

(2002) 06 AP CK 0040

In the Andhra Pradesh High Court

Case No : Writ Petition No. 14358 of 2001

Principal Secretary to Government, Municipal Administration
and Urban Development Department and Another

APPELLANT

Vs

M. Adinarayana

RESPONDENT

Date of Decision : 06-06-2002

Acts Referred:

Administrative Tribunals Act, 1985 — Section 15
Andhra Pradesh Civil Services (Conduct) Rules, 1964 — Rule 9
Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Rules, 1989 — Rule 3(1)

Citation : (2002) 5 ALD 451

Hon'ble Judges : S.R. Nayak, J;S. Ananda Reddy, J

Bench : Division Bench

Advocate : Government Pleader for Services-II, for the Appellant; K.V. Satyanarayana, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—This writ petition filed under Article 226 of the Constitution of India by the Government of Andhra Pradesh represented by its Principal Secretary to Government, Municipal Administration and Urban Development Department and the Director of Town and Country Planning, Hyderabad, is directed against the judgment and order dated 22-2-2001 of the Andhra Pradesh Administrative Tribunal at Hyderabad, (for short "the APAT") allowing O.A. No. 6755 of 2000 filed by the respondent herein and setting aside the order issued in G.O. Ms. No. 520 Municipal Administration and Urban Development Department, dated 28-10-2000.

2. The background facts leading to the filing of the writ petition be noted briefly and they are as follows : On an information that the respondent who at the relevant point of time was working as Deputy Director of Town and Country Planning, Hyderabad has acquired assets disproportionate to the known sources of income, a case in Re No. 13/ACB-CR/93 u/s 13(2) read with 13(1)(e) of the

Prevention of Corruption Act, 1988 was registered on 30-9-1992 and after registration of the case, the Investigating Officer obtained search warrants from the Principal Judge for SPE and ACB Cases at Hyderabad and conducted search of the residential premises of the respondent-charged officer bearing H. No. 12-2-717/1/24 of Sapthagiri Colony, Hyderabad. The investigation into the assets and expenditure of the charged officer possessed disproportionate assets to an extent of Rs.4,78,220/- to the known source of his income. On receipt of the report and examination of the same, the Government placed the charged officer under suspension by proceedings in Government Memo No. 1593/B2/93-6 M.A., dated 27-7-1995 and having formed an opinion on the basis of the records and after consulting the Head of the concerned Department decided to refer the case to the Tribunal for Disciplinary Proceedings, (for short "TOP"), constituted by the Government u/s 3 of the A.P. Civil Services (Disciplinary Proceedings Tribunal) Act, 1960, (for short TOP Act"). Accordingly, the case was referred to the TDP for enquiry. On reference the TDP framed the following charges against the respondent-charged officer:

1. Charge No.1: That you, Sri Adinarayana joined in Government Service as Town Planning Assistant on 1-11-1965 in the Department of Town Planning at Kakinada and subsequently you were promoted as Assistant Director in the year 1978 and as Deputy Director in May 1985 and while working as such during the check period from 1-11-1965 to 1-10-1993, you actuated by corrupt motive and in abuse of your official position in order to gain pecuniary benefit for yourself acquired assets worth Rs. 10,02,674/-, though your income was Rs. 10,50,024/- and expenditure was Rs. 5,25,570/- and therefore you are found in possession of disproportionate assets to a tune of Rs. 4,78,220/- and thereby you are guilty of misconduct within the meaning of Rule 2(b) of A.P. Civil Services (Disciplinary Proceedings Tribunal) Rules, 1991 framed under the A.P. Civil Services (Disciplinary Proceedings Tribunal) (Amendment) Act, 1993.

