***HONOURABLE SRI JUSTICE N.V. SHRAVAN KUMAR**

+WRIT PETITION (TR) No.510 OF 2017

% Dated 13-10-2023

Between:

B.Shiva Prasad S/o. Venkatarami Reddy

...Petitioner

and

$ Government of Andhra Pradesh,
Represented by its Secretary,
Irrigation & CAD Department,
Secretariat Buildings,
Hyderabad-500 022 and another

....Respondents

! Counsel for the petitioner : Sri Santhapur Satyanarayana Rao

^ Counsel for the respondents : Govt. Pleader for Services-II

< GIST : ---

>HEAD NOTE : ---

? Cases referred: :

1. AIR 1998 SC 2713
2. MANU/SC/0583/1999

THE HONOURABLE SRI JUSTICE N.V. SHRAVAN KUMAR

W.P. (TR) No.510 of 2017

ORDER:

This writ petition has been filed seeking to call for the records relating to the impugned G.O. Rt.No.1385, Irrigation & C.A.D (Ser.VII.(V&E)A.1) Department dated 26.12.2012 issued by the 1st respondent in imposing a major penalty of cut in 2 increments with cumulative effect and set aside the same as illegal and arbitrary and consequently to direct the respondents to accord all consequential benefits.

SUBMISSIONS OF THE PETITIONER:

2. It is the case of the petitioner that he was initially appointed as Assistant Executive Engineer on 09.04.1992 and subsequently he was promoted as Deputy Executive Engineer.

3. While so, the 1st respondent, Secretary to Government, Irrigation & C.A.D. Department, vide G.O. Rt. No.1611, dated 05.12.2006 had issued orders framing certain articles of charges and initiated the disciplinary proceedings for which, the petitioner submitted his explanation denying the article of charge. Statement of Article of Charge reads as under:

> "As per specifications the compressive strength of C.C(1.2.4) with HGB grade metal will be 15.00 N/mm. But the test results are ranging from 5 to 10 N/mm which is much below than the allowable strength of individual core sample strength (75% of 15.00 N/,,) or

> average3 compressive strength (85% of 15.00 N/mm). These C.C. road bilts are liable for rejection. But the said Sri B.Shiv Prasad recorded for payment for these cement concrete road bits of "Laying of CC road over the existing WBM internal roads at Nandimalla (V) cross road and, at Mitta Nandimalla Erladinne (V) Rehabilitation and Resettlement centers of PJP left flank in Mhaboobnagar district" as standard works."

4. Notwithstanding the fact of offering plausible explanation, the 1st respondent has chosen to proceed with the departmental enquiry by placing the matter before the Commissioner of Enquiries to inquire into the charges framed against the petitioner and vide G.O. Rt. No.744, dated 10.06.2008, one Sri Prasanth Mahapathra, I.A.S., Commissioner of Enquiries was appointed as inquiring authority and thereafter, one Sri Lingaraju Phanigarah, I.A.S., was appointed as Enquiry Officer vide G.O. Rt. No.788, dated 29.07.2011. It is submitted that the Commissioner of Enquiry conducted an inquiry and submitted a report on 24.09.2011 holding that the charges framed against the petitioner and other officers were not held proved. Thereafter, the 1st respondent, instead of dropping further action based on the report of the enquiring authority and its findings therein, has chosen to differ with the said findings stating that the Government has decided to deviate with the findings of the inquiry authority and issued a Memo dated 19.03.2012 communicating the reasons for disagreement with the findings of the Enquiry Officer duly enclosing the report for which also, the petitioner submitted an explanation requesting to drop further action. It is further submitted

that though the petitioner has submitted plausible and convincing explanation, yet the 1st respondent, sticking on to the Vigilance report and without taking into consideration the quality assurance certificate issued by the concerned authorities, has chosen to impose punishment of a major penalty of cut in two increments with cumulative effect against the petitioner despite the charges were not proved during the course of inquiry conducted by the Commissioner of Inquiries. Hence, the petitioner filed the present writ petition.

