



W.P.No.4635 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.06.2023

PRONOUNCED ON : 03.08.2023

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

WP.No.4635 of 2011

and

W.M.P.Nos.1 and 2 of 2011

S.Palanisamy

... Petitioner

v.

1.The Principal Chief Conservator of Forests,
[Head of Forests Force],
Chennai 600 015.

2.The Conservator of Forests,
Salem Circle, Salem.

3.The Divisional Forest Officer,
I.F.F. Division, Salem District,
Salem.

4.The District Forest Officer,
Salem District, Salem.

5.The Government of Tamil Nadu,
Rep. By its Secretary to Government,
Environment & Forests Department,
Secretariat, Chennai 600 009.

... Respondents



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Prayer: Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to the orders in Pro.No.6913/2010/Pa.3 dated 30.06.2010 of the Second Respondent (2) Na.Ka.No.4616/09/T. dated 23.07.2010 passed by the third respondent and [3] Pro.No.BB2/76221/2010 dated 11.01.2011 passed by the first respondent and to quash the same.

For Petitioner : Mr.M.Ravi

For Respondents : Mrs.Geetha Thamaraiselvan,
Special Government Pleader

ORDER

The Writ petition has been filed challenging the orders in Pro.No.6913/2010/Pa.3 dated 30.06.2010 passed by the 2nd Respondent, Na.Ka.No.4616/09/T. dated 23.07.2010 passed by the 3rd respondent and [3] Pro.No.BB2/76221/2010 dated 11.01.2011 passed by the 1st respondent.

2. The petitioner was serving as Forest Ranger at Athur Range, I.F.F. Division, Salem, from 22.08.2008. He was entrusted with the work of pitting, planting, digging catch water pits under "2008 Pudupatty



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Nagar TAP Scheme" The said works were carried out during the period 01.04.2008 to 21.03.2009. It is submitted by the learned counsel for the petitioner that the work assigned was systematically carried out in compliance with the method and the manner specified. It was further submitted that the 2nd and 3rd respondents had also carried out periodical inspection and did not find any irregularity / deviation / lapse in carrying out the above work. However, pursuant to an alleged inspection on 05.08.2009 and 06.08.2009 by FEMAS party in the month of August 2009 which is attached to the office of the 1st Respondent it was observed that the works were not carried out in accordance with the specifications. Based on the report by the FEMAS party, the 1st Respondent called upon the petitioner to explain the irregularities. This was followed by a Charge Memo dated 10.03.2010 under Rule 17(a) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules for the alleged loss of Rs.2,58,480/- and for other lapses / deficiencies. It may be relevant to point out the irregularities set out in the charge memo.

a) That the number of saplings / plants was less than what ought to have been planted.



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b) The catch water pits which must measure of 60 cubic centimeters on inspection was found to measure less than that.

3. Though the Charge Memo also contained charges of alleged irregularities in the construction of community building, however, the same has not been dealt with as it is no longer an issue. On the basis of the two allegations set out above, it was proposed to recover a sum of Rs.2,58,480/- as representing the loss to the exchequer in view of the failure to discharge the work entrusted in the manner specified. The petitioner submitted his explanation vide letter dated 09.04.2010.

4. However, the proposal was confirmed by the 2nd respondent vide proceedings dated 30.06.2010 wherein reliance was sought to be placed on the Report of the 3rd respondent rejecting the explanation offered by the petitioner.

5. The 2nd respondent after recording the rejection of the petitioner's explanation by the 3rd Respondent confirmed the proposal vide order dated 30.06.2010 by stating the following:



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“jp U.v].:godprhkp> rufUf;F vjpuhf Nryk; ,ilgL fhLfs;
Nfhl;l td mYtyh; e.f.vz;.4616/2009 jp ehs; 10.03.2010-y;
toq;fg;gl;l Fw;wj;jhs py; rhl;lg;gl;Ls;s Fw;wq;fs py; tdf;F 0
fl;blk; fl;Ltjw;F &.10>000/-gl;Lthlh nra;ag;gl;Ls;sJ fzf;fpy;
nfhz;L tug;gl;Ls;sJ. kPjKs;s Fw;wr;rhl;Lfs; ep&gzkhfpwJ. vdNt.
muRf;F Vw;gl;l ,og;G njhifahd &.2>58>481/-ia
jp U.v].:godprhkp> rufhp d; Cjpaj;jpyp Ue;J 28 jtizfs py; khjk;
xd;Wf;F &.9500/- tPjk; 27 jtizfSk;> 28tJ jtizap y; &.1981/-k;
#iy-2010 Kjy; gpbj;jk; nra;a MizapLfpNwd;.”

