
(2014) 11 AP CK 0102
In the Andhra Pradesh High Court
Case No : W.A. No. 472 of 2006

The Member-Secretary, APSEB and Others	APPELLANT
Vs	
Y. Sivaiah	RESPONDENT

Date of Decision : 13-11-2014

Acts Referred:

Citation : (2015) 5 ALD 47

Hon'ble Judges : L.N. Reddy, J;Challa Kodanda Ram, J

Bench : Division Bench

Advocate : G. Vidya Sagar, Advocates for the Appellant; V.V. Prabhakar Rao, Advocates for the Respondent

Judgement

L.N. Reddy, J.—The respondents in W.P. No. 2668 of 1998 filed this writ appeal. The facts pertaining to the appeal are as under:

The respondent was working as Assistant Divisional Engineer in the erstwhile A.P. Electricity Board. A trap was laid upon him on 10.09.1991 by the Anti Corruption Bureau (ACB). Alleging that the respondent received illegal gratification of Rs. 500/- from a consumer, proceedings under the Prevention of Corruption Act were initiated. Simultaneously, the Board has initiated disciplinary proceedings.

2. The proceedings initiated by the ACB ended in acquittal. In the departmental enquiry, the explanation submitted by the respondent was found not satisfactory. An enquiry officer was appointed and a detailed enquiry was conducted. In his report, the enquiry officer recoded a finding that though the only charge framed against the respondent is not proved, his conduct in the matter of maintenance of records and according sanction of connections is not proper. Based upon the report, a show cause notice dated 04.05.1995 was issued by the disciplinary authority proposing the punishment of dismissal. The respondent submitted his explanation on 20.05.1995. On a consideration of the same, the disciplinary authority passed an order, dated 20.06.1995 imposing the punishment of reversion to next lower post. Departmental appeal filed against the same was

dismissed. Therefore, the respondent filed the writ petition challenging the order of punishment.

3. The respondent pleaded that once the enquiry officer recorded a finding to the effect that the charge is not proved, there was absolutely no basis for the disciplinary authority to impose the punishment of reversion. The appellants did not file any counter affidavit. However, in the course of hearing, they objected the writ petition by stating that though the charge was not proved, certain acts of indiscipline were found to be existing. Learned Single Judge allowed the writ petition and has set aside the order of punishment. Hence, this writ appeal.

4. Heard Sri G. Vidya Sagar, learned senior counsel for the appellants and Sri V.V. Prabhakar Rao, learned counsel for the respondent.

5. The basis for initiation of disciplinary proceedings against the respondent was a trap laid by the ACB, wherein he was found to have received a sum of Rs. 500/- as illegal gratification. Criminal case however ended in acquittal. In the departmental proceedings, only one charge was framed viz.,

CHARGE:

Sri Y. Sivaiah, while working as Asst. Divisional Engineer, Operation, Puttur, reported to have demanded bribe of Rs. 500/- from Sri T.R. Jayaraman for sanction of estimate meant for release of supply to the power loom at Narayanayanam belonging to Sri T.R. Jayaraman and was caught red handed by the officials of Anti Corruption Bureau of Chittoor District, Thirupathi Range on 10.9.91.

6. After discussing the voluminous material placed before him, the enquiry officer observed as under:

In analysis of the facts of the case in detail it is observed that in the absence of corroborative evidence and in view of the infirmity in the evidence, it is not possible to establish that the delinquent officials had demanded and accepted an amount of Rs. 500/- towards bribe. As a result of this the delinquent to be given the benefit of doubt.

7. However, the enquiry officer proceeded to express his view on the general functioning of the respondent, particularly in the context of maintenance of records and the misuse of official position. Under the heading "conclusion", he observed as under:

CONCLUSION:-An in depth analysis of the basic reasons behind the issue would enable to carefully workout the conceptual framework and operational ethos to carefully chalk out the problem.

8. After this, he stated that there is transgression of established norms by the respondent, though the charge was held not proved. Punishment of dismissal from service was proposed on the basis of the observation of the enquiry officer. Ultimately, the punishment of reversion to lower post was imposed.

9. In his report, the enquiry officer used the word "transgression". However, the actual "transgression" was done by him. The only duty assigned to him was to record a finding as to whether the charge viz., that the respondent has accepted illegal gratification of Rs. 500/- is proved. Having recorded a finding that there is no evidence to prove the charge, the enquiry officer proceeded to evaluate the general functioning of the respondent. That was totally outside the scope of the disciplinary enquiry and for all practical purposes, the enquiry officer made an attempt to exhibit his linguistic skills as well the tendency to evaluate the conduct of others.

10. The very issuance of show cause notice, proposing to impose the punishment of dismissal was untenable. Atleast the disciplinary authority saw the reason and realised that the proposal itself is totally untenable. Though the punishment of reversion is relatively less in magnitude, compared to the one that was proposed, the specific finding in the report of the enquiry officer does not permit of imposition of any punishment whatever. It has already been mentioned that a clear finding was recorded to the effect that the charge was not proved. Observations made outside the scope of the enquiry cannot constitute the basis for taking any action, much less for imposition of punishment. Learned Single Judge proceeded on these very lines and allowed the writ petition. We do not find any basis to interfere with the order passed in the writ petition.

11. The writ appeal is accordingly dismissed.

12. The miscellaneous petition filed in this writ appeal shall also stand disposed of. There shall be no order as to costs.