

STATE OF ANDHRA PRADESH

A

v

DR. K. RAMCHANDRAN

JANUARY 7, 1998

[S. SAGHIR AHMAD AND G.B. PATTANAIK, JJ.]

B

*Service Law :*

*A.P. Civil Services (Disciplinary Proceedings Tribunal) Act, 1960.*

C

*Section 4 (as it stood prior to amendment by A.P. Act 6 of 1993)—Disciplinary proceedings—Reference to Tribunal—Requirement of—Penalty imposed on employee without referring the case to Tribunal—Validity—Held : It is mandatory to refer disciplinary case to Tribunal—Penalty, imposed without jurisdiction and hence illegal.*

D

*Interpretation of Statutes :*

*Rules of interpretation—Subsidiary rule—Mandatory or directory—Amendment—Word “shall” replaced by word “may”—Held : This shows the amended provision is discretionary whereas the unamended provision is mandatory.*

E

**The appellant State had imposed a penalty of 20% cut in the pension of the respondent for a period of 5 years. By another order the appellant refused to treat the period of suspension of the respondent as period spent on duty. The respondent challenged the aforesaid orders before the State Administrative Tribunal. The Tribunal set aside the aforesaid orders on the ground that Government had no jurisdiction to hold disciplinary proceedings as such proceedings had to be referred to the Tribunal under Section 4 of the A.P. Civil Services (Disciplinary Proceedings Tribunal) Act, 1960. Hence this appeal.**

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**In the meanwhile Section 4 of the Act was amended by the A.P. Act 6 of 1993 and the word “shall” occurring in Section 4 was replaced by the word “may” by inserting Section 4-A in the Principal Act.**

**Dismissing the appeal, this Court**

H

A **HELD : 1.1.** In view of the word “shall” occurring in Section 4 of the  
 A.P. Civil Services (Disciplinary Proceedings Tribunal) Act, 1960 the case  
 of an employee Committing misconduct has to be referred to the Tribunal  
 constituted under the Act for holding disciplinary proceedings. When the  
 disciplinary proceedings were started against the respondent, the government  
 B had no jurisdiction to hold departmental proceedings for the misconduct  
 committed by the respondent. It had no choice except to refer the case to the  
 Tribunal. [26 G-H; 27-A]

C 1.2. Section 4 of the Act which was mandatory was amended by A.P.  
 Act 6 of 1993 and the word “shall” occurring in Section 4 was replaced by  
 the word “may”, which gave a discretion to the Government to refer or not  
 to refer the matter to the Tribunal. Section 4-A which was inserted in the  
 Principal Act by the same amending Act also indicates that the choice to  
 refer or not to refer the case to the tribunal for disciplinary proceeding or  
 to withdraw any case already referred to the Tribunal, became available to  
 the Government only after the amendment of the principal Act by Act 6 of  
 D 1993 and not before that. [27 B-C]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 914 of 1986.

From the Judgment and Order dated 22.6.85 of the Andhra Pradesh  
 Administrative Tribunal in R.P. No. 62 of 1982.

E Mr. G. Prabhakar for the Appellant.

Ex-parte for the Respondent.

F The Judgment of the Court was delivered by

G **SAGHIR AHMAD, J.** By G.O (MS) M & H dated march 3, 1981, the  
 Government of Andhra Pradesh had imposed the penalty of 20% cut in the  
 pension of the respondent for a period of 5 year. By another order G.O. 1278  
 M & H dated 10.8.1981, the Government refused to treat the period of  
 suspension of the respondent as period spent on duty. Both the orders were  
 challenged by the respondent before the Andhra Pradesh Administrative  
 Tribunal, which by its Judgment dated 22nd June, 1985 allowed the petition  
 and set aside the above orders on the ground that the Government had no  
 jurisdiction to hold disciplinary proceedings as the disciplinary proceedings  
 could be held only by the Tribunal constituted under the Andhra Pradesh  
 H civil Services (Disciplinary Proceedings Tribunal) Act, 1960.

Learned counsel appearing on behalf of the state of Andhra Pradesh contends that the Government being the employer and the Authority which can pass final orders of punishment in disciplinary proceedings, retains its jurisdiction to proceed departmentally against its employees for mis-conduct committed by them in spite of the Tribunal constituted under the Act of 1960 for holding disciplinary proceedings and therefore the decision of the Tribunal taking, a contrary view, is not correct. We are not impressed by the argument.

