

Divl. Forest Officer, Kothagudem & Ors vs Madhusudhan Rao on 8 February, 2008

Equivalent citations: 2008 AIR SCW 1365, (2008) 66 ALLINDCAS 220 (SC), 2008 LAB. I. C. 1308, AIR 2008 SC (SUPP) 1479, (2008) 2 SERVLR 258, (2008) 2 MAD LJ 1018, (2008) 2 LAB LN 30, (2008) 1 SCT 783, 2008 (3) SCC 469, (2008) 117 FACLR 578, (2008) 2 ALLMR 786 (SC), (2008) 3 SERVLJ 125, (2008) 2 CURLR 31, (2008) 3 ANDH LT 39, (2008) 2 SCALE 322, 2008 LABLR 359

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Bench: A.K. Mathur, Altamas Kabir

CASE NO.:

Appeal (civil) 1104 of 2008

PETITIONER:

DIVL. FOREST OFFICER, KOTHAGUDEM & ORS

RESPONDENT:

MADHUSUDHAN RAO

DATE OF JUDGMENT: 08/02/2008

BENCH:

A.K. MATHUR & ALTAMAS KABIR

JUDGMENT:

JUDGMENT CIVIL APPEAL NO. 1104 OF 2008 [@ SPECIAL LEAVE PETITION (CIVIL) NO. 297 OF 2006] ALTAMAS KABIR, J.

1. Leave granted. Delay condoned.

2. This appeal at the instance of the Divisional Forest Officer, Kothagudem and other officers of the Ministry of Forests, Government of Andhra Pradesh is directed against the judgment and order dated 9.3.2005 passed by the Division Bench of the Andhra Pradesh High Court dismissing the Writ Petition No. 3817 of 2005 filed by the appellants herein.

3. The Writ Petition was filed challenging the order dated 23.11.2004 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad, in O.A. No. 1157 of 2002 allowing the same and directing that the respondent herein be reinstated in service.

4. From the materials as disclosed, it appears that the respondent herein was appointed as a

"Forester" on 7.4.1994 and was posted in Section Komararam from 7.4.1994 to 24.8.1996. According to the appellants, during the said period the appellant was advanced funds to carry out different works under the Andhra Pradesh Forestry Project. Despite having received such funds, he did not undertake the said work and disciplinary proceedings were initiated against him on the following charges:

"1. (a) Neglect of duty with mala fide intention by not depositing the Government funds in the Joint Account (Bank) thereby causing embezzlement of Government money of Rs. 10,000/-

(b) by false expenditure and producing the fabricated vouchers without executing the work amounting to embezzlement of Government money of Rs. 54,625.00,

(c) by not maintaining the muster rolls and non-payment of wages of Rs.4865.00 to the labourers, resulting in embezzlement of the money.

2. Misappropriation of Rs. 580.00 collected towards C'fees, by not issuing CF.140 receipt to the accused."

Having been found guilty of both the charges by the Divisional Forest Officer, the following punishment was imposed upon the respondent, namely,

(i) (5) Annual Grade Increments was stopped with cumulative effect apart from recovery of Government losses of Rs. 64,725/- at the rate of Rs. 500/- per month in (130) installments;

(ii) The suspension period from 24.8.1996 to 17.4.1997 be regularised towards Earned Leave available to the respondent.

5. Aggrieved by the said order of punishment passed by the Divisional Forest Officer, Kothagudem, the respondent filed an appeal to the Conservator of Forests, Khammam Circle, Khammam. The said authority upon going through the materials was of the view that it was a clear case of misappropriation of Government funds which entailed more punishment than had been awarded by the Divisional Forest Officer. The respondent's case was, therefore, reopened in terms of Rule 18(2) of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 and a show cause notice was issued to the respondent in terms of Rule 37(2)(v) directing him to show cause as to why he should not be removed from service. Upon considering the reply submitted by the respondent, the Conservator of Forests passed order dated 11.7.2001 dismissing the respondent from service.

6. A revision petition filed by the respondent before the Principal Chief Conservator of Forests, Andhra Pradesh was partly allowed by his order dated 19.11.2001 to the extent that the order of "dismissal from service" was modified to "removal from service". It may be indicated that neither the Conservator of Forests, Khammam Circle, Khammam, nor the Chief Conservator of Forests, Andhra Pradesh, in their separate orders gave any reasons as such for maintaining first the

punishment as imposed by the Divisional Forest Officer and thereafter the enhanced punishment of dismissal passed by the Conservator of Forests.

7. It is against the said orders that the respondent moved the Andhra Pradesh Administrative Tribunal, which after considering the matter in detail formulated the following points for consideration in the case:

- (a) Whether the order of the appellate authority is vitiated and liable to be set aside?
- (b) Whether there are any procedural lapses, which are not pointed out by the appellate authority?
- (c) Whether entertainment of appeal without condoning the delay is bad?
- (d) What decision have and given in this matter?

8. The Tribunal observed on a careful consideration of the submissions made that all that was found in the appellate authority's order dated 11.7.2001 was a narration of charges made against the respondent and it did not independently apply its mind to the materials before it before proceeding to dispose of the matter. The Tribunal also took note of the fact that a copy of the Enquiry Officer's report had not been supplied to the respondent although the same was mandatory under Rule 20 of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules. It observed that even the said aspect had not been considered by the appellate authority.

9. It was also noted that although it was mandatory on the part of the Government to consult the Public Service Commission in case of passing an order of removal from service, such consultation does not appear to have taken place as the counter affidavit filed was silent in that regard.

10. On consideration of the aforesaid facts, the Tribunal concluded that the appellate authority had not exercised its independent discretion while awarding the enhanced punishment of removal from service.