6. Pursuant to the above order of the 2nd respondent, the 3rd respondent passed the consequential order dated 23.07.2010 whereby it sought to recover the sum of Rs.2,58,481/- representing the loss to the exchequer as found by the 2nd respondent in 27 equal instalments of Rs.9,500/- and a sum of Rs.1,981/- as the 28th instalment.

7. Aggrieved, the petitioner preferred an appeal dated 24.08.2010 before the 1st respondent reiterating his stand. Thereafter, a writ petition was filed in W.P.No.19837 of 2010 wherein, the order of the 2nd respondent dated 23.07.2010 was challenged before this Court, the prayer was confined to a direction to dispose of the statutory appeal. This Court was pleased to direct the 1st respondent to dispose of the appeal within a period of 8 weeks from the date of receipt of a copy of the order.



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8. Pursuant thereto, the 1st respondent had passed the impugned order dated 11.01.2011 confirming the order of the 2nd respondent. The relevant portion of the order dated 11.01.2011 passed by the 1st respondent is extracted hereunder:

“4. jpU.v];.godprhkp> tdr;rufhpd; Nky;KiwaPL njhlh;Gila midj;J Mtzq;fSk; ed;F ghprPypf;fg;gl;ld. ,tuJ Nky;KiwaPl;by; muR ,og;Gf;F khtl;l td mYtyiuAk; Nrhy;Jg; nghWg;ghf;f Ntz;Lk; vd;w xU fUj;jpidj; jtpu Gjpa fUj;Jf;fs; vJTk; \$wtpy;iy. ,ej xU fUj;jpidj; jtpu nrhy;yg;gl;l midj;Jf; fhuzq;fSk; tdg;ghJfhtyhpdy; ghprPyid nra;ag;gl;l gpwFjhd; ,Wjp Miz toq;fg;gl;Ls;sJ.

(2) khtl;l td mYtyUf;F murpog;gpy; 25% eph;zak; nra;ag;glNtz;Lnkd;w murhiz vz;. 92 ehs; 09.03.1993 gpwF khw;wg;gl;Ls;sJ. Murhiz vz;.145 Rw;Wr;#oy; kw;Wk; tdj;Jiw ehs; 29.01.2001d;gb> ahh; nghWg;Ngh mth;kPJ eltb;f;if vLf;fg;glNtz;Lk; vd;W \$WfpwJ. jdbg;gilapy; epjp x0q;fPd;f;jpw;F rufiuAk;> Ntiyfs; rhptu nra;ag;glhikiaf; ftdpf;fj; jtpwajw;F khtl;l td mYtyiuAk; nghWg;ghf;fp eltb;f;if vLf;fg;gl;Ls;sJ.

(3) ,th; kPJ Rkj;jg;gl;l le;J Fw;wq;fspy; ,uz;L Fw;wq;fs; typAWj;jg;gltpy;iy. kPjpAs;s %d;W Fw;wq;fs; ep&gpf;fg;gl;Ls;sJhf njhpe;jhYk; muR ,og;G kl;LNk gpbj;jk; nra;a Mizapl;gl;Ls;sJ. kPjp ,uz;L Fw;wq;fSf;F jz;lid vJTk; toq;fg;gltpy;iy. jidf; fUj;jpy; nfhz;Lk; Gjpa fUj;Jf;fs; Nky;KiwaPl;by; ,y;iynad;gijf; fUjpAk; Nky;KiwaPL kDtpd;kPJ fPo; tUkhW Miz toq;FfpNwd;.”

9. Aggrieved by the impugned order, the petitioner has filed the



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writ petition *inter alia* submitting the following:

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a. That the petitioner while serving as Forest Ranger, Athur Range entrusted with the work of planting, digging catch water pits, etc. The above work was executed by the petitioner during the period 01.04.2008 to 21.03.2009. During this period, there were two inspections carried out wherein no irregularities were found in discharge of duties / functions by the petitioner. It is submitted that there has been periodical inspection by the Authorities and monitoring teams. FEMAS party which made inspection during the month of August attached to the Office of the 1st respondent found there were certain shortfalls resulting in loss to the exchequer to the tune of Rs.2,58,480/-. None of the inspection reports other than the FEMAS found any irregularity. It is thus submitted that the charge memo and the consequential proceedings are bad in law and not made on the basis of evidence.