Sub-section (2) (d) of the Act defines 'Tribunal', which means Tribunal constituted under section 3. Section 2(c) defines the word 'prescribed', which means prescribed by rules made under the Act.

Section (3) of the Act provides as under:

"Every member of the Tribunal shall be a Judicial Officer of the status of a District Judge and his appointment shall be made by the Government out of a panel of names forwarded by the High Court."

Section 4 of the Act, prior to its amendment by Andhra Pradesh Act 6 of 1993, provided as under:

"4. Cases to be referred to Tribunal: The Government shall refer to the Tribunal for enquiry and report such cases as may be prescribed of allegations of misconduct on the part of Government Servants".

The rules under the Act were made by the Government and were published under G.O. MS No. 895 G.A. (Ser-D) dated 18th July, 1961, in which misconduct has been defined as under:

"2 (b) "Misconduct" shall have the same meaning as criminal misconduct under Section 5 (1) of the Prevention of Corruption Act, 1947 (Central Act II of 1947) and shall include any attempt to commit any offence referred to in clause (c) of clause (d) of that section and any "wilful contravention of the rules made under the proviso to Article 309 of the constitution of India, to regulate the conduct of persons appointed to public services and posts and posts in connection with the affairs of the state". (G.O. Ms. No. 1026, G.A. (Ser-D), dated 16.2.1969."

Rule 3 which is the relevant rule is quoted below:

"Government may, subject to the provisions of rule 4 refer to the

A Tribunal for enquiry and report under section 4 of the Act.

(a) case relating to Government servants drawing a basic pay of Rs. 360 and above per mensem in respect of matters involving misconduct; and

B (b) cases relating to Government servants drawing a basic pay of less than Rs. 600 per mensem in respect of matters involving misconduct committed by such Government Servants either jointly with Government Servant drawing a basic pay of not less than Rs. 360 per mensem or in the course of the same transaction involving misconduct committed by such other Government servants. (G.O. Ms. No. 490 GAD (Ser-D) dated 25.7.1980:

C Provided that it shall not be necessary to refer to the Tribunal any case in which the Tribunal has at any previous stage, reported its finding in regard to the order to be passed and no fresh question has thereafter arisen for determination". (G.O.Ms. No.718, G.A.(Ser-C), dated 8th October, 1976.

D "2(A) Where two or more Government servants are concerned in any case the Government may make an order directing disciplinary proceedings against all of them may be taken in a common proceeding and; thereupon the Tribunal shall conduct the enquiry into such case accordingly" (G.O. Ms. No. 862), G.A., dated 9.8.1972.

E (3) Notwithstanding anything contained in sub-rule (1) or (2), cases arising in the Judicial Department and cases of officer and servants of the High Court who come under the rule making control of the Chief Justice as laid down in article 229 of the Constitution of India shall not be referred to the Tribunal".

F Under the above Rule, the employees, whose cases are to be referred to the Tribunal have been specified. If any of the employee falling within the above category committed misconduct, his case, in view of unamended section 4 of the Act, "particularly because of the use of the word "SHALL" therein, had to be referred to the Tribunal constituted under that Act for holding disciplinary proceedings. This Tribunal, it will be noticed, is presided over by a Judicial Officer of the rank of a District Judge appointed by the Government from a panel of names recommended by the High Court.

G It is apparent that at the relevant time, when the disciplinary proceedings

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were started against the respondent, the Government had no jurisdiction to hold departmental proceedings for the misconduct committed by the respondent. It had no choice except to refer the case to the Tribunal. A

Section 4 of the Act which was in mandatory terms was amended by Andhra Pradesh Act 6 of 1993 and the word "shall" occurring in section 4 was replaced by the word "may", which gave a direction to the Government to refer or not to refer the matter to the Tribunal. Section 4A which was inserted in the Principal Act by the same amending Act, also namely, Andhra Pradesh Act 6 of 1993, gave power to the Government to withdraw at any stage, any case from the Tribunal before its conclusion. This, again indicates that the choice to refer or not to refer the case to the Tribunal for disciplinary proceeding or to withdraw any case already referred to the Tribunal, became available to the Government only after the amendment of the principal Act by Act in 6 of 1993. B C

The Judgment passed by the Administrative Tribunal does not, therefore, suffer from any error or illegality. the appeal is consequently dismissed. There shall be no order as to costs. D

V.S.S.

Appeal dismissed.