

(2009) 10 AP CK 0046
In the Andhra Pradesh High Court
Case No : Writ Petition No. 7487 of 2009

A. Hanumantha Prasad and Others	Vs	APPELLANT
Coal Mines Provident Fund Organisation and Another		RESPONDENT

Date of Decision : 29-10-2009

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 10, 10(7), 11, 14, 15
Coal Mines Provident Fund (Staff and Conditions of Service) Regulations, 1964 — Regulation 37
Industrial Disputes Act, 1947 — Section 22, 33

Citation : (2009) 1 ALD 637 : (2010) 1 ALT 18 : (2009) 4 APLJ 226 : (2009) 4 SLR 287

Hon'ble Judges : G. Rohini, J

Bench : Single Bench

Advocate : Emani Srinivas, for the Appellant; J. Prabhakar, for the Respondent

Final Decision : Allowed

Judgement

G. Rohini, J.—This writ petition is filed seeking a declaration that the order dated 19.03.2009 passed by the 1st respondent - Commissioner, Coal Mines Provident Fund Organisation - dismissing the petitioners from service under Rule 11(ix) of the CCS (CCA) Rules, 1965 as arbitrary, illegal and contrary to Rules 14 & 15 of the said Rules.

2. The facts, in brief, are as under:

The petitioners herein are the employees of Coal Mines Provident Fund Organisation. They were initially working in the Regional Office at Hyderabad. Aggrieved by the decision of the Coal Mines Provident Fund Organisation (for short, "CMPFO") to shift the Regional Office from Hyderabad to Godavarikhani, the Employees Union of CMPFO went on strike after issuing a strike notice dated 1.7.2005 u/s 22 of the Industrial Disputes Act, 1947 (for short, "ID Act"), On the intervention of the Assistant Labour Commissioner (Central), the strike was

called off pursuant to an agreement dated 31.01.2006 signed between the representative of the Regional Office and the Employees Union and the Regional Office continued to function at Hyderabad. While so, in the last week of April, 2007, five employees were transferred from Hyderabad to Godavarikhani. The Employees Union raised an objection on the ground that such transfer was contrary to the terms of the settlement/agreement dated 31.01.2006 and ultimately the said dispute resulted in a strike by all the employees from 17.07.2007. It is not in dispute that the petitioners herein are also members of the said employees union and thus participated in the strike.

3. While the Employees Union, consisting of about 70 members including the petitioners herein, were on strike the Commissioner of CMPFO placed the four petitioners herein under suspension along with three other employees under Rule 10 of the CCS (CCA) Rules, 1965 w.e.f. 5.10.2007 and they were not even paid the subsistence allowance. Aggrieved by the same, the petitioners along with two other suspended employees filed W.P. No. 5109 of 2008. The said writ petition was disposed of by this Court by order dated 9.4.2008 directing that the respondents shall pay subsistence allowance together with accrued arrears as and when the petitioners approach the Regional Office at Godavarikhani. Against the said order, the CMPFO filed a Writ Appeal contending that the petitioners cannot claim subsistence allowance unless the order of suspension is challenged. In the circumstances, the petitioners having withdrawn W.P. No. 5109 of 2008 and filed a fresh writ petition being W.P. No. 14015 of 2008 seeking a declaration that the order of suspension dated 5.10.2007 is arbitrary, illegal and contrary to Section 33 of the Industrial Disputes Act, 1947 as well as Rule 10(7) of CCS (CCA) Rules, 1965 and to set aside the same with a consequential direction to pay the subsistence allowance at Hyderabad for the period from 5.10.2007 to 4.1.2008 and full salary from 5.1.2008 till date of joining in the Regional Office at Hyderabad. The said writ petition was allowed by this Court by order dated 4.9.2008 holding as under:

For the foregoing reasons, the writ petition is allowed. The impugned orders of suspensions became inoperative, on account of the failure, on the part of the competent authority, to review the order of suspension within 90 days from the date of order of suspension, as required under Rule 10(7) of the Rules. It is held that the action of the 1st respondent, in transferring the petitioners to far off places, while placing them under suspension, is not bona fide.

The 1st respondent is directed to, forthwith, reinstate the petitioners, on their reporting to duty at the Regional Office at Godavarikhani, and pay arrears of subsistence allowance for three months from the date of suspension, and full salary from the date of expiry of 90 days, from the date of suspension, within a period of four weeks, from the date of their reporting to duty. Such reporting shall be without prejudice to their rights in the proceedings if any, under the Industrial Disputes Act. There shall be no order as to costs.

