

PETITIONER:

A.P. KHADI AND VILLAGE INDUSTRIES BOARD, HYDERABAD AND OTHER

Vs.

RESPONDENT:

SHRI R. RADHAKRISHNAMURTHY

DATE OF JUDGMENT: 11/02/1997

BENCH:

B.P. JEEVAN REDDY, SUJATA V. MANOHAR

ACT:

HEADNOTE:

JUDGMENT:

O R D E R

Leave grated. Heard the counsel for the parties.

This appeal is directed against the judgement of a Division Bench of the Andhra Pradesh High Court disposing of the writ appeal with certain directions. The writ petition was dismissed by the learned Single Judge.

The respondent-writ petitioner was working as a Development Officer under the Appellant-Board. On 25.5.87, as many as 49 charges were framed and served upon him and a disciplinary enquiry held. The Enquiry Officer found 29 out of 49 charges proved. A show-cause notice dated 4.5.88 was issued calling upon the respondent to show-cause why he should not be dismissed from service. After considering his explanation, he was dismissed from service by proceedings dated 25.5.88. The respondent challenged the said order by way of writ petition. One of the contention urged before the learned Single Judge was that the order of suspension as well as order of dismissal was not passed by the Chairman but by some other incompetent authority. This contention was rejected by the learned Single Judge in the following words:

"In the counter it is stated that the charge memo was issued with the approval of the Chairman and the enquiry officer was also appointed with the approval of the Chairman. A perusal of the records shows that the entire proceeding were taken with the approval of the Chairman commencing from the order of suspension to the date of the impugned order. The Note File of the Board contains the signatures of the Chairman on 24.5.87 and 20.11.87 to the effect that the impugned proceedings were issued by the Chairman. As the Chief Executive Officer is the authority to communicate the proceedings and hence, all the proceedings were only signed by him, but the Note

File reveals that the Chairman approved the proceedings. The contention of the petitioner therefore has no substance."

The learned Single Judge also rejected the other contentions urged by the respondent and dismissed the writ petition. The respondent preferred a writ appeal wherein he reiterated the contention that the orders of suspension and dismissal were not taken and approved by the Competent Authority viz., Chairman. With a view to ascertain the true situation, the Division Bench called upon the counsel for the Board to produce the original file. The Chief Executive Officer Shri B.Kripandam, I.A.S., however, filed an affidavit that the original file was handed over to the standing counsel who had placed it before the learned Single Judge for his perusal but that the file has not been taken back from the Court. He, therefore, expressed his inability to produce the file. He reiterated that all the steps taken against the respondent were taken with the full sanction and authority of the Chairman. The Division Bench, however, was of the opinion that since it is not in a position to verify the correctness of the contention urged by the respondent (appellant before them) in view of the non-availability of the file, the respondent should be given the total benefits to which he was entitled had he retired on the completion of age of superannuation. This is what the Division Bench observed:

"Although it is the usual administrative practice for the Chief Executive Officer to issue formal orders after obtaining on the note file the orders of the competent authority, in the present case we are unable to verify this fact due to absence of the file, which as already stated supra, was misplaced. In view of this lingering doubt we asked the learned counsel before us as to how much amount the appellant would have been entitled to had he retired on completion of the age of superannuation, particularly when the order of dismissal was passed five days before he attained the age of retirement. Sri Murthy, learned counsel for the appellant, showing that the total benefits approximately the appellant would have got comes to Rs. 62,609.06. Sri Murthy was also fairly stated that the matter may be closed by awarding some compensation to the appellant.

In the circumstances, we are of the view that the following order would be just and proper. Within three months from today respondents No.1 to 3 shall pay a sum of Rs. 60,000/- to the appellant. We must also mention that the post is a non-pensionable one and in the normal course if the appellant had retired from service, he would have got approximately the aforesaid

amount."

In this appeal, it is submitted by the learned counsel for the appellant-Board that the Division Bench ought to have accepted the statement of the learned Single Judge contained in his judgement and that there was no reason for doubting the correctness of the said statement. The Board had handed over the file to the Court and since it was not returned, they were not in a position to produce the same before the Division Bench. The Board cannot be punished for the same, it is submitted.

We are to the opinion that the learned counsel for the appellant is justified in his submission. The learned Single Judge has specifically and clearly recorded in his Judgment that he has perused the records and that all the proceedings "commencing from the order of suspension to the date of the impugned order" were taken with the approval of the Chairman and that the 'note file' does contain the signature of the Chairman showing that the impugned order of dismissal was issued by the Chairman. We see no reason why the said statement should be doubted. The statement found in the Judgment should be accepted as correct. The contention of the respondent to the contrary could not have been countenanced in the face of the said statement in the Judgment. We are, therefore, of the said statement in the Judgment. We are, therefore, of the opinion that the respondent must be deemed to have been dismissed by the Competent Authority viz., Chairman.

Mr. Narasimha, learned counsel for the respondent writ petitioner, submitted that there are several other submissions which were raised in the writ appeal but which have not been considered by the Division Bench since they allowed the appeal on the aforesaid one submission. In view of this submission, we think it appropriate that the matter should go back to the High Court/Division Bench for a fresh disposal of the writ appeal in accordance with law and in the light of the observations made herein.

The appeal is accordingly allowed. The Judgment under appeal is set aside and the matter remitted to the High Court for a fresh disposal of the writ appeal. No order as to costs.