

(1999) 12 AP CK 0037

In the Andhra Pradesh High Court

Case No : Writ Petition No. 19358 of 1999

V. Ram Mohan Rao

APPELLANT

Vs

Transmission Corporation of A.P. and others

RESPONDENT

Date of Decision : 29-12-1999

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 15
Central Reserve Police Force Rules, 1955 — Rule 27
Employees Revised Conduct Regulations — Regulation 10, 5

Citation : (2000) 2 ALD 161 : (2000) 1 ALT 229

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : M/s. B. Adinarayana Rao and G. Ghansi, for the Appellant; Mr. S. Ravindranath, for the Respondent

Judgement

1. The petitioner in the instant writ petition prays for issuance of a writ of Mandamus declaring the action of (he respondents 1 and 2 in appointing the third respondent herein as Enquiry Officer to conduct a de novo enquiry against the petitioner in respect of the allegations of which the previous Enquiry Officer has already conducted and submitted his report in May, 1998 as illegal, arbitrary and without jurisdiction. The petitioner accordingly prays for a consequential direction to set aside the Memo No.CE/DC/DM-V/555/P.I/97-7 dated 24-7-1999.

2. Relevant facts in brief may be noticed for the purpose of deciding as to whether the impugned proceedings suffer from any jurisdictional errors or legal infirmities.

3. The petitioner presently is stated to be working as Assistant Divisional Engineer, Shift, 220 KV Sub-station, Chandrayanagutta. The A.P. State Electricity Board had initiated departmental enquiry against the petitioner herein and six other officers and had appointed the Superintending Engineer, Enquiry Cell, Vidyut Soudha, Hyderabad as Enquiry Officer by proceedings dated 24-5-1997. The Enquiry Officer so appointed framed the following charges against the

petitioner.

(1) Proposed and released ISC No.4481 of M/s. Southern Press Tress Pvt. Limited in the premises of M/s. Santhi Wires (P) Limited HT Service at Patancheru-thus violated Terms and conditions of tariff and breached the rules and regulations prescribed by Board.

(2) Failed to check infrastructure before lease of supply to ISC No.4481 and thus abetted illegal power tapping and consequent pilferage of energy amounting to about Rs.91.68 lakhs.

4. It is evident from the record that the aforesaid charges have been framed against the petitioner on the basis that on 28-10-1989 power supply was released to one M/s. Southern Press Tress (P) Ltd. and the said company is in the premises of M/s. Santhi Wires (P) Ltd., where HT service was in existence since long time and that there was no infrastructure existing for the LT consumer to avail power. The petitioner submitted his explanation stating that the Assistant Engineer, Patancheru surveyed, formulated and submitted the estimates which was counter-signed by the petitioner only after scrutiny of the relevant documents i.e., site layout, lease deed of the premises, no-objection certificate of the local authority, proposed connected load details etc. It is the case of the petitioner that it is the Divisional Engineer (Operation), Sangareddy who sanctioned the service and accordingly LT agreement was got executed and supply was released on 28-10-1989. It is also the case of the petitioner that he is in no way responsible for the alleged theft of energy by the consumer which was noticed on 15-4-1997, long after the petitioner ceased to be the Assistant Divisional Engineer (Operation), Patancheru.

5. The Enquiry Officer having received the explanation of the petitioner in respect of the charges and conducted oral enquiry on 10-3-1998 and 11-3-1998 against the petitioner and others who were also charged in respect of the same incident. The Enquiry Officer accordingly submitted his report on 15-5-1998 to then existing A.P. State Electricity Board.

6. Thereafter the respondent-Board "after careful examination of the report of the Enquiry Officer accepted the findings of the Enquiry Officer and decided to let off one G. Chandraiah, former Additional Assistant Engineer (presently working as Assistant Divisional Engineer of Miryalaguda) with a warning. He was advised to be more careful in future." In the similar manner, the Board while accepting the findings of the Enquiry Officer has decided to drop further action against one S. Parsuram Reddy, ADE (Retired) by proceedings dated 30-1-1999. In the said proceedings also, it is stated that the report of the Enquiry Officer has been accepted.

7. However, the respondent-Board through the impugned proceedings appointed the Chief Engineer (Training), Erragadda, Hyderabad the third respondent herein as an Enquiry Officer in the place of the previous Enquiry Officer to conduct de novo enquiry into the very same allegations in respect of which the previous

Enquiry Officer had already submitted the report on 15-5-1998. It is that order which is challenged in this writ petition.

