HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

****

WRIT PETITION No.31599 of 2012

Between:-

P.Ashok Kumar, S/o Prasad Rao,
Aged 37 years, Occ: Junior Assistant
(under disciplinary proceedings)
Bhimavaram Municipality
R/o D.No.7-7-51/1, Narasaiah Agraharam,
Near Anjaneya Swamy Temple,
Kumandavalli Road,
Bhimavaram,
West Godavari District.

… Petitioner

Versus

The Regional Director cum Appellate
Commissioner of Municipal Administration,
Rajahmundry, East Godavari District and 5 others

… Respondents

****

DATE OF JUDGMENT PRONOUNCED : 06.10.2023

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

&

THE HON'BLE SRI JUSTICE T.MALLIKARJUNA RAO

1. Whether Reporters of Local Newspapers may be allowed to see the Judgment? Yes/No

2. Whether the copy of Judgment may be marked to Law Reporters/Journals? Yes/No

3. Whether His Lordship wish to see the fair copy of the Judgment? Yes/No

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JUSTICE A V SESHA SAI

_____

JUSTICE T.MALLIKARJUNA RAO

*** THE HON'BLE SRI JUSTICE A.V.SESHA SAI**

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THE HON'BLE SRI JUSTICE T.MALLIKARJUNA RAO

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... Respondents

! Counsel for the Petitioner : Sri P.V.Ramana
^ Counsel for the Respondents : Learned Government Pleader for Services-IV
Learned Standing Counsel for the Municipality (Respondent.No4)

< Gist:

> Head Note:?

Cases referred:

1) **(2009) 2 Supreme Court Cases 570**
2) **(2010) 13 Supreme Court Cases 427**
3) **(2005) 6 Supreme Court Cases 636**
4) **2022 SCC Online SC 341**
5) **2022 SCC Online SC 1282**

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

&

THE HON'BLE SRI JUSTICE T.MALLIKARJUNA RAO

WRIT PETITION No.31599 of 2012

ORDER: *(per Hon'ble A.V.Sesha Sai,J)*

This Writ Petition, filed under Article 226 of the Constitution of India, calls in question the order, dated 13.02.2012, passed by the Andhra Pradesh Administrative Tribunal [herein after referred as the 'Tribunal'] in O.A.No.5246 of 2011; the order in Review in M.A.No.905 of 2012 in O.A.No.5246 of 2011, dated 07.09.2012, and the dismissal order, dated 06.05.2011, passed by the Disciplinary Authority i.e., the Regional Director-cum-Appellate Commissioner of Municipal Administration, Rajahmundry, East Godavari District, dismissing the petitioner from Service.

Facts in brief :-

2. The petitioner was a Junior Assistant and, while he was working as such, the 1st respondent/Regional Director-cum-Appellate Commissioner of Municipal Administration, Rajahmundry, East Godavari District, issued a Charge Memo, dated 23.05.2005, framing

the following charges :

> ***Article – 1:*** *that the said Sri P.Ashok Kumar, Junior Assistant (under suspension) Pithapuram Municipality, has harassed Kum.A.Kanaka Durga, Watcher (working as Dispatch Clerk on working arrangement), Pithapuram Municipality, on 11.04.2005 at about 3.30 pm., and abused her in filthy language with the assistance of some others and at about 5.05 pm., on the same day manhandled her due to which she had fell on the ground.*
>
> ***Article – II:*** *that he has committed certain irregularities in connection with sanction of NSDP tap connections while he worked as Taps Clerk in Pithapuram Municipality sustaining a loss of Rs.58,500/- to the municipal funds.*
>
> ***Article – III:*** *that he was demanding money from the Self-Help Groups for sanction of revolving fund to them, that he was not putting up the connected files and submitting the same to the Executive Authority in time with an illegal view.*

3. Thereafter, the Disciplinary Authority appointed an Enquiry Officer, who submitted a report, holding that the Charge No.2 stood proved and Charge Nos.1 & 3 could not be proved by the Department. Thereafter, the Disciplinary Authority/Regional Director of Municipal Administration, passed an order, *vide* Roc.No.506/2004-