2. Charge No. II : That you have acquired the assets i.e., house bearing No. 12-2-717/124, Sapthagiri Colony, Hyderabad in your name worth Rs.2,23,000/- and one Maruthi Car bearing Regn. No. AHU 5355 worth Rs.80,000/- that also you were allotted 2000 shares of 225 partly convertible debentures in Nagarjuna Fertilizers and Chemicals Limited on 21-3-1991 and 1-2-1993 in all worth Rs. 23,375/- and that you also purchased teak wood from Sri Venkateswara Saw Mill, Sirpur worth Rs.58,026/- without prior permission of the Competent Authority violating Rule 9 of A.P. Civil Services (Conduct) Rules, 1964 and thereby you are guilty of misconduct within the meaning of Rule 2(b) of A.P. Civil Services (Disciplinary Proceedings Tribunal) Rules 1991 framed under the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Amendment Act, 1993."

The TDP conducted the enquiry in accordance with the provisions of the rules framed under the TDP Act. The TDP held that the charged officer is guilty of misconduct within the meaning of Rule 2(b) of the Andhra Pradesh Civil Services (Disciplinary Proceedings Tribunal) Rules, for short TDP Rules", framed under the

TDP Act, having been in possession of assets to a tune of Rs. 2,61,816.20 ps., disproportionate to the known sources of income. In respect of Charge No. 2, the TDP found that the charged officer is guilty of misconduct since he has violated the mandatory provisions of Rule 9 of the A.P. Civil Services (Conduct) Rules, 1964, for short the Conduct Rules". The TDP submitted the report to the Government.

3. The Government served a notice vide Memo No. 1593/B2/93, MA and UD Department dated 24-9-1997 on the charged officer calling upon him to submit his explanation, if any, to the report submitted by the TDP. The said notice was received by the charged officer on 30-9-1997. Questioning the validity of the said Memo, the charged officer filed AO. No. 7590 of 1997 in the APAT and the same was dismissed on 31-3-1997. The charged officer being aggrieved by the order of the APAT filed W.P. No. 8798 of 1998 which was disposed of on 27-4-1998. This Court while disposing of the above writ petition directed that "it will be open to the petitioner to take all objections as to the jurisdiction of the Tribunal and other issues before the Government, which issued the show-cause notice." Subsequently, the charged officer filed one more OA being O.A.No.4087 of 1998 wherein he sought a direction to the Government to submit his explanation to the show-cause notice initially with regard to jurisdiction aspect of the TDP only and remaining with regard to the factual aspect and other legal aspects to submit his explanation at a later stage, if any necessity arises. It is stated in the impugned order of the APAT that OA No. 4087 of 1998 was heard and reserved for orders on 16-8-1998 and no orders were passed. When the matter stood thus, by memo dated 11-12-1998, the charged officer was requested to submit his explanation on or before 31-12-1998 to the notice dated 24-9-1997 without fail. The charged officer, when he received the above memo dated 11-12-1998, filed M.A. No. 4308 of 1998 in OA No. 4087 of 1998 on 24-12-1998 praying the APAT to grant stay of all further proceedings in pursuance of the Government Memo dated 24.9.1997, and it is stated that the APAT did not pass any order on the said miscellaneous application till the Tribunal passed the impugned order. However, on 31-12-1998, the charged officer submitted his explanation with regard to the jurisdiction of the TDP and requested the Government to dispose of the question of jurisdiction in the first instance. In the said explanation the charged officer also stated that he was not in a position to submit his explanation with regard to factual aspects inasmuch as he was handicapped by the demise of his Counsel whose services were engaged by him to represent his case before the TDP and consequent misplacement of the documents. The charged officer in the said explanation also brought to the notice of the Government that in the absence of documents and necessary materials, he was not in a position to submit his explanation on or before 31-12-1998 as demanded by the Government vide Memo dated 11-12-1998. The charged officer, therefore, requested - the Government to furnish him all the records and that request was refused by the Government on the ground that there was no provision to furnish reports to the delinquent officer under the service rules. However, subsequently,

the charged officer submitted his explanation with regard to factual aspects also on 31-3-1999.

