
(2005) 03 AP CK 0003
In the Andhra Pradesh High Court
Case No : Writ Petition No. 672 of 2004

G. Chenna Reddy

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 04-03-2005

Acts Referred:

Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 — Rule 20

Public Servants (Inquiries) Rules, 1950 — Rule 10, 21, 21(12), 21(2), 21(20)

Citation : (2005) 3 ALD 887

Hon'ble Judges : P.S. Narayana, J;G. Bikshapathy, J

Bench : Division Bench

Advocate : Y. Venkat Sastry, for the Appellant; Government Pleader for Services-II, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—The writ petition is filed by the unsuccessful applicant as against an order made in O.A. No. 8965/ 98 dated 4-12-2003 on the file of A.P. Administrative Tribunal in short referred to as "Tribunal" hereinafter wherein the proceedings issued in G.O. Rt. No. 1044, T.R. and B(Ser. T.3) Department, dated 28-11-1998 had been assailed.

2. Sri Venkata Sastry, the learned Counsel representing the writ petitioner, in detail had taken this Court through the respective pleadings of the parties before the Tribunal, the impugned order and had pointed out that the whole enquiry is vitiated for the reason that the same had not been conducted in accordance with the A.P. Civil Services (Classification, Control and Appeal) Rules, 1991, in short referred to as "present Rules" hereinafter and had been conducted in accordance with the A.P. Civil Services (Classification, Control and Appeal) Rules, 1963, hereinafter referred to as "old Rules" and hence the Counsel would maintain that the whole proceedings are vitiated. The learned Counsel also had pointed out to Rule 20 of the present Rules dealing with Procedure for imposing major penalties

and would comment that in the light of the procedure which had been adopted in the conduct of enquiry applying the old Rules, serious prejudice had been caused to the writ petitioner and this question was not given serious consideration by the Tribunal though the said question was just touched by the Tribunal. The Counsel also would point out that in the present case, the appellate authority made the order which had been impugned in the O.A. and hence the writ petitioner was deprived of an opportunity of having a remedy by way of an Appeal and on this ground also the proceedings are vitiated. The Counsel in all fairness would submit that this ground as a specific ground no doubt had been raised but the general ground that the procedure had not been followed alone had been canvassed.

3. Per contra, the learned Government Pleader for Services-II would contend that in the light of the reasons recorded by the Tribunal it cannot be said that the Tribunal had gone wrong in any way in negating the contentions advanced by the writ petitioner. The learned Counsel also pointed out that the show-cause notice dated 17-9-1993 duly enclosing a copy of the report of the Enquiry Officer had been furnished to the applicant and the applicant submitted his explanation and the same was acknowledged by the appellant on 29-9-1993 who in turn submitted an explanation on 30-9-1993 and after consulting the A.P. Public Service Commission which had communicated their concurrence on 16-10-1998, the order which had been impugned before the Tribunal had been made. Even if the present Rules are taken into consideration, there is no irregularity which would vitiate the proceedings as such. The Counsel also would maintain that in view of the limitations to be observed by this Court while interfering with such orders made by the Tribunal exercising the powers of judicial review, this is not a fit case which deserves to be disturbed at the hands of this Court.

4. Heard the Counsel.

5. The main ground of attack is that the whole enquiry and the proceedings are vitiated for non-compliance of the provisions of Rule 20 of the present Rules. Several details in this regard no doubt had been pointed out. Incidentally yet another question that the appellate authority had made the order which had been impugned in the O.A. also had been canvassed. The writ petitioner was initially appointed as Additional Assistant Engineer, now called as Assistant Engineer on 16-12-1976 under the Engineer in Chief, Roads and Buildings (Administration) Hyderabad, the 2nd respondent herein, and he was subsequently promoted as Draughtsman, Grade-II on 3-2-1981 and later promoted as Deputy Executive Engineer on 16-3-1986. While working so, the writ petitioner was posted on deputation to the 3rd respondent Corporation as Deputy Executive Engineer (Housing) at Nagarkurnool sub-division in Mahabubnagar District. While on deputation the writ petitioner was to supervise the construction of 5000 houses in about 140 colonies in 16 Mandals in Nagarkurnool sub-division between 16-3-1986 to 31-5-1988. The construction of houses was taken up under the scheme by involving the beneficiaries without