A3, dated 27.05.2009, inflicting on the petitioner the punishment of dismissal from service. Questioning the said order of punishment of dismissal from service, the petitioner herein filed O.A.No.7112 of 2009 before the Tribunal. The said Original Application came to be allowed by the Tribunal, *vide* order, dated 20.11.2009. Subsequently, the Disciplinary Authority issued another Charge Memo, dated 09.09.2010, framing the following (4) Articles of Charge :

CHARGE No.1 :

That the said Sri P.Ashok Kumar, Former Junior Assistant, Pithapuram Municipality presently working in Bhimavaram Municipality while functioning as Junior Assistant has committed irregularities in sanctioning of NSDP tap connections.

Basis of charge :

The Municipal Commissioner, Pithapuram, in his letter Roc.No.2325/2000/C1, dated 20-07-2002, has submitted that, Sri P.Ashok Kumar, Junior Assistant of Pithapuram Municipality, who was suspended on 13.11.2000 on irregularities in sanctioning individual tap connections under NSDP, and he was reinstated into service from 12.03.2001 on pending enquiry, and also submit that, on verification of the available sanctioned tap applications it was clearly found that, the above irregularities have been committed by the then Junior Assistant, namely Sri P.Ashok Kumar, Junior Assistant, and the Municipal Commissioner, Pithapuram has

requested the Regional Director-cum-Appellate Commissioner of Municipal Administration, Rajahmundry, to take necessary action, since the Regional Director-cum-Appellate Commissioner of Municipal Administration, Rajahmundry is the competent authority for further action in the matter.

CHARGE No.II

That he has committed irregularities in connection with sanction of NSDP tap connections sustaining a loss of Rs.31,500/- to the Municipal Funds.

Basis of charge :

The Municipal Commissioner, Pithapuram, in his letter Roc.No.2325/2000/C1, dated 20-07-2002 & 20-08-2004 has submitted that, on verification of the available sanctioned tap applications files with reference to Cheques and Taps registers, the following (2) types of irregularities committed by Sri P.Ashok Kumar, the then Junior Assistant, Pithapuram Municipality were found :

A) (12) Tap connections were sanctioned without Payment donations through either BC/DD or Municipal Challan. ***Rs.27,000-00***

B) (11) Tap connections were sanctioned with Noting others (who were actual donors) ***Rs.31,500-00***

Rs.58,500-00

The Municipal Commissioner, Pithapuram, in his letter Roc.No.2325/2000/C1, dated 03.10.2006 & 11.03.2010 has submitted that, all (24) connected files

have been verified, and the following facts are noticed.

As per the initial report, dated 20.07.2002, an amount of Rs.58,000/- has been arrived as financial loss sanctioned to Municipal funds due to certain irregularities committed by Sri P.Ashok Kumar, Junior Assistant, (u/s) while sanctioning NSDP tap connections. Out of those (15) were sanctioned in Non-slum areas and balance were in slum areas

15 x 3,000/- = Rs.45,000-00

9 x 1,500/- = Rs.13,500-00

The Municipal Commissioner, Pithapuram has submitted that, during the verification of connected records it is noticed in Non-slum files (15 Nos. that the then TPBO has submitted his remarks to the Municipal Commissioner, and Chairperson for accepting the Non-slum area as Slum as the house situated in area which seems like slum and the then Municipal Commissioner, and Chairperson, and Municipal Council, had approved the remarks of the TPBO, and hence, contribution for each tap connection was collected @ Rs.1500/- and sanction orders were issued by the then Municipal Commissioner, Pithapuram.

Therefore, for the Tap Connections at Rs.1,500-00 has to be collected tap contribution including Non-slum areas

-4x1500 =Rs. 6,000-00

1) Loss sustained as per statement A

-12x1500 =Rs.18,000-00

Sl.No.5,10,12 were adjusted to Municipal funds
Sl.No.23 of 98th pages Sl.No.from 65 to 74 and
Sl.No.42 of 69th page of Cheques register respectively

-3x1500 =Rs. 4,500-00

2) Loss sustained as per Statement B

-12x1500 =Rs.18,000-00

Total Loss ***=Rs.31,500-00***

The Municipal Commissioner, Pithapuram has further submitted that, out of (12) applications shown in statement-A, the cheque numbers shown in note files (9 Nos.) are not tallying with the numbers in cheques register, and as shown in statement-B, the cheques numbers shown in note files (12 Nos.) are not tallying with the number in cheques register. Hence, total amount of Rs.31,500/- has been caused financial loss to the Municipal funds (statements enclosed).