4. Pursuant thereto, the petitioners along with two other employees reported to

duty at Godavarikhani on 15.09.2008. Though they were permitted to join, the subsistence allowance was not paid in compliance with the order in W.P. No. 14015 of 2008. In the meanwhile, the CMPFO filed W.A. No. 1188 of 2008 challenging the order in W.P. No. 14015 of 2008 and by order dated 23.09.2008 interim stay was granted. Subsequently, after hearing both the parties, the said order was modified as under.

Looking to the facts of the case, the ad interim relief which was granted on 23rd September 2008 is modified to the effect that subject to final orders which may be passed in this appeal, the appellants shall pay 50% of the amount which is payable to the respondents, as directed by the learned Single Judge, in addition to the subsistence allowance which is payable in respect of first 90 days from the date on which the respondents were placed under suspension.

The amount payable to the respondents shall be paid within two weeks from today.

5. The said Writ Appeal is still pending on the file of this Court. While so, all the petitioners herein were served with a charge-sheet dated 7.1.2008 issued under Rule 14 of CCS (CCA) Rules, 1965, calling upon them to submit their written statement of defence within ten days. The Articles of Charge and the Statement of the imputation of the alleged misconduct and wilful insubordination were also served on the petitioners. A common charge was framed against all the petitioners as under:

That the said Sri...while functioning as...Coal Mines Provident Fund Organisation, Regional Office, Hyderabad during the year 2007 went on unlawful strike against shifting of the Regional Office, CMPFO from Hyderabad to Godvarikhani and deserted his duties by keeping himself absent wilfully in CMPFO, Godavarikhani.

6. Thereafter, an Enquiry Officer was appointed before whom the petitioners submitted their defence brief on 10.01.2009. Thereafter the impugned orders dated 19.03.2009 came to be passed imposing the penalty of dismissal from service under Rule 11(ix) of CCS (CCA) Rules, 1965 with immediate effect.

7. Aggrieved by the same, the present Writ Petition is filed contending inter alia that the impugned orders of dismissal are in violation of Rules 14 & 15 of CCS (CCA) Rules, 1965 since the disciplinary authority failed to make available the report of the enquiry officer nor the petitioners were asked to submit their explanation. It is also contended that whereas the charge-sheet was issued only on the allegation of participation in illegal strike, the impugned orders imposing the penalty of dismissal from service contained many other additional charges and since no opportunity was given to the petitioners at any point of time to meet the said charges, the impugned orders based upon the said additional charges are arbitrary and illegal and liable to be set aside on that ground also. It is further contended that the impugned order of dismissal was nothing but an action of vengeance against the petitioners as they had approached this Court and other forums challenging the coercive steps initiated by the 1st respondent.

8. In the counter-affidavit filed on behalf of the 1st respondent, a preliminary objection has been raised as to the maintainability of the writ petition on the ground that an alternative remedy of appeal is available against the impugned orders of dismissal under Regulation 37 of Coal Mines Provident Fund (Staff & Conditions of Service) Regulations, 1964 (for short, "Regulations") read with Rule 23 of CCS (CCA) Rules, 1965.

9. On merits, it is contended in the counter-affidavit that all the required formalities were duly followed before imposing the penalty of dismissal from service. It is further explained that the petitioners, being employees of Coal Mines Provident Fund Organisation, are not authorised to go on strike under any law. It is also contended that the petitioners are governed by the above said Regulations and as such the Industrial Disputes Act, 1947 has no application at all. So far as the contention of the petitioners that the impugned orders are in violation of Rules 14 and 15 of CCS (CCA) Rules, 1965, it is submitted that Rule 15 has no application to the facts and circumstances of the case and at any rate the said rule is only directory and moreover since no prejudice is caused to the petitioners, the mere non-supply of report cannot be said to have resulted in miscarriage of justice.

10. I have heard the learned Counsel for both the parties at length.

11. From the pleadings noticed above, it is clear that the petitioners were not served with the report of the inquiring authority and no opportunity was given to them to make their representation against the action proposed before passing the impugned orders imposing the penalty of dismissal from service. The respondents could not dispute the said fact but it is only contended that non-supply of the said report has not vitiated the consequential proceedings including the impugned orders of dismissal.

12. In the facts and circumstances, the only question that arises for consideration in this writ petition is; what is the effect of non-furnishing of the report of the inquiring authority to the petitioners?

13. In *Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.*, the Supreme Court having considered in detail the need for furnishing copy of the report of the inquiring authority to the delinquent held as under:

It will thus be seen that where the enquiry officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, enquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached. The employee's right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in effect denied the right to defend himself and to prove his innocence in

the disciplinary proceedings.

14. It is further held that when the Enquiry Officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the Inquiry Officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the Enquiry Officer's report before the disciplinary authority takes its decision on the charges is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.