involving the contractors. A colony committee of the beneficiaries was formed who elected one among them as President. The construction activity was carried on involving the President of the said beneficiaries of the Housing Corporation referred to supra. On completion of the said construction work, the writ petitioner requested for repatriation to his parent Department on 24-3-1988 and later on 8-3-1990 but no action had been taken and no reasons had been given why his request was not being considered. While so, the writ petitioner was placed under suspension by proceedings dated 9-7-1990 by the 3rd respondent and it is the case of the writ petitioner that the actual default was committed by yet another Assistant Engineer who was in-charge of the construction of the colony at Lakshmapur. Hence the writ petitioner filed O.A.No. 36057/91 before the Tribunal and a direction to serve charge memo and for completion of enquiry had been granted. Subsequent thereto the charge memo dated 18-9-1991 was issued by the Joint Collector, Mahabubnagar/Enquiry Officer and the writ petitioner filed his explanation and the writ petitioner prayed for oral enquiry, but no oral enquiry was conducted and none of the witnesses were cross-examined as per the Rules. The writ petitioner was however reinstated by orders in G.O. Rt. No. 474, dated 22-5-1992 and he was issued posting orders by the 3rd respondent on 22-9-1992 and subsequent thereto the writ petitioner was repatriated to the 2nd respondent on 29-6-1993. The writ petitioner was given posting order as Deputy Executive Engineer at Bhongir on 13-12-1993 and thereafter a show-cause notice was issued by the 1st respondent in Memo No. 1067/S.I.3/90-14 dated 17-9-1993 stating that it was decided to impose a major punishment besides recovery of Rs. 4,21,026/- for alleged irregularities. The writ petitioner had given a reply to the said show cause notice taking a stand that the entire enquiry proceedings are vitiated as being contrary to the present Rules and the procedure prescribed thereunder, the same being violative of principles of natural justice too. It is further stated to the surprise of the writ petitioner he had received the impugned proceedings in G.O. Rt. No. 1044, dated 28-11-1998 inflicting the punishment of dismissal from service besides recovery of the amount stated supra. The said action was taken without considering the explanation and without following the procedure under the present Rules. Hence, questioning the same, the aforesaid O.A. had been preferred.

6. At Paras 10 and 11 of the order impugned in writ petition made by the Tribunal, it was observed :

"After receipt of the Enquiry Officer's report, the Government have issued a show-cause-notice dated 17-9-1993 duly enclosing a copy of the report of the Enquiry Officer to the applicant. The applicant had submitted his explanation to the same. This was acknowledged by the applicant on 29-9-1993. He submitted his explanation on 30-9-1993. After consulting the A.P. Public Service Commission which had communicated the concurrence on 16-10-1998, final impugned orders were issued.

Thus, it is seen that so far as the procedure laid down under A.P.C.S. (CCA) Rules

1991 is concerned, there is no irregularity which vitiates the proceedings making them null and void. The findings of the Enquiry Officer are based upon the personal inspections carried out in the presence of the applicant. This Tribunal cannot step into the shoes of the Enquiry Officer when his report is based on solid evidence.

Regarding quantum of punishment it is settled law that it is purely within the domain of the disciplinary authority and in this case the Government issued the final orders imposing the punishment of dismissal. There are no extraordinary circumstances warranting any interference in the quantum of punishment."

