
(1968) 03 AP CK 0017

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1874 of 1965

M. Chinnappa Reddy

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 28-03-1968

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2)

Citation : AIR 1969 AP 234

Hon'ble Judges : Gopalrao Ekbote, J

Bench : Single Bench

**Advocate : P. Chennakesava Reddy and K. Parvateesam, for the Appellant;
V.V.L. Narasimha Rao and Govt. Pleader, for the Respondent**

Judgement

1. This is an application for the issue of a writ of certiorari to quash the order of the Sub-Collector, Rajampet, dated 7-3-1965, as confirmed by the District Collector, Cuddapah, and the Board of Revenue.

2. The Petitioner is the hereditary village Munsif of Utukur Village, Rajampet Taluk, Cuddapah District. He was performing his duties accordingly. While so, on 6-5-1964, charges were framed against him by the Sub-Collector, Rajampet, for misappropriation of Rs. 120 collected on 13-8-1961 was deposited on 2-11-1961. And thirdly, he remained absent without obtaining leave. The petitioner was directed to submit his explanation. After some dilly dallying on his part, finally he submitted the explanation. In his explanation, he said that the amount of Rs. 274-12 p. was deposited by him on 12-9-1963 under challan No. 684/5 in the Sub-Treasury. In regard to the temporary misappropriation, he stated that he had given a receipt in advance and not actually collected the amount. In regard to the third charge, he stated that he never remained absent without any leave. He wanted the witnesses to be cross-examined and their evidence recorded in his presence. The Sub-Collector finding himself unable to make the enquiry directed the Tahsildar to conduct the enquiry. The Tahsildar, without information to the petitioner, conducted confidential enquiry and submitted a confidential

report to the Sub-Collector. On the basis of this report, a copy of which was not given to the petitioner, the petitioner was removed from service by the order of the Sub-Collector dated 7-3-1965. He found the petitioner guilty of all the charges.

3. On appeal to the Collector, the Collector dismissed the appeal on 24-5-1965 concurring with the opinion of the Sub-Collector. A further appeal to the Board of Revenue, therefore, was carried by the petitioner. The Board of Revenue, by its order dated 23-9-1965, thought that while charges 2 and 3 were trivial, in its opinion. the first charge was proved. In that view, the Board of Revenue concurred with the opinions of the two authorities below. It is this concurrent view of all the officers that is now challenged in this writ petition.

4. The only contention raised by Sri. P. Chennakesava Reddy, the learned counsel for the petitioner, is that the charge memo served upon the petitioner indicates the proposed punishment of dismissal from service. It is a gross violation of the procedure contemplated under the rules and is contrary to the provisions of Article 311 of the Constitution. The Sub-Collector had prejudged the issue and consequently, the whole proceeding is vitiated. In support of this contention, he relied upon the following decisions: S. Manickam Vs. Superintendent of Police and Others, ; Mohan Das v. Suptdt. of Police, Khammameth;, 1967 1A WR 156; and State of Andhra Pradesh v. K. H. Khan, 1967 2 A WR 121. Although this contention has not been raised anywhere before any of the tribunals, nor was it raised specifically in the petition, even then I allowed the learned advocate to raise that point because, in my opinion, that goes to the very root of the question. It is now fairly settled that at the initial stage when charges are framed and served upon the delinquent officer, the punishing authority or the inquiring officer should not propose what punishment ultimately he is to be given. That is not the stage when any opinion can either be formed or expressed. It amounts to prejudging the issue, which is always likely to create misapprehension in the mind of the delinquent officer. It is only at the stage when after a proper enquiry the punishing authority forms an opinion that the accused officer has committed the offence that he could propose the punishment and ask the delinquent officer to explain as to why that punishment should not be imposed. At the initial stage, if the charge framed indicates the proposed punishment, it vitiates the proceedings. The abovesaid decisions clearly decide that point, and with respect, I follow those decisions.

5. The learned Advocate for the Government however, invited my attention to A.N. D'silva Vs. Union of India (UOI), and argued that since this decision was not brought to the notice of the learned Judges who decided those cases, I should hold that the said decisions have not correctly laid down the proposition of law. I do not think that these decisions are in any way inconsistent with the Supreme Court decision. What had happened in that case was that the appellant therein was an employee of the Government of India in the Posts and Telegraphs Department and held the post of Divisional Engineer, Telegraphs, at Agra. On

September 18, 1948, he was suspended from service and a charge-sheet was delivered to him. The appellant was called upon to submit his defence to the charges to the inquiring officer named therein. The appellant was further asked to show cause why in the event of charge (I) being proved, he should not be dismissed from Govt. service, and in the event of charge (ii) being proved, he should not be permanently degraded to the rank of Electrical Supervisor or awarded any other lesser penalty. An objection was taken before the Supreme Court that the punishment proposed in the charge-sheet was not removal for the charge for which he had in truth been found guilty and therefore the order of punishment amounted to imposing a punishment amounted different from the one which it was originally contemplated to pass against him. While deciding this point, Shah J., who wrote the opinion, observed as follows:

"In the communication addressed by the Enquiry Officer the punishment proposed to be imposed upon the appellant if he was found guilty of the charges could not properly be set out. The question of imposing punishment can only arise after the enquiry is made and the report of the Enquiry Officer is received. It is for the punishing authority to propose the punishment and not for the Enquiry Authority. The latter has, when so required, to appraise the evidence, to record its conclusion and if it thinks proper to suggest the appropriate punishment. But neither the conclusion on the evidence nor the punishment which the enquiring authority may regard as appropriate is binding upon the punishing authority. In the present case, after the report of the Enquiry Officer was received, the appellant was called upon to show cause against his proposed dismissal from service. After considering the representation made by the appellant, the President came to the conclusion that not dismissal but removal from service was the appropriate punishment. In imposing punishment of removal, the President did not violate the guarantee of reasonable opportunity to show, cause against the action proposed to be taken against the appellant. The appellant was told about the action proposed to be taken and he was afforded an opportunity to make his defence. Thereafter a lighter punishment was imposed. There is nothing on the record to show that the President found the appellant guilty of the second charge and imposed punishment proposed by the Enquiry Officer for the first charge"

6. It would be clear that the supreme Court was not concerned with the argument as to whether the inquiring officer or the punishing authority can at the first stage when charge-sheet is delivered to the delinquent officer propose punishment, and if he so proposes, what is the effect of it on the enquiry conducted thereafter? The argument on the other hand before the Supreme Court was that the punishment given was not the same as was originally proposed by the Enquiry Officer. That is not the point urged before me here. The learned Judges took the view that it is not for the inquiring officer to propose any punishment, and even if he had proposed the punishment in his report, it is for the punishing authority to take a proper view and then propose the punishment to the delinquent officer. That is his bounden duty at the second stage. I do not,

therefore, consider that the Supreme Court in any manner has decided anything contrary to the decisions relied upon by the learned Advocate for the petitioner. Following the abovesaid decisions of this Court. I would, therefore, hold that the proceedings in this case are vitiated and cannot be upheld. It is open to the Sub-Collector to conduct a fresh enquiry, if he desires to so conduct, and pass necessary order after following the procedure laid down by law.

7. The writ petition, therefore, is allowed and the impugned order quashed. In the circumstances, however, I make no order as to costs.

NB/VBBAA

8. Petition allowed.