11. The reasoning of the Administrative Tribunal was duly considered and endorsed by the High Court in the Writ Petition filed by the appellants herein. The High Court observed that although the appellate authority had the power to enhance the punishment, it was also the duty of the appellate authority to consider the grounds and then only to reject the appeal. The High Court also observed that though in the same proceeding, the appellate authority came to a conclusion that the punishment was required to be enhanced, without considering the grounds raised by the respondents, it simply enhanced the punishment, which was illegal and contrary to law. On the said reasoning, the High Court dismissed the Writ Petition filed by the appellants.

12. Appearing in support of the appeal, Mr. H.S. Gururaja Rao, learned Senior Advocate, submitted that while confirming an order against which an appeal has been preferred, the appellate authority is not required to pass a reasoned order since the order impugned was before him and he was

merely endorsing the same.

13. In support of his aforesaid submission, Mr. Gururaja Rao referred to a Constitution Bench decision of this Court in *State of Madras Vs. A.R. Srinivasan* [AIR 1966 S.C. 1827], which was a case involving compulsory retirement of a civil servant in which the aforesaid question had arisen. Repelling the argument of Mr. Setalvad that even while affirming an order, an authority acting in a quasi-judicial character should indicate some reasons as to why it accepted the findings of the lower forum, this Court held that having regard to the material which is made available to the State Government, it would be somewhat unreasonable to suggest that the State Government must record its reasons why it accepted the findings of the Tribunal. This Court went on to observe further that even while differing with the order of the lower forum, the State Government was merely required to give reasons why it differs though it was not necessary that such reasons should be detailed or elaborate. The conclusion arrived at by the Constitution Bench was that where the State Government agrees with the findings of the Tribunal which are against the delinquent officer, it could not be said as a matter of law that the State Government could not impose penalty against the delinquent officer in accordance with the findings of the Tribunal, unless it gave reasons to show why the said findings were accepted by it.

14. In this regard reference was also made to two other decisions of this Court; (i) *Som Datt Datta Vs. Union of India & Ors.* [(1969) 2 S.C.R. 177], and (ii) *Tara Chand Khatri Vs. Municipal Corporation of Delhi & Ors.* [(1977) 1 S.C.C. 472] where the aforesaid sentiments were reiterated. Mr. Gururaja Rao urged that since this was a serious matter involving embezzlement of Government funds, the lacuna in the orders passed by the appellate and revisional authorities should not be taken as fatal, since the Divisional Forest Officer had dealt with the charges and the response of the respondents thereto in great detail.

15. Mr. D. Ramakrishna Reddy, learned counsel appearing on behalf of the respondent, however, submitted that both the Administrative Tribunal as also the High Court had correctly come to the conclusion that neither the appellate authority nor the revisional authority had applied their minds to the appeal and the revision preferred by the respondent and the orders passed by the said authorities had been correctly set aside by the Administrative Tribunal on such basis. Learned counsel further urged that certain mandatory provisions of the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, had not been followed and as rightly pointed out both by the Tribunal as also the High Court, although the Conservator of Forests as the appellate authority was empowered to enhance the punishment awarded by the Divisional Forest Officer, he was required to deal with the response to the show cause notice with more application, instead of simply enhancing the punishment without giving any reasons therefor. He also urged that non- supply of the Enquiry Officer's Report was another fatal defect under Rule 20 of the aforesaid Rules. He urged that the order of the High Court did not warrant any interference and the appeal was liable to be dismissed.

16. In support of his submissions, Mr. Ramakrishna Reddy referred to the decision of this Court in *R.P. Bhatt Vs. Union of India & ors.* [(1986) 2 S.C.C. 651] wherein it was observed that while considering an appeal against an order enhancing any penalty under the Central Civil Services

(Classification, Control and Appeal) Rules, requirements of Rule 27(2) must be complied with and consideration would mean a finding of satisfaction as to whether the procedure laid down in the Rules had been complied with and if not complied with, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. Mr. Ramakrishna Reddy submitted that the three cases cited by Mr. Gururaja Rao had already been referred to and ultimately the appeal was allowed with the direction on the concerned authority to dispose of the appeal before him afresh after applying his mind to the requirements of Rule 27(2) of the Central Civil Services Rules, 1965.

17. The next case referred to by Mr. Reddy is Ram Chander Vs. Union of India & ors. [(1986) 3 S.C.C. 103] where the decision in R.P. Bhatt's case (supra) was followed.

18. Having considered the submissions made on behalf of the respective parties and also having regard to the detailed manner in which the Andhra Pradesh Administrative Tribunal had dealt with the matter, including the explanation given regarding the disbursement of the money received by the respondent, we see no reason to differ with the view taken by the Administrative Tribunal and endorsed by the High Court. No doubt, the Divisional Forest Officer dealt with the matter in detail, but it was also the duty of the appellate authority to give at least some reasons for rejecting the appeal preferred by the respondent. A similar duty was cast on the revisional authority being the highest authority in the Department of Forests in the State. Unfortunately, even the revisional authority has merely indicated that the decision of the Divisional Forest Officer had been examined by the Conservator of Forests, Khammam wherein the charge of misappropriation was clearly proved. He too did not consider the defence case as made out by the respondent herein and simply endorsed the punishment of dismissal though reducing it to removal from service.

19. It is no doubt also true that an appellate or revisional authority is not required to give detailed reasons for agreeing and confirming an order passed by the lower forum but, in our view, in the interests of justice, the delinquent officer is entitled to know at least the mind of the appellate or revisional authority in dismissing his appeal and/or revision. It is true that no detailed reasons are required to be given, but some brief reasons should be indicated even in an order affirming the views of the lower forum.

20. Having regard to the above, we are not inclined to interfere with the order of the High Court and the appeal is accordingly dismissed, but without any order as to costs.