SUPREME COURT OF INDIA

Government of A.P.

Vs.

N. Ramanaiah

C.A.No. 2023 of 2006

(R.V. Raveendran J.)

14.05.2009

JUDGEMENT

B.SUDERSHAN REDDY, J.

1. This appeal by the Government of Andhra Pradesh has been filed challenging the final judgment and order dated 28.04.2003 of the High Court of judicature of Andhra Pradesh passed in Writ Petition No.2121/03 whereby the High Court allowed the Writ Petition filed by the respondent herein. The High Court by the impugned order quashed the order dated 17.04.2001 passed by the appellant dismissing the respondent from service.

2. Relevant facts leading to filing of this appeal by the State may briefly be stated as under:

3. The respondent herein was initially appointed as Over- Seer in the year 1966 which post was re-designated as Assistant Engineer in the year 1974. He was in-charge of Bitumen stores between

May 1990 and September 1994 while working as the Assistant Engineer in R&B Department, Karim Nagar District, Andhra Pradesh. It was brought to the notice of the appellant that the respondent while working at the said place misappropriated huge quantities of 425 MT of bulk bitumen and 71.00 MT of pack bitumen. The Engineer- in-chief (R&B) Administration, was accordingly directed by the Government to frame appropriate charges against the respondent and others involved in the misappropriation under sub-rule (3) of Rule 20 of A.P.Civil Services (CC & A) Rules, 1991 (herein referred to as the `Rules') against the respondent and others concerned. The Engineer-in-chief accordingly framed articles of charges as against the respondent. The Government issued orders appointing a Member of Commissionerate of Inquiries as the Enquiry Officer to conduct departmental enquiry against the respondent and others for the irregularities of large scale misappropriation of bitumen belonging to Government valued at about more than Rs. Forty Lakhs. The respondent was placed under suspension by the order dated 13.08.1998. The Enquiry Officer after making an enquiry as is required in law has submitted his report in which it is held that the respondent who was incharge of stores has not been able to properly account for missing quantities of bitumen and accordingly held that the charges have been duly proved against him.

4. The Government having examined the Enquiry Officer's report and material available on record provisionally decided to impose a major penalty of dismissal from service on the respondent. A show cause notice under Rule 21(4) of the Rules was served on the respondent requiring him to explain as to why the major penalty of dismissal should not be imposed on him. A copy of the Enquiry Officer's report has been duly furnished to the delinquent to which he submitted his written statement. The Government having examined the written statement of defence found no merit in it. The Andhra Pradesh Public Service Commission was consulted as is required in law for its concurrence to impose the major punishment of dismissal from service on the respondent to which the Commission expressed its concurrence. The Government in exercise of the powers conferred by clause (x) of Rule 9 of the said Rules accordingly passed the orders in G.O.Ms. No. 58 TR&B(S.I.3) dated 17.04.2001 inflicting punishment of dismissal from service as against the respondent.

5. The respondent challenged the said order of dismissal before the A.P. Administrative Tribunal. The Tribunal vide its judgment dated 28.06.2002; upheld the order of dismissal passed by the Government against the respondent and accordingly dismissed the appeal filed by him. Aggrieved by the said order, the respondent filed Writ petition No.2121/03 in the High Court of Andhra Pradesh. The High Court vide its impugned judgment quashed the orders of the A.P.Administrative Tribunal and accordingly set aside the order of dismissal passed against the respondent. Hence this appeal by the Government of Andhra Pradesh.

6. We have elaborately heard the learned senior counsel appearing for both the parties and perused the impugned order and the material available on record. The High Court allowed the Writ Petition only on the ground that the impugned order of dismissal has been passed by the State Government imposing the major punishment of dismissal from service depriving the employee of his right of appeal provided under the said Rules framed under Article 309 of the Constitution of India which regulates the service conditions of the Government employees. The High Court concluded that a valuable right of appeal has been denied to the respondent delinquent since the appellate authority

itself has passed the impugned order of dismissal instead of appointing authority prescribed under the Rules.

