
(2010) 07 AP CK 0079
In the Andhra Pradesh High Court
Case No : W.A. No. 1054 of 2007

The MD, Tribal Cooperative Marketing Devp.	APPELLANT
Vs	
Meda Venkata Kumara Swamy	RESPONDENT

Date of Decision : 29-07-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 07 AP CK 0079

Hon'ble Judges : Sanjay, J;B. Prakash Rao, J

Bench : Division Bench

Advocate : Urmila, for the Appellant; Krishnaiah, for the Respondent

Final Decision : Dismissed

Judgement

B. Prakash Rao, J.—The appellant herein is the Management of a Cooperative Marketing Federation known as M/s Tribal Cooperative Marketing Development Federation of India Limited (in short called as "TRIFED"), who filed this appeal under Clause 15 of Letters Patent seeking to assail the correctness of the orders of the learned Single Judge in W.P. No. 11906 of 1999, dated 3-10-2007 allowing the Writ Petition filed under Article 226 of the Constitution of India at the instance of the respondent/employee of the appellant herein setting aside the impugned orders dated 4-7-1996 dismissing him from the service.

2. In the above appeal, initially the Division Bench of this Court while admitting granted interim suspension of the orders of the learned Single Judge as per orders in WAMP. No. 2126 of 2007 dated 17-12-2008. On the application filed by the respondent employee in WAMP. No. 1013/2009 seeking to vacate the said interim order dated 17-12-2007, and since the counsel on either side requested the main appeal itself to be taken as the questions, both at interlocutory and the final hearing, being one and the same hence at their request the main appeal itself is taken up and heard.

3. Briefly, the facts giving rise to the present proceedings are that, the

respondent writ petitioner was appointed and joined with the appellant as Sales Executive Trainee on 17-1-1989 and later was promoted as Assistant Manager on 16-1-1993. While so, on certain allegations disciplinary proceedings were initiated against the respondent herein and accordingly 12 charges were framed against the respondent herein by the appellant on 8-2-1996. The respondent submitted an explanation on 19-2-1996 denying the allegations as contained in the said charges. The enquiry officer who conducted the enquiry submitted report holding that all the charges are proved against the respondent and accepting the said report the final order of punishment of dismissal from service was passed on 2-7-1996, and the same was communicated to the respondent as per proceedings dated 4-7-1996. Assailing the same, this present writ petition has been filed.

4. The main ground urged on behalf of the respondent/petitioner was to the effect that there has been no proper enquiry with sufficient opportunity to the respondent herein and the entire enquiry was an ex parte one, and therefore, such an enquiry being in the teeth of the principles of natural justice is void and hence is liable to be set aside.

5. The learned Single Judge by taking into account the checkered events during the process of enquiry conducted by the enquiry officer held that there was no proper opportunity, hence allowed the writ petition. Hence the appeal.

6. After hearing the counsel on either side in detail and in depth on merits and the procedure which has been taken recourse to by the enquiry officer during the enquiry, without going into the merits of the allegations or charges made against the employee vis-a-vis the explanation filed by him, it is suffice to note that initially the enquiry was fixed on 29-4-1996 for which the enquiry officer issued a notice on 15-3-1996 which was received by the respondent on 21-3-1996. However, it appears that the delinquent was not present on 29-4-1996, but he sent a letter in advance on 27-4-1996 seeking postponement of the enquiry and fixing the same at later date. Yet the fact remains that on 29-4-1996 no enquiry was conducted nor the same was taken up by the enquiry officer on that day. Instead, since the said day i.e., 29-4-1996 happened to be a gazetted holiday, the enquiry officer on its own proceeded with the enquiry on the next day i.e., 30-4-1996 and the depositions of the witnesses were recorded on 30-4-1996, 1-5-1996 and 14-5-1996, and there upon, he seems to have submitted a report on 5-6-1996 holding that all the charges were proved against the delinquent. The said report of the enquiry officer was communicated to the delinquent on 10-6-1996 calling upon him to submit a representation. However, the impugned order of dismissal from service was passed on 2-7-1996 with immediate effect it was communicated to the respondent employee on 4-7-1996.

7. From the above, as rightly pointed out by the learned Single Judge, there is apparently a confusion as to the date on which the enquiry to be commenced or held. Admittedly, the enquiry was fixed on 29-4-1996, but the enquiry did not take place on that day, since it was declared to be a gazette holiday. He

adjourned the same to 30-4-1996. For any adjournment from 29-4-1996 to 30-4-1996 admittedly there is no fresh notice or any intimation given to the delinquent. Thus, the respondent-employee was not aware of any such postponement especially to the next date i.e., 30-4-1996 by any mode whatsoever. That apart, the delinquent himself sent a letter on 27-4-1996 requesting for postponement of the enquiry and to be taken up at later date and the said application has remained unconsidered and no orders are passed either way to the knowledge of the delinquent. There is nothing on record to show that the delinquent was intimated about the next date. Without verifying as to whether the delinquent was put to notice of such enquiry to be held on 30-4-1996, the enquiry officer straight away proceeded with conducting of enquiry by examining the witnesses in his absence. There is no explanation forthcoming on behalf of the appellant as to why the barest verification is not done from their side as to whether the respondent delinquent is being put to notice of such adjourned next date of hearing, and yet it sought to proceed in his absence. There was no attempt on the part of the appellant or the enquiry officer as to whether the delinquent was present and if absent, why he should. Further, no orders are passed on the representation filed by him on 27-4-1994 seeking adjournment of the case. Nor, there is any endorsement by the enquiry officer to treat the delinquent as set ex parte or any noting that in spite of service of notice, the delinquent is absent.

8. On the face of it, the enquiry officer ought not to have proceeded in such a possible manner, and more so, to take up the case on the next date merely because the day on which the enquiry was fixed happened to be a holiday. Necessarily, the enquiry should have adjourned to any other convenient date with due intimation to the delinquent. No officer or authority can presume that the enquiry could have been taken up immediate next day because of declaration of holiday. Unless and until a specific notice is issued afresh for the next date, and served, it cannot be said that it will have a logical end to meet the ends of justice.

9. It has to be borne in mind that when dealing with the substantive rights of an employee especially in the process of conducting a disciplinary proceedings all precautions had to be taken to see that due opportunity is provided to the delinquent during the course of enquiry for his participation and as well as for submitting his case through any evidence or otherwise in rebuttal. This constitutes the basic requirement in tune with canons of principles of natural justice and any violation in the process would seriously affect the very validity or the correctness of the entire process and the ultimate decision based thereon. It is quite surprising to see that in this case the charges were framed on 8-2-1996 and though the enquiry was started immediately, however, for a fault of this nature which goes to the very root of the case and which is an avoidable one, the matter is kept pending for such serious lapse on the part of the enquiry officer and as well as the management. This could have been avoided so as to minimize the duration for such enquiries to be conducted in the proper manner and being

assailed only on such grounds of want of notice or the violation of principles of natural justice. It has been now established and repeatedly held by various Courts that the mandate of cannons of principles of natural justice is a must and could not be given a go-bye in any circumstances. Further, the steps as required to be taken in the said process of adhering to the principles of natural justice should be strictly followed so as to avoid this type of litigation which will have impact on both sides.

10. In the aforesaid circumstances, we are of the view that the learned Single Judge has rightly set aside as the same being violative of principles of natural justice. We do not find error to warrant any interference with the said orders.

11. The writ appeal is accordingly dismissed. No costs.