

(2013) 04 AP CK 0037
In the Andhra Pradesh High Court
Case No : Writ Petition No. 2826 of 2013

D. Srinivas

APPELLANT

Vs

Govt. of A.P. and Others

RESPONDENT

Date of Decision : 26-04-2013

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (2013) 4 ALT 1

Hon'ble Judges : R. Subhash Reddy, J;B. Chandra Kumar, J

Bench : Division Bench

Advocate : P. Suresh Reddy, for the Appellant;

Final Decision : Allowed

Judgement

R. Subhash Reddy, J.—In this writ petition, petitioner has questioned the validity of order dated 02.12.2011 passed in O.A. No. 8278 of 2011 and, further, order dated 04.12.2012 passed in Rev. M.A. No. 3802 of 2011 in the said O.A., by the Andhra Pradesh Administrative Tribunal, Hyderabad. Petitioner, in the aforesaid O.A., before the Tribunal, has questioned order dated 28.07.2011 passed in G.O.Rt. No. 734, Transport, Roads & Buildings (Vig. I) Department dated 28.07.2011, by which penalty of stoppage of three annual grade increments without cumulative effect is imposed against him on the alleged proven misconduct in the departmental enquiry conducted in the disciplinary proceedings initiated against him.

2. Necessary facts in brief are as under:

During the year 1998, petitioner was working as Assistant Engineer (Electrical) in the office of Electrical Engineer, Nampally, Hyderabad. The then Executive Engineer (General) has invited tenders from electrical contractors for award of work of electrical installations in the newly constructed 20 bedded hospital in the premises of Juvenile Home for Girls, Nimboliadda, Hyderabad, worth about Rs. 38,000/-. Certain discrepancies with regard to proposed rates of certain items

were noticed by the Electrical Engineer (General) before opening of tenders. One of the electrical contractors has filed complaint before the Upa Lokayuktha, A.P., against Sri Y.G. Edward, the then Electrical Engineer (General), R & B Secunderabad alleging that with regard to certain items in the aforesaid tender exorbitant rates were shown to cause loss of Rs. 10,616.70 Ps. Preliminary enquiry was conducted in the matter and based on the preliminary enquiry report, memo dated 01.05.2000 was issued to the then Executive Engineer (General) and to the petitioner herein to show cause why punishment should not be imposed by reverting the petitioner to lower post. Petitioner submitted his explanation to the said memo, inter alia, stating that there was neither any misconduct nor any willful fault which resulted in loss to the Government by the steps taken by him. Further proceedings were dropped pursuant to the show-cause notice, but, thereafter, regular departmental enquiry was initiated by framing charge against the petitioner and also the then Executive Engineer (Electrical) by name Y.G. Edward. The article of charge framed against the petitioner in the disciplinary proceedings pursuant to Memo No. 2221/Ser. I-3/2000-2, dated 09.01.2001, reads as under:

That the said Sri D. Sreenivas, Assistant Engineer (R & B) Electrical, Office of the Electrical Engineer (General), Hyderabad, has proposed inflated rates over S.S.R. for the items of work at Sl. No. 12, 13 and 14 in Tender Schedules for the work of providing electrical installations to the newly constructed 20 bedded Hospital in the premises of Juvenile Home for Girls (Tahaggi-Jail) at Nimboli Adda, Hyderabad, and called for Tenders vide C.T. No. 9/99-2000, dt. 24.06.99. He has also manipulated the documents duly including cost of conduit pipes already laid with mala fide intention. Thereby, Sri D. Sreenivas, Assistant Engineer (R & B) Electrical, has attempted to cause financial loss of Rs. 10,617/- to the Government. Thus, he has violated Articles 3(1), Article-4 of A.P. Financial Code, Volume-I and Rules 3(1) and 3(2) of A.P. Civil Services (Conduct) Rules, 1964.

