

(2000) 12 AP CK 0077
In the Andhra Pradesh High Court
Case No : Writ Petition No. 2682 of 1994

G. Amrutaiah

APPELLANT

Vs

Member Secretary, Punishing Authority, APSEB, Hyd and
others

RESPONDENT

Date of Decision : 18-12-2000

Acts Referred:

Constitution of India, 1950 — Article 226
Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 — Rule 14, 5

Citation : (2001) 1 ALD 338 : (2001) 1 ALT 552

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Mr. M. Jagannadha Sarma, for the Appellant; Mr. S. Ravindranath, SC for APSEB, for the Respondent

Judgement

1. The petitioner at the relevant time was working as Assistant Engineer in Andhra Pradesh State Electricity Board (hereafter called, "the Board"). By proceedings dated 26-7-1990 Member Secretary of the Board ordered that the petitioner be removed from service with effect from the said date. The petitioner's appeal was dismissed on 5-9-1991 purportedly by the Chairman of the Board as per the proceedings dated 5-9-1991 by which the decision of the Chairman was communicated by the Member Secretary. The petitioner's review petition was also dismissed. Assailing the order of removal, as confirmed by the appellate authority, the petitioner filed the present writ petition praying for a writ of certiorari to quash the order of the disciplinary authority as confirmed by the appellate authority as well as the reviewing authority.

2. The facts leading to filing of this case in brief are as follows. The petitioner was appointed as Assistant Engineer (Electrical) in 1978. In 1982 he was transferred and posted as Assistant Engineer (Maintenance) in 132 KV Sub-Station at Karimnagar. In September, 1988 officials of the Anti Corruption Bureau (ACB), Government of Andhra Pradesh visited the premises of Kakatiya Industrial Training Institute (KITI) which is an educational institution run by Kakatiya

Educational Society (KES). Presumably, on the report of ACB by order dated 11-11-1988 the petitioner was suspended with effect from 13-11-1988. A departmental enquiry was ordered duly appointing the Divisional Engineer as Enquiry Officer. The charge-sheet dated 6-2-1989 against the petitioner levelled four charges. As summarised by the Enquiry Officer they are as follows:

"Charge No. 1: Smt. G. Kamalamrutham, W/o. G.A. Amrutaiah, Assistant Engineer/ Maintenance/132 KV SS/Karimnagar has been the Secretary of the Managing Committee of the private Kakatiya Industrial Training Institute without the permission of APSE Board.

Charge No.2: Sri G. Amrutaiah, Assistant Engineer, Maintenance, 132 KV SS, Karimnagar has been actively participating in the management of the private Kakatiya Industrial Training Institute. He has been collecting the fees personally as can be seen from the signatures on the receipt books. He got himself photographed along with the staff and students of Kakatiya Industrial Training Institute, Karimnagar.

Charge No.3: As seen from the attendance register of 132 KV SS, Karimnagar, Sri G. Amrutaiah, Assistant Engineer/Maintenance/I32 KV SS, is found to be absent from duty from 19-9-1988 to 23-9-1988.

Charge No.4: Certain iron and steel materials as detailed in Annexure-A, were found by ACB, lying in the premises of the private Kakatiya Industrial Training Institute, Karimnagar".

3. During the enquiry on behalf of the Board, Inspector of Police, ACB, panchas, officials of the Board and the Principal of KITI were examined in support of the charges. The petitioner and his wife, who is admittedly the Secretary of KES, were examined as witness of the delinquent officer. Both of them admitted that the petitioner occasionally visited KITI and rendered advice to his wife on honourary basis without taking any remuneration. The Enquiry Officer submitted a report dated 5-6-1989 holding that all the four charges are not proved and observed that the charges may be dropped.