7. Shri R.Sundaravardhan, learned senior counsel appearing for the appellant submitted that the impugned order of the High Court suffers from incurable infirmities requiring the interference of this court in exercise of its jurisdiction under Article 136 of the Constitution of India. It was submitted the order of dismissal passed by the Government in exercise of its power under clause (x) of Rule 9 of the said Rules does not suffer from any infirmity. The submission was the order passed by the Government does not suffer from any jurisdictional error and the question of depriving the respondent of his right to prefer an appeal does not arise since there is no appeal provided against the order passed by the Government. It was further submitted that there is a right of review provided under the Rules to an aggrieved employee which was not availed of by the respondent.

8. Shri P.S. Narasimha, learned senior counsel appearing for the respondent submitted that a public servant cannot be deprived of his substantive right of appeal. The submission was when an appeal is provided to the Government against the order of the disciplinary authority and the Government passes an order of punishment, the employee concerned is deprived of the remedy of appeal which is substantive right given to him under the Rules. It was submitted that the issue really becomes relevant particularly where there is a provision for appeal against the order of disciplinary authority to the higher authority and where there is no appeal provided against the order of higher authority. It was submitted that a reasonable opportunity to be afforded to a Government servant means and includes right of appeal whenever provided by law and deprivation of such a right to prefer appeal against the order of appointing authority dismissing the public servant from service amounts to denial of reasonable opportunity guaranteed under Article 311 (2) of the Constitution.

9. The only question that falls for our consideration in the instant appeal is whether the impugned order of dismissal passed by the Government of Andhra Pradesh suffers from any illegality on the ground that it had deprived the respondent of his valuable right to prefer an appeal had it been passed by the disciplinary authority which is subordinate to the Government. The real point in issue is whether the impugned order of the Government dismissing the respondent from service suffers from any jurisdictional error?

10. The elaborate provisions in Part XIV relating to services under the Union and the States indicate the importance which the framers of our Constitution attached to the Civil Service. The trinity of Articles 309, 310 and 311 deal with the services regulating recruitment, and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or any of the State. Every person who is a member of civil service of a State or holds any civil post under a State holds office during the pleasure of the Governor. Article 311 (2) qualifies the pleasure of the President or the Governor, and the pleasure cannot be exercised if a Government servant's service is to be terminated as a punishment for misconduct.

In such a case, Article 311 (2) mandates that a reasonable opportunity of being heard in respect of the charges must be given to the Government servant. Any order inflicting the punishment of dismissal, removal without giving the opportunities as is required by Article 311 (2) would be null and void as violative of an express constitutional requirement. One more aspect that may have to be borne in mind that Article 311 (1) does not command that the dismissal must be by the very same authority who made the appointment or by its direct superior. The dismissal can be either by the appointing authority or by any other authority to which the appointing authority is subordinate. The dismissal of a civil servant must comply with the procedure laid down in Article 311.

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Government of Andhra Pradesh made the Rules known as A.P. Civil Services (Classification, Control and Appeal) Rules, 1963. These Rules prescribe the detailed procedure for holding a departmental enquiry in all cases where the dismissal, removal or reduction in rank of any government servant was to be considered. These rules are required to be read so as to be in conformity with the constitutional provisions. We shall now proceed to analyse the rules in order to appreciate the submissions made by both the parties.

11. Rule 2 (a) of the Rules defines appointing authority in relation to a Government servant as the authority which actually made the temporary or officiating or substantive appointment as the case may be, of the Government servant to the post held by him at the time of initiation of disciplinary proceedings; or the authority which is, under the rules regulating the recruitment to the post which the Government servant for the time being holds, competent to make an appointment, whichever authority is higher. There is no dispute before us the appointing authority in relation to the post that was held by the respondent delinquent employee is the Engineer-in-chief and he is also the disciplinary authority. For the purposes of Rules the `disciplinary authority' is defined in Rule 2 (c) of the Rules as the authority competent under the Rules to impose on a Government servant any of the penalties under Rule 9 or Rule 10 of the Rules. Rule 9 in its turn provides that for good and sufficient reasons and as further provided in the Rules; major penalties be imposed on a Government servant including dismissal from service which shall ordinarily be a disqualification for future employment under the Government. Rule 9 itself does not make any provision as to which authority is authorised to impose the penalties.

