

(2012) 08 AP CK 0070
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 416 of 2012

A.P. Transco

APPELLANT

Vs

Y. Appa Rao

RESPONDENT

Date of Decision : 31-08-2012

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2013) 2 ALT 442 : (2013) LabIC 1357

Hon'ble Judges : G. Rohini, J;C. Praveen Kumar, J

Bench : Division Bench

Advocate : P. Laxma Reddy, for the Appellant; A.M. Rao, for the Respondent

Final Decision : Allowed

Judgement

G. Rohini, J.—This appeal is preferred against the order dated 27.09.2011 passed by the learned Single Judge in W.P. No.8300 of 2005. The respondent therein i.e., A.P. Transmission Corporation (for short, AP Transco) is the appellant before us. The writ petitioner/sole respondent herein who was working as an Assistant Engineer in AP Transco was charge-sheeted vide memo dated 23.12.1996 issued by the Superintending Engineer, Enquiry Cell, Hyderabad for the irregularities alleged to have been committed by him while discharging his official duties. After due enquiry, the charges levelled against him were held proved and in pursuance thereof the Member Secretary, A.P.S.E.B. issued a show-cause notice dated 30.01.1999 calling upon the writ petitioner to show-cause as to why the punishment of removal from service should not be imposed. In compliance with the same, the writ petitioner submitted a detailed explanation on 27.05.1999. Thereafter the Director (D and HRD) passed the order dated 6.4.2000 imposing the punishment of reduction of pay by three stages for a period of two years. Having noticed that in the said order, his explanation to the show-cause notice was described as an appeal, the writ petitioner made a representation and in pursuance thereof, a fresh order dated 17.01.2002 was issued under the signature of the Joint Managing Director (REV and HRD) thereby substituting the

words "explanation" in the place of "appeal" and amending para-3 of the order dated 06.04.2000 as under:

The Chairman and Managing Director/AP Transco has carefully examined the representation of Sri Y. Appa Rao, Assistant Engineer and taking a lenient view has decided to modify the punishment of removal of service to that of reduction of pay by three stages for a period of two years to Sri Y. Appa Rao, Assistant Engineer.

2. Against the said order dated 17.01.2002, though the writ petitioner preferred an appeal, the same was dismissed vide proceedings dated 08.10.2002.

3. Aggrieved by the same, the petitioner filed W.P. No.8300 of 2005 contending inter alia that the Joint Managing Director who had passed the original order dated 17.01.2002 himself had dismissed his appeal in his capacity as an appellate authority and therefore the impugned order was in violation of the principles of natural justice.

4. Having accepted the said contention, the learned Single Judge allowed the writ petition by order dated 27.09.2011 holding as under:

After hearing the learned counsel for the parties, it is clear that the orders of reduction of pay of the petitioner by three stages for a period of two years could only be passed in the first instance by the Joint Managing Director (Rev. & H.R.D) of A.P. Transco but not by the Chairman and Managing Director of A.P. Transco. Secondly, an appeal filed challenging the punishment imposed can be considered and decided, as per the column No.11 of the Revised Conduct Rules of A.P. Transco Employees, by the Chairman and Managing Director of AP Transco but not by the Joint Managing Director of AP Transco, the respondent herein.

In the light of the above, the orders dated 06.04.2000, 17.01.2002 and 08.10.2002 passed by the respondent authorities cannot be sustained and the same are hereby set aside.

The writ petition is allowed to the extent indicated above. No order as to costs.

5. The above said order passed by the learned Single Judge is under challenge before us in this appeal preferred by the A.P. Transco.

6. We have heard the learned counsel for both the parties.

7. Section 5 of the A.P.S.E.B. Employees' Discipline and Appeal Regulations as adopted by the A.P. Transco provides for the penalties that may be imposed upon the employees of the Board which includes reduction to a lower rank in the seniority list or to a lower post or time scale. Regulation 7 (a) read with the Schedule annexed to the Regulations specifies the competent and appellate disciplinary authorities for imposing any of the penalties mentioned in Regulation 5. Regulation 14 (a) further provides that every employee belonging to Class-I and Class-II service shall be entitled to appeal to the Board against any order passed by the Chairman. If it is an order passed by the Chief Engineer or a

subordinate authority then the appeal lies to the Chairman.

8. So far as the Assistant Engineers are concerned, who are the Class-II Officers, the competent authority to impose the penalty of reduction to the lower time scale is the Director (D and HRD). Against the said order, an appeal lies to the CMD (Chairman & Managing Director).