CHARGE No.III

That, the individual caused misappropriation for vested interest, and remitted an amount of Rs.58,500/- which establish that, the individual has misappropriated the amount, and committed the financial irregularity.

Basis of Charge :

The Municipal Commissioner, Pithapuram, in his letter Roc.No.2325/2000/C1, dated 11.03.2010 has submitted

that, Sri P.Ashok Kumar, Junior Assistant has remitted an amount of Rs.16,500/- in Municipal Treasury on 29.06.2006, and he has also remitted balance amount of Rs.15,000-00 through Challan No.2279, dated 10.10.2006.

CHARGE No.IV :

That, Sri P.Ashok Kumar, Former Junior Assistant, Pithapuram Municipality presently working in Bhimavaram Municipality, has exhibited lack of integrity, devotion to duty, and conduct and thereby contravened Rule 3 of A.P.C.S. (Conduct) Rules, 1964.

Basis of Charge :

It is obvious that the employee, who had been entrusted with responsible duties including sanction of various Government Schemes to the beneficiaries, has utterly failed in discharging his duties properly and caused heavy financial loss to the institution, and also disgraded the respect of the department in public who apprehended him for their genuine benefits under various schemes, and lack of sincerity and integrity while performing his duties.

4. On 29.09.2010, the petitioner submitted his explanation. Thereafter, an Enquiry Officer was appointed by the Disciplinary Authority and the Enquiry Officer, so appointed, submitted his report on 09.02.2011, finding the petitioner guilty of all four Charges.

5. Enclosing a copy of the said Enquiry report, the Disciplinary Authority issued a notice, *vide* Roc.No.506/2004/A3, dated 14.02.2011, asking the petitioner to show cause as to why major punishment should not be inflicted. In response to the said Show Cause Notice, the petitioner herein submitted his reply/explanation, dated 24.03.2011. Thereafter, *vide* letter, dated 26.03.2011, the Disciplinary Authority/Regional Director of Municipal Administration sought permission of the Commissioner & Director of Municipal Administration to impose major punishment of dismissal from service on the petitioner under Rule 9 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (herein after referred as 'Rules'). The Commissioner & Director of Municipal Administration, *vide* Memo, dated 15.04.2011, while referring to the Rules, notified *vide* G.O.Ms.No.292, MA., dated 16.05.1992, instructed the Regional Director of Municipal Administration to take action against the petitioner, if required, without referring the matter to the Commissioner & Director of Municipal Administration.

6. Eventually, the Regional Director/Disciplinary Authority, *vide* order, dated 06.05.2011, inflicted on the petitioner the punishment of dismissal from service under Rule 9 of the Rules. Assailing the validity of the said order of punishment, the petitioner

herein filed the present O.A.No.5246 of 2011 and the Tribunal, by way of an order, dated 07.09.2012, dismissed the Original Application and also dismissed M.A.No.905 of 2012, seeking Review of the said order.

7. In the above background, the present Writ Petition came to be instituted, assailing the orders of the Tribunal, confirming the order of punishment, passed by the Disciplinary Authority.

8. The contentions and submissions of Sri P.V.Ramana, learned counsel for the petitioner :

1) The orders passed by the Tribunal, confirming the order of punishment passed by the Disciplinary Authority is highly erroneous, contrary to law and opposed to the very spirit and object of the provisions of the Rules, in general and Rule 20 in particular ;
2) Though the Charge Memo referred to a number of documents, nobody was examined to prove the said documents, during the course of regular enquiry ;
3) Charges are highly ambiguous and not definite as mandated under Rule 20 of the Rules ;
4) Since the order passed by the Tribunal in O.A.No.7112 of 2009, dated 20.11.2009, attained finality and as the said order did not grant any permission to initiate fresh disciplinary proceedings on the same charges, the very initiation of the present impugned disciplinary

proceedings would not be permissible ;