It is Rule 14 which provides further details of the disciplinary authorities and authorities competent to impose the penalties, in respect of Subordinate Services. Rule 14 which is relevant for our present purposes provides:

"Rule 14. Disciplinary Authorities and Authorities competent to suspend, in respect of Subordinate Services :

(1) (a) - - - - - (b)- - - - - (2) The authority which may impose on a member of a Subordinate

Service, the penalties specified in [clauses (ii) and (v) to (x)} of Rule 9 shall be the appointing authority or any authority to which it is subordinate."

A plain reading of the Rules aforementioned clearly suggests the disciplinary authority endowed with the jurisdiction to impose on a member of subordinate service, the penalties specified in clause (ii) and (v) to (ix) of Rule 9 includes not only the appointing authority but any authority to which the appointing authority is subordinate. The power is concurrently conferred upon the appointing authority and as well as the authority to which the appointing authority is subordinate. There is no dispute that Engineer-in-chief being the appointing authority in respect of the post that was held by the respondent delinquent at the time of initiation of disciplinary enquiry is undoubtedly subordinate to the Government. In such view of the matter it cannot be said that the Government had no jurisdiction or the authority under the Rules to impose a major penalty on a member of subordinate service. Sub-rule (2) of Rule 14 clearly enables not only the appointing authority but any authority to which the appointing authority is subordinate to impose penalties including the dismissal of Government servant from service.

There is no provision in the Rules which prohibits the Government exercising the power of appointing authority in the matter of imposition of the penalties specified in clauses (ii) and (v) to (ix) of Rule 9 which includes dismissal from service. The Constitution being the transcendental law, the rule making authority by making Rule 14 (2) took care to see that constitutional guarantee enshrined in Article 311 (1) of the Constitution which was available to the Government servant was protected. That the construction placed by us on the expression `subordinate' is in consonance with the meaning and import of the word `subordinate' occurring in Article 311 (1) of the Constitution is apparent from many a decisions of this Court. We shall refer to some of them. In our considered opinion there is nothing in the Constitution which debars the Government from exercising the powers of appointing authority to dismiss a Government servant from service. These Rules cannot be read as implying that dismissal must be by the very authority who made the appointment or by his Punjab [(1982) 3 SCC 200], this Court observed that "in view of Article 311 (1) of the Constitution the removing authority cannot be subordinate in rank to the appointing authority. By necessary implication the removing authority may be higher in rank to the appointing authority"

(emphasis supplied). There is a compliance with clause (1) of Article 311 if the dismissing authority is not lower in rank or grade than the appointing authority. [See The State of U.P. & ors. vs. Ram Naresh Lal (1970 (3) SCC 173) and Jai Jai Ram and Ors. vs. U.P. State Road Transport Corporation, Lucknow and ors. (1996 (4) SCC 727].

12. The decision in K.C. Chandrasekharan s/o K.C. Chamu vs. State of Kerala [AIR (1964) Kerala 87] supports the submission made by the learned senior counsel for the appellant that the mere fact that the Rules provided for an appeal to Government in case the Government servant is punished by an authority subordinate to it does not mean that the Government cannot itself undertake the disciplinary proceedings against its officers. In that case the Government having received reports

that the appellant therein, while he was Special Forest Officer, received illegal gratification and helped illicit transport of timber from the forest areas, conducted a preliminary investigation which disclosed a prima facie case, placed the public servant under suspension, framed specific charges against him, served them on him, and finding his explanation thereto unsatisfactory, ordered an enquiry by the Enquiry Officer, who submitted his report to Government finding corruption on the part of the public servant and recommending his removal from service. Government then consulted the Public Service Commission and having considered the explanation of the public servant passed orders dismissing him from service. The said order was challenged by the public servant therein on the ground that under Kerala Civil Services (Classification, Control and Appeal) Rules, 1957, the Inquiry authority should have submitted its report to the appointing authority, who, in this case, was the Conservator of Forest, in which case the public servant would have had a right of appeal to Government from the penalty that might have been imposed on him by the appointing authority. The contention was that he was deprived of right of appeal and that amounted to denial of reasonable opportunity guaranteed under Article 311 (2) of the Constitution. The Kerala High Court held :