Petitioner has filed explanation denying the allegations made against him in the said charge memo. Having not satisfied with the explanation of the petitioner, a regular enquiry was conducted. Basing on the report submitted by the enquiry officer, orders are passed by the Government imposing punishment of stoppage of three increments without cumulative effect. The enquiry which was conducted in the departmental proceedings is common against the petitioner and the then Executive Engineer (General). When order was passed by the 1st respondent-Government entrusting the matter to Commissioner of Inquiries for common enquiry, vide proceedings dated 02.06.2003; the Executive Engineer (Electrical) approached the Tribunal by filing O.A. No. 4315 of 2003 which was disposed of by the Tribunal by order dated 27.10.2006 directing the respondents therein to complete the disciplinary proceedings within a period of three months from the date of receipt of the order and if the said disciplinary proceedings are not completed within the timeframe as fixed by the Tribunal, no further action shall be taken. When the said disciplinary enquiry was not completed within the period as prescribed by the Tribunal and when the Commissioner of Inquiries was

proceeding with the enquiry, the Executive Engineer (Electrical) filed C.A. No. 543 of 2008 in O.A. No. 4315 of 2003 complaining violation of the order dated 27.10.2006. At that stage, the 1st respondent-Government issued proceedings in G.O.Rt. No. 1523, T, R & B (Vig. I-2) Department dated 10.10.2008 dropping the proceedings insofar as the then Executive Engineer (Electrical) is concerned. Mainly the said O.A., was filed by the then Executive Engineer (Electrical) questioning the enquiry proceedings on the ground that there was abnormal delay and laches on the part of the disciplinary authority in initiating disciplinary proceedings and in completing the enquiry. Petitioner has participated in the enquiry proceedings. It was the defence of the petitioner that he did not prepare the estimates and the same were prepared by one Sri Abdul Gaffer, Field Officer and he had no role in preparing the said estimates. Further, it is pleaded that if any lapses are there on the part of the petitioner, the same is not with an intention, either to cause loss to the Government or with any other motive. In the enquiry proceedings, he also relied on the dropping of the proceedings against the then Executive Engineer (Electrical). It was also his case that as much as the very tender notification was cancelled even before opening the tenders, there was no willful fault on his part, so as to impose any punishment on him. In spite of the same, the disciplinary authority, vide G.O.Rt. No. 734, Transport, Roads & Buildings (Vig. I) Department dated 28.07.2011, basing on the report submitted by the enquiry officer, imposed penalty of stoppage of three increments, without cumulative effect, on the petitioner. The said order of the disciplinary authority was the subject matter of challenge before the Tribunal. Mainly, order imposing the aforesaid punishment against the petitioner is questioned on the ground of abnormal delay and laches on the part of the disciplinary authority in imposing punishment with reference to the allegations of the year 1998. Further, specific case of the petitioner is discrimination alleging that when common enquiry was conducted, proceedings were dropped against the then Executive Engineer (Electrical); in spite of the same, proceedings continued against him and the impugned order is passed. It is stated that orders are passed only when his case was due for promotion to the higher post.

3. Heard Sri P. Suresh Reddy, learned counsel for the petitioner and learned Government Pleader for Services-I for the respondents.

4. In this writ petition, it is submitted by the learned counsel for the petitioner as under:

Though there is no material to prove misconduct against the petitioner, the enquiry officer himself has misread the evidence and submitted enquiry report by recording a finding that loss was in the form of not completing the hospital building. In the absence of any charge to that effect, the said finding recorded by the enquiring authority is beyond the scope of the charge. There is abnormal delay in completing the disciplinary proceedings and the same itself is a ground to set aside the impugned order. When common enquiry is conducted and charge framed in the disciplinary proceedings against the petitioner and the then

Executive Engineer (Electrical) is one and the same, petitioner is discriminated by imposing penalty whereas the proceedings initiated against the then Executive Engineer (Electrical) are dropped. The directions issued by the Tribunal in the O.A., filed by the Executive Engineer (Electrical) hold good even against the petitioner also; such directions are given only to cut short inordinate and unnecessary delay in completing the enquiry proceedings.

5. In support of his contentions, learned counsel for the petitioner has placed reliance on the executive instructions issued by the Government in G.O.Rt. No. 679, General Administration (Services-C) Department dated 01.11.2008, wherein instructions are given to the competent authorities in disciplinary enquiries to complete enquiries within a period of six months after initiation. Further, learned counsel for the petitioner has placed reliance on an unreported judgment of a Division Bench of this Court in W.P. No. 23820 of 2008 dated 03.11.2008. He further relied on the following judgments of the Hon"ble Supreme Court.

