

CASE NO.:
Appeal (civil) 3632 of 2003

PETITIONER:
Chairman, A.P. State Electricity Board & Ors.

RESPONDENT:
M. Kurmi Naidu

DATE OF JUDGMENT: 13/09/2006

BENCH:
H.K. SEMA & P.K. BALASUBRAMANYAN

JUDGMENT:
JUDGMENT

H.K. SEMA, J

I.A.No.3 for substituting the name of Transmission Corporation of Andhra Pradesh limited (APTRANSCO) in place of Andhra Pradesh State Electricity Board (APSEB) is allowed. The appellants shall now be read as Chairman, Transmission Corporation of Andhra Pradesh Limited (APTRANSCO).

The challenge in this appeal is to the order dated 8.10.2001 passed by the Division Bench in Writ Appeal No.1507 of 2001 affirming the order dated 27.4.2001 passed by the learned Single Judge in Writ Petition No.16332 of 1996, whereby the appeal filed by the appellants was dismissed with costs.

Briefly stated, the facts are as follows:-

The respondent at the relevant time was working as Assistant Engineer under the Board. He was served with a charge memo dated 18.10.1993. The charge reads:- "Sri M Kurmi Naidu, Asst.Engineer/ Operation/Sakur reported to have released unauthorized agricultural pumpsets by violating set norms, rules and regulations which constitute misconduct as per A.P.S.E.Board (Revised) Conduct Regulations".

The respondent submitted his explanation to the charge. Not being satisfied with the explanation, an Enquiry Officer was appointed, who submitted the Report holding the charge found proved against the respondent. After being satisfied with the inquiry Report, the Chairman of the Board, admittedly the Appellate Authority inflicted the punishment of compulsory retirement from service. It is not disputed that the disciplinary authority is the Member Secretary of the Board. However, the punishment of compulsory retirement from service was inflicted upon the respondent by the Chairman of the Board who is the Appellate Authority.

The controversy raised before the learned single Judge as well as before the Division Bench was that the disciplinary authority is the Member Secretary of the Board who is competent to impose punishment upon the respondent but the punishment was inflicted by the Chairman who is the Appellate Authority, thereby the respondent was deprived of the forum of appeal before the Chairman and prejudice has been caused to the respondent and the same is violative of the principles of natural justice.

The Division Bench of the High Court after referring to the decision rendered by this Court in Surjit Ghosh vs. Chairman & Managing Director, United Commercial Bank,

(1995) 2 SCC 474 distinguished by this Court in Balbir Chand Vs. Food Corporation of India Ltd., (1997) 3 SCC 371 arrived at the following conclusion:-

"There cannot be, having regard to the several decisions of the Apex Court any doubt whatsoever that a valuable right cannot be taken away except by or in accordance with statute. When a right of appeal has been provided to a delinquent employee such a right in our opinion except for just cause cannot be taken away nor a delinquent Officer can be deprived thereof. Regulation 7 (e) is in general terms. However, as indicated hereinbefore the Proviso appended to clause (2) of Regulation 10 specifically states that punishment of compulsory retirement, which comes within the provisions of clause 6 to Explanation (1) of Regulation 5, shall be imposed by the competent authority with the concurrence of the committee constituted thereunder. An order passed by the Chairman of the Board is, however, not subject to concurrence. A valuable safeguard has, therefore, been provided in favour of a delinquent officer to the effect that only the disciplinary authority is required to apply its mind as regards the finding of guilt arrived at by the Enquiry Officer, but also such findings are subject to a further scrutiny by a competent authority."

Regulation 7(e) of A.P.S.E. Board Employees Discipline Appeal Regulations 1990 (in short the Regulation) provides that powers vested in an authority may be exercised by a superior authority in its discretion. It reads:

"7(e) Powers vested in an authority may be exercised by a superior authority in its discretion.

"Note (1): powers vested in an authority may be exercised by a superior authority in its discretion vide Regulation 7(e) of A.P.S.E. Board Employees Discipline Appeal Regulations".

The question is as to whether the respondent was at all deprived of his right of appeal in the present case. In Surjit Ghosh (supra) this Court held at scc p.477 as under:

"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".