" 5. The constitutional guarantee a Government servant is entitled to is one of being afforded a reasonable opportunity of the above content in an enquiry under the Civil Services (Classification, control and Appeal) Rules. The complaint here is not that the appellant was not afforded any of the three opportunities mentioned above, but that he had been deprived of the right of appeal to the Government from the order of the appointing authority if it had imposed the penalty on him by the Government having received the report of the Inquiring Authority and passed orders thereon.

Whether opportunity afforded to a Government servant in a particular case is reasonable will depend upon the circumstances of each case, me enquiry In this case was held by the Enquiry commissioner and Special Judge, who was a Judge of the High court of Travancore-Cochin mere is no complaint that the appellant had not been given opportunity to participate in the proceeding and vindicate his innocence we do not think that a right of appeal is a necessary postulate of an opportunity of showing cause within the meaning of Article 311 (2) of the Constitution, and do not the any force in the plea that the appellant was deprived of the constitutional protection of that Article because me Government, who is appellate authority, itself scrutinised the report of the Inquiring Authority, consulted the Public Service Commission and imposed the punishment on him.

The fact that the Kerala Civil services (Classification, Control and Appeal) Rules, 1957, provided for as appeal to Government in case the Government servant had been punished by an authority subordinate to it are not mean that the Government could, not itself undertake the disciplinary proceedings against its offices, to fact, Rule 13 of the Kerala Civil services (Classification Control and Appeal) Rules provided that the authority which might impose the penalty of dismissal from the civil service on a member of a subordinate service was the appointing authority or any higher authority, which LATTER must necessarily include the Government. Under Rule 17 (2) the authority concerned, that is to say, either the appointing authority or any higher authority could direct an enquiry to be held by a special officer or tribunal appointed by the Government for the purpose or any other person mentioned, in Sub-rule (3). Rule 17 (5) provided that the report of the

Inquiring Authority should be forwarded to the appointing authority, who should proceed to impose the appropriate penalty on the delinquent officer. There was a lacuna in the rules as to whom the report was to be submitted in case the Government Itself had undertaken the disciplinary proceedings and ordered enquiry into the charges transfer against the officer. As the enquiry had been ordered by the Government, the report of the Inquiring Authority should be submitted to the Government itself. The operation of Rule 17 (5) could therefore be confined only to cases where the appointing authority was to imposed the penalty as the sub- rule itself indicated. We do not see any impropriety, much less any illegality, in the Government itself having received the report of findings by the Enquiry Commissioner and Special judge and imposed the penalty on the appellant in this case. As THE proceedings snow that reasonable opportunity to prove his innocence had been afforded to the appellant before the Inquiring Authority and to show cause against me proposed imposition of the penalty of dismissal from service before the Government, no violation of the guarantee or reasonable opportunity provided in Article 311 (2) or the Constitution had occurred in the impugned proceedings.

We approve the said reasoning of the Kerala High Court.

13. In the State of Madras vs. G.Sundaram [AIR 1965 SC 1103], a Constitution Bench of this court while interpreting the provisions of the Madras District Police Act, 1859 and the Madras Police Subordinate Service (Discipline and Appeal) Rules, 1950, rejected the contention of the employee therein that an order of compulsory retirement amounts to an order of dismissal which could be passed only by one of the officers specified in Section 10 of the Police Act and not by the State Government which is not given any power to pass such order. This Court observed :

"12. - - - -If the order of compulsory retirement amounts, in the circumstances of this case, to an order of dismissal, the Constitutional requirement of Article 311 that the respondent could not have been dismissed from service by an authority subordinate to that by which he was appointed has been satisfied. The respondent must have been appointed to the Police Service in 1929 by an authority subordinate to the State Government and, therefore, the State Government was competent to dismiss him.

