reliance on a

judgment of this Court in Surjit Ghosh Vs. Chairman and Managing Director, United Commercial Bank, and others, . It is an admitted position that a joint enquiry was conducted against all the delinquent officials, the highest in the hierarchy of competent authority who could take disciplinary action against the delinquents was none other than the Managing Director of the Corporation. In normal circumstances where the Managing Director being the appellate authority should not pass the order of punishment so as to enable the delinquent employee to avail of right of appeal. It is now well settled legal position that an authority lower than the appointing authority cannot take any decision in the matter of disciplinary action. But there is no prohibition in law that the higher authority should not take decision or impose the penalty as the primary authority in the matter of disciplinary action. On that basis, it cannot be said that there will be discrimination violating Article 14 of the Constitution or causing material prejudice. In the judgment relied on by the Counsel, it would appear that in the Rules, officer lower in hierarchy was the disciplinary authority but the appellate authority had passed the order removing the officer from service. Thereby, appellate remedy provided under the rules was denied. In those circumstances, this Court opined that it cannot prejudice to the delinquent as he would have otherwise availed of the appellate remedy and his right to consider his case by an appellate authority on question of fact was not available. But it cannot be laid as a rule of law that in all circumstances the higher authority should consider and decide the case imposing penalty as a primary authority under the rules. In this case, a right of second appeal/revision also was provided to the Board. In fact, appeal was preferred to the Board. The Board elaborately considered the matter through the Chairman. It is not violative of Article 14 of the Constitution."

11. Regulation 7(e) of the Regulations specifies powers vested in an authority may be exercised by a superior authority in its discretion. Regulation 7 deals with competent and appellate disciplinary authorities. As can be seen and on a careful reading of the language employed in Regulation 7(e), the exercise of the powers under the said provision is discretionary. It is not in dispute that the Member-Secretary, an appellate authority under the regulations had exercised the power of inflicting the punishment. A right of appeal is a substantive right and under the regulation where a discretionary power is conferred, I do not think that, in normal circumstances, an appellate authority exercising power can take shelter to defend the order under such regulation so as to defeat the right of appeal, the remedy to reach the party is otherwise entitled to. In this view of the matter, in fact the Division Bench also had expressed the same opinion in W.A. No.1507 of 2001, but, however, it is brought to my notice that the said judgment was carried to the Supreme Court of India and interim stay had been granted. Be that as it may, in view of the language employed in Regulation 7(e) of the regulations, since the power of superior authority to inflict punishment being only a discretionary power, in my considered opinion, such power may have to be exercised very sparingly and normally it should not come in the way of defeating the substantive right of

petitioner to invoke the appeal remedy and hence in this view of the matter, I am of the opinion that the reasons recorded in the judgment WA No.1507 of 2001 are well justified inasmuch as an appellate authority had exercised power of inflicting punishment in the present case. I am of the considered opinion that though the petitioner is a workman, inasmuch as the question of inherent lack of authority is raised I am not inclined to drive the petitioner to the Labour Court or Industrial Tribunal. It is needless to point out if other factual aspects are to be gone into in normal course, I would have driven the petitioner to the Labour Court or Industrial Tribunal, but that is not the present case since I am not touching any of the factual disputes in between the parties.

12. In view of the foregoing discussion, I am of the considered opinion that in any view of the matter, the impugned order as such is not sustainable in law and accordingly the writ petition is allowed, but however in view of peculiar facts and circumstances of the case I am not inclined to make any order as to costs. However, it is made clear that this order will not come in the way of the competent authority exercising the power under the regulations.