The present Rules were published in A.P. Gazette, Part-I, Ext.No. 235 dated 1-7-1992 and they came into force on 1-10-1992. Reliance also was placed on Union of India v. Rati Pal Saroj 1998 (1) SLR 782, K. Vijaya Lakshmi v. Union of India 1998 (8) Supreme 484, Radhey Shyam Gupta v. U.P. State Agro Industries Corporation 1998 (9) Supreme 504 : 1999 (1) ALD 19, State of U.P. v. Ramesh Chandra Mangalik 2002 (2) Supreme 191, Nagaraj Shivarao Karjagi v. Syndicate Bank, Head Office, Manipal 1991 (2) SLR 784, N.K. Kudva v. Syndicate Bank 2002 (1) SLR 55, H.S. Mishra v. Secretary/General Manager and Mau-Aima Sahakari Katai Mills Ltd. 2002 (3) SLR 709, in this regard.

7. On a careful scrutiny of the order which had been impugned in the O.A. and also the findings recorded by the Tribunal in this regard, it is not in serious dispute or controversy that the proceedings had been conducted in accordance with the old Rules despite the specific objection taken by the writ petitioner in this regard. Rule 20 of the present Rules dealing with Procedure for imposing major penalties falling under Part-V reads as hereunder:

(1) No order imposing any of the penalties specified in Clauses (vi) to (x) of Rule 9 shall be made except after an inquiry held, as far as may be in the manner provided in this rule and Rule 21 or in the manner provided by the Public Servant (Inquiries) Act, 1850 (Central Act 37 of 1850) or the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Act, 1983, where such inquiry is held under the said Acts.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into, or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to inquire into the truth thereof.

Explanation:--Where the disciplinary authority itself holds the inquiry, any reference made in Sub-rule (7) to Sub-rule (20) and in Sub-rule (22) to the inquiring authority shall be construed as a reference to the disciplinary authority.

(3) Where it is proposed to hold an inquiry against a Government servant under this rule and Rule 21, the disciplinary authority or the cadre controlling authority who is not designated as disciplinary authority and who is subordinate to the

appointing authority can draw up or cause to be drawn up--

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge.

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain--

(a) a statement of all relevant facts including any admission or confession made by the Government servant;

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct" or misbehaviour and a list of documents and witnesses by which each article of charges is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person.

(5) (a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charges as are not admitted, or, if it considers it necessary so to do, appoint under Sub-rule (2), an inquiring authority for the purpose, and where all the articles of charge have been admitted by the Government servant in his written statement of defence, the disciplinary authority shall record its findings on each charge after taking such evidence as it may think fit and shall act in the manner laid down in Rule 21.

(b) If no, written statement of defence is submitted by the Government servant, the disciplinary authority may itself inquire into the articles of charge or may, if it considers it necessary to do so, appoint, under Sub-rule (2) an inquiring authority for the purpose.

(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

(6) The disciplinary authority shall, where it is not inquiring authority, forward to the inquiring authority--

(i) a copy of the articles of charge and the statement of the imputations of misconduct or misbehaviour;

(ii) a copy of the written statement of defence, if any, submitted by the Government Servant;

(iii) a copy of the statements of witnesses, if any, referred to in Sub-rule (3);

(iv) evidence proving the delivery of the documents referred to in Sub-rule (3) to the Government Servant; and

(v) a copy of the order appointing the "Presenting Officer".

(7) The Government Servant shall appear in-person before the inquiring authority on such day and at such time within fifteen working days from the date of receipt by him of the articles of charge and the statement of the imputations of misconduct or misbehaviour, as the inquiring authority may, by a notice in writing, specify in this behalf or within such further time, not exceeding fifteen days, as the inquiring authority may allow.

(8) (a) The Government Servant may take the assistance of any other Government Servant to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the disciplinary authority is a legal practitioner, or, the disciplinary authority, having regard to the circumstances of the case so permits:

Provided that no member of service dealing in his official capacity with the case of inquiry relating to the person charged shall be permitted by the Inquiry Officer or by any officer to whom an appeal may be preferred to appear on behalf of the person charged before the enquiry officer;

Provided further that the Government Servant may take the assistance of any other Government Servant posted at any other station, if the inquiring authority having regard to the circumstances of the case, and for reasons to be recorded in writing; so permits.