4. On consideration of the report of TDP and explanation of the petitioner dated 31-3-1999, the charged officer was removed from service by the Government as a disciplinary measure in G.O. Ms. No.520, Municipal Administration and Urban Development Department, dated 28.10.2000. The charged officer being aggrieved by the above order of the Government filed OA No.6755 of 2000 before the APAT seeking quashing of the said order. Before the APAT, on behalf of the charged officer, it was contended that that the TDP had no jurisdiction when the Government referred the case to it on 25-7-1995 to entertain the 1st charge inasmuch as the TDP was then not vested with the jurisdiction to try the cases falling under Prevention of Corruption Act, under Rule 2(b) of TDP Rules; that there are number of laches, calculation mistakes, omissions in the report of the TDP apart from non-application of mind to the relevant facts; the APAT acted illegally in not applying Circular Memo No.700/SC-D/88-4 GA, dated 13-2-1989. The APAT accepting the contentions of the charged officer allowed the Original Application and set aside the Government Order in G.O. Ms. No.520, Municipal Administration and Urban Development Department, dated 28-10-2000. Hence, this writ petition by the Government of Andhra Pradesh and the Director of Town and Country Planning, Hyderabad.

5. The learned Government Pleader for Services-II appearing for the petitioners contended that the possession of assets disproportionate to the known sources of income is a misconduct as defined under Rule 2(b) of the Conduct Rules framed under the proviso to Article 309 of the Constitution of India and, therefore, the TDP had jurisdiction to enquire into the misconduct in terms of the TDP Act and the TDP Rules and the opinion of the APAT that the TDP had no jurisdiction to enquire into the 1st charge which falls under the Prevention of Corruption Act and which is a graver offence than the routine misconduct contemplated under the Conduct Rules is erroneous. The learned Government Pleader submitted that a grave misconduct does not cease to be a misconduct just because it is grave. Alternatively, the learned Government Pleader submitted that it is well settled that an objection regarding jurisdiction should be taken at the earliest opportunity and since the charged officer did not raise such objection when the Government referred the case to the TDP on 27-7-1995 and that having failed to take objections at the earliest point of time, the Tribunal was not justified in entertaining that plea. The learned Government Pleader contested the correctness of the finding of the Tribunal that as on 25-7-1995, the TDP had no jurisdiction to entertain 1st charge framed against the charged officer in view of the amendment issued in G.O. Ms. No. 514, General Administration (Services-C) Department, dated 15-10-1994 amending Sub-rule (1) of Rule 3 of the TDP Rules. The learned Government Pleader contended that though the Government referred the case to the TDP on 25-7-1995, the report of the TDP was submitted to the Government only on 8-6-1997 by which date the TDP, was competent to entertain charge No. 1 also by virtue of the subsequent amendment brought

about vide G.O. Ms. No.409, General Administration (Ser. C) Department, dated 20-9-1996 substituting a new Sub-rule (1) in place of the earlier Sub-rule (1) in Rule 3 of TDP Rules. The learned Government Pleader next contended that under the TDP Act and the rules framed thereunder, the TDP is a fact-finding authority. The TDP in the course of proceedings examined as many as 57 PWs and 13 defence witnesses and marked 129 exhibits for the prosecution and 81 exhibits for the defence and on consideration of the entire oral and documentary evidence, recorded the findings. Those findings recorded by the TDP could not have been upset by the Tribunal inasmuch as the Tribunal has no such power. In support of the submission, the learned Government Pleader placed reliance on the judgment of the Supreme Court in *Government of Tamil Nadu and another Vs. A. Rajapandian*, . Further, the learned Government Pleader placing reliance on the judgment of the Supreme Court in *Union of India (UOI) and Others Vs. Upendra Singh*, , contended that the APAT had no jurisdiction to go into the truth or otherwise of the charges and it was for the TDP to ascertain truth or otherwise of the charges. The learned Government Pleader contended that the APAT is not an appellate authority and therefore it could not have acted as an appellate authority over the findings recorded by the TDP and accepted by the Government.