SUBMISSIONS OF THE RESPONDENTS:

5. On behalf of the respondents, counter affidavit has been filed stating that it has been brought to the notice of the Government by the Vigilance and Enforcement Department vide their report dated 19.04.2006 that certain Engineers of I&CAD Department have committed irregularities in construction of School building compound wall and laying of cement concrete roads in Rehabilitation and Re-settlement centres in Priyadarshini Jurala Project, Mahaboobnagar district with a recommendation to initiate suitable departmental action against the Engineers responsible for the lapses pointed out. After examining the Vigilance and Enforcement report in detail, disciplinary proceedings have been initiated against the petitioner and two other Engineers by way of issuing the common articles of charge against them.

6. The petitioner has denied the charge in his written statement of defense. After examination of the written statements of defense of the

Charged Officers, including the petitioner, it has been decided to entrust the case to Commissioner of Inquiries (COI) to inquire into the charges framed against the petitioner and (2) others, as their written statements of defense found not convincing. Accordingly, vide G.O.Rt. No.744, I&CAD (Ser.VII.(V&E) Department dated 10.06.2008 Dr. Prasanta Mahapatra, I.A.S. COI has been appointed as Inquiring Authority to inquire into the charges framed against the COs including the petitioner. Thereafter, orders were issued revising the appointment of Inquiring Authority due to administrative reasons i.e., DR Garg, IAS, COI, Sudhrendu Bhattacharya, IAS COI. Finally, the case was reassigned to Sri Langaraj Panigrahi, IAS as Inquiring Authority vide G.O.Rt.No.788, 18CAD (Ser.VII (V&E)A1) Department, dated 29.07.2011.

7. The Inquiring Authority vide his D.O. letter dated 24.09.2011 has submitted his inquiry report stating that the charge framed against the COs including the petitioner is held as not proved. After examination of the inquiry report, it has been decided to deviate with the findings of the Inquiry Authority in terms of Rule 21(2) of APCS (CCA) Rules, 1991 for the following reasons:

> "the contention of the COs that in nominal mix, the strength limits are only approximate and are not definite which may give different samples depending on metal size and W.C. ratio, is accepted" is totally contrary to the provisions of IS 456-2000. Para 9.3 of the code stipulates the proportions for nominal mix concrete to obtain the desired concrete grade

> (compressive strength). Para 9.1. 1 - clearly states that nominal mix is likely to involve higher cement (to obtain the same compressive strength by design mix). In case the concrete work is carried out as per the provisions of the code with respect to size of the metal, WC ratio and as per the table 9 of the code, the strength of the concrete shall be as per the grade."

8. A copy of the inquiry report with the above disagreement factors were communicated to the Charged Officers (COs) including the petitioner with a direction to submit their explanations if any thereon. Accordingly, the COs including the petitioner have submitted their explanations and after examining the explanations of the petitioner and others, the Government have provisionally decided to impose a punishment of stoppage of (2) annual grade increments with cumulative effect against the petitioner. In Government letter dated 02.08.2012, the Secretary, APPSC, Hyderabad was requested to Communicate the concurrence of the APPSC on the above provisional decision. The Secretary, APPSC in his letter dated 22.08.2012 has informed that the APPSC has agreed to the above provisional decision of the Government. Accordingly, vide G.O.Rt. No.1385 I&CAD Ser, VII (V&E)A.1 Department, dated 26.12.2012, orders were issued by imposing a punishment of cut in two (2) annual grade increments with cumulative effect against the petitioner Sri B. Shiv Prasad, Deputy Executive Engineer. Orders have also been issued by imposing a penalty of 2% cut in pension permanently against Sri M.Bheem Reddy, the then Deputy Executive Engineer (now retired) and a

penalty of 5% cut in pension permanently against Sri Sarath Chandra, I/C CE (now retired), after obtaining the concurrence of APPSC.

