

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

**W.P. No. 8533 of 2012**

**ORDER:**

Heard Sri S. Surender Reddy, learned counsel for the petitioner and Sri Zakir Ali Danish, learned Standing Counsel for the TSSPDCL.

2. The petitioner filed this writ petition to issue an appropriate order or direction more particularly a Writ of Mandamus declaring the punishment orders passed by the 1<sup>st</sup> respondent by proceedings Memo No.CGM(HRD)/GM(S)/AS-III/PO-VII/F. No.3942-D/05-7, dated 11.09.2007 in awarding the punishment of postponement of two increments with cumulative effect and the confirmation orders passed by the 2<sup>nd</sup> respondent by proceedings Memo No. CMD/CGM(HRD)/GM(S)/AS-DC/PO/F.No.3942-D/05-9, dated 08.03.2008 as illegal, arbitrary and abuse of process of law and is a clear case of violation of principles of natural justice and contrary to the Electricity Board regulations and set aside the said orders in the interest of justice.

**3. The case of the petitioner, in brief, is as follows:**

a) The petitioner completed Diploma Course (ITI) in Electrical in the year 1988 and is a local candidate of Adilabad District. Basing on the educational qualifications, through employment exchange, conducting written examination, oral interview and on the merit obtained in the selection process, the petitioner was appointed as Helper-cum-Cleaner (HCC) on 21.03.192 and was posted at Thiryani Section, Asifabad Sub-Division, Kagaznagar Division, Adilabad District.

b) Thereafter, basing on the performance and eligibility, the petitioner was promoted as Assistant linemen in the year 1993 and later he was promoted as Linemen in the year 1996 and that as a Line Inspector in the year 1998. Subsequently, the petitioner was promoted as Senior Linemen in the year 2010 and presently working at Adilabad.

c) Since from the initial appointment, the petitioner worked sincerely to the utmost satisfaction of his superior officers without remarks from any corner.

d) While the petitioner was working as Line Inspector at Operation Section, Rebenna, Tandoor Mandal in the year 2006, basing on the false complaint given by a third person, the Vigilance section of the department conducted enquiry.

Though the allegations were not proved, the department proceeded further and appointed the Divisional Engineer, DPE, Nizamabad as enquiry officer and he issued show cause notice on 06.05.2006 making three charges i.e.

(1) demanded and received the bribe amount from one Boini Bheemaiah of Gopal nagar village for extension of electricity line from the fields of one Telephone Choudary over telephone poles and gave the agricultural connection.

(2) owning a jeep in the name of his wife which was engaged in Bellampally sub-division on contract basis and sold the said jeep without taking permission from the department and

3) forged copies of leave papers and manipulated sanction memo of the Divisional Engineer/OP/Sirpur Kagaz Nagar.

e) After receiving the charge memo, the petitioner submitted explanation on 22.07.2006 denying the charges framed against him. The enquiry officer recorded statements of witnesses. The enquiry officer without considering the statements of the witnesses in its true spirit filed the report in routine manner that the charges were proved. After submitting the enquiry report, the 1<sup>st</sup> respondent issued a show cause notice dated 02.03.2007 to submit explanation

why punishment should not be imposed on him. The petitioner submitted explanation requesting the 1<sup>st</sup> respondent to drop the further action. Without considering the petitioner's explanations, the 1<sup>st</sup> respondent passed final orders on 11.09.2007 and imposed the punishment of 'postponement of two increments with cumulative effect.

f) Aggrieved by the same, the petitioner preferred appeal before the 2<sup>nd</sup> respondent and that the 2<sup>nd</sup> respondent without considering the contents of the appeal, rejected the appeal by order dated 08.03.2008 and confirmed the punishment order passed by the 1<sup>st</sup> respondent.

g) Thereafter, the petitioner preferred revision petition before the Member of DISCOM Board, Waranga and the same was also rejected by order dated 02.08.2008. Hence, this writ petition.