@ Tata Engineering and Locomotive Co. Ltd. Vs. Jitendra Pd. Singh and Another,

@ M.V. Bijlani Vs. Union of India (UOI) and Others,

@ P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board,

6. On the other hand, it is submitted by the learned Government Pleader for the respondents as under:

Though enquiry proceedings are common against the petitioner and the then Executive Engineer (Electrical), but, as the Executive Engineer (Electrical) approached the Tribunal by filing O.A. No. 4315 of 2003 and in view of the directions issued by the Tribunal, further proceedings are dropped. As the petitioner has not approached the Tribunal and in view of the findings recorded by the enquiry officer, the punishment is imposed. Even with regard to alleged delay in enquiry proceedings, the same is due to administrative reasons; as such same is no ground to interfere with the impugned order, by which penalty is imposed on the proven misconduct against the petitioner.

7. Having heard the learned counsel for the parties, we have perused the order passed by the Tribunal in O.A. No. 8278 of 2011 and, further, order dated 04.12.2012 passed in Rev. M.A. No. 3802 of 2011.

8. In this case, mainly, discrimination is pleaded by the petitioner on the ground that having initiated common enquiry against him and the then Executive Engineer (Electrical) on identical charges, proceedings against the then Executive Engineer (Electrical) are dropped vide G.O.Rt. No. 1523, T, R & B (Vig. I-2) Department dated 10.10.2008. It is true that petitioner was Assistant Engineer (Electrical) during the year 1998. With reference to the allegations made against him, it is the case of the petitioner that he did not prepare the estimates and one Sri Abdul Gaffer has prepared the estimates on which basis tenders were called for, by the then Executive Engineer (Electrical). During the course of hearing, learned Government Pleader has produced the article of charge framed against

the then Executive Engineer (Electrical) Sri Y.G. Edward in the disciplinary proceedings. The same reads as hereunder:

That the said Sri Y.G. Edward, Executive Engineer (R & B) Electrical, Electrical Division, Kurnool, while working as Electrical Engineer (General), Hyderabad has proposed inflated rates over S.S.R. for the items of work at Sl. No. 12, 13 and 14 in Tender Schedules for the work of providing electrical installations to the newly constructed 20 bedded Hospital in the premises of Juvenile Home for Girls (Tahaggi-Jail) at Nimboli Adda, Hyderabad and called for Tenders vide C.T. No. 9/99-2000, dt. 24.06.99. He has also manipulated the documents duly including cost of conduit pipes which were already laid with mala fide intention. Thereby, Sri Y.G. Edward, the then Electrical Engineer (General), Hyderabad has attempted to cause financial loss of Rs. 10,617/- to the Government. Thus, he has violated Articles 3(1), Article-4 of A.P. Financial Code, Volume-I and Rules 3(1) and 3(2) of A.P. Civil Services (Conduct) Rules, 1964.

9. The only charge framed against the petitioner and the then Executive Engineer (Electrical) is one and the same. When charge memo was issued to the then Executive Engineer (Electrical), he approached the Tribunal and filed O.A. No. 4315 of 2003 questioning the same on the ground of delay. In view of the allegations made by him, the Tribunal, by order dated 27.10.2006, directed the respondents to complete the disciplinary proceedings within a period of three months from the date of receipt of the order with a specific direction that if the disciplinary proceedings are not completed within the time as prescribed, no further action shall be taken against the charge memo dated 09.01.2001, G.O.Rt. No. 556 dated 02.06.2003 and G.O.Rt. No. 572 dated 22.06.2005. In spite of the timeframe fixed by the Tribunal in the order obtained by the then Executive Engineer (Electrical), when proceedings were not concluded, he approached the Tribunal, again, by filing C.A. No. 543 of 2008 and thereafter orders were issued in G.O.Rt. No. 1523 dated 10-10.2008 dropping further action against him. In the enquiry proceedings, even in the explanation offered by the then Executive Engineer (Electrical), he has stated that Sri D. Srinivas, the petitioner herein, did not prepare the estimates and he has nothing to do with the issuance of tender schedules. The petitioner herein also stated that he did not prepare the estimates and Sri Abdul Gaffer has prepared the same. It is further pleaded by the petitioner that discrepancies, if any, in the tender schedule were bona fide errors and when the same were brought to the notice of the then Executive Engineer (Electrical), tenders were cancelled; as such no loss was caused to the Government. The enquiry officer, in his report, has recorded a finding which reads as under:

The charged officers have argued that there was no loss to the Government, as the tender was cancelled. Actually, the loss was in the form of delay in completion of the hospital building. The EE(G) never took up this work. The work was later completed by the Police Housing Corporation.