9. It is further submitted that the petitioner has joined in service as Assistant Executive Engineer in I&CAD Department on 09.04.1992 through APPSC and was promoted as In-charge Deputy Executive Engineer in the year 2005. The Director General (Vig. & Enft.) & E.O. Prl. Secretary to Government G.A.D. in his Report No. 44(1356/N&E/ E2/05), dated 19.04.2006 has stated that certain Engineers of I&CAD Department have committed irregularities in construction of School building Compound wall and laying of cement concrete Roads in Rehabilitation and Re-settlement centers in Priyadarshini Jurala Project, Mahaboobnagar district and recommended for initiation of suitable departmental action against the officers responsible for the lapses pointed out. Government after examining the matter has decided to initiate departmental action against the petitioner along with other Engineers and accordingly disciplinary proceedings have been initiated in G.O.Rt.No.1611, dated 05.12.2006 against the petitioner by way of issuing articles of charges. After examination of the written statements of defense of the COs including the petitioner, it has been decided to entrust the case to COI to inquire into the charges framed against the petitioner and (2) others as their written statements of defense found not convincing. Accordingly, in G.O.Rt.No.744, I&CAD (Ser.VII. (V&E) Department dated 10.06.2008 Dr. Prasanta Mahapatra, I.A.S. COI has been appointed as

Inquiring Authority to inquire into the charges framed against the COs including the petitioner. Thereafter, orders were issued revising the appointment of Inquiring Authority due to administrative reasons i.e., DR Garg, IAS, COI, Sudhrendu Bhattacharya, IAS COI. Finally, the case was reassigned to Sri Langaraj Panigrahi, IAS as Inquiring Authority vide G.O. Rt.No.788, I&CAD (Ser.VII (V&E) A1) Department, dated 29.07.2011. Following is the finding of the Inquiring Authority:

> "As per the report on results of comprehensive strength test conducted on concrete cores extracted from the identified locations of cement concrete roads located at Nandimalla & Mitta Nandimalla villages in Mahabunagar Dist. Conducted by Civil-Aid Technoclinic Pvt. Ltd. i.e. the Agency which conducted the tests engaged by the V&E Dept., the comprehensive strength of the samples taken by V&E widely varies between 27.5 to 1.4 M/mm2 with quite number of samples with strength around 15N/mm2. Therefore, it can be concluded that in case of normal mix the sample variation of strength is possible. Otherwise the test samples would have not shown such a wide variation in the test results. Therefore, the contention of the charged officers that nominal mix the strength limits are only approximate and are not definite which may give different strength on the different samples depending on metal size and W.C. ratio is accepted."

10. It is submitted that the laying of the cement concrete road was completed and final payment was made in May 2005. After three years three months of completion of the work, his predecessor Dr. Pransanth Mahapatra, IAS had made an inspection of the work in

connection with conduct of this departmental enquiry and he has observed that cement Concrete internal roads in both colonies are intact and no pot hole has been developed so far. The charged officers have also furnished recent photographs of the work along with their final submission on 21.09.2011. From the photographs it is observed that the roads even after six years are in good condition. Therefore, the charge that sub standard work has been executed by three charged officers is not substantiated. Therefore, charges framed against the charged officers are not held proved.

11. On examination of the enquiry report, it has been observed and decided to deviate with the findings of the IA in terms of Rule 21(2) of APCS (CCA) Rules, 1991. Accordingly, the COs including the petitioner have been directed to submit their explanations if any on the above disagreement factors. The petitioner submitted his explanation on the deviation factors on 04.04.2012 and requested to drop further action against him. The explanation submitted by the petitioner that, *"in Nominal mix, strength depends upon various field conditions like temperature of the work spot, moisture in the coarse strength available in the cement over and above. Normal standards, skilled labour and importance of other works to be executed simultaneously"* is not convincing and is contrary to the Codal provisions. The desired compressive strength is arrived duly considering various adverse field conditions likely to be encountered. Yet some tolerance in minimum value of each sample and average

strength is allowed. The Compressive strength of the concrete whether it is a normal mix or design mix, should invariably be within the permissible limits. Accordingly, vide G.O.Rt. No.1385 I&CAD Ser,VII (V&E)A.1 Department, dated 26.12.2012, orders have been issued by imposing a punishment of cut in two (2) annual grade increments with cumulative effect against the petitioner, Deputy Executive Engineer with the concurrence of APPSC.