8. It is the case of the petitioner that the disciplinary authorities are bound to pass appropriate orders based upon the report of the Enquiry Officer. No de novo enquiry could be held against the petitioner. If the disciplinary authority decides not to accept the report of the Enquiry Officer, it is always open to him to take a different view in the matter and proceed with the disciplinary case. But the disciplinary authority has no power to order a de novo enquiry. The A.P. State Electricity Board Employees Discipline and Appeal Regulations (for short "the Regulations") do not confer any such power upon the disciplinary authority to order a de novo enquiry. At any rate, there is no reasonable cause or any basis for appointing the third respondent as Enquiry Officer to hold the de novo enquiry against the petitioner. The decision to hold a de novo enquiry is not supported by any reasons but has been ordered in a casual and mechanical manner. It is also the case of the petitioner that the impugned decision is discriminatory in its nature, for the reason that the very same report submitted by the Enquiry Officer has been accepted in toto and accordingly an officer charged along with the petitioner was let off with a warning and the proceedings against another officer were completely dropped. Continuation of the disciplinary proceedings initiated in the year 1997 in respect of an incident alleged to have been taken place in the year 1989 is nothing but arbitrary.

9. In the counter affidavit filed by the respondents, it is submitted that the [inquiry Officer held that the petitioner is not responsible in any manner whatsoever for the irregularities if any in the matter, and accordingly submitted his report stating that the charges are not held proved against the petitioner. The disciplinary authority examined the report of the Enquiry Officer and came to the conclusion that there is a wide variation between the preliminary report of the IGP&A (V&S) the very basis for appointing an Enquiry Officer, and observed that the petitioner should have verified the feeding arrangement as he is the Meter Reader for HT services. It is under those circumstances, the disciplinary authority has not accepted the findings of the Enquiry Officer and ordered for de novo enquiry appointing the Chief Engineer, Hyderabad as Enquiry Officer. It is the case of the respondents that the disciplinary authority has inherent power to order for de novo enquiry in order to prevent miscarriage of justice. The disciplinary authority is not bound to accept the report of the Enquiry Officer and is also at liberty to disagree with the findings of the Enquiry Officer and order for de novo enquiry if it consider that the report of the Enquiry Officer is not based on facts established prima facie. It is specifically stated that the petitioner was prima facie found responsible for the grave lapses resulting in colossal loss of Rs.91.68 lakhs and the Board has suffered on account of various acts of omissions and commissions by the petitioner resulting in such colossal loss to the Board.

10. In the counter affidavit, it is further stated that in the case of C.

Chandraiah, AAE (Operations) and S. Parusaram Reddy, AE (Operations), the disciplinary authority took note of the fact that both of them being subordinates to the petitioner acted as per the sanctions accorded by the Divisional Engineer and counter signed by the petitioner and the conditions prevailing "were different during their tenure." It is stated that they have merely acted as per the sanction accorded by the Divisional Engineer. It is submitted that further action against Parusaram Reddy has been dropped since he retired from the service and C. Chandraiah, AEE has been let off with a warning as he was found not guilty of the charges.

11. It is further submitted that there is no undue delay on the part of the disciplinary authority in ordering de novo enquiry. The delay if any is due to administrative reasons. The decision of the disciplinary authority is not arbitrary. It is submitted that the decision taken by the disciplinary authority is in the public interest and is in accordance with regulations.

12. There is no dispute whatsoever that the Enquiry Officer found the petitioner herein not guilty of any of the charges framed against the petitioner and accordingly submitted his report. Sri B. Adinarayana Rao, learned Counsel for the petitioner concedes that it would have been perfectly open to the disciplinary authority not to accept the report if any such valid reasons exist for not accepting the report and a different view could have been taken, but only after putting the petitioner on notice. It is also submitted that further enquiry could have been ordered, but not a de novo enquiry.