10. Having regard to the nature of charge framed against the petitioner in the

disciplinary proceedings, enquiry could have been confined only to show whether any financial loss was caused as alleged to the tune of Rs. 10,616.70 Ps., to the Government due to manipulations alleged in preparation of tender schedules. In spite of the same, the enquiry officer has submitted report exceeding the scope of the enquiry and submitted report with the finding as referred above. Based on the said finding, enquiry officer has held that charges framed against the petitioner as well as the then Executive Engineer (Electrical) were proved. When the charges are same and identical against both officers, there is no reason for dropping proceedings against the Executive Engineer (Electrical) alone who is Higher Officer to that of the petitioner, while imposing punishment on the petitioner who worked as Assistant Engineer (Electrical) during the relevant point of time. Even as per the case put forth by the petitioner, he was not the person who has prepared estimates, but he has only prepared tender schedules. It was his specific case before the Tribunal that if there were any discrepancies in preparation of tender schedules, the same were bona fide errors, but not with an intention either for causing loss or any willful act. In this case, it is to be noticed that allegations relate to the year 1998 and, earlier, based on the ex parte enquiry report submitted to Upa Lokayuktha, a memo was issued and petitioner herein and the then Executive Engineer (Electrical) have submitted their response and thereon proceedings were dropped and further steps were not taken. Thereafter, regular departmental proceedings were initiated by conducting common enquiry against the petitioner and the then Executive Engineer (Electrical). Having regard to the nature of charge which is identical, there is no valid reason for dropping proceedings against the then Executive Engineer (Electrical) only and imposing penalty on the petitioner though enquiry revealed that the then Executive Engineer (Electrical) as well as the petitioner were responsible for the charge framed against them which is identical in nature. In the judgment in the case of Tata Engineering and Locomotive Co. Ltd. (1 supra), the Hon'ble Supreme Court has considered identical situation wherein, against three workmen identical charges were framed, and one of the charged employees was imposed with the punishment of dismissal. In the said judgment, the Hon'ble Supreme Court has held that the same will amount to denial of justice and is discriminatory and offends Articles 14 and 16 of the Constitution. In the said judgment, further, it is held as under:

Since as many as three workmen on almost identical charges were found guilty of misconduct in connection with the same incident, though in separate proceedings, and one was punished with only one month's suspension, and the other was ultimately reinstated in view of the findings recorded by the Labour Court and affirmed by the High Court and the Supreme Court, it would be denial of justice to the appellant if he alone is singled out for punishment by way of dismissal from service.

11. Further, a Division Bench of this Court in an unreported judgment in W.P. No. 23820 of 2008 dated 03.11.2008, in a situation where four employees were charged with identical charges and where all of them were exonerated except

one and when he was imposed with punishment, this Court found that such an action on the part of the respondents therein amounts to discrimination. The aforesaid judgments fully support the case of the petitioner.

12. Inasmuch as the charges framed against the petitioner and the then Executive Engineer (Electrical) are same and identical in all respects and when proceedings are dropped against the co-delinquent officer, i.e. the Executive Engineer (Electrical) there is no reason for imposing punishment on the petitioner. The said discrimination pleaded by the petitioner is sought to be defended by the respondents, pleading that proceedings are dropped against the then Executive Engineer (Electrical) only on account of the order of Tribunal; however, this Court is of the view that directions issued by the Tribunal hold good as regards the petitioner also though he was not party before the Tribunal. It has become common practice to prolong the disciplinary proceedings indefinitely for years together after their initiation, in spite of directions issued by the Government from time to time. One such instruction issued by the Government in G.O.Rt. No. 679, General Administration (Services-C) Department, dated 01.11.2008 is placed on record by the learned counsel for the petitioner. In the said instructions, while reiterating the earlier instructions, the Government directed disciplinary authorities to complete disciplinary proceedings within six months after their initiation and it is further observed therein that in case of any delay in disciplinary proceedings, action shall be initiated against the enquiring authority concerned. In spite of the same, such delays are being continued. Inasmuch as directions were issued by the Tribunal taking note of the delay alleged by the co-delinquent officer to the petitioner, i.e. the Executive Engineer (Electrical) the same also will enure to the benefit of the petitioner. The Tribunal has committed an error on this aspect only on the ground that separate charge memo is issued to the petitioner. As already noticed, though charge memos are separate, but, charge is one and the same against both the officers, i.e. the petitioner and the then Executive Engineer (Electrical); in that view of the matter, there is no reason to impose punishment on the petitioner, while dropping proceedings against the then Executive Engineer (Electrical). Whatever is the reason for dropping the proceedings against the then Executive Engineer (Electrical), the action of the respondents in imposing penalty on the petitioner based on the identical charge is clearly an infraction of Article 14 of the Constitution insofar as the petitioner is concerned. In view of the judgments referred supra, we are of the considered opinion that the impugned order is fit to be set aside on the ground of discrimination.