12. It is further submitted that based on the material available with the Government and after examination of the entire issue duly following the due procedures and taking into consideration of codal rules, Government has on the conclusion that the charge still stands proved.

13. It is further submitted that after examining the inquiry report in detail, in Government Memo dated 26.06.2006 while communicating the copy of the inquiry report, along with the disagreement factors with the findings of the Inquiring Authority, the petitioner was directed to submit his explanation on the disagreement factors of the Government with the findings made by the Inquiry Authority. Hence, the contention of the petitioner is not correct.

14. It is further submitted that the entire disciplinary case was examined in terms of the existing rule position which is available APCS (CC&A) Rules 1991. Hence, the punishment imposed against

the petitioner is in order and the contention of the petitioner is not correct, and is baseless and false.

15. On behalf of the petitioner, Reply Affidavit has been filed substantiating the case of the petitioner.

CONTENTIONS OF THE PETITIONER:

16. The learned counsel for the petitioner submitted that one way the respondent in his counter affidavit in para No.6(d) stated that the work was completed during May, 2005. After three years and three months of completion of the work his predecessor Dr.Pranshanth Mahapatra, IAS had made an inspection of the work in connection with this departmental inquiry and he has observed that cement concrete internal roads in both colonies are intact and ultimately held that charge is not proved. In those circumstances, no reason is mentioned for disagreeing with the findings and that penalty was imposed over the petitioner after lapse of Six (6) years period. It is further submitted that a keen reading of report of the Commissioner of Inquiries discloses that the alleged charge pertaining to for the period 25.08.2005 i.e., the works were completed and the final bills were also paid as on 25.08.2005 to the concerned contractor. Whereas the charge Memo in G.O.Rt.No.1611, dated 05.12.2006 was issued calling explanation from the petitioner after lapse of more than one year, basing on the vigilance report dated 19.04.2006. However, without considering the explanation, the matter was entrusted to the Commissioner of Inquiries to conduct

detailed inquiry in terms of Rule 20 of CCA Rules. It is further submitted that the Commissioner of Inquiries, after conducting a detailed inquiry, had submitted his detailed report on 24.09.2011 to the Government categorically stating that *"it is absorbed that the roads even after Six (6) years are in good condition. Therefore, the charge that substandard work has been executed by Three (3) charged officers is not substantiated. Therefore, charges framed against the charged officers are not held proved,"*

17. The petitioner would further submit that subsequently basing on Government Memo No.12861/Ser.VII(V&E)1/2006-16 dated 16.12.2011, the Chief Engineer (Projects) vide his letter No. CE(P)/DCE I/OT8/AEE2/R&R/ 2011 dated 18.01.2012, submitted a detailed report to the 1st respondent, wherein holding that the CC roads works in Mitta Nandimalla and Nandimalla X Roads centers executed during the year 2006 are intact and copy of test results and photographs were also enclosed. It is further submitted that on a keen reading of the above said letter dated 18.01.2012 of Chief Engineer in the reference columns discloses that the 1st respondent sought such report vide Memo dated 16.12.2011 based on the Vigilance report dated 12.01.2012. Despite the fact that both the above reports are in favour of the petitioner, the 1st respondent at the instance/dictation from the vigilance authorities advise, communicated the report of the commissioner of inquiries along with disagreement note vide Memo No.12861/Ser.VII (V&E.l)/2006-17,

dated 19.03.2012, differing with the findings of commissioner of inquiries and called for explanation from the petitioner. On receiving the same, the petitioner once again submitted his detailed explanation on 04.04.2012, requesting to drop further action against him. Without considering his contentions and without taking into account of inquiry report dated 23.09.2011 of the Commissioner of inquiries i.e. senior IAS officer, as well as report of the Chief Engineer (Projects), Mahabubnagar, dated 08.01.2012, the 1st respondent imposed a major punishment vide impugned G.O.Rt.No.1385, dated 26.12.2012. It is further submitted that despite of two reports in favour of the petitioner, the 1st respondent at the instance/dictation from the vigilance commission, straight away differed with the finding of the commissioner of inquiries, dated 24.09.2011 and furnished a report of the Inquiry Officer along with disagreement note vide Memo dated 19.03.2012.

