

HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

MAIN CASE NO.: W.P.No. 2893 of 2023

PROCEEDING SHEET

Sl. No.	Date	ORDER	OFFICE NOTE
2	24.02.2023	<u>NV,J</u> The present writ petition is filed to declare the action of the 3rd respondent in issuing the proceedings in JCST's VJA-I File.No.CTVW1-12021/1/2023-DC-VJW1-3 dated 23.01.2023 placing the petitioner under suspension without any basis and without following the procedure prescribed under the A.P.Civil Services (Classification, Control and Appeal) Rules, 1991 (for short "the CCA Rules, 1991"). 2. Sri Y.V. Ravi Prasad, learned Senior Counsel, representing Sri Y.V. Anil Kumar, learned counsel for the petitioner would submit that the President of the Andhra Pradesh Government Employees Association as well as the Andhra Pradesh Commercial Taxes Services Association, Vijayawada, on behalf of all the employees in the State of Andhra Pradesh, submitted a representation dated 19.01.2023 to His Excellency the Governor of Andhra Pradesh expressing the grievance that the	

		salaries of employees and the pensions of retired employees in the State are not being paid on the 1st day of every month. Aggrieved by the said action, the respondents developed grudge against the office bearers of the said Associations and issued the impugned proceedings. He would further submit that the 1st reference cited in the impugned proceedings reflects an adverse news item published in a Telugu Newspaper against the Intelligence Unit of Vijayawada-I Division on 04.04.2021, but previously i.e., during the year 2021 the petitioner worked as GSTO in the Office of the Assistant Commissioner (ST), Samarangam Chowk Circle, Vijayawada. So far as the enquiry reports dated 16.04.2021 and 19.12.2022 are concerned, the enquiries were conducted behind the back of the petitioner and till date, the petitioner is not served with any show cause notice calling for explanation or a charge memo. i) The learned Senior Counsel would submit that the impugned orders are punitive in nature and to terrorize the employees not to express their grievances and issuance of the impugned orders is nothing but depriving the fundamental rights of the employees under Article 19(1) of the Constitution of India. The petitioner never worked at the	
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		Intelligence Unit of Vijayawada-I during the subject period as alleged. He would submit that without conducting the enquiries as per the Rules contemplated under the CCA Rules, 1991 and without giving any opportunity to participate in the enquiries, the enquiry reports, on which the impugned proceedings were effected, cannot be acted upon. The impugned order of suspension is an act of vengeance, biased and victimization, as a representation was submitted to His Excellency the Governor of Andhra Pradesh ventilating the grievances of the employees. ii) The learned Senior Counsel would also submit that though the petitioner submitted an application dated 25.01.2023 to the respondents seeking to furnish the documents referred in the impugned proceedings, but the documents are not furnished so far. Further, there is no whisper in the impugned orders as to on what ground the suspension orders were issued. Even according to the impugned orders, detailed enquiry was already conducted, as such, there is no necessity to place the petitioner under suspension after completion of enquiry. Therefore, the impugned action of suspension is against the object and principles of suspension pending enquiry. In support of his submissions, he	
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		relied on the decision of the Hon'ble Supreme Court in <i>Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd.</i> reported in (1999) 3 SCC 679 and also the judgment of the learned Single Judge of this Court in <i>M.R.A. Samuel Vs. The State of Andhra Pradesh</i> (W.P.No.17187 of 2020 dated 18.02.2021). He, therefore, prays to set aside the impugned orders. 3. <i>Per contra</i>, learned Government Pleader for Services-I appearing for the respondents, would submit that the impugned proceedings were issued basing on the enquiry reports dated 16.04.2021 and 19.12.2022 submitted by the Enquiry Officers. While conducting the discreet/detailed enquiries, the respondents need not to observe the CCA Rules, 1991 as claimed by the petitioner. The discreet enquiry is nothing but a preliminary enquiry for knowing the real facts. He would further submit that the petitioner and many others caused financial loss to the Government exchequer to a tune of Rs.15.00 crores in respect of supply of drugs by leaving 112 dealers from the purview of tax out of 131 cases. Similarly, the petitioner also caused financial loss to a tune of Rs.22.76 crores in respect of supply of surgicals and Rs.40.00 crores by allowing the contractors, who executed the	
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	contracts under Neeru-Chettu programme, to evade tax, for extraneous reasons. He did not dispute the nature of employment of the petitioner. i) The learned Government Pleader would further submit that the Government vide Memo dated 14.07.2022 appointed OSD, Revenue Department, as an Enquiry Officer to conduct enquiry into all the aspects involved in the case of adverse report published in the newspaper against the officers and staff of the Intelligence Wing, JC (ST), Vijayawada-I Division. Accordingly, the OSD, Revenue Department, conducted enquiry and submitted an enquiry report on 19.12.2022. The Intelligence Wing of Vijayawada-I Division took up verification of 21 dealers out of 27 dealers. After verification of the returns filed by 21 dealers, show cause notices were issued in the months of March and June, 2020. However, orders were passed in January and April, 2022. The huge gap of nearly two years between the receipt of information and crystallizing the demands on suppressed turnovers watered down the very effort of taking up verification of the data because in most of these cases the orders were not served properly and only the minor part of demands raised was collected. He would also submit that out of 21 cases, 5 dealers	