**4. The counter affidavit filed on behalf of the respondents is as follows:**

a) As per Regulation (9) of the APSE Board Service Regulations Part-I (As adopted by APNPDCL) all servants of the respondents company shall perform such duties and carry out such functions as may be assigned to them.

b) A per Regulation (4) of APSEB Service Regulation Part I (As adopted by APNPDCL) the respondent's company shall have the right of interpreting the said regulation and its decision shall be final and binding.

c) Accordingly as per Regulation (3) of APSE Board Service Regulations Part-I (As adopted by APNPDCL) at the outset all employees have to perform their duties with devotion and integrity duly staying away from indulgence in the acts of misconduct as defined and described in the above regulations.

d) Therefore, on receipt of the complaint, the respondents conducted enquiry, charges were framed, statement of witnesses were record, the enquiry officer submitted reported that the charges were proved and that show cause notice was also issued for the explanation of the petitioner and that the petitioner submitted his explanation. Thereafter, the punishment of stoppage of three annual grade increments with cumulative effect was imposed and that three months time was given to prefer appeal.

e) The petitioner preferred appeal. The appellate authority after perusing the record, and taking lenient view in the matter, awarded punishment of stoppage of two increments

with cumulative effect instead of three increments with cumulative effect. As such the petitioner was given reasonable opportunity of being heard. Therefore, the writ petition is liable to be dismissed.

5. In so far as the findings in respect of the 3 charges alleged against the Petitioner as per the Enquiry Officer's report dt. 22.09.2006 vide letter No.DE/DPE/NZB/F./D.No.595/06 are as under:

*"Conclusion: After hearing all witnesses and accused Officers at the oral enquiry held on 15.09.2006 at 33/11 KVSS, Thanduru, it is revealed that:*

***Charges of Sri B.Bapu Reddy, L. 1***

***Charge 1:*** Demanding and receiving on bribe amount of Rs.20,000/- from Boini Bheemaiah is not proved against Sri B.Bapu Reddy, L.1. But it is proved that the electricity supply extended to Sri Boini Bheemaiah over telephone pole and gave agriculture connection vide S.C.No.56, Cat-V, Gopalnagar (V), Thanduru (M) illegally without observing departmental formalities.

***It is a lapse on the part of Sri B.Bapu Reddy, L. 1***

***Charge: II:*** Sri B.Bapu Reddy, L.1 has owned a jeep in the name of his wife Smt B.Aruna and sold out without taking permission from department.

*The jeep was purchased by his wife with 'Shree Dhanam' given to her by her parents. The same thing was not informed to the department. As per conduct regulation No.5 of APSEB employee's conduct regulation 'An employee shall not acquire, alienate or otherwise deal with movable/immovable property of value exceeding Rs.20,000/- by way of purchase, sales, gift, lease, mortgage, pledge, charge, exchange etc. in his name or in the name of any member of his family without prior information to the Board or competent authority as the case may be.*

*Hence, it is a misconduct on the part of SriB.Bapu Reddy,L.1.*

**Charge: III:** *It is proved that he has manipulated the sanction memo of D.E/OP/Sirpur Khagaznagar. It is a lapse on the part of Sri B.Bapu Reddy, L. 1*

**Charges of Sri V.Hari Kishore, A.A.E.**

**Charge I** *Demanding and receiving of bribe amount of Rs.20,000/- is not proved against Sri V.Hari Kishore, AAE.*

*But it is proved that the electricity supply extended to Sri Boina Bheemaiah over telephone pole and gave agriculture connection vide S.C.No.56 Cat-V,Gopalnagar (V), Thanduru (M) illegally without observing departmental formalities.*

*It is a supervisory, lapse on the part of Sri V.Hari Kishore, AAE.*

*Hence, stringent disciplinary action may be initiated against Sri B.Bapu Reddy, L1/OP/Asifabad (Ex.L1/OP/Rebbena) and action may be initiated against Sri V.Hari Kishore, AAE/OP/Rural/Jagtial (Ex.AAE/OP/Rebbena) for their lapse."*