13. The Police Rules were framed by the State Government in exercise of the powers conferred by Section 10 of the Police Act and by certain other provisions including the proviso to Article 309 of the Constitution. Rule 2 of the Police Rules mentions the various penalties which can be imposed among the members of the service and mentions 'compulsory retirement' in Clause (g) as one such penalty. Rule 4 specifies the authority which may impose any of the penalties prescribed in Rule 2 on a member of the service specified in column 1 of the Schedule to the Rules and states that it shall be the authority specified in the corresponding entry under columns 2 to 8, therefore, whichever is relevant or any higher authority. According to the entry in the Schedule, the authority competent to order compulsory retirement, removal or dismissal of an Inspector of Police in the districts, is the Deputy Inspector- General of Police. The State Government is an authority higher than the Deputy

Inspector- General of Police. This cannot be gainsaid. It is, however, urged for the respondent that the higher authority contemplated by Rule 4 is the authority higher in rank according to the provisions of the Police Act and that such an authority could be only the Inspector-General of Police. We do not agree with this contention.

14. The State Government can pass the various orders of punishment dealt with in the schedule and this is clear from Rule 5 which describes the forum to which a member of the Service can appeal from an order imposing any of the penalties specified in Rule 2. According to Clause (c), an appeal lies to the Governor if such an order imposing a penalty specified in Rule 2 is passed by the State Government. We, therefore, agree with the High Court that the State Government was competent to order the compulsory retirement of the appellant. "

(emphasis supplied)

14. In the present case Rule 33 of the Rules provides right of appeal against an order imposing any of the penalties specified in Rule 9 or Rule 10 whether made by the disciplinary authority or by an appellate authority or revising authority to the appellate authorities. Rule 34 specifies the appellate authorities. There is no difficulty to hold that had the appointing authority, who, in this case was the Engineer-in-chief passed the order of penalty the respondent would have had a right of appeal to the Government. Rule 32 of the Rules says that notwithstanding anything contained therein no appeal shall lie against any order made by the Governor; in the present case the impugned order of dismissal was made by the Government in the name of Governor, therefore there is no right of appeal as such against the impugned order of dismissal made by the Government. It is well said and needs no restatement at our hands that a right of appeal no doubt is a substantive one but not inherent or fundamental right. No appeal lies to the higher authority as a matter of right unless provided for by the law.

It is not as if there is no remedy available against the order passed by the Government dismissing a Government servant from its service. Rule 38 of the said Rules confers on every member of State Service, or a member of Subordinate Service in whose case the Government have passed original orders, shall not be entitled to appeal but shall be entitled to make separately and in his own name, within a period of three months from the date on which the order was communicated to him, a petition to the Government for review of the order passed by the Government on any of the following grounds namely :

(i) that the order against which the petition of review is made was not passed by the competent authority;

(ii) that a reasonable opportunity was not given to the petitioner for defending himself;

(iii) that the punishment is excessive or unjust;

(iv) that the petitioner has made a discovery of new matter or evidence which he proves to the satisfaction of the Government, was not within his knowledge or could not be adduced by him before the order imposing the penalty was passed; and (v) that there is an evidence error or omission in the order such as failure to apply the law of limitation or an error of procedure apparent on the fact of record."

The power conferred upon the Government to review its own order is very wide and that a substantive right of review has been conferred on every member of a State Service or a member of Subordinate Service against the orders passed by the Government. In the present case the respondent failed to avail the remedy provided for under Rule 38.