6. Sri K.V. Satyanarayana, learned Counsel for the charged officer - the respondent herein, on the other hand, contended that the plea of the learned Government Pleader that the charged officer did not take objection to the Jurisdiction of the TDP to entertain Charge No.1 at [he earliest opportunity is incorrect and the facts are otherwise. The learned Counsel contended that in view of the directions issued by this Court while disposing of WP No.8798 of 1998 on 27.4.1998 reserving liberty to the charged officer to take all objections including the objection as regards jurisdiction also, the contention now raised by the learned Government Pleader is untenable and the jurisdiction point has to be decided on merit. Sri Satyanarayana, next contended that 2nd charge framed against the charged officer alleges breach of Rule 9 of the Conduct Rules whereas that Rule does not contemplate "prior permission" at all. The learned Counsel submitted that under Sub-rule (1) of Rule 9 of the Conduct Rules, what is required is "previous intimation" to the Government to acquire or dispose of any Immovable property and reporting of transactions involving moveable properties to the Government under Sub-rule (2) of Rule 9. Sri Satyanarayana, therefore, submitted that the very framing of Charge II is materially defective and, therefore, the disciplinary action taken against the petitioner should fall to the ground on that count itself. In support of the submission, Sri Satyanarayana placed reliance on a judgment of the Division Bench of Calcutta High Court in *Broja Ballav Ghose v. Union of India* 1986 Lab. IC 1166. Even otherwise, according to Sri Satyanarayana, the factual findings recorded by the APAT are based on proper appreciation of materials and evidence on record and there is absolutely no ground made out by the State Government to interfere with those findings by this Court in exercise of its extraordinary, discretionary power under Article 226 of the Constitution.

7. Since it is the threshold contention of the learned Government Pleader for Services - II that the plea of the charged officer regarding want of jurisdiction in the TDP should not have been entertained by the APAT at that belated stage, it becomes necessary for us to first decide whether the APAT was justified in entertaining the plea of want of jurisdiction in the TDP. From the narration of facts summarized supra, it is seen that this Court while disposing of W.P.No.8798 of 1998 on 27-4-1998, filed by the charged officer against the order made by the APAT dated 31-3-1997 in O.A. No. 7590 of 1997, reserved liberty to the charged officer to raise all objections as to the jurisdiction of the TDP as well as other issues before the Government in response to the show-cause notice dated 24-9-1997. That direction was allowed to become final. Therefore, it is not open to the Government to question the right of the charged officer to raise the jurisdictional issue and to contend that that plea should have been taken before the TDP when the government referred the case on 27-5-1995. Further, the Government in passing the impugned order completely lost sight of the objections raised by the charged officer with regard to the jurisdiction of the TDP to entertain charge No. 1 in his explanation dated 31-12-1998. There is neither reference to that objection nor consideration of the same in the impugned order passed by the Government removing the respondent from service as a disciplinary measure. Be that as it may, there is no hard and fast rule as regards the timing or stage of raising a legal plea touching jurisdiction of an authority or a Tribunal or a Court. The concerned Court has to exercise such discretion judiciously and keeping in mind the facts and circumstances of each case and to advance justice and not to thwart justice. Looking from that angle, we are of the considered opinion, that the APAT was justified in entertaining the jurisdictional plea raised by the charged officer particularly in the context of the liberty granted to him by this Court in WP No.8798 of 1998, dated 27-4-1998, which is admittedly allowed to become final. Therefore, it becomes necessary for the Court to decide the jurisdictional plea raised by the charged officer as regards 1st charge on merits and we accordingly proceed to do so.

8. There is no controversy between the parties that when the Government referred the case to the TDP on 25-7-1995, the TDP had no jurisdiction to entertain the 1st charge by virtue of the amendment made to the TDP Rules by G.O. Ms. No. 514, Municipal Administration and Urban Development (Ser. C) Department, dated 15-10-1994 amending Sub-rule (1) of Rule 3. That position was continued till 20-9-1996 when again new Sub-rule (1) of Rule 3 of TDP Rules was substituted by way of amendment vide G.O. Ms. No.409, General Administration (Ser.C.) Department, dated 20-9-1996. However, the contention of the learned Government Pleader for Services II is that though that was the position as on 25-7-1995, by the time the TDP submitted its report to the Government on 8-6-1997, the substituted Sub-rule (1) of Rule 3 with effect from 20-9-1996 was in force and, therefore, it could not be said that the TDP had no jurisdiction to entertain the 1st charge. This submission of the learned Government Pleader is not well founded and not acceptable to us. It is well