9. In the case on hand, the original order dated 17.01.2002 imposing the penalty of reduction of pay was no doubt passed under the signature of the Joint Managing Director. However the said order itself shows that the decision was taken by the Chairman and Managing Director. Therefore, the appeal against the said order lies to the AP Transco. The record placed before this Court shows that the appeal preferred by the writ petitioner was considered by AP Transco and was rejected. The said decision was communicated by the Joint Managing Director (HRD) by proceedings dated 8.10.2002.

10. It was explained in the counter-affidavit filed by the Joint Managing Director, AP Transco that with regard to the irregularities alleged against the writ petitioner a combined enquiry was conducted against the Assistant Divisional Engineers (ADE) and also the Assistant Engineers (AE). Though both ADE and AE are the Class-II officers, the Disciplinary Authority for ADE is specified in Regulation 7 read with Schedule-I as Chairman and Managing Director whereas the Disciplinary Authority for the AE is the Director D and HRD. Therefore, as per Regulation 7 (e) the Chairman & Managing Director imposed the penalty against the writ petitioner also by order dated 17.01.2002 since the powers vested in an authority may be exercised by a superior authority.

11. Having regard to the nature of the controversy involved, it is necessary to notice Regulation 7 of A.P. State Electricity Board Employees' Discipline and Appeal Regulations which reads as under:

7. (a) Competent and appellate disciplinary authorities:

The Authorities which may impose any of the penalties mentioned in regulation 5 and the appropriate Authorities to whom appeal lies shall be as specified against each of the categories in Schedule.

(b) Competency of authorities superior to disciplinary authority:

Where in any case a higher authority has imposed or declined to impose a penalty under this regulation in respect of the same case.

(c) Where in any case a lower authority has imposed penalty or exonerated a member it shall not debar a higher authority from exercising his power under this regulation in respect of the same case. The order of such higher authority shall supersede any order passed by a lower authority in respect of the same case.

Provided that in cases where a case is sought to be reopened after one year, the authority concerned (the reopening authority) should obtain the permission of the next higher authority or the Board as the case may be.

(d) The fact that a lower authority has dropped a charge against a person as not proved shall not debar a higher authority from exercising it.

(e) Powers vested in an authority may be exercised by a superior authority in its discretion.

12. On a reading of the above provision, we are satisfied that the Chairman and Managing Director being a superior authority to the Director is competent to exercise the powers of the Disciplinary Authority against the petitioner, who is a Class-II officer.

13. As against such an order passed by the Chairman, the appeal lies to the AP Transco. The learned counsel for the appellant submits that the petitioner's appeal was considered by the Full Board i.e., all the Directors of AP Transco but not by the Chairman and Managing Director as sought to be contended by the petitioner.

We have called for the record and on a perusal of the same we found that the petitioner's appeal was considered by the AP Transco, but not by the Chairman & Managing Director. It is no doubt true that the Chairman & Managing Director is the appellate authority against an order passed by the Director who is the competent authority so far as the Assistant Engineers are concerned. However Regulation 7 (e) provides that powers vested in an authority may be exercised by a superior authority in its discretion. Thus it is clear that the original order dated 17.1.2002 imposing the penalty came to be passed by the Chairman & Managing Director in exercise of the said power conferred under Regulation 7 (e). Despite the fact that the Chairman & Managing Director who is the superior authority passed the said order, the appellant was not deprived of the right of appeal since against the order of the Chairman & Managing Director an appeal lies to the AP Transco. In fact it was so mentioned in the order dated 17.01.2002 itself stating that against the said order, an appeal lies to the AP Transco under Regulation 18. Accordingly the appellant availed the remedy of appeal and it was decided on merits. Therefore, no prejudice was caused to the appellant.

14. In identical circumstances, it was held in *Balbir Chand Vs. Food Corporation of India Ltd. and others*, as under:

It is now a 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, the appellate remedy provided under the Rules was denied. In those circumstances, this Court opined that it caused 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.

15. The same principle has been reiterated in Chairman, A.P. State Electricity Board and Others Vs. M. Kurmi Naidu, while referring to Regulation 7 (e) of the AP State Electricity Board Employees" Discipline and Appeal Regulations, 1990 in an appeal preferred by the AP State Electricity Board.

16. For the aforesaid reasons and in the light of the legal position noticed above, the order dated 17.01.2002 imposing the penalty of reduction of pay cannot be held to be illegal. Similarly, no prejudice has been caused to the appellant since the appellant was not deprived of the right of appeal against the said order dated 17.1.2002. Therefore, the learned Single Judge ought not to have interfered with the order of the punishment dated 17.01.2002 and the order of the appellate authority dated 8.10.2002.

17. Accordingly, the order of the learned Single Judge is hereby set aside and W.P. No.8300 of 2005 shall stand dismissed. The Writ Appeal is accordingly allowed. No costs.