18. In this regard to substantiate his case, the counsel for petitioner had placed reliance in the case of **Punjab National Bank and others Vs. Kunj Bihari Misra**[1] wherein, the Hon'ble Apex Court held that whenever the report of the Inquiry Officer is in favour of delinquent, in the event of proposing to defer with the findings of the Inquiry Officer, a mandatory obligation lie on the disciplinary authority, to give opportunity of hearing to delinquent before recording its conclusions. In the case on hand, the 1st respondent without giving

[1] AIR 1998 SC 2713

such opportunity of personal hearing, before proposing to differ with the findings of the Inquiry Officer, straight away differed with the findings of the Inquiry Officer and communicated disagreement note vide Memo dated 19.03.2012 along with the report of the Inquiry Officer dated 24.09.2011 and called for explanation.

19. The petitioner would further submit that the work was completed as on 25.08.2005 and based on report of the vigilance commission dated 19.04.2006, department proceedings were initiated, vide charge memo dated 05.12.2006. Despite of Two (2) favorable reports from the authorities including report of the Commissioner of Inquiries, the 1st respondent at the instance/pressure yielded by the commissioner of inquiries, after lapse of more than Seven (7) years from the incident, issued orders of punishment. It is further submitted that as stated in the main case that in similar circumstances in the case of Twelve (12) Engineers against whom similar disciplinary proceedings initiated in case of substandard execution of work in RDS and Priyadarshini Jurala Project, dropped further action vide G.O.Rt.No.290, dated 26.03.2011. Therefore, the action of the 1st respondent imposing punishment over the petitioner, despite of favorable reports from the Commissioner of Inquiries as well as Chief Engineer (Projects) is not only illegal and discriminatory and contrary to law laid down by Hon'ble Apex Court in 2001 (10) SCC 530 as well as the Division Bench judgment reported 2013 (4) ALT 1 (DB). Therefore, on the ground of discrimination,

as well as delay and laches the present impugned order is liable to be set aside in limini in the interest of justice.

20. Eventually the petitioner would submit that the power vested with the authority has to exercise honestly, *bona fide*, reasonably with application of mind. But unfortunately in the case on hand, the 1st respondent initiated action and concluded said proceedings under the dictation from the vigilance authorities. Therefore, the 1st respondent committed a jurisdictional error in passing the present impugned order and such action is contrary to law laid down by Division Bench of this Hon'ble Court in 2004 (7) ALT 289 (DB). Therefore, for all these reasons the present impugned order is liable to be set aside in the interest of justice.

21. The learned counsel for the petitioner placed reliance on the judgments rendered by the Hon'ble Apex Court in **Yoginath D. Bage Vs. State of Maharashtra[2].** He further submitted that there is inordinate delay and laches in the disciplinary proceedings.

22. On the other hand, the learned Government Pleader for Services-II reiterated the averments made in the counter affidavit filed in support of their case.

[2] MANU/SC/0583/1999

DISCUSSION:

23. Heard the learned counsel for the petitioner and the learned Government Pleader appearing for the respondents and perused the material made available on record.

24. It is not in dispute that the alleged charges levelled against the petitioner were held not proved initially by the inquiry officer. The main grievance of the petitioner is that the 1st respondent, instead of taking an independent decision, forwarded the report to the Vigilance Commissioner, who deferred/disagreed with the findings of the Enquiry Officer. The 1st respondent while disagreeing with the findings of the Enquiry Officer and coming to a different conclusion, ought to have given an opportunity of personal hearing to the petitioner.