4. Charge Nos.1 and 2 relate to the allegation that the wife of the delinquent officer became Secretary of KES without the permission of the Board and the petitioner actively participated in the management of the KITI. On these charges the Enquiry Officer held that the wife of the petitioner is involved in work of social nature on honourary basis without any remuneration and as such permission of the Board need not be taken by the delinquent officer under Regulation 4 (ix) of APSE Board Revised Conduct Regulations, 1986 (hereinafter called "Conduct Regulations") and that the delinquent officer is involved in honourary work of social nature in helping and advising KES and KITI without any remuneration and hence his involvement does not constitute misconduct as per Regulation 4(ix) of the Conduct Regulations.

5. Charge No.3 imputes misconduct to the petitioner for the alleged unauthorised

absence of duty from 19-9-1988 to 23-9-1988. The Enquiry Officer held that this charge is not proved as there is abundant evidence that the delinquent officer attended to the office on 19-9-1988, 20-9-1988 and 23-9-1988 and applied Casual Leave on 21-9-1988 and 22-9-1988.

6. Charge No.4 contains an imputation that delinquent officer by misusing his official position as Assistant Engineer (Maintenance) of Sub-Station, Karimnagar, procured iron materials from the Board for the benefit of KITI. During the enquiry, the Principal of KITI who was examined as witness for the Board furnished details of voucher numbers for the iron materials to evidence the purchase of the material by the KITI, including voucher items 9 to 11 in the list of materials. The Assistant Divisional Manager of District Stores, Karimnagar sent information to the Enquiry Officer stating that items 1 to 8 in the list of materials used by KITI will not be received in the stores. Having regard to this, the Enquiry Officer held that the materials in Annexure-A to the charge-sheet were not managed to be supplied by the delinquent officer to KITI and accordingly the charge was dropped.

7. The Member Secretary issued a show-cause notice on 9-1-1990 disagreeing with the enquiry report on charges 1, 2 and 4 and proposing further action in accordance with APSE Board Employee's Discipline and Appeal Regulations, 1970 (hereafter called "the Regulations"). However, the disciplinary authority agreed with the Enquiry Officer in regard to the finding on charge No.3 and found that the findings of the Enquiry Officer to drop the charges 1, 2 and 4 are not acceptable. The petitioner sent his explanation to the show-cause notice on 26-2-1990 pleading to drop all the charges and also pleading to consider unblemished service of 21 years while passing the orders. The Member Secretary of the Board by the proceedings dated 26-7-1990 found charges, 1, 2 and 4 proved and accordingly imposed punishment of removal.

8. The petitioner filed appeal under Regulations 13 and 14 of the Regulations to the appellate authority on 8-10-1990 which is dismissed on 5-9-1991. The petitioner's review petition to the Board under Rule 14(a)(iii) was also dismissed. In the writ petition the petitioner challenged the show-cause notice as unlawful, the order of the disciplinary authority as perverse and one based on no evidence and the order of the appellate authority as vitiated by real bias and non-application of mind. In challenge to the show-cause notice dated 9-1-1990 the petitioner contends that when the disciplinary authority is deferring with the Enquiry Officer, the former should afford a full opportunity to the charged employee to meet the case and as the disciplinary authority did not give an opportunity to meet the case on validity of the findings on charges, the order is unsustainable.

9. The respondents filed a counter affidavit denying all the allegations. While reiterating the events leading to the initiation, completion of departmental enquiry, the counter justifies the findings recorded by the disciplinary authority while differing with the findings of the Enquiry Officer. The respondents contend

that the grounds of challenge to the impugned orders are legally untenable. It is stated that the appellate authority considered all the points raised by the petitioner and dismissed appeal by speaking order.

10. The reply affidavit filed by the petitioner seeks to further emphasis the contentions raised in the affidavit enclosing the writ petition. Suffice to notice that in the reply affidavit the petitioner alleges that the disciplinary authority has not assigned any reasons for ignoring the documents relied on by the petitioner in proof of ignorance with regard to Charge No.4.