b. That the District Forest Officer / 4th respondent herein who is responsible for 25% of recovery of excess or inadmissible items of expenditure in the case of irregularities resulting in financial loss to the Government, had issued the charge memo in terms of G.O.Ms.No.92



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dated 03.02.1993 which provided for fixation of responsibility at different levels. However, the above said G.O.Ms.No.92 has now been modified and G.O.Ms.No.145 has been issued. G.O.Ms.No.145 seeks to clarify and modify G.O.Ms.No.92 whereby if an authority who is otherwise found responsible in terms of G.O.Ms.No.92 has himself initiated / unearthed the irregularity, then the question of proceeding against the authority who had identified mistake would not arise. It is submitted that is not the case here, therefore, it may not be open to the District Forest Officer to place reliance on G.O.Ms.No.145 inasmuch as the impugned proceeding are taken on the basis of the FEMAS party report which according to the petitioner is an external agency.

c.That it is not possible to count the plantation or carry out actual measurement of catch water pits executed by the petitioner in view of the very nature of works. The FEMAS report is at best an estimation without any scientific calculation being carried out. Further, the Quantitative Audit adopted by FEMAS to find deficiency in planting sapling is misconceived for it is applicable to Audit Civil Work and cannot be the basis for finding any short fall in plantation.



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d. The very fact that both petitioner as well as District Forest Officer/ 4th respondent has been proceeded against is indicative of the fact that both must be understood as being jointly responsible. If that be the case, the proceedings that is contemplated must be in compliance with Rule 9A of the Tamil Nadu Civil Service (Discipline and Appeal) Rules which provides for joint enquiry. It is submitted the procedure under Rule 9A of the Tamil Nadu Civil Service (Discipline and Appeal) is mandatory and failure to comply may prove fatal to the very validity of the proceeding and reliance was placed on the judgment of this Court in the case of *Neethi rajan v. The Secretary to Government, 2009 SCC OnLine Mad 2810* in support thereof.

e. That the impugned proceedings suffers from violation of principles of natural justice inasmuch as the report of FEMAS which is the basis of the charge memo issued was not furnished to the petitioner, nor was any notice issued.

f. The impugned disciplinary proceedings also suffers from violation of principles of nature justice inasmuch as orders are non



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speaking as it merely reproduces the report. Further, the order of the Appellate Authority does not contain any reason whatsoever nor has it dealt with the submissions made by the petitioner. The District Forest Officer's report relied upon by the Disciplinary Authority was never furnished to the petitioner.

12. To the contrary, it is submitted by the learned counsel for the respondents that both the petitioner as well as the 3rd respondent have been proceeded against for irregularities which are distinct and independent of each other though with the reference to the same act. It is further submitted that the submission of alleged violation of principles of natural justice is misplaced.

13. Heard both sides. Perused the material on record.

14. On a careful consideration of the arguments and the submission made by both sides and material on record, this court is of the considered view that the impugned orders cannot be sustained. This Courts finds that there is merit in the case of the petitioner that the impugned orders of both the 2nd respondent as well as the 1st respondent are liable to be set-



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aside as more than one facet of natural justice is violated. The impugned orders have been passed on the basis of the 3rd respondents report, a copy of which was not furnished to the petitioner. Any report / material which forms the basis of an order resulting in adverse civil consequence must be furnished to the party against whom it is sought to be used / relied upon to enable them to respond. In this regard, it may be useful to refer to the following judgments:

i.State of U.P. v. Shatrughan Lal, (1998) 6 SCC 651

“4. Now, one of the principles of natural justice is that a person against whom an action is proposed to be taken has to be given an opportunity of hearing. This opportunity has to be an effective opportunity and not a mere pretence. In departmental proceedings where charge-sheet is issued and the documents which are proposed to be utilised against that person are indicated in the charge-sheet but copies thereof are not supplied to him in spite of his request, and he is, at the same time, called upon to submit his reply, it cannot be said that an effective opportunity to defend was provided to him. (See: Chandrama Tewari v. Union of India [1987 Supp SCC 518])

ii. Kashinath Dikshita v. Union of India, (1986) 3 SCC 229

“12. Be that as it may, even without going into minute details it is evident that the appellant was entitled to have an access to the documents and statements throughout the course of the inquiry. He would have needed these documents and statements in order to cross-examine the 38 witnesses who were produced at the inquiry to establish the charges against him. So also at the time of arguments, he would have needed the copies of the documents. So also he would have needed the copies of the documents to enable him to effectively cross-examine the witnesses with reference to the



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contents of the documents. It is obvious that he could not have done so if copies had not been made available to him. Taking an overall view of the matter we have no doubt in our mind that the appellant has been denied a reasonable opportunity of exonerating himself.”