13. Sri S. Ravindranath, learned Standing Counsel for the Corporation contends that the public interest requires de novo enquiry against the petitioner. The disciplinary authority has inherent jurisdiction depending upon the facts and situation to order a de novo enquiry. This Court under Article 226 of the Constitution of India, normally does not interfere with an order passed by the disciplinary authority, which has not caused and resulted in any prejudice to the delinquent officer. In *K.R. Deb Vs. The Collector of Central Excise, Shillong*, the Supreme Court while interpreting Central Civil Services (Classification, Control and Appeal) Rules, 1957 observed that "Rule 15 provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the enquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the disciplinary authority may ask the Inquiry Officer to record further evidence." It is observed by the Supreme Court that there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiry Officer or Inquiry Officers does not appeal to the Disciplinary Authority. The disciplinary authority has enough powers to reconsider the evidence itself and come to its own conclusion. In the facts and circumstances of that case, the Apex Court came to the conclusion that the Collector, instead of taking responsibility himself, was determined to get some officer to report against the appellant therein. In such view of the matter, it was observed that

the procedure adopted by the "Collector was not warranting by the rules, but was harassing to the appellant."

14. According to the learned Counsel for the petitioner, the judgment could squarely cover the issue that arises for consideration. It is submitted that clause (9) of Rule 15 of Central Civil Services (Classification, Control and Appeal) Rules is in part materia with Rule 10 of APSEB. Employees Revised Conduct Regulations (for short "the Regulations"). Clause (9) of Rule 15 of Central Civil Services (Classification, Control and Appeal) Rules says "the Disciplinary Authority shall, if it is not the Inquiry Authority, consider the record of the inquiry and record its findings on each charge." It may be appropriate to have a look at the Regulation 10 of the Regulations with which we are concerned:

10. Procedure for imposing penalties:

(1) No order imposing on a member of a service a penalty specified in items (i), (ii) and (in), (v) or (ix) of Regulation 5 shall be passed except after.

(a) The member of the service is informed in writing by the authority competent to impose the penalty of the proposal to take action in regard to him and of the allegations on which the action is proposed to be taken, and is, given an opportunity to make any representations he may wish to make to such authority; and

(b) Such representation, if any, is taken into consideration by the authority competent to impose the penalty.

(2) (a) In every case where it is proposed to impose on a member of a service any of the penalties specified in items (iv), (vi), (vii) and (viii) in Regulation 5, the authority competent to impose the penalty shall appoint an Enquiry Officer, who shall be superior in rank to the person on whom it is proposed to impose the penalty, or shall itself hold an enquiry either suo motu or on a direction from a higher authority. In every such case the grounds on which it is proposed to take action shall be reduced to the form of definite charge or charges, which shall be

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communicated to the person charged, together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders in the case. He shall be required, within a reasonable time, to file a written statement of his defence and to state whether he desires an oral enquiry or to be heard in person or both. The person charged may, for the purpose of preparing his defence be permitted to

inspect and take extracts from such official records as he may specify, provided that the Enquiry Officer may, for reasons to be recorded in writing refuse such permission, if, in his opinion, such records are not relevant for the purpose or it is against public interest to allow access thereto. On receipt of the statement of defence within the specified time or such further time as may have been given, an oral enquiry shall be held if such an enquiry is desired by the person charged or is decided upon by the Enquiry Officer or is directed by the competent authority. At that enquiry, oral evidence shall be heard as to such of the allegations as are not admitted and the persons charged shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called as he may wish, provided that the Enquiry Officer may, for special and sufficient reason to be recorded in writing, refuse to file, call a witness. After the oral enquiry is completed, the person charged shall be entitled to file, if he so desires, any further written statement of his defence. If no oral enquiry is held and the person charged desires to be heard in person, a personal hearing shall be given to him. The Enquiry Officer shall, on completion of the enquiry or the personal hearing of the person charged or both, forward the proceedings of the enquiry to the authority competent to impose the penalty unless he is himself such an officer. The proceedings shall contain the charges framed against the person charged along with the grounds of charge, written statement filed in defence, if any, a sufficient record of the evidence adduced during the oral enquiry, a memorandum of the point urged by the person charged during the personal hearing, if any, a statement of the findings of the Enquiry Officer on the different charges and the grounds therefor.

(b).....

(c) After the authority competent to impose the penalty mentioned in clause (a) has arrived at a provisional conclusion in regard to the penalty to be imposed, the person charged shall be supplied with a copy of the report of the Enquiry Officer and be given a reasonable opportunity of making representation, within a reasonable time not ordinarily exceeding one month, on the penalty proposed. Any representation made in this behalf by the person charged shall be duly taken into consideration by the competent authority before final orders are passed. Provided that such representation shall be based only on the evidence adduced during the enquiry referred to in clause (a).