11. Sri M. Jagannadha Sarma, learned Counsel for the petitioner, submits that charges 1 and 2 do not constitute misconduct as per Regulation 4 of the Conduct Regulations. He submits that there is no Regulation requiring prior permission from the employer for the spouse of an employee to do social work and involve in an educational institution. He also submits that as per Regulation 4(ix) it would be misconduct if an employee engages himself directly or indirectly in any trade or business or undertake any employment for remuneration without previous sanction of the competent authority and that honourary work of social or charitable nature, work of literary, artistic or scientific character can be taken up as employee provided such work does not interfere with his official duties. Having regard to this, the learned Counsel would submit that the charges 1 and 2 do not constitute misconduct as per Regulation 4 (ix) of the Conduct Regulations. The learned Counsel for the petitioner challenges the impugned orders insofar as they concerned with Charge No.4 in the following manner. The findings are based on presumptions and surmises and for this purpose he refers to the charge itself, which proceeds that the delinquent officer is presumed to have managed to utilise the material for the benefit of KITI. The disciplinary authority has placed burden of proof on the delinquent in recording a finding that the delinquent officer has not placed relevant vouchers or documentary proof that the iron and steel material was in fact purchased by KITI. The learned Counsel also refers to the relevant portion in the enquiry report to show that there were vouchers for items 9 to 11 of Annexure -"A" to charge-sheet, that the Assistant Divisional Engineer, Stores, informed that items 1 to 8 would not be received in stores and therefore there is no material and evidence to prove the charge. He submits that "presumption cannot take place of proof" and any finding based on presumption would be perverse. In support of this limb of argument, the learned Counsel relied on the judgments of the Supreme Court in *State of Assam v. Mohan Chandra* AIR 1972 SC 2535 and *Nand Kishore Prasad Vs. State of Bihar and Others*, . The involvement of the petitioner's wife and the petitioner as well in the activities of KITI even taken to be true would not amount to misconduct. The learned Counsel for the petitioner relied on the judgments in *Smith v. Hancock* 1894 Ch.D 377 and *Chandra Kishore v. Accountant General*, U.P. 1968 Lab. IC 823.

12. It is further submitted on behalf of the petitioner that the impugned order of the appellate authority is vitiated by violation of principles of natural justice. This

is highlighted by submitting that when disciplinary authority disagrees with the findings of the Enquiry Officer on all charges, the former before taking a decision has to provide an opportunity of hearing to the delinquent officer and as the procedure is given a go by the order of the disciplinary authority is vitiated rendering itself void. In support of this submission the learned Counsel relied on the judgment of the Supreme Court in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, and Yoginath D. Bagde Vs. State of Maharashtra and Another, .

13. It is also contended that as per Regulation 13 of the Regulations the appellate authority "shall consider" whether the facts on which the order was passed have been established, whether the facts established afford sufficient ground for taking action and whether the penalty is excessive, adequate or inadequate. The appellate authority has not given proper reasons and considered the appeal in a mechanical manner and therefore unsustainable. Reliance is placed on the judgment of the Supreme Court in Ram Chander Vs. Union of India (UOI) and Others, .

14. Lastly it is submitted that the appellate authority relied on the material which is not relevant, in that, the vouchers said to have been tempered were not purchased by the delinquent officer while discharging official duties and therefore reliance placed on them is arbitrary and unreasonable. It is also contended by the learned Counsel for the petitioner that an appeal is provided to the Board under 14(b) to the Chairman. The appeal was initially considered by the Committee constituted under Regulation 10(2)a) of the Regulations (hereinafter called, "the Committee") and later by the Board itself which is not permissible. During consideration by the Committee as well as the Board, the Member Secretary, who passed the order participated in the decision making process and therefore the appellate order is vitiated by the real bias.

