
(2002) 06 AP CK 0016
In the Andhra Pradesh High Court
Case No : Writ Petition No. 14002 of 1991

A. Rama Murthy	Vs	APPELLANT
The A.P. Industrial Infrastructure Corp.		RESPONDENT

Date of Decision : 18-06-2002

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2002) 5 ALD 112 : (2002) 6 ALT 138

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Nuty Ram Mohan Rao, for the Appellant; R. Subba Rao, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioner was an employee of the Respondent-Corporation. After his initial recruitment, he earned number of promotions and ultimately he was promoted to the post of Assistant Regional Manager on 22-11-79.

2. While he was working in that capacity at Karimnagar, he was issued a charge memo dated 13-2-90 by the Deputy General Manager (Finance II), who has been appointed as the Enquiry Officer. The only charge that was framed in the charge memo was that the petitioner has collected a sum of Rs.11,447/- on 7-9-1989 from M/s. Sri Charan Enterprises towards balance of Cost and Maintenance Charges of a plot, without specific orders from the Managing Director and in spite of the fact that the allotment of the plot in favour of the said Entrepreneur was cancelled, a decree of eviction was obtained by the Corporation against him in OS.No.44/88 and execution proceedings were in progress. The petitioner was required to submit his explanation within 15 days from the date of receipt of the charge memo. It was further stated in the memo that, in addition to submission of explanation, the petitioner shall also state as to whether he desires an oral enquiry to be conducted in the matter.

3. On receipt of the charge memo, the petitioner submitted his explanation on 3-3-90. In the explanation, at the outset, he took exception to the appointment of the Deputy General Manager as the enquiry officer, on several grounds. He has elaborately stated the circumstances under which he accepted the said amount and he justified the same with reference to several earlier instances and also with reference to various facts relating to that particular transaction. He ultimately pleaded not guilty. Having dealt with the charge levelled against him, the petitioner requested for holding of an oral enquiry, in his presence, at Karimnagar, since number of witnesses have to be examined from that place. He has also stated that the enquiry should be conducted by an officer other than the one who was already appointed as an enquiry officer.

4. After receipt of the explanation, the enquiry officer submitted his report dated 12-3-1990 to the General Manager. In his report, the enquiry officer held that the charge against the petitioner is proved. He took the view that an open enquiry or examination of witnesses, as desired by the petitioner, was not necessary and observed in his report that if the General Manager considers that any open enquiry is necessary, the General Manager may issue appropriate orders in that regard and such an enquiry shall be conducted by an officer other than himself (the enquiry officer) because of the lack of confidence expressed by the petitioner.

5. After receiving the report of the enquiry officer, the General Manager issued show cause notice dated 10-4-1990 to the petitioner, directing him to show cause as to why he should not be reduced (obviously reverted) to the post of Assistant by way of punishment. The petitioner submitted his explanation dated 5-5-1990. After referring to various aspects of the matter, the petitioner ultimately stated that failure to conduct the enquiry is detrimental to his interests and contrary to the orders passed by the High Court in earlier proceedings. He ultimately requested the General Manager to drop further proceedings. The respondent thereafter passed orders dated 15-6-1990 imposing the punishment of withholding two annual increments with cumulative effect. This order is challenged in the writ petition.

6. The respondent filed a counter affidavit mostly dealing with the charge levelled against the petitioner and justifying the punishment imposed upon him. As regards the complaint of the petitioner that the enquiry was not properly conducted and the proceedings are vitiated, the respondent have stated in the counter that the correct procedure has been followed and there is no violation of any procedure.

7. Sri Siva, Advocate, appearing for Sri N.Ram Mohan Rao, learned counsel for the petitioner, submits that the charge levelled against the petitioner was factually unsustainable and that the enquiry conducted against the petitioner was in contravention of the principles of law. He stated that the appointment of enquiry officer even before the petitioner was issued a show cause notice was not contemplated in law. It is his further contention that once the petitioner has

taken objection against the particular enquiry officer, in law as well as on the grounds of fairness, the enquiry officer ought to have excused himself and his proceeding further with the enquiry is in violation of principles of natural justice. It is also contended that when the petitioner was placed under suspension, he filed W.P.No.15583/89 and this Court while disposing of the writ petition, through orders dated 3-4-1990, directed inter alia that the enquiry shall be conducted at Karimnagar, but no enquiry whatsoever was held. He takes exception to the procedure adopted by the enquiry officer in so far as he submitted his report only on the basis of the charge memo and explanation without conducting even a semblance of enquiry. He ultimately submits that the entire proceedings are vitiated and the impugned order is liable to be set aside.