settled that a statutory authority like the TDP with limited jurisdiction gets jurisdiction only by virtue of reference made by the Government. If the Government does not make reference in terms of the TDP Act and the rules framed thereunder, the TDP would not acquire jurisdiction to enquire into any misconduct levelled against a delinquent official. Therefore, the jurisdiction of the TDP to entertain a particular charge levelled against a government officer has to be decided by applying the law prevailing as on the date of reference and not with reference to the date on which the TDP submitted its report to the Government. If that is so, no exception can be taken to the opinion of the APAT as regards the jurisdiction of the TDP to entertain Charge No. 1.

9. It is true that by virtue of the judgment of the Supreme Court in *A. Rajapandian's* (supra) and the other decisions cited by the learned Government Pleader for Services-11, the APAT cannot sit as a Court of appeal over a decision based on the findings of the inquiring authority in disciplinary proceedings. Where there is some relevant material which the disciplinary authority has accepted and which material reasonably support the conclusion reached by the disciplinary authority, it is not the function of the APAT to review the same and reach different finding than that of the inquiring authority/or disciplinary authority. The above proposition is well settled by a catena of decisions of the Supreme Court and High Courts. At the same time, it is also well settled that if the findings recorded by the inquiring authorities or the disciplinary authorities are found to be perverse in the sense that they are not based on legal evidence, it is always open for the Court to treat such flaw as a legal flaw and step in and quash the impugned action. Therefore, whether the reviewing Court or the Tribunal should step into interfere with the findings recorded by the inquiring authority or the disciplinary authority in a disciplinary proceeding depends upon the finding on the question whether the fact-finding authority has based its findings on legally permissible substantive evidence or not. If the Court or the Tribunal finds that the findings recorded by the enquiring authority or the disciplinary authority are based on some legally permissible substantive evidence, it will not interfere with such findings on grounds of insufficiency or inadequacy of the evidence. Insufficiency or inadequacy of the evidence is not for the reviewing Court or the Tribunal. It is the concern of the fact-finding enquiring authority or the disciplinary authority.

10. In our considered opinion, the very framing of Charge No. 2 is fatal to the disciplinary authority. Charge No.2 is framed alleging that the charged officer acquired certain assets, which include both moveable and Immovable properties "without prior permission" as required under Rule 9 of the Conduct Rules. Rule 9 of the Conduct Rules reads as follows :

Rule 9. Acquiring or disposing of movable or immovable property :--(1) No Government employee shall, except after previous intimation to Government, acquire or dispose of, or permit any member of his family to acquire or dispose of, any immovable property by exchange, purchase, sale, gift, or otherwise,

either by himself or through others.

(2) A Government employee who enters into any transaction concerning any movable property exceeding rupees twenty thousand in value, whether by way of purchase, sale or otherwise, shall forthwith report such transaction to Government:

Provided that any such transaction conducted otherwise than through a regular or reputed dealer shall be with the previous sanction of Government."

Sub-rule (1) requires that before a government employee acquires, disposes of, or permit any member of his family to acquire or dispose of, any immovable property by exchange, purchase, sale, gift, or otherwise, either by himself or through others, he has to do so "after previous intimation". The requirement of "prior permission" cannot be equated to statutory requirement of "previous intimation". They are not one and the same. Intimation is intended to apprise the Government, whereas prior permission is something positive on the part of the Government without which the Government employee cannot acquire the assets. The judgment of the Division Bench of Calcutta High Court Broja Ballav Ghose "s case (supra) is on the point. In that case, the appellant had acquired three properties, two in the name of the mother, in the years 1953 and 1955 respectively and another plot of land was purchased on July 12, 1961 by the appellant himself for a consideration of Rs.4,500/-. The charge framed against the appellant was that in acquiring these three properties, he violated Rule 15(1) of the Railway Services (Conduct) Rules, 1956. The, enquiring authority had rightly pointed out that no such charge could be framed with regard to the two properties acquired in the years 1953 and 1955 when the relevant rule had not come into force and as such could have no application whatsoever. The enquiring authority, however, had found the appellant guilty of breach of the said rule for acquisition of a plot of land on July 12, 1961. The Calcutta High Court in the premise of the above factual matrix and dealing with the question whether the acquisition of plot of land on July 12, 1961, by the appellant has violated Rule 15(1) or not, held:

"..... Before we deal with this property it will be useful to refer to the relevant Rule. The relevant Rule reads as follows :-

15. Movable, immovable and valuable property :--(1) No Railway servant shall, except with the previous knowledge of the Government, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise, either in his own name or in the name of any member of his family :

Provided that any such transaction conducted otherwise than through a regular or reputed dealer shall require the previous sanction of the Government."

In framing the charge the disciplinary authority did not specify the fact constituting the breach but the charge framed was that the appellant contravened Rule 15(1) of the Railway Services (Conduct) Rules, 1956 in

acquiring the said plot of land on July 12, 1961. In our opinion framing of the charge is materially defective because acquisition of the property by itself does not constitute contravention of Rule 15(1) of the said Rules as appears to be charge. To be fair to the railway administration we have read this charge in the light of the allegations in support thereof. When we refer to the allegations the relevant allegation is "Shri Ghose did not obtain previous permission of his departmental authority for acquiring the aforesaid immovable properties as he was required to do under Rule 15(1) of the Railway Services (Conduct) Rules, 1956". Now what is the finding of the enquiring authority. The finding is to record the words of the enquiring authority herself, "While entering into the transaction as specified in this item he neither obtained any prior permission of the Government nor did he send any prior intimation to the Government. By doing this he has contravened the provisions of Rule 15(1) of the Railway Services (Conduct) Rules, 1956". It is very unfortunate that either the disciplinary authority framing the charge nor the enquiring authority was really clear about the charge actually framed against the appellant as is required in order to bring a charge of violation of Rule 15(1) of the above Rules. We have quoted the Rule hereinbefore only to show that the Rule does not require any permission of the Government for the purpose of acquisition. What is required is only to put the Government to the knowledge of such acquisition. Now neither in the charge as framed nor in the allegation in support of the charge there is any allegation that the appellant acquired the property without the previous knowledge of the Government. The charge was framed upon a misconception that the appellant was required to obtain previous permission and since no such permission was obtained he had violated Rule 15(1) of the Rules. This was based on misconception as we have pointed out herein before because that was not the requirement of the Rule. The enquiring authority was not sure what was actually the charge against the appellant. She was no so sure only because there was no appropriate charge against the appellant. She wanted to cover it up by putting two alternatives namely that it was so acquired neither on previous permission nor on any previous intimation but she failed to take note of the fact that the appellant was never charged of having acquired the property without any prior intimation. A finding which is de hors the charge is clearly unsustainable and no penalty can rest upon such a finding...."

We are in respectful agreement with the above opinion of their Lordships of the Calcutta High Court.

11. In the instant case also, the TDP, which is the enquiring authority, has recorded the finding that the charged officer acquired Item Nos. 1, 3 and 4 properties "without prior permission" from the competent authority. No penalty can rest upon a charge or finding recorded thereon de hors the statute or the Statutory Rules. The materials and evidence on record would clearly show that the concerned competent authority of the Government has had intimation and knowledge of the charged officer purchasing the assets in question. There is also no serious dispute between the parties. The only thing said by the TDP against

the charged officer as regards intimation is that he did not inform the competent authority forthwith soon after he purchased the assets. Even assuming that that finding of the TDP is correct, that could hardly be a justification for this Court to interfere with the impugned order, which is otherwise well founded and based on cogent and sound reasoning. Further, we find that factual findings recorded by the APAT on Charges I and II are also based on relevant considerations and sound reasoning.

12. In the result and for the foregoing reasons, we do not find any merit in the writ petition and it is accordingly dismissed with no order as to costs.