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		cancelled their registrations soon after receipt of information from the Intelligence Wing from ESI and evaded tax. The petitioner as part of Intelligence Wing failed to take appropriate action by instructing the respective authorities for taking preventive measures while cancelling the registration and failed to attach the erring dealers' bank accounts or their properties provisionally under the APGST Act, 2017 before passing orders or after passing the orders as required under the said Act to protect/recover the revenue which exhibits the nexus between the unscrupulous dealers and the petitioner. The information of bank accounts of the dealers to which ESI remitted the sale proceeds was available on record. Thus, the inaction of the Intelligence Wing as is apparent from preceding narration of facts and the failure to discharge the statutory duties cast under Sections 67, 70 and 71 of the APGST Act, 2017 had resulted in huge loss of revenue to the State. In view of the above, no interference is called for by this Court under Article 226 of the Constitution of India and he seeks time to file a detailed counter affidavit. In support of his contentions, he relied upon the decisions of the Hon'ble Apex Court in <i>Pravin Kumar Vs. Union of India</i> reported in (2020) 9 SCC 471, in <i>Natwar Singh Vs. Director of Enforcement</i> reported in	
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		<i>a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether Rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical Rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the Rules of natural justice or in violation of statutory Rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.</i> <i>13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappreciate the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In Union of India</i>	
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		<i>v. H.C. Goel (MANU/SC/0271/1963 : [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1 LLJ 38]) this Court held at SCR pp.728-29 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued.</i> <i>28. It is thus well settled that the Constitutional Courts while exercising their powers of judicial review would not assume the role of an appellate authority. Their jurisdiction is circumscribed by limits of correcting errors of law, procedural errors leading to manifest injustice or violation of principles of natural justice. Put differently, judicial review is not analogous to venturing into the merits of a case like an appellate authority.”</i> b) In Natwar Singh case, The Apex Court held thus: <i>“23. The right to fair hearing is a guaranteed right. Every person before an Authority exercising the adjudicatory powers has a right to know the evidence to be used against him. This principle is firmly established and recognized by this Court in Dhakeswari Cotton Mills Ltd. v. Commissioner of Income Tax, West Bengal (MANU/SC/0073/1954 : (1955) 1 SCR 941). However, disclosure not necessarily involves supply of the material. A person may be allowed to inspect the file and take notes. Whatever mode is used, the fundamental principle remains that nothing should be used against the person which has not brought to his notice. If relevant material is not disclosed to a party, there is prima facie unfairness irrespective of whether the material in question arose before, during or after the hearing. The law is fairly well settled if prejudicial allegations are to be made against a person, he must be given particulars of that before hearing so that he can prepare his defence. However, there are various exceptions to this general rule where disclosure of evidential material might inflict serious harm on the person directly concerned or other persons or where</i>	
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		disclosure would be breach of confidence or might be injurious to the public interest because it would involve the revelation of official secrets, inhibit frankness of comment and the detection of crime, might make it impossible to obtain certain clauses of essential information at all in the future [See R v. Secretary of State for Home Department, ex. p. H (1995) QB 43] . 36. On a fair reading of the statute and the Rules suggests that there is no duty of disclosure of all the documents in possession of the Adjudicating Authority before forming an opinion that an inquiry is required to be held into the alleged contraventions by a noticee. Even the principles of natural justice and concept of fairness do not require the statute and the Rules to be so read. Any other interpretation may result in defeat of the very object of the Act. Concept of fairness is not a one way street. The principles of natural justice are not intended to operate as roadblocks to obstruct statutory inquiries. Duty of adequate disclosure is only an additional procedural safeguard in order to ensure the attainment of the fairness and it has its own limitations. The extent of its applicability depends upon the statutory framework.” c) In T. Takano case, the Hon’ble Supreme Court held as under: “44. The contention of the Respondents is that since the investigation report Under Regulation 9 would also include information on "commercial and business interests, documents involving strategic information, investment strategies, rationale for investments, commercial information and information regarding the business affairs of the entities/persons concerned" affecting the privacy and the competitive position of other entities, it should not be disclosed. Buttressing this argument, the Respondent referred to Clauses (d), (e) and (h) of the Sub-section (1) of the RTI Act which states there shall be no duty to disclose information affecting the commercial confidence or that which could harm the competitive position of a third party or impede the process of investigation, unless there is a larger	