25. In the case of **Punjab National Bank** one supra, the Hon'ble Apex Court held at para 18 as under:

> "18. At this stage it will be appropriate to refer to the case of State of Assam and Anr. Vs. Bimal Kumar Pandit ([1964] 2 SCR 1] decided by a Constitution Bench of this Court. A question arose regarding the contents of the second show cause notice when the Government accepts, rejects or partly accepts or partly rejects the findings of the Enquiry Officer. Even though that case relates to Article 311 (2) before its deletion by the 42nd Amendment, the principle laid down therein, at page 10 of the report, when read alone with the decision of this Court in Karunakar's case will clearly apply here. The Court observed at Page 10 as follows:-

"We ought, however, to add that if the dismissing authority differs from the findings recorded in the enquiry report, it is necessary that its provisional conclusions in that behalf should be specified in the second notice. It may be that the report makes findings in favour of the delinquent officer, but the dismissing authority disagrees with the said findings and proceeds to issue the notice under Article 311 (2). In such a case, it would obviously be necessary that the dismissing authority should expressly state that it differs from the findings recorded in the enquiry report and then indicate the nature of the action proposed to be taken against the delinquent officer. Without such an express statement in the notice, it would be impossible to issue the notice at all. There may also be cases in which the enquiry report may make findings in favour of the delinquent officer on some issues and against him on some other issues. That is precisely what has happened in the present case. If the dismissing authority accepts all the said findings in their entirety, it is another matter: but if the dismissing authority accepts the findings recorded against the delinquent officer and differs from some or all of those recorded in his favour and proceeds to specify the nature of the action proposed to be taken on it own conclusions, it would be necessary that the said conclusions should be briefly indicated in the notice. In this category of case, the action proposed to be taken could be based not only on the findings recorded against the delinquent officer in the enquiry report, but also on the view of the dismissing authority that the other charges not held proved by the enquiring officer, are according to the dismissing authority, proved. In order to give the delinquent officer a reasonable opportunity to show cause under Article 311 (2), it is essential that the conclusions provisionally reached by

> the dismissing authority must, in such cases, be specified in the notice. But whether the dismissing authority purports to proceed to issue the notice against the delinquent officer after accepting the enquiry report in its entirety, it cannot be said that it is essential that the dismissing authority must say that it has so accepted the report. As we have already indicated, it is desirable that even in such cases a statement to that effect should be made. But we do not think that the words used in Article 311 (2) justify the view that the failure to make such a statement amounts to contravention of Article 311 (2). In dealing with this point, we must bear in mind the fact that a copy of the enquiry report had been enclosed with the notice, and so, reading the notice in common sense manner, the respondent could not have found any difficulty in realising that the action proposed to be taken against him proceeded on the basis that the appellants had accepted the conclusions of the enquiring officer in the entirety."

26. In the case of **Yoginath** two supra, the Hon'ble Apex Court held at para 56 as under:

> "56. In the instant case, we have scrutinised the reasons of the Disciplinary Committee and have found that it had taken its final decision without giving an opportunity of hearing to the appellant at the stage at which it proposed to differ with the findings of the Enquiry Officer....."

27. From the above two judgments of the Hon'ble Apex Court, it is clear that the respondents ought to have given an opportunity of hearing to the petitioner at the stage at which they propose to

differ/disagreement with the findings of the Enquiry Officer and then indicate the nature of the action proposed to be taken on its own conclusions, which ought to have been briefly indicated in the notice. In the instant case, no such procedure has been adopted by the respondents duly issuing such notice.