15. The learned Standing Counsel for A.P. Transmission Corporation (successor of APSE Board), Sri S. Ravindranath refutes all the contentions. He submits that non-issue of notices and affording hearing to the petitioner by the disciplinary authority does not result in prejudice to the petitioner and in the absence of any prejudice specifically shown the non-compliance with the procedure laid down by the Supreme Court in Punjab National Bank's case (supra) does not vitiate the disciplinary order. He relied on the judgments of the Supreme Court in Asstt. Supdt. of Post Offices and Others Vs. G. Mohan Nair, and Aligarh Muslim University and Others Vs. Mansoor Ali Khan, . He also submits that in any event the order of the original authority is supported by abundant evidence on record and that the order of the appellate authority does not suffer from any defect warranting interference by this Court under Article 226 of the Constitution of India.

16. In view of the rival contentions, the following points arise for consideration.

(1) Whether the appellate order dated 5-9-1991 and the order by the revisional authority dated 1-10-1993 are illegal and liable to be set aside?

(2) Whether the order passed by the disciplinary authority dated 26-7-1990, as confirmed by the appellate authority, is contrary to the law laid down by the Hon"ble Supreme Court in the case of Punjab National Bank (supra)?

(3) To what relief?

In Re Point No.1:

After receiving the enquiry report, the first respondent (Member Secretary) issued a show-cause notice to explain. The petitioner sent his explanation. On the note put up by the office, the Member Secretary endorsed that "on careful consideration, it clearly shows that AO had done benami business of KITI without the permission of the Board and therefore proposed punishment is confirmed. As required under proviso to Regulation 10(2) the file was circulated. On 16-6-1990 the Committee gave concurrence to the punishment proposed by the first respondent. Accordingly, the impugned order dated 26-7-1990 was passed. The petitioner sent up appeal against the orders of the Member Secretary. After receiving the appeal petition, office put up note. As per Regulation 14(b) Chairman is the appellate authority against the orders passed by the Member Secretary. Nonetheless, curiously, the file was circulated to Director (Personnel); Member (D&RE); Member Secretary and the Chairman. The Director (Personnel) endorsed the office note without any comment and the Member (D&RE) endorsed that "the appeal does not merit consideration" whereas the Member Secretary endorsed to the effect that "passed orders as per the order of the disciplinary authority". Then this file was circulated to the Chairman who directed that the issue be discussed in the "internal Board" meeting. Accordingly, in its meeting held on 15-3-1991 the internal Board discussed and decided and it was decided to reject the appeal preferred by the petitioner vide item No.49. Again the file was put up to the Chairman with the office note for passing orders in view of the decision taken in the internal Board meeting. Thereafter, the Chairman rejected the appeal.

17. Very peculiar administrative procedure was adopted in disposing of the appeal of petitioner. Regulation 14(b) was followed more in breach and in any event the appellate order is not in accordance with Regulation 15(1) of the Regulations. When the Chairman is the designated appellate authority, it was circulated to all the members of the internal Board and the matter was discussed in its meeting. The Chairman disposed of the appeal without due application of mind in a mechanical manner as decided in the internal Board meeting. From a reading of Regulations 14(b) and 15 it is not possible to accept the contention of the learned Standing Counsel for A.P. TRANSCO that the appeal was disposed of in accordance with law. In my considered opinion the Chairman has not even looked into the appeal petition, the Enquiry Officer's report, the order of the disciplinary authority and other explanations submitted by the petitioner. As already noticed the appellate authority shall have to consider the appeal of the petitioner with reference to the facts on which the order is passed, with reference to the evidence and with reference to proportionality of the punishment. AH

these things are absent in the appellate order. Further, when the file was circulated at the appeal stage, the same was also put up to Member Secretary and he participated in the internal Board meeting. Hence, the appellate authority order is also vitiated by real bias. It is well settled that when the order is vitiated by bias, unless it is waived by the aggrieved party, the same suffers from incurable defect and it is liable to be set aside. Accordingly, the appellate order and the revisional order, which merely confirmed the appellate order, are set aside as they are not in accordance with Regulation 14(b) read with Regulation 15 of the Regulations. Point No.1 is answered in favour of the petitioner.