15. After the said decision was rendered by the Supreme Court, there was an amendment to Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 and Sub-rule (2) of Rule 15 as substituted by the said amendment dated 21.08.2000 runs as under:

15. (1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 14, as far as may be.

(2) The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority, a copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant, (2-A) The disciplinary authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in Sub-rules (3) and (4).

(3) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in Clauses (i) to (iv) of Rule 11 should be imposed on the Government servant, it shall, notwithstanding anything contained in Rule 16, make an order imposing such penalty:

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant.

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry is

of the opinion that any of the penalties specified in Clauses (v) to (ix) of Rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the Government servant any opportunity of making representation on the penalty proposed to be imposed.

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the Government servant.

16. As could be seen from the language of Rule 15(2) it is mandatory to forward a copy of the report of the inquiring authority together with the findings of the inquiring authority on any article of charge to the delinquent employee and he shall be required to submit his written representation to the disciplinary authority within 15 days. The said requirement is mandatory irrespective of whether the report of the Inquiring Authority is favourable or not to the delinquent employee.

17. In the instant case, admittedly the said requirement has not been complied with. Though the said fact has not been disputed in the counter-affidavit it is contended by the respondents that Rule 15 is only directory and at any rate no prejudice is caused to the petitioners on account of non-furnishing of the report of the inquiring authority. Thus it is contended by the learned Counsel for the respondents that the mere non-supply of report of the inquiring authority has not vitiated the proceedings.

18. In support of his submission, the learned Counsel for the respondents relied upon the decisions of the Supreme Court in *Canara Bank Vs. V.K. Awasthy*, and *Haryana Financial Corporation and Another Vs. Kailash Chandra Ahuja*, .

19. The learned Counsel has also relied upon a decision of Larger Bench of this Court in *K. Swarna Kumari, Subordinate Judge (Compulsorily Retired) Vs. Govt. of Andhra Pradesh and Others*, wherein it was held that even where the rule in its entirety has been ignored, the prejudice doctrine can be extended to the disciplinary proceedings.

20. The doctrine of prejudice was also considered by the Supreme Court in detail in *V.K. Awasthy's case* (2 supra) and it was held as under:

Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values. The administration of justice is to be freed from the narrow and restricted considerations which are usually associated with a formulated law involving linguistic technicalities-and grammatical niceties. It is the substance of justice which has to determine its form.

The expressions "natural justice" and "legal justice" do not present a water-tight classification. It is the substance of justice which is to be secured by both, and

whenever legal justice fails to achieve this solemn purpose, natural justice is called in aid of legal justice. Natural justice relieves legal justice from unnecessary technicality, grammatical pedantry or logical prevarication. It supplies the omissions of a formulated law. As Lord Buckmaster said, no form or procedure should ever be permitted to exclude the presentation of a litigants' defence.

The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasijudicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate interrogate and adjudicate". In the celebrated case of *Cooper v. Wandsworth Board of Works*, the principle was thus stated:

even God did not, pass a sentence upon Adam, before he was called upon to make his defence, "Adam" says God, "wherefore hast thou not eaten of the tree whereof I commanded thee that thou shouldst not eat."

Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond.

21. Another important decision on this question is *Kailash Chandra Ahuja's* case (3 supra) in which it was held that non-furnishing of report does not by itself render the punishment invalid. It was further explained by the Supreme Court after analysing the ratio laid down in *B. Karunakar's* case (1 supra) that failure to supply report of the inquiry officer to the delinquent employee would not ipso facto result in proceedings being declared null and void and order of punishment non est and ineffective and that it is for the delinquent employee to plead and prove that non-supply of such report has caused prejudice and resulted in miscarriage of justice. The Supreme Court also held that whether prejudice has been caused to the delinquent employee depends upon the facts and circumstances of each case and that it cannot be presumed that prejudice is writ large in the absence of any proof.

22. In the light of the settled legal position noticed above, it is necessary to consider whether non-supply of report of the inquiring authority dated 22.1.2009 has caused prejudice to the petitioners so as to decide what relief should be granted to the petitioners.