Note :--(1) The Government Servant shall not take the assistance of any other Government Servant posted who has pending two disciplinary cases on hand in which he has to give assistance.

(2) The Government Servant shall not take the assistance of any other Government Servant who is dealing in his official capacity with the case of inquiry relating to the Government Servant charged.

(b) The Government Servant may also take the assistance of retired, Government Servant to present the case on his behalf, subject to such conditions as may be specified by the Government from time to time by general or special order person this behalf.

(9) If the Government servant who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the inquiring authority such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiry authority shall record the plea, sign the record and obtain the signature of the Government Servant thereon.

(10) The inquiry authority shall return his findings of guilty in respect of these articles of charge to which the Government Servant pleads guilty.

(11) The inquiry authority shall, if the Government Servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government Servant may, for the purpose of preparing his defence.

(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in Sub-rule (3).

(ii) submit a list of witnesses to be examined on his behalf.

Note :--If the Government Servant applies orally or in writing for the supply of copies of the Statements of witnesses mentioned in the list referred to in Sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the disciplinary authority.

(iii) gave a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow for the discovery or production of any documents which are in the possession of Government but not mentioned in the list referred to in Sub-rule (3).

Note :--The Government Servant shall indicate the relevance of the documents required by him to be discovered or produced by the Government.

(12) The inquiring authority shall, on receipt of the notice for the discovery or production of documents, forward the same or copies thereof to the authority in whose custody or possession the documents are kept, with a requisition for the production of the documents by such date as may be specified in such requisition:

Provided that the inquiring authority may for reasons to be recorded by it in writing, refuse to requisition such of the documents as are, in its opinion, not relevant to the case.

(13) On receipt of the requisition referred to in Sub-rule (12), every authority having the custody or possession of the requisitioned documents, shall produce the same before the inquiring authority, and the requisitioning of the documents can be done either at the instance of the Member of the Service or by the inquiring authority suo motu :

Provided that if the authority having the custody or possession of the requisitioned documents is satisfied for reasons to be recorded by it in writing that the production of all or any of such documents would be against the public interest or security of the State, it shall inform the inquiring authority accordingly and the inquiring authority shall on being so informed, communicate the information to the Government Servant and withdraw the requisition made by it for the production or discovery of such documents;

Provided further that if such documents are not produced as evidence and if they are sent only for the perusal of inquiring authority, the inquiring authority shall have the power to take it to a higher authority stating that on a perusal of a particular document it finds nothing in it to warrant claiming privilege.

(14) On the date fixed for the inquiry, the oral and document evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer and may be cross-examined by or on behalf of the Government Servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of the inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

(15) If it shall appear necessary before the closure of the case on behalf of the disciplinary authority, the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government Servant or may itself call for new evidence or recall and re-examine any witness and in such case the Government Servant shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the inquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which the inquiry is adjourned. The inquiring authority shall give the Government Servant an opportunity of inspecting such documents before they are taken on the record. The inquiring authority may also allow the Government Servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary in the interests of justice.

Note :---New evidence shall not be permitted or called for, or any witness shall not be recalled to fill up gap in the evidence. Such evidence may be called for only when there is an inherent lacuna or defect in the evidence which has been produced originally.

(16) When the case for the disciplinary authority is closed, the Government Servant shall be required to state his defence orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the Government Servant shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer, if any, appointed.

(17) The evidence on behalf of the Government Servant shall then be produced. The Government Servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government Servant shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority.

(18) The inquiring authority may, after the Government Servant closes his case,

and shall, if the Government Servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government Servant to explain any circumstances appearing in the evidence against him.

(19) The inquiring authority may, after the completion of the production of evidence, hear the Presenting Officer, if any appointed, and the Government Servant, or permit them to file written briefs of their respective cases, if they so desire.