In Re Point No.2:

It is well accepted that when the law provides for appeal against an order of original/primary authority on the exercise of appellate power, the original order merges in the appellate order. In view of the finding on Point No.1, generally speaking nothing more is required. However, in a matter like this, where the allegation is that the original authority did not follow the principle laid down by the Supreme Court in Punjab National Bank's case (supra) in the event this Court finds substance in the submission, the question arises as to how the relief is to be moulded. From this point of view it is necessary to examine the question though at this stage, the Court is not inclined to go into the question whether there is no evidence in support of the charges and whether misconduct is made out.

18. As already noticed, the learned Counsel for the petitioner Sri M. Jagannadha Sarma submits that when the disciplinary authority disagrees with the findings of the Enquiry Officer before arriving at any decision, the disciplinary authority is bound to give an opportunity of hearing to the delinquent and that post-decisional opportunity by issuing a show-cause notice will not cure the defect. The principle is well settled in Punjab National Bank's case (supra). Three-Judge Bench of the Hon'ble Supreme Court authoritatively held that when the disciplinary authority differs with the view of the Enquiry Officer and propose to come to a different conclusion there is no reason as to why an opportunity of hearing should not be granted. It was farther observed that "it will be most unfair and iniquitous that where charged officer succeeded before the Enquiry Officer is deprived of representing to the disciplinary authority before that authority differs with the Enquiry Officer's report. The following observations of the Supreme Court are apposite:

"If the Inquiry Officer had given an adverse finding as per Karunakar's case (AIR 1994 SCW 1050) (supra) the first stage required an opportunity to be given to the employee to represent to the disciplinary authority even when an earlier opportunity had been granted to them by the Inquiry Officer. It will not stand to reason that when the finding in favour of the delinquent officer is proposed to be over-turned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the

authority which proposes to decide against the delinquent officer must give him a hearing. When the inquiring officer holds the charges to be proved then that report has to be given to the delinquent Officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent Officer. When, like in the present case, the inquiry report is in favour of the delinquent Officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings what is of ultimate importance is the finding of the disciplinary authority".

19. The above principle was again reiterated by the Supreme Court in Yoginath D. Bagde's case (supra). In this case, the delinquent was a Judicial Officer. Charges of indulging in corrupt practices were framed against him. The Enquiry Officer appointed by the High Court submitted a report holding that the charges against the delinquent Officer are not proved. The disciplinary committee of the High Court considered the report of the Enquiry Officer and disagreeing with the findings held that the charges are proved against him. A notice along with copy of the enquiry Officer's report was sent to the delinquent to show-cause to why the punishment of dismissal from service should not be imposed. Later he was dismissed from service. The dismissal order was challenged in the writ petition. The writ petition was dismissed by the High Court. Before the Supreme Court it was contended that the dismissal order by the High Court is contrary to the provisions of Article 235 of the Constitution as the matter was not placed before Full Court of all sitting Judges and that when the disciplinary authority is disagreeing with the Enquiry Officer they ought to have given an opportunity of hearing. The Supreme Court held that the decision of the disciplinary committee which is authorised by the Full Court does not go contrary to Article 235 of the Constitution of India. It was also held that by not giving an opportunity of hearing the High Court (disciplinary authority) acted contrary to the principle in the case of Punjab National Bank (supra) (Para 37 in 1999 SC (L&S)) the Supreme Court observed as under.

"After having taken that decision, the members of the Disciplinary Committee merely issued a notice to the appellant to show-cause against the major punishment of dismissal mentioned in Rule 5 of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. This procedure was contrary to the law laid down by this Court in the case of Punjab National Bank in which it had been categorically provided, following earlier decisions, that if the disciplinary authority does not agree with the findings of the enquiry Officer that the charges are not proved, it has to provide, at that stage, an opportunity of hearing to the delinquent so that there may still be some room left for convincing the disciplinary authority that the findings already recorded by the enquiry Officer were just and proper".