28. In case between the **STATE OF AP Vs. N.RADHAKRISHNA**[3] the Hon'ble Supreme Court deprecated the practice of delay in disciplinary proceedings and came to the conclusion that the delay causes prejudice to the charged officer unless he is to be blamed for the delay. Para 19 is relevant, which reads as follows:

> "It is not possible to lay down any pre-determined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. the essence of the matter is that the court has to take into consideration all relevant factors and to balance and weight them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he s not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the

[3] (1998) SCC 154

> proceedings. In considering whether delay has vitiated the disciplinary proceedings the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. if the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer enterusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

29. Practically, the same view was also taken in the case of **M.V.BIJLANI V. UNION OF INDIA AND OTHERS[4].** The Hon'ble Supreme Court also has stated that protracted disciplinary proceedings would be much more than the punishment. In the case of **P.V.MAHADEVAN V. M.D.TAMILNADU HOUSING BOARD[5],** it has been held as follows:

> "Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to

[4] (2006) 5 SCC 88
[5] (2005) 6 SCC 636

> the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer."

30. As regards the submissions made by the petitioner that though the 1st respondent authority without taking any action independently on the findings of the Enquiry Officer simply under the order and dictation of the Vigilance authority, prepared the disagreement note and concluded the proceedings by the 1st respondent, a Division Bench of this Court in the case of **D.Ramesh Sinha Vs. Cadre Authority For Key Personnel of Co-Op. Central Banks/Apex Bank**[6] held at para 8 as under:

> "8. Having regard to the aforementioned notings in the records, we have no doubt whatsoever that the

[6] 2002(1) SLR 93

> impugned orders of suspension have been passed pursuant to and in furtherance of the directions issued by the State Government. Power to initiate disciplinary proceedings against an employee or place him under suspension emanates from a statute. While exercising such statutory power, the competent authority, must therefore, apply its mind independently as to whether the conditions precedent for excercising such power exist. It is now trite that if a statutory authority acts at the behest of some other authority, however high he may be, who has no statutory role to play in the matter, then such action/or any order passed by him, would be a nonest in the eye of law. It is also well settled that while passing an order, if the statutory authority ignores the relevant factors or takes into considerations, factors not germane for the passing of the order, then such action or the order flowing from such action, would be vitiated in law. Equally well settled is the principle that the statutory authority while exercising statutory powers, must pose correct questions so as to apply correct legal principles and arrive at correct conclusions basing on the actual and exact state of affairs, and if he fails to do so, the same would amount to misdirection in law. Although decisions on this score are galore, suffice it to refer to the decision of the apex Court in COMMR. OF POLIC. V. GORDHANDAS, and the decision of the Court of Appeal, Civil Division, in **Secretary of State v. Tameside, (1976) 3 All England Reporter 665."**

31. Finally, in the case of **SATYENDRA CHANDRA JAIN Vs. PUNJAB NATIONAL BANK AND OTHERS**[7] at paras 4 and 5 held as under:

[7] (1997) 11 Supreme Court Cases 444

> "4. In the present case the disciplinary authority had passed the order for removal from service of the appellant on 16-11-1988, i.e., at a time when the said directive dated 21-7-1984 was operative. It must, therefore, be presumed that in passing the said order, the disciplinary authority was acting in accordance with the said directive and has imposed the punishment of removal from service in accordance with the recommendation made by the Chief Vigilance Officer.
>
> 5. having regard to the decision in *Nagaraj Shivarao Karjagi (1991) 3 SCC 219 : 1991 SCC (L&S) 965 : (1992) 19 ATC 639)* and the fact that the appellant has already attained the age of superannuation we are of the view that the disciplinary authority should reconsider the matter regarding the penalty to be imposed on the appellant in the light of the misconduct that has been found established against him. The disciplinary authority will take this decision on the basis that the recommendation made by the Chief Vigilance Officer is not binding. In case the disciplinary authority chooses to impose a lesser punishment than the punishment of removal from service, the order dated 16-11-1988 imposing the penalty of removal from service will stand modified accordingly. The disciplinary authority shall consider the matter and take a decision in this regard within three months. The appeal is disposed of accordingly. No costs."