**5. Perused the Record :**

6. A bare perusal of the enquiry report dt. 22.09.2006 of the Divisional Manager, DPE/APNPDCL Nizamabad clearly indicates that there is no discussion in the enquiry report as to what basis the charges are held as proved against the Petitioner. A bare perusal of the enquiry report clearly reveals that the lapses alleged against the Petitioner are only procedural lapses and not any serious lapses and further the findings of the enquiry officer are not based on any evidence since the enquiry officer admittedly as borne on record did not examine anybody in support of the charges framed against the Petitioner. The Enquiry Officer in his enquiry report dated 22.09.2006, held that the petitioner manipulated the sanction

Memo of DE/OP, Sirpur Khagaznagar without examining anybody in support of Charge III framed against the petitioner.

7. The Counsel for the Petitioner brings on record the Memo No.CGM(HRD)/GM(S)/AS-III/PO-VII/F.NO.3942-D/05-7, dated 11.09.2007 and a bare perusal of the same clearly indicates that Sri V.Hari Kishore, Ex-AAE/OP/Rebbena AAE/OP/Rural Jagital was let off by awarding punishment of "CENSURE" instead of the punishment of "postponement of 2 increments with cumulative effect" and the counsel for the petitioner further contends that the Respondents however awarded unduly harsh and shockingly disproportionate punishment of stoppage of 2 increments with cumulative effect to the Petitioner. While it is not for this Court to re-appreciate the evidence on record, nor to sit in judgement over the findings of the enquiry officer or the disciplinary authority, these aspects are being examined in the present case only for the limited purpose of ascertaining as to whether or not the Respondents had discriminated against the Petitioner in imposition of punishment. While under similar circumstances Sri V.Hari Kishore was let off with a



punishment of Censure the Petitioner however was awarded the punishment of postponement of two increments with cumulative effect. It is pertinent to note that Sri V.Hari Kishore, AAE, is another accused officer who was charge sheeted along with the Petitioner.

8. The Apex Court in its judgement in **Kailashnath Gupta V. Enquiry Officer (R.K.Rai) Allahabad Bank and others**<sup>1</sup> at para 11 observed as follows :

*"In the background of what has been stated above, one this is clear that the power of interference with the quantum of punishment is extremely limited. But when relevant factors are not taken note of, which have some bearing on the quantum of punishment, certainly the Court can direct re-reconsideration or in an appropriate case to shorten litigation, indicate the punishment to be awarded. It is stated that there was no occasion in the long past service indicating either irregularity or misconduct of the appellant except the charges which were the subject matter of his removal from service. The stand of the appellant as indicated above is that though small advances may have become irrecoverable, there is nothing to indicate that the appellant had misappropriated any money or had committed any act of fraud. If any loss has been caused to the Bank (which he quantifies at about Rs.46,000) that can be recovered from*

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<sup>1</sup> (2003) 9 SCC 480

*the appellant. As the reading of the various articles of charges go to show, at the most there is some procedural irregularity which cannot be termed to be negligence to warrant the extreme punishment of dismissal from service".*

9. A bare perusal of the impugned orders dated 08.03.2008 and also the impugned order dated 02.08.2008 passed by the 2<sup>nd</sup> Respondent clearly indicate that the same had been passed in a routine mechanical manner without considering the fact that the Petitioner did not involve in any serious misconduct but only committed certain procedural lapses, the same are accordingly set aside.

10. Taking into consideration the judgement of the Apex Court in **Kailashnath Gupta v. Enquiry Officer**, this Court opines that the present case is a fit case of remand to the 1<sup>st</sup> Respondent and the 1<sup>st</sup> Respondent is directed to reconsider the matter afresh within a period of four weeks from the date of receipt of the copy of the order and duly communicate the decision to the petitioner. The consideration shall be limited to the quantum of punishment and not any other question duly taking into consideration the observations made by this Court in the present Writ Petition.

11. Accordingly, the writ petition is allowed. However, there shall be no order as to costs.

Miscellaneous petitions, if any, pending shall stand dismissed.

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**SUREPALLI NANDA, J**

Date: 28.09.2022

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