20. In view of the judgment of the Supreme Court it is not possible to accept the

contention of the learned Counsel for the respondents" that no prejudice is caused to the petitioner. His reliance on the judgment of the Supreme Court in Aligarh Muslim University's case (supra) and the judgment of this Court in Ch. Nagender Vs. Registrar (Management), High Court of A.P. and another, , is of no avail insofar as this case is concerned.

21. Accordingly, it should be held that the order of the disciplinary authority is vitiated as the same is contrary to the principle in the case of Punjab National Bank. Therefore, the matter has to be remitted back to the disciplinary authority to take action in accordance with law. Admittedly, the petitioner was placed under suspension on 11-11-1988 and continued to be under suspension. He was removed from service with effect from 26-7-1990. Now that this Court has taken a view that the order of the disciplinary authority suffers from illegality what should be the consequence of the same. Regulation 11 of the Regulations deals with "suspension" and clause (d) of the same Regulation reads as under:

"11(d) Where a penalty of dismissal, removal or compulsory retirement from service imposed upon an employee of the Board is set aside or declared or rendered void in consequence of or by a decision of a Court of law and the disciplinary authority, on a consideration of the circumstances of the case decides to hold a further inquiry against him on the allegations on which the penalty of dismissal/removal or compulsory retirement was originally imposed, the employee shall be deemed to have been placed under suspension by the appointing authority from the date of the original order of dismissal, removal or compulsory retirement and shall continue to remain under suspension until further orders".

22. Sri Ravindranath, however, invited attention of this Court to the judgment of the Supreme Court in Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc., and submits that in every case of High Court intervention in a disciplinary matter, the delinquent Officer cannot be conferred the benefit of paying suspension allowance. He relied on the following passage of the said case.

"The question whether the employee would be entitled to the back wages and other benefits from the date of his dismissal to the date of his reinstatement if ultimately ordered should invariably be left to be decided by the authority concerned according to law, after culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be reinstated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the reinstatement and to what benefits, if any and the extent of the benefits, he will be entitled. The reinstatement made as a result of the setting aside of the inquiry for failure to furnish the report should be treated as a reinstatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held".

23. The above observations are made in different context and they have no

application to the facts of this case. The learned Counsel for the petitioner has placed reliance on another judgment of the Supreme Court in Divisional Personnel Officer, Western Railway, Kota v. Sunder Das 1981 (3) SLR 142 and submits that when the departmental Rules themselves provide for the manner of treating the period from the date of removal/dismissal as on suspension, this Court has to give effect to the Statutory Regulation. In the said case, three-Judge Bench of the Supreme Court dealing with Rule 1706(4) of the Indian Railway Establishment Code which is in pari materia with Regulation 11(d) of the Regulations, held that in all cases where the order of disciplinary authority is set aside, the sub-clause (4) of Rule 1706 will be attracted and there cannot be any exception to that Rule. Applying the same and having regard to the facts and circumstances of this case, I deem it proper to hold that the petitioner would be entitled to subsistence allowance at 75% of the wages for the period of suspension until final orders are passed. It is also made clear that the question whether the petitioner would be entitled to draw subsistence allowance at revised pay scales after 1990 would ultimately depend on the final orders that might be passed by the disciplinary authority as well as the appellate authority as the case may be.

24. In the result, the writ petition is allowed. The impugned orders of the disciplinary authority and the appellate authority are set aside and the matter shall be remitted back to the disciplinary authority to take action in accordance with the principle laid down in Punjab National Bank's case (supra) and the petitioner shall be deemed to be under suspension under Regulation 11(d) with effect from 11-11-1988 and for the period during which he is not paid subsistence allowance after July, 1990 he shall be paid subsistence allowance as indicated hereinabove. There shall be no order as to costs.