5) Though the petitioner submitted his explanation, highlighting various issues in response to the final Show Cause Notice, the Disciplinary Authority did not consider the same, while passing the order of punishment ;

6) Enquiry Officer relied upon the report of the Municipal Engineer, which was never referred to in the list of the documents mentioned in the Charge Memo ;

7) The petitioner is neither a processing authority nor a sanctioning authority for NSDP Tap connections ;

8) No action was taken either on the processing authority or on the sanctioning authority and the said action is discriminatory ;

In support of his submissions and contentions, learned counsel for the petitioner places reliance on the following judgments:

1) ***Roop Singh Negi V. Punjab National Bank and others*** -(2009) 2 Supreme Court Cases 570

2) ***ORYX Fisheries Private Limited V. Union of India and others***-(2010) 13 Supreme Court Cases 427

3) ***P.V.Mahadevan V. MD, T.N. Housing Board***-(2005) 6 Supreme Court Cases 636

9. The contentions and submissions of the learned Government Pleader and the learned Standing Counsel appearing for the 4th respondent :

(i) There is no error nor there exists any infirmity in the orders passed by the Tribunal or in the order of punishment passed by the Disciplinary Authority and, in the absence of the same, the impugned orders are not amenable for any judicial review under Article 226 of the Constitution of India ;

(ii) Strictly adhering to the mandatory requirements of law, as mandated in the Rules, and only after affording complete opportunity to the petitioner, the Disciplinary Authority passed the order of punishment, as such, the orders of the Disciplinary Authority and the Tribunal cannot be faulted.

10. To bolster his submissions and contentions, learned Government Pleader relied on the following judgments :-

1) ***State of Uttar Pradesh and Others V. Rajit Singh***- 2022 SCC online SC 341

2) ***Inspector of Panchayats and District Collector, Salem V. S.Arichandran and Others***- 2022 SCC online SC 1282

11. **In the above background, now the points that arise for consideration of this Court are :-**

1. *Whether the orders of the Tribunal and the order of the punishment passed by the Disciplinary Authority, in the facts and circumstances of the*

case are sustainable and tenable ?

2. *Whether the petitioner is entitled for any relief from this Court under Article 226 of the Constitution of India ?*

FINDINGS :

12. The material available before this Court reveals that earlier the Disciplinary Authority issued a Charge Memo, dated 23.05.2005, framing three charges referred to supra. The Enquiry Officer appointed, pursuant to the aforesaid charges, found the petitioner guilty of the Charge No.2 and did not find him guilty of Charge Nos.1 & 3. Thereafter, the Disciplinary Authority passed an order of dismissal, dated 27.05.2009, and when the same was assailed in O.A.No.7112 of 2009, the Tribunal allowed the same, *vide* order, dated 20.11.2009, and the operative portion of the said order, at paragraphs 18 to 20, reads as follows :

> "…**18.** From the record, it is clear that there is no charge of misappropriation at any point of time. With regard to the irregularities committed by the applicant and the recovery of loss, the applicant has accepted the irregularities and remitted the amount of the loss caused.
>
> **19.** As the charge of misappropriation has not been served/communicated to the applicant, there cannot

be a punishment on the unserved charge and in the case on hand, such punishment has been imposed in view of the Commissioner and Director having asked the Disciplinary Authority to impose punishment as per G.O.Ms.No.25, dated 03.2.2004. Hence, the case is squarely covered by the law laid down by the Apex Court in the cases extracted Supra.

20. In view of the above facts and circumstances, as the charge of misappropriation has never been served or enquired into and in view of the directions given by the higher authority, the punishment has been imposed, the impugned order is liable to be set aside and is accordingly set aside. The O.A., is accordingly allowed. The applicant should be reinducted forthwith along with the back wages as the impugned order has been set aside as illegal, arbitrary and without jurisdiction. M.A., stands closed accordingly."