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		<i>public interest in the disclosure of information. The RTI Act attempts to balance the interests of third party individuals whose information may be disclosed and public interest in ensuring transparency and accountability. The RTI Act is reflective of the parliamentary intent to facilitate transparency in the administration, which is the rationale for the disclosure of information. This is subject to certain defined exceptions.</i> <i>45. We cannot be oblivious to the wide range of sensitive information that the investigation report submitted Under Regulation 9 may cover, ranging from information on financial transactions and on other entities in the securities market, which might affect third-party rights. The report may contain market sensitive information which may impinge upon the interest of investors and the stability of the securities market. The requirement of compliance with the principles of natural justice cannot therefore be read to encompass the right to a roving disclosure on matters unconnected or as regards the dealings of third parties. The investigating authority may acquire information of sensitive nature bearing upon the orderly functioning of the securities market. The right of the noticee to disclosure must be balanced with a need to preserve any other third-party rights that may be affected.”</i> 4. In reply, the learned Senior Counsel would submit that the petitioner is not holding the post meant for collection of tax and he had been discharging duties during the subject period at other than tax collection units, as such, the allegation made against the petitioner that for extraneous reasons, he caused monetary loss to the exchequer, is not correct and it is only invented to prejudice the adjudicating agencies and this Court. This	
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		contention was not refuted by the learned Government Pleader in his counter. Learned Senior Counsel would submit that number of transfer and suspension proceedings were issued against the persons who never worked at the particular unit as contended and the alleged enquiries were already conducted in relation to only one unit i.e., Intelligence Wing, Vijayawada-I. 5. Having regard to the submissions made by the learned Senior Counsel for the petitioner as well as the learned Government Pleader for Services-I, it is manifest that the respondent authorities already conducted detailed enquiries on two occasions i.e., on 16.04.2021 and 19.12.2022, and by relying the said enquiry reports and without observing the principles of natural justice and without providing any opportunity to the petitioner to submit an explanation, the present impugned orders came to be passed by <i>de horsing</i> the procedure as contemplated under Rules 21 and 22 (1) of the CCA Rules, 1991 which envisages thus: <i>“Rule 21 – Action on the inquiry report – (1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 20 as far as may be.</i>	
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		<i>(2) The disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority a copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the Government servant who shall be required to submit, if he so desires, his written representation of submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant.</i> <i>(3) The disciplinary authority shall consider the representation, if any, submitted by the Government servant and record its findings before proceeding further in the matter as specified in the sub-rules (4) and (5) below.</i> <i>(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge is of the opinion that any of the penalties specified in clauses (i) to (v) of Rule 9 should be imposed on the Government servant, it shall, notwithstanding anything contained in Rule 22, make an order imposing such penalty;</i> <i>Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Government servant.</i> xxxxx xxxxxx xxxxxx xxxxxx xxxxx <i>Rule 22 – Procedure for imposing minor penalties – (1) Subject to the provisions of sub-rule 4 of Rule 21, an order imposing on a Government servant any of the penalties specified in clauses (i) to (v) of Rule 9 and in Rule 10 shall be made except after : -</i> <i>(a) informing the Government Servant in writing of</i>	
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		<i>the proposal to take action against him and of the imputations of misconduct or misbehavior on which it is proposed to be taken, and giving him a reasonable opportunity of making such representation as he may wish to make against the proposal.”</i> 6. The impugned order was issued in exercise of the powers conferred under Rule 8 (1) of the CCA Rules, 1991 which reads as under: <i>“Rule 8 – Suspension – (1) A member of a service may be placed under suspension from service -</i> <i>where a disciplinary proceeding against him is contemplated or is pending, or</i> <i>where in the opinion of the authority competent to place the Government servant under suspension, he has engaged himself in activities prejudicial to the interest of the security of the State, or</i> <i>where a case against him in respect of any criminal offence is under investigation, inquiry or trial</i> <i>A member of a service may be placed under suspension from service even if the offence for which he was charged does not have bearing on the discharge of his official duties.”</i> On a perusal of the Rule 8 (1), this Court is of the opinion that Rule 8(1) is not applicable, since the enquiry was already completed twice in the present case and the enquiry reports were submitted by the Inquiry Officers on 16.04.2021 and 19.12.2022.	
