

K. Suresh Babu Vs Principal District and Sessions Judge and Others

Court: Andhra Pradesh High Court

Date of Decision: July 30, 2008

Acts Referred: Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 – Rule 10(2), 10(3), 20, 21(1), 21(2)

Citation: (2008) 6 ALD 804 : (2008) 6 ALT 572 : (2009) 1 SLR 283

Hon'ble Judges: V.V.S. Rao, J; G. Chandraiah, J

Bench: Division Bench

Advocate: P. Sridhar Reddy, for the Appellant; M. Bhaskara Lakshmi, SC for APHC, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

V.V.S. Rao, J.

The petitioner is working as Personal Assistant in the Court of Junior Civil Judge, Gudur, Nellore District. He filed the

instant Writ Petition aggrieved by the orders of the first respondent dated 07.07.2006. Be it noted, by the said impugned order, the first

respondent disagreed with the findings of the Enquiry Officer in the matter of disciplinary enquiry against the petitioner and ordered fresh enquiry

duly appointing III Additional District and Sessions Judge, Nellore, to conduct fresh enquiry in accordance with Rule 20 of the Andhra Pradesh

Civil Services (Classification, Control and Appeal) Rules, 1991 (CCA Rules, for brevity).

2. The disciplinary enquiry was initiated against the petitioner. The Principal Senior Civil Judge, Nellore, was appointed as Enquiry Officer to

enquire into two charges. These related to the dereliction of duty by the petitioner as Personal Assistant to learned Junior Civil Judge, Atmakur.

The indictment against the petitioner is that he is not prompt in attending to the residence of the Officer for taking dictation, as a result of which,

judgments could not be pronounced in time, and that the petitioner misplaced record pertaining to Calendar Case No. 85 of 2002. The Enquiry

Officer submitted a report dated 29.04.2006. He recorded the finding as not guilty on both the charges. On receiving the said report, the first

respondent came to the conclusion that Enquiry Officer did not properly appreciate the evidence of P.Ws.1 to 5, and that the approach of the

Enquiry Officer is not correct. Accordingly, he ordered fresh enquiry. Be it noted, before doing so, a copy of the enquiry report was

communicated to the petitioner, but he did not submit any explanation.

3. A counter affidavit is filed justifying the action of the District Judge. As the counter affidavit - as in the case of writ affidavit, mainly deals with the

merits of the case, we are not inclined to sum up the contents thereof. Be that as it is, learned Counsel for the petitioner placed strong reliance on

Sub-rule (2) of Rule 21 of CCA Rules and submits that when the disciplinary authority disagrees with exoneration report of the Enquiry Officer, a

show cause notice is mandatory before ordering fresh enquiry. Per contra, the learned Standing Counsel for High Court submits that when the case

falls under Sub-rule (1) of Rule 21 of CCA Rules, no notice is required, and it is always open to the disciplinary authority to order fresh enquiry in

the event of disagreement with the findings of the Enquiry Officer. Reliance is placed on an unreported judgment of a Division Bench of this Court,

to which one of us (VVSJRJ) is a member, in N. Sambaiah v. District and Sessions Judge, Warangal (W.P. No. 4933 of 2008, dated

02.04.2008), in support of the contention.

4. A perusal of Sub-rules (1) and (2) of Rules 21 of CCA Rules would show that both of them contemplate two different situations. Sub-rule (1)

of Rule 21 empowers the disciplinary authority to remit the case to the enquiring authority for further enquiry and report. Interpreting this, this

Court in N. Sambaiah (supra) laid down that, "the power to remit the matter for a further enquiry and report includes the power to issue the charge

sheet containing the same charges or additional charges which may be as a result of recasting of the charges. 5. However, for good reasons, we

are not convinced that the case on hand does not fall within the ambit of Rule 21(1) of CCA Rules. It is case which falls under Rule 21(2) of CCA

Rules, for the simplest reason that after issuing impugned orders, the first respondent communicated the copy of the enquiry report dated

29.04.2006 to the petitioner, but he was not called upon to explain as to why a fresh enquiry should not be ordered by disciplinary authority. In all

probability, the petitioner might have been under the impression that as the report of the Enquiry Officer was in his favour, there was no necessity

to submit explanation. If only he had been put on notice that the disciplinary authority desires to appoint a fresh Enquiry Officer, he would have

given explanation with reference to the enquiry report already communicated to him. On this limited ground, the impugned order cannot be

sustained. This view of ours also draws support from Mathura Prasad Vs. Union of India (UOI) and Others, , whereunder their Lordships laid

down as under.

...The disciplinary authority merely sent a demi-official letter to the enquiry officer. He did not pass any order. The file was sent back to him for a

clear remark on every point of charges framed against the appellant. It could not have been either an order passed in terms of Sub-rule (2) of Rule

10 or Sub-rule (3) thereof. The disciplinary authority was a statutory authority. He was, therefore, bound to act within the four corners of the

statute. Procedures relating to conduct of a disciplinary proceedings have been laid down by the Rules. He was bound to follow the same

scrupulously...

The enquiry officer in his first report might not have specifically recorded his findings with reference to each of the charges leveled against the

appellant but he arrived at a finding on analysis of the materials on record. If he was to differ with the said findings on the basis of any fresh

materials, he was enjoined with a duty to grant another opportunity of hearing to the appellant.

(emphasis supplied)

6. We, however, hasten to add that we do not intend to lay down any principle that even in a case falling under Rule 21(1) of CCA Rules,

disciplinary authority should give a show cause notice. Any such interpretation thereof would certainly go against plain language of Rule 21(1) of

CCA Rules. If the case falls under Rule 21(2) of CCA Rules as contemplated therein, the disciplinary authority is bound to issue a notice requiring

the Government servant to submit written representation to the disciplinary authority within fifteen days of receipt of the enquiry report.

7. In this case, as noticed supra, no notice was issued to the petitioner requiring him to submit his representation with regard to the contemplated

fresh enquiry by the disciplinary authority. For that reason, the impugned order is unsustainable.

8. In the result, for the above reasons, the writ petition is allowed.

9. The impugned order is set aside and the matter is remitted to the first respondent to proceed further in accordance with the observations made

hereinabove. There shall be no order as to costs.