13. Thereafter, the Disciplinary Authority issued another Charge Memo, dated 09.09.2010, framing four charges, while obviously, splitting the earlier Charge No.2 in the Charge Memo, dated 23.05.2005, and proceeded with enquiry by appointing an Enquiry Officer. In fact, a perusal of the order in O.A.No.7112 of 2009, dated 20.11.2009, shows that, while setting aside the earlier order of dismissal, the Tribunal did not give permission or liberty to

the respondents to hold the enquiry.

14. Another significant aspect, which needs to be noted, is that no witnesses were examined to prove the allegations against the petitioner and the contents of the documents referred in the Charge Memo, dated 09.09.2010. In this context, reference to the relevant provisions of the Rules, is highly essential.

15. The State Government, in exercise the powers conferred by the Proviso to Article 309 of the Constitution of India, framed the said Rules and notified the same, *vide* G.O.Ms.No.487, General Administration (Services-C) Department, dated 14.09.1992. For the purpose of resolving the issues in the case on hand, Rule 20 of the Rules, which deals with the procedure for imposing major penalties, is relevant and germane.

16. According to Sub-Rule (1) of Rule 20 of the Rules, no order imposing any of the penalties specified in Clauses (vi) to (x) of Rule 9 shall be made, except after enquiry held, as far as may be, in the manner provided in this Rule and Rule 21 of the Rules.

Sub-Rules 3 & 4 of Rule 20 read as follows :

> ***"(3)*** *Where it is proposed to hold an inquiry against a Government Servant under this rule and rule 21, the disciplinary authority or the controlling authority who is not*

designated as disciplinary authority and who is subordinate to the appointing authority can draw up or cause to be drawn up—

> ***(i)*** *the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;*
>
> ***(ii)*** *A statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain;*
>
> > ***(a)*** *A statement of all relevant facts including any admission or confession made by the Government Servant;*
> >
> > ***(b)*** *A list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.*

(4) *The disciplinary authority shall deliver or cause to be delivered to the Government Servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charge is proposed to be sustained and copies of the said documents and statements of the said witnesses and shall require the Government servant to appear before the disciplinary authority on such day and at such time not exceeding ten working days and submit a written statement of his defence and to state whether he desires to be heard in person. If the charged officer desires to be heard in person, personal appearance may be allowed before the disciplinary authority no such day and at such time not exceeding ten working days."*

17. In the instant case, the Charge Memo, dated 09.09.2010, referred to the following list of documents, *vide* Annexure-II.

ANNEXURE – II

List of documents by which the Article of Charges framed against Sri P.Ashok Kumar, Former Junior Assistant, Pithapuram Municipality presently working in Bhimavaram Municipality are proposed to be sustained.

1. Letter Roc.No.2325/2000/C1, dated 20.07.2002 of the Municipal Commissioner, Pithapuram.
2. D.O.Roc.No.2325/2000/C1, dated 20-08-2004 of the Municipal Commissioner, Pithapuram.
3. Letter Roc.No.2325/2000/C1, dated 03.10.2006 of the Municipal Commissioner, Pithapuram.
4. Representation, dated 07.03.2007 of Sri P.Ashok Kumar, Ex-Junior Assistant, Pithapuram Municipality, and presently working as Junior Assistant, Bhimavaram Municipality.
5. Letter Roc.No.2325/2000/C1, dated 11.03.2010 of the Municipal Commissioner, Pithapuram.
6. G.O.Ms.No.458 of G.A.D., dated 22.09.2009.

ANNEXURE – III of the Charge Memo, dated 09.09.2010, reads as follows :

List of Witnesses by whom the Article of Charges framed against Sri P.Ashok Kumar, Former Junior Assistant,

Pithapuram Municipality presently working in Bhimavaram Municipality are proposed to be sustained.

---NIL---

The reality remains that *vide* Annexures, no witness was cited nor any witness was examined, during the course of regular enquiry to prove the documents referred, *vide* Annexure-II.

18. Another significant aspect, which needs to be noted, is that the Enquiry Officer referred to a report of the Municipal Engineer, Pithapuram, and the fact remains that the same was not referred in the list of the documents, *vide* Annexure-II of the Charge Memo, dated 09.09.2010.