32. The respondents in their counter at para 6(e) submitted that in terms of the enquiry report, it has been observed and decided to deviate with the findings of the IA in terms of Rule 21(2) of APCS (CCA) Rules, 1991 for the following reasons:

> "the contention of the COs that in nominal mix, the strength limits are only approximate and are not definite which may give different samples depending on metal size and W.C. ratio, is accepted" is totally contrary to the provisions of IS 456-2000, mix concrete to obtain the desired concrete grade (compressive strength). Para 9.1.1 – clearly states that nominal mix is likely to involve higher cement (to obtain the same compressive strength by design mix). In case the concrete work is carried out as per the provisions of the code with respect to size of the metal, WC ratio and as per the table 9 of the code, the strength of the concrete shall be as per the grade."

33. Thereafter, the petitioner has submitted his explanation on the deviation factors on 04.04.2012 stating that in nominal mix, strength depends upon various field conditions like temperature of the work spot, moisture in the coarse strength available in the cement over and above, normal standards, skilled labour and importance of other works to be executed simultaneously was not considered by the respondents holding that the said explanation offered by the petitioner is not convincing and is contrary to the Codal provisions. The said observation of the respondents is not backed by any technical report with respect to the scope of work and in the absence of the same, the respondents stating that the explanation offered by the petitioner is not convincing and contrary to the Codal provisions is unsustainable. However, no specific findings have been given to that effect. The respondents ought to have referred this particular issue to any technical expert and verify and obtain a report in terms

of the provisions of IS 456-2000. That apart, it is noted that though the work was completed as on 25.08.2005 and based on report of the Vigilance Commission dated 19.04.2006, departmental proceedings were initiated, vide charge Memo dated 05.12.2006 despite of two favourable reports from the authorities including report of the Commissioner of Inquiries. The 1st respondent, at the instance/ pressure yielded by the Commissioner of Inquiries, after a lapse of more than seven years from the date of incident issued orders of punishment, inspite of the fact that two reports are in favour of the petitioner and that the issues involved requires further technical reasoning as per the observations of the respondents that it is contrary to the Provisions of IS 456-2000. In the absence of any such report, the respondents arriving to impose impugned punishment against the petitioner is unsustainable. The scope of enquiry is purely technical in nature and in the absence of any substantial reason justifying the action of the respondents in imposing the impugned punishment based on the technical evaluation without proper reference and without giving an opportunity to the petitioner is *ex facie* illegal and unsustainable.

34. On a perusal of the impugned G.O. Rt.No.1385 dated 26.12.2012 it is noted that subsequent to the explanation given by the petitioner to the disagreement factors of the Government on the findings of the Inquiry Authority, no substantial reasons were given by the respondent No.1 justifying on the findings in disagreement factors.

An opportunity would have been given to the petitioner to know the charges framed against him. More so, when in an earlier report dated 24.09.2011, the Inquiry Authority has come to a conclusion holding that there is no evidence to determine that the petitioner has committed misconduct. Though a reference was taken to reference 6 to the report dated 24.09.2011, but no cogent reasons were given to the extent of on what basis the respondent No.1 differed from the report dated 24.07.2011.

35. That apart, another aspect to be considered is that the disciplinary proceedings were initiated against the 12 similarly situated officers wherein for the very same cause was dropped. Therefore, the impugned G.O. Rt.No.1385, Irrigation & C.A.D (Ser.VII.(V&E)A.1) Department dated 26.12.2012 is not only discriminatory but also there was a considerable delay and laches and as such, the same is liable to be set aside.

CONCLUSION:

Considering the above judicial pronouncements, if any order is passed at the instance of the higher authority, without application of independent mind by the disciplinary authority, itself is illegal and the same is unsustainable.

36. In view of the above, having regard to the facts and circumstances of the case and the submissions made by the learned counsel on either side, this writ petition is allowed by setting aside the

G.O. Rt. No.1385, dated 26.12.2012. Consequently, the respondents are directed to accord all consequential benefits as per the eligibility of the petitioner in accordance with law, within a period of (3) Three months from the date of receipt of a copy of this order.

37. Accordingly, this Writ Petition (TR) is allowed. There shall be no order as to costs.

As a sequel, miscellaneous applications, if any pending, shall stand closed.

JUSTICE N.V. SHRAVAN KUMAR

Date: 13.10.2023
LSK