8. Sri R.Subba Rao, learned Standing Counsel for respondent-Corporation, on the other hand, submits that it is permissible in law to appoint an enquiry officer even at the inception and the enquiry officer is competent to issue charge memo. As far as the procedure adopted by the enquiry officer is concerned, the learned Standing Counsel submits that it is for the enquiry officer to decide as to whether it is necessary to examine the witnesses and if he feels that the subject matter of the enquiry does not call for any oral enquiry, he can dispense with the same. On facts, the learned Standing Counsel submits that the petitioner has accepted the balance of consideration in respect of the plot even after the allotment was cancelled and a decree for eviction was obtained by the Corporation and that the same constitutes gross misconduct.

9. In this writ petition, it is not proposed to go into the question as to whether the charge levelled against the petitioner is factually sustainable or not. The reason is that the finding of the enquiry officer or the view taken by the disciplinary authority cannot be appreciated in the proceedings under Article 226 of the Constitution of India and the High Court cannot sit in appeal over the findings of the enquiry officer. It is only in exceptional cases that the Court will scrutinize as to whether the findings on the charges levelled in disciplinary proceedings are factually sustainable and the case on hand is not such exceptional one.

10. The only question that needs to be considered is whether the proceedings before the enquiry officer or the procedure adopted by the respondent suffers from any legal infirmity.

11. One facet of this matter relates to the appointment of the enquiry officer even before the disciplinary proceedings are initiated against the petitioner. It is well settled that the disciplinary proceedings are said to have commenced against the delinquent employee with the issuance of the show cause notice or the charge sheet as the case may be. Normally, wherever the appointing authority feels that there is any dereliction on the part of an employee under him, a show cause notice or charge sheet, as the case may be, is issued incorporating the acts and instances of misconduct against the employee and he is required to submit explanation. If the employee accepts dereliction on his part,

no further enquiry is needed. However, if the employee denies the charges levelled against him, the matter needs to be enquired further in a domestic or departmental enquiry, in accordance with the procedure prescribed for the concerned Organisation. Appointing an enquiry officer even before the employee is issued a show cause notice and even before he submits his explanation is, in a way, an extraordinary phenomenal. If at all any thing, it only conveys the resolve of the appointing authority to proceed with the disciplinary proceedings, irrespective of the nature of explanation that may be offered by the employee. Such a practice may not be in consonance with the principles of good administration. However, appointing an enquiry officer even before show cause notice is issued, by itself does not vitiate the proceedings. The reason is that no prejudice, as such, is caused to the employee. Therefore, the contention of the petitioner in this regard cannot be accepted.

12. One important aspect that needs to be noticed is that irrespective of the stage of appointment of enquiry officer, the object of appointing an enquiry officer is to undertake an enquiry into the charges levelled against the concerned employee. The enquiry may be in the form of adducing oral or documentary evidence before him by the management, on one hand, and the delinquent employee, on the other. Once an employee insists on conducting of an oral enquiry, the enquiry officer has no option except to undertake the same. In fact his appointment is only for that purpose. Once the enquiry officer is appointed, the employer is under obligation to place its case before the enquiry officer in support of the charges in the form of oral and documentary evidence. According to the normal principles of evidence, if the employer fails or refuses to lead evidence in support of the charges, the enquiry officer has to hold that the charges are not proved, inasmuch as no material is placed in support of the charges. It is only when the employer adduces the evidence, the delinquent employee has to be afforded an opportunity to lead his evidence, apart from cross examining the witnesses examined by the employer.

13. In this case, the respondent did not place any evidence before the enquiry officer. Handing over the file or forwarding the records to the enquiry officer, while appointing him, cannot be equated with adducing evidence or proving the charge. Whatever may be the justification for and the consequences of the failure on the part of the respondent to lead its evidence, the enquiry officer ought to have permitted the petitioner to adduce evidence in support of his contentions. The petitioner made a specific and definite request to the enquiry officer not only to conduct oral enquiry at Karimnagar, but also has furnished certain names of the proposed witnesses. Even if the enquiry officer was of the view that it is not necessary to examine all the witnesses cited by the petitioner, it was rather basic and fundamental that he should have recorded the statement, at least of the petitioner. He did not choose to do so. The enquiry officer has submitted his report only on the basis of the charge sheet issued by him and explanation submitted by the petitioner. If this was the only exercise to be undertaken in the matter, his appointment itself was superfluous. The disciplinary

authority himself could have undertaken this. By refusing or failing to conduct oral enquiry, the enquiry officer has defeated the very purpose of his appointment. Therefore, the report submitted by him cannot be sustained in law.