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		7. As per service jurisprudence, as stated by the respondents, the detailed enquiries were already conducted and basing upon the enquiry reports, the present impugned orders were passed. In these circumstances, the suspension of the petitioner from service does not warrant, since the entire enquiry was already completed. The said ratio was laid down by the Hon'ble Supreme Court as well as this Court in the following decisions on which the learned Senior Counsel for the petitioner placed reliance: a) In M.Paul Anthony case, the Hon'ble Apex Court observed as under: <i>“29. Exercise of right to suspend an employee may be justified on facts of a particular case. Instances, however, are not rare where officers have been found to be afflicted by "suspension syndrome" and the employees have been found to be placed under suspension just for nothing. It is their irritability rather than the employee's trivial lapse which has often resulted in suspension. Suspension notwithstanding, non-payment of Subsistence Allowance is an inhuman act which has an unpropitious effect on the life of an employee. When the employee is placed under suspension, he is demobilized and the salary is also paid to him at a reduced rate under the nick name of 'Subsistence Allowance', so that the employee may sustain himself. This Court, in O.P. Gupta v. Union of India and Ors. (MANU/SC/0670/1987: (1988)ILLJ453SC) made the following observations with regard to Subsistence Allowance:</i> <i>“An order of suspension of a government servant does</i>	
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		not put an end to his service under the government. He continues to be a member of the service in spite of the order of suspension. The real effect of suspension as explained by this Court in <i>Khem Chand v. Union of India</i> is that he continues to be a member of the government service but is not permitted to work and further during the period of suspension he is paid only some allowance -- generally called subsistence allowance -- which is normally less than the salary instead of the pay and allowances he would have been entitled to if he had not been suspended. There is no doubt that an order of suspension, unless the departmental inquiry is concluded within a reasonable time, affects a government servant injuriously. The very expression 'subsistence allowance' has an undeniable penal significance. The dictionary meaning of the word 'Subsist' as given in <i>Shorter Oxford English Dictionary</i>, Vol. 11 at p. 2171 is "to remain alive as on food; to continue to exist". "Subsistence" means -- means of supporting life, especially a minimum livelihood. (Emphasis supplied)" b) In M.R.A. Samuel case, the learned Single Judge of this Court held thus: <i>"23. The power of suspension should, however, not be exercised in an arbitrary manner and without any reasonable ground or as a vindictive misuse of power. A suspension order cannot be actuated by mala fides, arbitrariness, or be passed for an ulterior purpose. (Ashok Kumar Aggarwal's case (referred (25) supra)). An order of suspension should not be passed in a perfunctory or in a routine and casual manner but with due care and caution after taking all factors into account. (Ashok Kumar Aggarwal's case). It should be made after consideration of the gravity of the alleged misconduct or the nature of the allegations imputed to the delinquent employee. The authority should also take into account all available material as to whether, in a given case, it is advisable ((2013) 16 SCC 147, (1994) 4 SCC 126, AIR 1964 SC 787) to allow the delinquent to continue to perform his duties in the office or his</i>	
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		<i>retention in office is likely to hamper or frustrate the inquiry. (Ashok Kumar Aggarwal's case). Ordinarily, an order of suspension is passed after taking into consideration the gravity of the misconduct sought to be inquired into or investigated, and the nature of the evidence placed before it, on application of mind by the disciplinary authority. (Ashok Kumar Aggarwal; Bimal Kumar Mohanty29)."</i> 8. As seen from the impugned order, it is crystal clear that no show cause notice and no charge memo were issued to the petitioner to submit his explanation and no opportunity was given to him to participate in the enquiries said to have been conducted by the respondents. The fact remains is that the enquiries had not been conducted as per the CCA Rules, 1991 and hence, the enquiry reports dated 16.04.2021 and 19.12.2022 cannot be relied upon. Therefore, the power of suspension is only to be used to achieve the object to keep the delinquent away from the records and witnesses at the time of enquiry, but here enquiry was already completed, and the power cannot be used as a means of punishment. In fact, the present impugned proceedings does not speak any administrative exigencies, but due to the enquiry reports which are unknown to the petitioner, the impugned proceedings were issued for other reasons particularly as punitive measure only. In view of the facts and circumstances as stated supra, the	
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	judgments relied on by the learned Government Pleader are not applicable to the case on hand. 9. In view of the foregoing discussion and the law laid down by the Hon'ble Apex Court as well as this Court in the judgments relied on by the learned Senior Counsel for the petitioner, I am of the opinion that the respondents did not follow the due process of law before issuing the impugned orders, which would attract the principle of malice in law as the impugned order was not based on any real factor germane and it was based upon the allegations made against a unit of Department in a news item published in a Telugu Newspaper on 04.04.2021. Admittedly, the petitioner never discharged his duties at the subject unit and his duties do not at all relate to collection of tax as alleged. 10. Hence, there shall be an interim suspension of operation of the impugned proceedings in JCST's VJA-I File.No.CTVW1-12021/1/2023-DC-VJW1-3 dated 23.01.2023 issued by the 3rd respondent, for a period of two weeks from today. 11. List the matter on 28.02.2023.	
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		12. Meanwhile, counter affidavits be filed by the respondents. <u> </u> NV, J cbs	
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