19. It is pertinent to note that, while imposing penalty on the employees, strict adherence to relevant Service Rules is absolutely necessary and essential and any deviation from the mandatory requirements of law, would, undoubtedly, render the entire disciplinary proceedings 'Null and Void'.

20. It is significant to note that the petitioner is neither a processing authority nor a sanctioning authority for the subject NSDP tap connections and even though the Town Planning Building Overseer

and Municipal Commissioner, being the processing and sanctioning authorities, no action was taken against them, for the reasons best known to the respondents, which would, undoubtedly, tantamount to discrimination, offending under Article 14 of the Constitution of India.

21. Though a request is made on behalf of the respondents to remand the matter to the Disciplinary Authority for holding enquiry, by complying with the mandatory requirements of law, this Court is not inclined to consider the same, having regard to the said discrimination and also keeping in view of the fact that the allegations in the instant case were of the year 2000 and the first Charge Memo came to be issued in the year 2005.

22. Yet another crucial aspect, which needs attention in this context, is that, though the petitioner submitted an elaborate explanation to the final Show Cause Notice, pointing out various issues and statutory infirmities in holding the Enquiry, which strike at the root of the matter, the Disciplinary Authority, despite the factum of receipt of the explanation submitted by the petitioner, did not make any endeavour to consider the said aspects and passed the order of punishment without assigning any reasons.

23. In fact, all these important and crucial aspects missed the attention of the Tribunal. In this context, it is also required to be noted that according to Rule 20 of the Rules, the Charges are required to be specific and be free of ambiguities. But, in the instant case, the Charges and the very basis of the Charges are full of contradictions, ambiguities and in the considered opinion of this Court, the said aspect is fatal to the case of the respondents.

24. In this context, it may be appropriate to refer to the Judgments cited by the learned counsel for the petitioner. In the case of ***Roop Singh Negi V. Punjab National Bank and Others (First cited supra)***, the Hon'ble Apex Court, at Paragraphs 14, 21 & 23, held as follows :

> **"...14**. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the

documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence.

21. Yet again in M.V. Bijlani vs. Union of India & ors. (2006) 5 SCC 88, this Court held:

"....Although the charges in a departmental proceeding are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with."

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought

on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely *ipse dixit* as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.

25. In the case of ***Oryx Fisheries Private Limited V. Union of India and Others (second cited supra),*** the Hon'ble Apex Court, at Paragraphs 39 & 40, held as follows :

39. On the requirement of disclosing reasons by a quasi-judicial authority in support of its order, this Court has recently delivered a judgment in the case of Kranti Associates Pvt. Ltd. & Anr. v. Sh. Masood Ahmed Khan & Others on 8th September 2010.

40. In M/s Kranti Associates (supra), this Court after considering various judgments formulated certain principles in para 51 of the judgment which are set out below

a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

b. A quasi-judicial authority must record reasons in support of its conclusions.

c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.

f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice.

i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency.

k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or `rubber-stamp reasons' is not to be equated with a valid decision making process.

m. It cannot be doubted that transparency is the *sine qua non* of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harward Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

26. In the case of ***P.V.Mahadevan V. MD, T.N. Housing Board (third cited supra),*** the Hon'ble Apex Court, at Para No.11, held as follows :

"…**11.** 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 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."

27. Coming to the judgments cited by the learned Government Pleader, in the case of ***State of Uttar Pradesh and Others V. Rajit Singh (fourth cited supra),*** the Hon'ble Apex Court, at Paragraphs 14 to 17, held as follows :

...14. Now, so far as the quashing and setting aside the order of punishment imposed by the Disciplinary Authority applying the Doctrine of Equality on the ground that other officers involved in the incident have been exonerated and/or no action has been taken against them, is concerned, we are of the firm view that on the aforesaid ground, the order of punishment could not have been set aside by the Tribunal and the High court. The Doctrine of Equality ought not to have been applied when the Enquiry Officer and the Disciplinary Authority held the charges proved against the delinquent officer. The role of

the each individual officer even with respect to the same misconduct is required to be considered in light of their duties of office. Even otherwise, merely because some other officers involved in the incident are exonerated and/or no action is taken against other officers cannot be a ground to set aside the order of punishment when the charges against the individual concerned - delinquent officer are held to be proved in a departmental enquiry. There cannot be any claim of negative equality in such cases. Therefore, both the Tribunal as well as the High Court has committed a grave error in quashing and setting aside the order of punishment imposed by the Disciplinary Authority by applying the Doctrine of Equality.