15. Shri P.Narsimha, learned senior counsel appearing for the respondent relying upon the decision of this court in Surjit Ghosh vs. Chairman and Managing Director, UCO Bank and ors. [(1995) 2 SCC 474] contended that the respondent employee was denied a right of appeal, since the order of dismissal against him was passed by the Government though the disciplinary authority was Engineer- in-chief. The submission was as per the said Rules, the disciplinary authority was Engineer-in-chief and if the action was taken by him, the employee had an opportunity to appeal to the Government. In order to appreciate this contention it is required to notice that in the said case the undisputed facts were the disciplinary action against the bank employee therein was taken by the Deputy General Manager. In terms of the regulations, the disciplinary authority of officers in Grade E,D,C and B was the Divisional Manager/Assistant General Manager(Personnel) and the appeal against their order was to the DGM or any other officer of the same rank. This court took the view that if the action was taken by the disciplinary authority, he had an opportunity to appeal to the DGM or any other officer of the same rank. However, since the action was taken by DGM although the Divisional Manager and AGM (Personnel) were available for taking the action the employee was denied the right of an appeal and also the right of review which lay only against the appellate order. This court took the view that the order passed by the bank suffered from an inherent defect. Having said so the Court proceeded to observe that it is true that an authority higher than the disciplinary authority itself imposes the punishment, the order of punishment suffers from no illegality when no appeal is provided to such authority. It is further held:

" 6. - - - However, when an appeal is provided to the higher authority concerned against the order of the disciplinary authority or of a lower authority and the higher authority passes an order of punishment, the employee concerned is deprived of the remedy of appeal which is a substantive right given to him by the Rules/Regulations. An employee cannot be deprived of his substantive right. What is further, when there is a provision of appeal against the order of the disciplinary authority and when the appellate or the higher authority against whose order there is no appeal, exercises the powers of the disciplinary authority in a given case, it results in discrimination against

the employee concerned. This is particularly so when there are no guidelines in the Rules/Regulations as to when the higher authority or the appellate authority should exercise the power of the disciplinary authority. The higher or appellate authority may choose to exercise the power of the disciplinary authority in some cases while no doing so in other cases. In such cases, the right of the employee depends upon the choice of the higher/appellate authority which patently results in discrimination between an employee and employee. Surely, such a situation cannot savour of legality."

The said decision was apparently one where the power to impose the punishment was not concurrently conferred upon both the disciplinary authority, viz., the Divisional Manager/AGM (Personnel) and the Deputy General Manager under the regulations. The said decision is therefore clearly distinguishable.

16. In the case on hand the Rules clearly empower not only the disciplinary authority but as well as the Government to impose appropriate punishment as against delinquent public servant for proven charges of misconduct. In our opinion the judgment is not relevant and in no manner supports the point urged by the learned senior counsel for the respondent.

17. It was further submitted that there are no guidelines in the Rules as to when the Government should exercise the powers of disciplinary authority. The submission was the Government may choose to exercise the power of the disciplinary authority in some cases while not doing so in other cases eventuality resulting in the right of the Government servant dependant upon the choice of the Government which patently results in discrimination between one set up Government servant and another. This contention does not merit any serious examination by us since the constitutional validity of Rule 14 (2) which enables the Government to award punishment apart from the disciplinary authority is not challenged.

18. The decision in A. Sudhakar vs. Post Master General, General and anr. [(2006) 4 SCC 348] in no manner supports the contention urged on behalf of the respondent. On the other hand this court took the view that clause (1) of Article 311 of the Constitution puts an embargo upon passing an order of dismissal, removal or reduction of rank in services by an authority below the rank of appointing authority. "There does not appear to be an embargo in 29 terms of the said provision that a higher authority would not act as a disciplinary authority." The decision in Electronics Corporation of India vs. G. Muralidhar [(2001) 10 SCC 43] is based on the decision in Surjit Ghosh's case (supra) about which we have dealt with in the preceding paragraphs.

No further discussion as regards the ratio of the decision in Electronics Corporation of India (supra) is necessary for the purposes of disposal of this appeal.

19. It is evident from the record that no other substantial grounds have been raised or urged by the

respondent employee either in the Tribunal or in the High Court challenging the order of his dismissal from service. Nothing was urged even before us on merits. The High Court, mainly, therefore concentrated on the question as regards the validity of the impugned order of dismissal passed by the Government with which we have dealt in this judgment of ours. Therefore no useful purpose would be served by remitting the matter for fresh consideration on merits.

20. For all the aforesaid reasons, we find it difficult to sustain the order passed by the High Court interfering with the order of dismissal passed by the Government. The judgment of the High Court is accordingly set aside.

21. The appeal is allowed without any order as to costs.