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There is nothing in the regulation suggesting that the authority competent to impose penalty is bound to accept the proceedings of the Enquiry Officer. It is

not as if the authority competent to impose penalty is bound to accept the report. It is true that the authority competent to impose the penalty cannot reject the report without assigning any reason whatsoever. The Authority cannot insist for a particular type of report from the Enquiry Officer. Whether a de novo enquiry can at all be ordered, would depend upon the statutory setting dealing with disciplinary action and procedure for imposing penalties.

15. In *Union of India and Others Vs. P. Thayagarajan*, , the Supreme Court while interpreting the Central Reserve Police Force Act (66 of 1949) and the Central Reserve Police Force Rules, 1955 declared the law as to under what circumstances, the disciplinary authority may pass an appropriate order ordering de novo enquiry. The Supreme Court after referring to the decision in *K.R. Deb*, (supra), observed:

"A careful reading of this passage will make it clear that this Court notices that if in a particular case where there has been no proper enquiry because of some serious defect having crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined, the Disciplinary Authority may ask the Inquiry Officer to record further evidence but that provision would not enable the Disciplinary Authority to set aside the previous enquiries on the ground that the report of the Enquiry Officer does not appeal to the Disciplinary Authority. In the present case the basis upon which the Disciplinary Authority set aside the enquiry is that the procedure adopted by the Enquiry Officer was contrary to the relevant rules and affects the rights of the parties and not that the report does not appeal to him. When important evidence, either to be relied upon by the department or by the delinquent official, is shut out, this would not result in any advancement of any Justice but on the other hand result in a miscarriage thereof. Therefore we are of the view that Rule 27(c) enables the disciplinary authority to record his findings on the report and to pass an appropriate order including ordering a de novo enquiry in a case of present nature."

16. In the same judgment, it is observed that "it does not stand the logic that in a given case the appellate authority could order a fresh enquiry and not the Disciplinary Authority at whose instance the enquiry began and which is not satisfied with the enquiry held for some vital defects in the procedure adopted."

17. A Division Bench of this Court in *Y. Rama Rao Vs. Principal Secretary to Govt. Revenue (CT) Dept., Hyderabad and others*, , after elaborate consideration of a similar issue framed the questions: Whether the Disciplinary Authority has power to direct fresh enquiry in certain situations in contradistinction to "further enquiry" irrespective of the existence of the specific rule in that behalf? Whether such power to order fresh enquiry be regarded as incidental or necessary adjunct to the powers and functions of the disciplinary authority? This Court after referring to the judgments in *K.R. Deb* (supra) and *P. Thayagarajan* (supra), observed that two propositions can be taken to be well settled: One is, a fresh enquiry is not altogether barred even if there is no specific rule to that effect.

Another proposition is that the enquiry report cannot be discarded merely because it does not appeal to the Disciplinary" Authority on merits or in other words, that it does not accord with his views. A material defect in the procedure adopted which may amount to denial of reasonable opportunity and some important evidence not being available at the time of holding the enquiry, can be the grounds for ordering a fresh enquiry subject of course to all just exceptions.

18. It is well settled that the inquiring authority when so required, to appraise the evidence, to record its conclusion that if it thinks proper to suggest the appropriate punishment. But, neither the conclusion on the evidence nor the punishment which the enquiry authority may regard as appropriate is binding on the punishing authority. Finding of facts recorded by an Enquiry Officer entrusted with the work of holding a departmental enquiry into misconduct are not binding on the Disciplinary Authority. The punishing authority is competent to take a different view on evidence adduced against the delinquent and proceed on the basis that the conclusions of fact recorded by the Enquiry Officer were unsound and erroneous. Such is the extent of the power and jurisdiction of the disciplinary authority and in my considered opinion such power includes the power to order a de novo inquiry, if the circumstances and public interest so warrant.

19. In the instant case, the competent authority having perused the report submitted by the Enquiry Officer noticed a wide variation between the complaint/report from the IGP&A (V&S) and the Enquiry Officer. The competent authority has rejected the enquiry proceedings not on the ground that the report does not appeal to him. Obviously, the competent authority came to the conclusion that there is no proper enquiry, because the material forming part of the preliminary enquiry has not been taken into consideration by the Enquiry Officer. If the material to be relied upon by the department is shut out, the same would not result in advancement of any justice, but on the other hand results in miscarriage thereof. During the enquiry, it is not only the delinquent official, but also the department is entitled to rely upon such relevant material as it may wish to do so in support of its case.