13. Even with regard to delay, in this case, it is to be noticed that the alleged incident is of the year 1998. Preliminary enquiry was conducted on the complaint filed before the Upa-Lokayuktha by not giving opportunity to the petitioner. Show-cause notice was issued on 09.01.2001, for which explanation was filed and later proceedings were dropped. Thereafter, further regular departmental enquiry is initiated pursuant to the orders of the Government; as such there is delay in initiation and completion of the proceedings. With reference to the allegation of

the petitioner that there is abnormal delay and laches on the part of the disciplinary authority, in the counter-affidavit, an averment is made which reads as under:

Regarding the representation of petitioner to set aside punishment on the ground of inordinate delay in concluding the enquiry, it is submitted that the delay is due to administrative reasons of change of Enquiry Officers necessitated due to expiry of their term of office and in conducting and completing the enquiry and obtaining the enquiry report from enquiry officer and processing further at Government level. Hence, the representation of the petitioner is not correct.

14. This Court is of the view that the defence of the respondents on the allegation of abnormal delay raised by the petitioner is not satisfactory. Except administrative reasons, no other reason is indicated which contributed to delay in disciplinary proceedings. In the case of *M.V. Bijlani v. Union of India* (2 supra) while considering the plea of initiation and conclusion of disciplinary proceedings, the Hon''ble Supreme Court has held as under:

The Tribunal as also the High Court failed to take into consideration that the disciplinary proceedings were initiated after six years and they continued for a period of seven years and, thus, initiation of the disciplinary proceedings as also continuance thereof after such a long time evidently prejudiced the delinquent officer.

15. In the case of *P.V. Mahadevan* (3 supra) the inordinate delay of ten years in initiating and completing enquiry was found fault by the Hon''ble Supreme Court by holding that delinquent employee has already suffered enough on account of disciplinary proceedings. On the said ground, charge memo itself was quashed.

16. Further, in the case of *The Secretary, Min. of Defence and Others Vs. Prabhash Chandra Mirdha*, , the Hon''ble Supreme Court has held that delay in initiating or concluding enquiry proceedings causes prejudice to the delinquent; as such the same is also a ground for quashing the charge itself.

17. Coming to the case on hand, it is to be noticed that the charge relates to the year 1998 and no steps were taken immediately on the subject-matter of the charge. Only pursuant to the complaint lodged against the Executive Engineer (Electrical) alone before the Upa-Lokayuktha, A.P., and basing on the ex parte preliminary enquiry report, proceedings were initiated which were later dropped. Thereafter, regular departmental enquiry is conducted and on one ground or the other the enquiry officers were changed, which is admitted in the counter-affidavit, stating that delay is only on account of administrative reasons. Having regard to the nature of charge and the plea of delay, we are of the considered view that there is abnormal and unexplained delay on the part of the disciplinary authority in completing the enquiry and imposing punishment. Such an action is contrary to the judgments referred above apart from the executive instructions issued by the Government itself. Even for the said reason, the impugned order is liable to be set aside.

18. For the foregoing reasons, the writ petition is allowed and the order dated 02.12.2011 passed in O.A. No. 8278 of 2011 and, further, order dated 04.12.2012 passed in Rev. M.A. No. 3802 of 2011, by the A.P. Administrative Tribunal, Hyderabad, is set aside. Consequently, the final order imposing punishment on the petitioner vide G.O.Rt. No. 734, Transport, Roads & Buildings (Vig. I) Department dated 28.07.2011 is quashed and it is held that the petitioner is entitled to all the consequential benefits. No order as to costs. As a sequel, miscellaneous petitions, if any pending in this writ petition, shall stand closed.