(20) If the Government Servant to whom a copy of the articles of charge has been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority, or otherwise fails or refuses to comply with the provisions of this rule, the inquiry authority may hold the inquiry ex parts.

(21) (a) Where a disciplinary authority competent to impose any of the penalties specified in Clauses (i) to (v) of Rule 9 and in Rule 10 but not competent to impose any of the penalties specified in Clauses (vi) to (x) of Rule 9, has itself inquired into or caused to be inquired into the articles of any charge and that authority, having regard to its own findings or having regard to its decision on any of the findings of any inquiring authority appointed by it, is of the opinion that the penalties specified in Clause (vi) to (x) of Rule 9 should be imposed on the Government Servant, that authority shall forward the records of the inquiry to such disciplinary authority as is competent to impose the last mentioned penalties.

(b) The disciplinary authority to which the records are so forwarded may act on the evidence on the record or may, if it is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, recall the witnesses and examine, cross-examine and re-examine the witnesses and may impose on the Government Servant such penalty as it may deem fit in accordance with these rules.

(22) Whenever an inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has and which exercises, such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor, or partly recorded by its predecessor, and partly recorded by itself:

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interests of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided.

(23) (i) After the conclusion of the inquiry, a report shall be prepared and it shall contain--

- (a) the articles of charge and the statement of the imputations of misconduct or misbehaviour;
- (b) the defence of the Government Servant in respect of each article of charge;
- (c) an assessment of the evidence in respect of each article of charge;
- (d) the findings on each article of charge and the reasons therefor;

Explanation :--If in the opinion of the inquiring authority the proceedings of the inquiry establish any article of charge different from the original articles of the charge, it may record its findings on such article of charge:

Provided that the findings on such article of charge shall, not be recorded unless the Government Servant has either admitted the facts on which such article of charge is based or has had a reasonable opportunity of defending himself against such article of charge.

(ii) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority the records of inquiry which shall include--

- (a) the report prepared by it under Clause (i);
- (b) the written statement of defence, if any, submitted by the Government Servant;
- (c) the oral and documentary evidence produced in the course of the inquiry;
- (d) written briefs, if any, filed by the Presenting Officer of the Government Servant or both during the course of the inquiry, and
- (e) the orders, if any, made by the disciplinary authority and inquiring authority in regard to the inquiry.

Explanation :--It is not necessary to have an inquiry in the manner provided for in this rule or to hear in-person in the case of reduction of rank in seniority (A and B lists) of Constables fit for promotion as Head Constables in the Andhra Pradesh Police Subordinate Service or Andhra Pradesh Special Armed Police Service.

When inflicting major penalty of a kind of this nature, when the present Rules came into force as already specified supra, it is needless to say that the authorities conducting enquiry may have to follow the said procedure. On the ground that there may not be any substantial variance in this regard when specific objection had been taken at the earliest point of time by the writ petitioner/applicant the said ground cannot be totally ignored. Hence, in the light of the same, this Court is well satisfied that the impugned proceeding in the O.A. is definitely vitiated and the Tribunal erred in coming to the conclusion that the said order can be sustained. Yet another submission was made in this regard placing reliance on Surjit Ghosh Vs. Chairman and Managing Director, United

Commercial Bank, and others, , that in disciplinary proceedings, exercising powers by the authority higher than the disciplinary authority can be discriminatory. This ground was not taken as a specific ground to the effect that the appellate authority in fact had made the order impugned in the O.A. depriving the writ petitioner/applicant to have a remedy by way of Appeal, in the light of the specific ground taken at the earliest point of time that the disciplinary proceedings cannot be proceeded with except in accordance with the present Rules, this Court is well satisfied that the impugned order made by the Tribunal cannot be sustained and the same is liable to be quashed and accordingly the same is hereby quashed. It is needless to observe that the authorities are at liberty to initiate proceedings in accordance with the present Rules, if otherwise law permits them to do so in the light of the subsequent events.

8. Accordingly, the writ petition is hereby allowed. No costs.