

(2008) 08 AP CK 0061

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4804 of 2008

V. Papaiah

APPELLANT

Vs

A.P. Northern Power Distribution Company Ltd. and Another

RESPONDENT

Date of Decision : 13-08-2008

Acts Referred:

Citation : (2008) 6 ALD 390 : (2009) 1 ALT 172

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : S. Ravindranath, for the Appellant; P.R. Bala Rami Reddy, SC for AP Transco, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The petitioner is working as Additional Assistant Engineer, in the Northern Power Distribution Company Limited, the first respondent herein. The Chairman and Managing Director of the Company initiated disciplinary proceedings against the petitioner. He appointed the Superintending Engineer of the concerned wing, as Enquiry Officer. The latter, in turn, issued a charge-sheet, dated 29.9.2006, framing relevant charges. Departmental enquiry was conducted and the Enquiry Officer submitted his report on 27.2.2007, holding that the charges, framed against the petitioner, are proved. Thereafter, the first respondent issued a show-cause notice, dated 19.6.2007. The petitioner submitted his explanation on 27.7.2007. On consideration of the same, the first respondent passed an order, dated 23.2.2008, reverting the petitioner to the post of Sub-Engineer, for a period of three years. The same is challenged in this writ petition.

2. The petitioner had urged three contentions, namely, that the report of the Enquiry Officer is not based on any evidence; that the disciplinary authority vis-a-vis the petitioner is the Chief General Manager (HRD), the second respondent herein, whereas the first respondent had initiated and concluded the said proceedings; and that the approval of the Concurrence Committee was not

obtained, before imposing the penalty.

3. The respondents filed counter-affidavit stating that the serious allegations of corruption and misconduct were noticed against the petitioner, and in that view of the matter, departmental enquiry was conducted strictly in accordance with the rules. It is stated that the first respondent, being the Head of the organization has the power to initiate disciplinary proceedings against the petitioner. It is also stated that, in view of the amendment caused to the regulations, vide N.O.O. (CGM-HRD) Ms. No. 117, dated 27.9.2002, the approval of the Concurrence Committee is not necessary.

4. Heard Sri S. Ravindranath, learned Counsel for the petitioner, and Sri P.R. Bala Rami Reddy, learned Standing Counsel for the respondents.

5. This Court is not impressed by the contention advanced on behalf of the petitioner that the report of the Enquiry Officer is not supported by any evidence. The matters of this nature cannot be examined, as regular appeals. The petitioner can have a genuine complaint, if only he was not given any opportunity, during the course of enquiry.

6. The second contention advanced on behalf of the petitioner, that the proceedings were initiated and concluded by the first respondent, deserves consideration. According to the service regulations, as amended through order in N.O.O. (CGM-HRD) Ms. No. 117, dated 27.9.2002, the second respondent is the disciplinary authority for the post of Additional Assistant Engineer. The Chairman and Managing Director does not figure, even as an appellate authority. On the other hand, he has been prescribed as the disciplinary authority for several categories of posts, namely, Assistant Secretary, ADE, AE, Chief Head Draughtsman, Accounts Officer and AAO. Though the Chairman and Managing Director is superior, in rank, to the second respondent, once the rules stipulate a particular authority, as disciplinary authority, no proceedings can be initiated by a different authority.

7. Instances are not lacking, where a superior authority, in an organization, can exercise the powers of his subordinates, including those in disciplinary matters. However, unless a provision to that effect is made, in the relevant rules, the proceedings cannot be initiated, contrary to the prescribed procedure. On this short ground, the impugned order is liable to be set aside.

8. Through order in N.O.O. (CGM-HRD) Ms. No. 117, dated 27.9.2002, the requirement to obtain the approval of the Concurrence Committee was also modified. According to the altered provisions, the Concurrence Committee is constituted for posts of categories II and III, comprising of Director (Projects), Director (Operation) and Executive Director (Finance). The counter-affidavit is silent as to whether a committee was constituted and if so, whether its concurrence was obtained. That, however, becomes secondary, in view of the finding of this Court that the impugned order is vitiated for a different reason.

9. Hence, the writ petition is allowed and the impugned order is set aside. To avoid further complications in the matter, it is directed that the second respondent shall be entitled to issue show-cause notice and pass further orders, after giving opportunity to the parties concerned. This exercise shall be completed within two months from the date of receipt of a copy of this order.

11. There shall be no order as to costs.