It is to be noted that in Surjit Ghosh (supra) there

was no further appeal provision provided against the order of the higher authority and no appeal could be preferred and, therefore, the appellant was deprived of the appeal provision. It is in those circumstances the above observation was made. Surjit Ghosh's case was reconsidered and distinguished again by this Court in Balbir Chand's case (supra). It was pointed out at scc p.373 as under:-

"It is now well settled legal position that an authority lower than the appointing authority cannot take any decision in the matter of disciplinary action. But there is no prohibition in law that the higher authority should not take decision or impose the penalty as the primary authority in the matter of disciplinary action. On that basis, it cannot be said that there will be discrimination violating Article 14 of the Constitution or causing material prejudice. In the judgment relied on by the counsel, it would appear that in the Rules, officer lower in hierarchy was the disciplinary authority but the appellate authority had passed the order removing the officer from service. Thereby, appellate remedy provided under the Rules was denied. In those circumstances, this Court opined that it caused prejudice to the delinquent as he would have otherwise availed of the appellate remedy and his right to consider his case by an appellate authority on question of fact was not available. But it cannot be laid as a rule of law that in all circumstances the higher authority should consider and decide the case imposing penalty as a primary authority under the Rules. In this case, a right of second appeal/revision also was provided to the Board. In fact, appeal was preferred to the Board. The Board elaborately considered the matter through the Chairman. It is not violative of Article 14 of the Constitution".

Reverting back to the facts of the given case there is no dispute that the Member Secretary of the Board was the disciplinary authority. Show cause notice was issued under the signature of the Member Secretary, the disciplinary authority. However, the penalty of compulsory retirement from service was inflicted by the Chairman of the Board, who it is not disputed, is the Appellate Authority. What both the learned Single Judge and the Division Bench have failed to notice was that despite the aforesaid facts the respondent was not deprived of the right of appeal. An appeal lay to the Board. Ultimately, the respondent has filed before the Board a detailed petition styled as mercy petition on 1.10.1995 questioning the order of show cause dated 9.1.1995 and his explanation submitted to final show cause notice dated 7.2.1995 and challenged the final order passed by the Chairman on 6.9.1995. Though it was styled as mercy petition, the Board has treated the petition as an appeal petition. The Board after considering the appeal rejected the same by an order dated 31.8.1996.

It appears that the order dated 31.8.1996 passed by the Board rejecting his appeal has not been assailed either before the learned Single Judge or before the Division Bench. It has attained finality. Therefore, it cannot be said that the appellant was deprived of the remedy of appeal, which caused prejudice to him.

Mr.L.N.Rao, learned senior counsel, however, contended that prejudice has been caused to the respondent as the punishment of compulsory retirement imposable under the proviso appended to clause (2) of Regulation 10 provides that punishment of compulsory retirement which comes within the provision of clause 6 to Explanation (1) of Regulation 5 shall be imposed by the competent authority with the concurrence of the committee constituted thereunder. According to him the order passed by the Chairman of the Board is not however subject to concurrence of the committee. It is his further say that if the order inflicting compulsory retirement would have been passed by the disciplinary authority, such order could have been subjected to concurrence of the committee. However, in the present case, since the imposition of compulsory retirement was inflicted by the Chairman, the case of the respondent has been prejudiced as the order passed by the Chairman was not subjected to concurrence. We are unable to accept this contention. As already noticed all the grievances laid by the respondent in detail in his appeal memo dated 1.10.1995 was considered by the highest hierarchy, namely the Board, and was rejected. We are, therefore, of the opinion that in the given facts of this case, no prejudice whatsoever has been caused to the respondent. As already noticed, the respondent has not taken grievances of the Board's order dated 31.8.1996. This would show that he was satisfied with the appellate order of the Board.

In the view that we have taken the order of the learned Single Judge dated 27.4.2001 passed in W.P No.16332 of 1996 and the order of the Division Bench dated 8.10.2001 passed in Writ Appeal No.1507 of 2001 are not sustainable in law. They are, accordingly, set aside. The appeal is allowed. Writ Petition filed by the respondent stands dismissed. Parties are asked to bear their own costs.