20. Variety of factors may have bearing upon the decision to be taken by the competent authority in ordering a de novo enquiry. It may be difficult to illustrate as observed by the Supreme Court in *Thayagarajan's case* (supra). The power conferred upon the competent authority to record his findings and pass orders would include power to set aside the findings of the Enquiry Officer, if there is any serious infirmity in conducting the enquiry and such infirmity may be detrimental either to the interest of the department or the delinquent official, and such power to set aside the findings may include power to order further or fresh enquiry as the case may be. Of course, such power cannot be exercised in arbitrary manner. No de novo enquiry could be ordered by the competent authority because the report of the Enquiry Officer is not to his liking. No competent authority can compel the Enquiry Officer to prepare the enquiry proceedings in a particular manner either in favour or against the delinquent

officer. The competent authority is entitled to make a pragmatic assessment of the material available on record and may review the procedure adopted by the Enquiry Officer and if any substantial defect is noticed either in the matter of recording of evidence or the procedure adopted, the competent authority may order de novo enquiry.

21. In the facts and circumstances of the case, it cannot be said that the competent authority arbitrarily passed an order directing de novo enquiry against the petitioner. It cannot be said that the competent authority over stepped his jurisdiction. There is nothing in regulations prohibiting the competent authority to pass an order directing de novo enquiry. At any rate, the order hasnot resulted in any miscarriage of justice. The competent authority having regard to the nature of the case, came to the conclusion not to accept the report, and accordingly ordered de novo enquiry. It is not a case of any harassment or victimisation. No allegations of mala fides are levelled against the competent authority.

22. The next question relates to allegations of discrimination. It is submitted that the competent authority accepted the report of the Enquiry Officer in case of two officers against whom an enquiry was held along with the petitioner. The enquiry may be common enquiry, but the findings appears to have been recorded in case of each of the officer. At any rate, the correctness of the decision of the competent authority in accepting the enquiry report in so far as those two officers is concerned is not the subject matter of this writ petition. The decision cannot be cited as a precedent. One particular officer appears to have retired from the service during the pendency of the disciplinary enquiry and the competent authority thought it fit to drop further proceedings against him. At any rate, it is not possible to compel the respondents to give the same benefit to the petitioner without deciding as to the legality of the decision to drop the proceedings against those two officers. It is not possible for this Court to decide the validity of the said decision as the same is not impugned. It is not brought to the notice of the Court as to whether the said decision has been impugned and upheld by this Court.

23. It would be appropriate to refer the observations made by the Apex Court in Chandigarh Administration and another Vs. Jagjit Singh and another, , which reads thus:

"Generally speaking, the mere fact that the respondent-authority has passed a particular order in the case of another person similarly situated can never be the ground for issuing a writ in favour of the petitioner in the plea of discrimination. The order in favour of the other person might be legal and valid or it might not be. That has to be investigated first before it can be directed to be followed in the case of the petitioner. If the order in favour of the other person is found to be contrary to law or not warranted in the facts and circumstances of his case, it is obvious that such illegal or unwarranted order cannot be made the basis of issuing a writ compelling the respondent-authority to repeat the illegality or to

pass another unwarranted order..... Of course, if in case the order is in favour of the other person found to be a lawful and justified one it can be followed and a similar relief can be given to the petitioner if it is found that the petitioner's case is similar to the other person's case. But then why examine another person's case in his absence rather than examining the case of the petitioner who is present before the Court and seeking the relief.In other words, the High Court cannot ignore the law and well-accepted norms governing the writ jurisdiction and say that because in one case a particular order has been passed or a particular action has been taken, the same must be repeated irrespective of the fact whether such an order or action is contrary to law or otherwise.The orders and actions of the authorities cannot be equated to the judgments of the Supreme Court and High Courts nor can they be elevated to the level of the precedents, as understood in the judicial world."

24. This is the complete answer to the submission made by the learned Counsel for the petitioner with regard to the plea of discrimination.

25. For the aforesaid reasons, I do not find any merit in this writ petition. However, the de nova enquiry contemplated against the petitioner shall be held strictly in accordance with law and in a reasonable and fair manner. The Enquiry Officer shall make the enquiry in accordance with the principles of natural justice by providing reasonable opportunity to the petitioner of being heard in the matter. The observations if any made in this order shall have no bearing whatsoever upon the proposed enquiry.

26. The writ petition shall accordingly stand dismissed. No order as to costs.