23. It is specifically pleaded in the writ petition that the impugned order of removal is based upon certain other grounds enumerated in paras 17, 18 and 19 of the impugned orders. Admittedly the said grounds were never put to the petitioners. The said fact is evident from the article of charge in which only one allegation was made. However the impugned orders of dismissal are based upon several other grounds as under:

Despite the High Court of Andhra Pradesh, Hyderabad order dated 04.09.2008 asking him to join the CMPFO, Regional Office, Godavarikhani, to discharge his duties obediently and diligently, Shri A. Hanumantha Prasad, has not given any good conduct of himself. He has been colluding with his companion-strikers, and threatening and passing abusive and lewd remarks on the members of lady staff of Regional Office, CMPFO, Godavarikhani. He has also been found to enter the Regional Office, Godavarikhani in an unbecoming manner and while away his work hours in activities prejudicial to public interest. He has also colluded in drafting and writing lewd and spiteful letters against the women members of family of the serving officials and officers posted in Regional Office, Godavarikhani. All these acts are serious misconduct and are punishable under the CCS (CCA) Rules, 1965.

The charges framed against Shri A. Hanumantha Prasad, UDC, has been proved during the enquiry. It has further been reported by the Regional Commissioner and the Assistant Commissioner, Grade-I, CMPFO, Regional Office, Godavarikhani that Shri Prasad uses derogatory remarks, filthy languages and unparliamentary words against Commissioner (Disciplinary Authority), Regional Commissioner Sri Y.H.S. Rao and Assistant Commissioner, Grade-I Shri Hari Pachauri, in the office hours and spoiling the work atmosphere in Regional Office CMPFO, Godavarikhani.

A complaint has also been received from Sanjivani Mahila Welfare Society, Goutham Nagar, Godavarikhani, Karimnagar District (A.P.), that Shri A. Hanumantha Prasad including three other charged officials of CMPFO, Regional Office, Godavarikhani has been instigating lady staff members and working women engaged on contract basis against the Regional Commissioner Shri Y.H.S. Rao and Assistant Commissioner of Shri Hari Pachauri. It has been reported by the Sanjivani Mahila Welfare Society that Shri Prasad and three other charged officials often pass obscene remarks on the lady workers. It has been complained by the contract lady workers that Shri Prasad and three other charged officials call the lady workers as Kanthamma (Club Dancers). Being vexed by the behaviour of Shri Prasad and three other charged officials the Sanjivani Mahila Welfare Society has asked for protection from the mischievous staff members including Shri A. Hanumantha Prasad. The report of the Regional Commissioner and the Assistant Commissioner-I and the complaint of Sanjivani Mahila Welfare

Society are of very serious nature as it is a case of Sexual Harassment.

24. It is not known how the inquiring authority submitted his report on various other allegations which were never put to the petitioners. Had the report of the inquiring authority been furnished to the petitioners giving them an opportunity to make their representation, they would have I raised such an objection while assailing the I findings recorded by the inquiring authority.

25. It is also pleaded by the petitioners that similarly situated persons against whom identical charges were made, were awarded lesser punishment. It is also the specific case of the petitioners that no action has been initiated against many other members of the Employees Union who also joined the strike for about 39 days and in their case absence was treated as leave period. The petitioners could have raised all the aforesaid grounds before the Disciplinary Authority if only the report of the inquiring authority dated 22.01.2009 was furnished to them giving them an opportunity to make their representation.

26. Thus it is clear that non-furnishing of the copy of the report of the inquiring authority has caused serious prejudice to the petitioners. Consequently, the impugned orders levying the major penalty of dismissal from service are liable to be declared as illegal.

27. At this stage, the learned Counsel for the respondents raised yet another objection as to the relief that can be granted to the petitioners. It is contended by the learned Counsel for the respondents that it is not necessary to set aside the impugned orders of dismissal on the ground of non-furnishing of the enquiry report and it would be sufficient if the 1st respondent is directed to proceed with the enquiry from the, stage of furnishing the enquiry report to the petitioners.

28. This aspect was also considered in detail by the Supreme Court in B. Karunakar's case (1 supra) and it was held that the Courts have to apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment.

29. As already expressed above, the non- furnishing of the copy of the enquiry report resulted in serious prejudice to the petitioners. It is also relevant to note that by virtue of the order in W.P. No. 14015 of 2008 the petitioners were directed to be reinstated into service and it is not as if they are continuing under suspension. As a matter of fact, there is a direction by a Division Bench of this Court to pay 50% of the amount payable to the petitioners as directed in W.P. No. 14015 of 2008 in addition to the subsistence allowance. It is also submitted by the learned Counsel for the petitioners that in spite of the said order as well as the interim order passed by this Court in this writ petition the petitioners have not been taken into service nor they are paid salaries from April, 2009 onwards.

30. Having regard to the facts and circumstances, I am of the opinion that the proper relief that should be granted in this writ petition is to set aside the impugned orders in toto.

31. Accordingly, the impugned orders are hereby set aside and the Writ Petition is allowed granting liberty to the respondents to proceed with the enquiry after furnishing a copy of the report of the inquiring authority to the petitioners. No costs.