14. Turning to the proceedings before the enquiry officer, it needs to be observed that in the explanation submitted by the petitioner, he has taken exception to the enquiry officer by name Vishnu Vardhan Sharma undertaking the same. He has stated several reasons therefor. The petitioner has also insisted that the oral enquiry must be conducted at Karimnagar and witnesses, some of whom are named in the explanation, have to be examined in his presence. When the petitioner has raised objection for the enquiry to be undertaken by the particular enquiry officer, the minimum expected of the enquiry officer is either to excuse himself or to state the reasons why the apprehension expressed by the petitioner is without basis. The enquiry officer did not choose the 1st option, which is evident from the proceedings in the enquiry. The report does not indicate that the enquiry officer has stated that the apprehension by the petitioner is without basis. Having recorded his finding against the petitioner, the enquiry officer, at the end of his report, observed as under:-

"As far as this enquiry is concerned, the facts are clear, and finding of guilt of violations of the Regulations mentioned in the charge has been recorded under Point (i) hereinbefore. However, if the General Manager still considers, any open enquiry is an absolute necessity, he may kindly issue orders accordingly, with a specific rider that it shall be conducted by any officer other than myself, this is so, because the delinquent officer expressed at page 2 of his explanation that he cannot believe me as an impartial enquiry officer and also because he requested at page 6 of his explanation that the oral enquiry in his presence at IE Karimnagar may be conducted by any enquiry officer other than myself."

15. When the enquiry officer himself was satisfied that if at all the enquiry has to be held, it should be held by some other officer than himself, it is suggestive of the fact that he was, in a way, convinced about the apprehension expressed by the petitioner. Under such circumstances, the enquiry officer ought to have excused himself and his proceeding further with the enquiry was contrary to settled principles of law.

16. One other aspect of the matter is about the place of enquiry. The petitioner insisted that the enquiry should be conducted at Karimnagar alone. The reasons furnished by him are that the plot in respect of which the amount has been received was located at Karimnagar and there are several witnesses at Karimnagar, who can throw light upon the matter. Ordinarily, a delinquent employee cannot choose the place of enquiry. He may make a request with reference to the place. Ultimately, it is for the enquiry officer to decide as to which will be the proper place for conducting the enquiry. This case, however, presents a different situation. When the petitioner was placed under suspension through proceedings dated 18-10-1989, he filed W.P.No.15593/89 in this court. Initially, the order of suspension was suspended by this court enabling the

petitioner to continue in service. Thereafter, the writ petition was disposed of on 3-4-1990. In the order passed in that writ petition, this court inter alia directed as under:--

"The disciplinary enquiry initiated against the petitioner is to be conducted at Karimnagar."

17. Once there was such a direction, there was absolutely no justification for not conducting the enquiry at Karimnagar and for that matter, not conducting the enquiry at all.

18. The findings recorded above indicate that the enquiry undertaken by the enquiry officer is vitiated on more grounds than one. When the respondent issued show cause notice dated 10-4-1990 to the petitioner on the basis of the report submitted by the enquiry officer, the petitioner, in his explanation dated 5-5-1990, reiterated his contention as under:

"In the circumstances, I therefore pray to conduct regular enquiry giving me an opportunity to defend my case and also giving me an opportunity to examine the witnesses at Industrial Estate, Karimnagar, to put forth my case."

19. Even this does not appear to have weighed with the respondent. The only consideration by the respondent of the explanation submitted by the petitioner in the impugned order is as under:--

"The explanation offered by the Delinquent Officer has been examined in detail and the following conclusion is arrived at..."

20. When the petitioner has submitted his explanation by raising several legal and factual contentions, the respondent were under obligation to consider the same, whatever be the ultimate decision. When the consideration of the explanation in its true spirit itself is absent, the whole exercise gets reduced to an empty formality.

21. On behalf of the petitioner, an argument was advanced to the effect that issuance of the show cause notice after the management has arrived at a provisional conclusion as to the guilt of the petitioner was contrary to the ratio laid down by the Hon"ble Supreme Court in *MANAGING DIRECTOR, ECIL vs. B.KARUNAKAR* (1).

22. The learned Standing Counsel, on the other hand, submits that it is not open to the petitioner to advance such arguments in view of the judgment of the Hon"ble Supreme Court in *STATE BANK OF PATIALA vs. S.K.SHARMA* (2).

23. Having regard to the fact that the disciplinary proceedings are held to have been vitiated for the reasons referred to above, it is felt that it is not necessary to go into the aspect canvassed by the learned counsel basing on the judgments of the Hon"ble Supreme Court referred to above.

24. Therefore, the impugned order cannot be sustained for the foregoing reasons

and the same is accordingly set aside. This, however, does not preclude the respondent from instituting or holding proceedings against the petitioner in accordance with law, if so chooses. However, in taking such a decision, the fact that the petitioner has since retired from service shall be taken into account. The writ petition is accordingly allowed. No costs.