15. It appears from the order passed by the Tribunal that the Tribunal also observed that the enquiry proceedings were against the principles of natural justice in as much as the documents mentioned in the charge sheet were not at all supplied to the delinquent officer. As per the settled proposition of law, in a case where it is found that the enquiry is not conducted properly and/or the same is in violation of the principles of natural justice, in that case, the Court cannot reinstate the employee as such and the matter is to be remanded to the Enquiry Officer/Disciplinary Authority to proceed further with the enquiry from the stage of violation of principles of natural justice is noticed and the enquiry has to be proceeded further after furnishing the necessary documents mentioned in the charge sheet, which are alleged to have not been given to the delinquent officer in the instant case. In the case of

Chairman, Life Insurance Corporation of India and Ors. Vs. A. Masilamani, (2013) 6 SCC 530, which was also pressed into service on behalf of the appellants before the High Court, it is observed in paragraph 16 as under:-

> "16. It is a settled legal proposition, that once the court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the court cannot reinstate the employee. It must remit the case concerned to the disciplinary authority for it to conduct the enquiry from the point that it stood vitiated, and conclude the same. (Vide ECIL v. B. Karunakar [(1993) 4 SCC 727], Hiran Mayee Bhattacharyya v. S.M. School for Girls [(2002) 10 SCC 293], U.P. State Spg. Co. Ltd. v. R.S. Pandey [(2005) 8 SCC 264] and Union of India v. Y.S. Sadhu [(2008) 12 SCC 30])."

16. From the impugned judgment and order passed by the High Court, it appears that when the aforesaid submission and the aforesaid decision was pressed into service, the High Court has not considered the same on the ground that the other officers involved in respect of the same incident are exonerated and/or no action is taken against them. Applying the law laid down in the case of A. Masilamani (supra) to the facts of the case on hand, we are of the opinion that the Tribunal as well as the High Court ought to have remanded the matter to the Disciplinary Authority to conduct the enquiry from the stage it

stood vitiated. Therefore, the order passed by the High Court in not allowing further proceedings from the stage it stood vitiated, i.e., after the issuance of the charge sheet, is unsustainable.

17. In view of the above discussion and for the reasons stated above, the findings recorded by the Tribunal as well as the High Court quashing and setting aside the order of punishment imposed by the Disciplinary Authority by applying the Doctrine of Equality is hereby quashed and set aside. However, as the enquiry is found to be vitiated and is found to be in violation of the principles of natural justice in as much as it is alleged that the relevant documents mentioned in the charge sheet were not supplied to the delinquent officer, we remand the matter to the Disciplinary Authority to conduct a fresh enquiry from the stage it stood vitiated, i.e., after the issuance of the charge sheet and to proceed further with the enquiry after furnishing all the necessary documents mentioned in the charge sheet and after following due principles of natural justice. The aforesaid exercise shall be completed within a period of six months from today.

28. In the case of ***Inspector of Panchayats and District Collector, Salem V. S.Arichandran and Others (fifth cited supra),*** the Hon'ble Apex Court, at Paragraphs 14 to 16, held as follows :

"...14. At the outset, it is required to be noted that the learned Single Judge has set aside the order of dismissal passed by the Disciplinary Authority on the ground that the same was in breach of principles of Natural Justice, in as much as, the copy of the Inquiry Officer's Report was not furnished to the delinquent and his comments were not called for on the Inquiry Officer's Report. It is to be noted that the respondent delinquent was facing the departmental inquiry with respect to a very serious charge of misappropriation. Therefore, the High Court ought to have remitted that matter back to the Disciplinary Authority to conduct the inquiry from the point that it stood vitiated.

15. At this stage, a recent decision of this Court in the case of Rajit Singh (supra), in which this Court had considered its earlier decision in the case of ***A.Masilamani*** (supra) is required to be referred to. In paragraph 15, it is observed and held as under :-

> **"15.** It appears from the order passed by the Tribunal that the Tribunal also observed that the enquiry proceedings were against the principles of natural justice in as much as the documents mentioned in the charge sheet were not at all supplied to the delinquent officer. As per the settled proposition of law, in a case where it is found that the enquiry is not conducted properly and/or the same is in violation of the principles of natural justice, in that case, the Court cannot reinstate the employee as such and the matter is

to be remanded to the Enquiry Officer/Disciplinary Authority to proceed further with the enquiry from the stage of violation of principles of natural justice is noticed and the enquiry has to be proceeded further after furnishing the necessary documents mentioned in the charge sheet, which are alleged to have not been given to the delinquent officer in the instant case. In the case of ***Chairman, Life Insurance Corporation of India and Ors. Vs. A. Masilamani, (2013) 6 SCC 530***, which was also pressed into service on behalf of the appellants before the High Court, it is observed in paragraph 16 as under:-

> *"16. It is a settled legal proposition, that once the court sets aside an order of punishment, on the ground that the enquiry was not properly conducted, the court cannot reinstate the employee. It must remit the case concerned to the disciplinary authority for it to conduct the enquiry from the point that it stood vitiated, and conclude the same. (Vide ECIL v. B. Karunakar [(1993) 4 SCC 727], Hiran Mayee Bhattacharyya v. S.M. School for Girls [(2002) 10 SCC 293], U.P. State Spg. Co. Ltd. v. R.S. Pandey [(2005) 8 SCC 264] and Union of India v. Y.S. Sadhu [(2008) 12 SCC 30])."*

16. Applying the law laid down by this Court in the aforesaid decisions to the facts of the case on hand and as the order of dismissal has been set aside on the ground that the same was in breach of principles of Natural Justice, the High Court ought to have remitted the case concerned to the Disciplinary Authority to conduct the inquiry from the point that it stood vitiated and to conclude the same after furnishing the a copy of the Inquiry Report to the delinquent and to give opportunity to the delinquent to submit his comments on the Inquiry Officer's Report."

29. In the facts and circumstances of the case and having regard to the reasons recorded ***supra***, the judgments cited by the learned counsel for the petitioner and the principles laid down in the judgments are squarely applicable to the case on hand and the judgments cited by the learned Government Pleader would not render any assistance to the case of the respondents herein.

30. Another significant aspect, which needs to be noted, is that the present case is a case, where there is a total violation and infraction of mandatory requirements of law, as provided under the Rules, and the fact remains that the writ petitioner is not complaining violation of the principles of natural justice.

31. On the other hand, the specific complaint is to the vagueness in the Charges and the absence of any proof and violation of the provisions of law, referred to supra. It is also relevant to note that the entire case of the Department rests on the aspect of non-tallying of the cheques, but not misappropriation of the amount.

32. In these circumstances and having regard to the reasons and findings recorded supra and having regard to the law laid down by the Hon'ble Supreme Court, in the above referred judgments, this Court has absolutely no scintilla of hesitation to hold that the

impugned orders of dismissal passed by the Disciplinary Authority and orders of the Tribunal are neither sustainable nor tenable in the eye of Law.

RESULT :

33. For the aforesaid reasons, the Writ Petition is allowed, setting aside the orders of the Tribunal, dated 13.02.2012, in O.A.No.5246 of 2011 and also the orders in Review in M.A.No.905 of 2012 in O.A.No.5246 of 2011, dated 07.09.2012, and the impugned dismissal order, dated 06.05.2011, passed by the 1st respondent/the Regional Director-cum-Appellate Commissioner of Municipal Administration, Rajahmundry, East Godavari District. Consequently, the respondents are directed to reinstate the petitioner into service with all consequential and attendant benefits. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

A.V. SESHA SAI, J

T.MALLIKARJUNA RAO, J

6th October,2023
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI

&

THE HON'BLE SRI JUSTICE T.MALLIKARJUNA RAO

WRIT PETITION No.31599 of 2012

Dated : 06.10.2023

Note: LR copy to be marked.
B/o
RPD