15. Secondly, it is trite law that passing of a speaking order is a facet of natural justice and any non speaking order has been frowned upon by Courts as violating principles of natural justice. On a perusal of the 2nd respondent's order, it is clear that it merely places reliance upon the 3rd respondent's report and there is gross non-application of mind to the case put forth by the petitioner nor is there is any reason set out, in other words, it is not a speaking order.

16. Thirdly, it is rudimentary that the authority vested / conferred with the power to impose / inflict a punishment must exercise such power on an independent application of mind and should not be carried away / influenced by a report of any other authority, for that may well constitute abdication of Authority. While, I would think that this is a case of abdication on the part of 2nd and 3rd respondents since there is no independent application of mind. I would think that one need not labour on the above aspect for in any view the order is clearly non speaking and



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thus made in violation of natural justice.

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17. Finally, the attempt made by the respondents to reject the case of joint enquiry contemplated under Rule 9A of the Tamil Nadu Civil Service (Discipline and Appeal) Rules on the premise that the 3rd respondent has been proceeded with and the irregularities of the petitioner and that of the 3rd respondent are distinct is misconceived. Rule 9A of the Tamil Nadu Civil Service (Discipline and Appeal) Rules contemplates a joint enquiry not only where more than one Government Servant is “jointly involved” but also in the cases which are “interconnected”. The very fact that the 3rd respondent is being proceeded with would indicate that the cases if not constituting joint involvement are certainly interconnected and ought to be taken together in terms of the Rule 9A of of the Tamil Nadu Civil Service (Discipline and Appeal) Rules. Rule 9A of the Tamil Nadu Civil Service (Discipline and Appeal) Rules had come up for consideration before this Court in the case of *Neethi rajan*, wherein it was held as under para 17.

“17. But the charge memo against the petitioner was issued only by the Conservator of Forest and therefore, charge memo does not satisfy the first requirement of the rule 9(A). Even assuming that



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Conservator of Forest is the authority to initiate action against the Deputy Conservator of Forest, the 2nd requirement under Rule 9(A) is not satisfied. As per the second requirement, the disciplinary proceedings against all of them shall be taken together and in this case, admittedly, action has been taken only against the petitioner and till date, there is no proof made available that any action has been taken against the Deputy Conservator of Forest. Even assuming that charge memo has been issued against the Deputy Conservator of Forest that will also not cure the defect inasmuch as rule 9(A) contemplates that the action must be taken together against all of them.

Therefore, the fact that the action was not taken against both the officials together and charge memo was not issued by the Principal Chief Conservator of Forest, who is competent to initiate action against the Deputy Conservator of Forest, the charge memo issued by the Conservator of Forest, the 3rd respondent, is not in accordance with law.

18. The failure to comply with Rule 9 A of the Tamil Nadu Civil Service (Discipline and Appeal) Rules is fatal. Though this Court would have normally remitted the matter back in the case of non speaking order, however, I find that the petitioner had already attained the age of superannuation and is over 68 years today. Thus, a question arises as to whether in the circumstances it would be fair, just and equitable to remit the matter back, after almost a decade since retirement to go through the process of disciplinary proceeding again. In this regard, reliance was sought to be made on the Division bench judgment of this Court in W.A. 1674 of 2017 wherein, it was found that it may not be appropriate / not



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fair to proceed with the enquiry all over and was held as under at para 10 and 11.

“10. Even though this question has not been dealt with by the Writ Court, we find that once the law laid down by the Hon?ble Supreme Court is very clear and emphatic, the requirements set out therein cannot be waived or given up by the parties. We are therefore left without any other alternative but to interfere and to set aside the order of the Writ Court as well as the order of the Authorities imposing the punishment only on the sole ground that the Disciplinary Authority had chosen to conclude that the charges are proved without giving an opportunity to the delinquent employee. The opportunity that has been given after 07.05.2012 had in fact become an empty formality since the decision to conclude that the charges have been proved has been reached on 07.05.2012.

11. In the upshot, the Writ Petition will stand allowed and the punishment will stand set aside. We find that the appellant had already reached the age of superannuation and has also been allowed to retire. Mr.M.Ravi, learned counsel appearing for the appellant would submit that because of the currency of the punishment, the appellant has been denied certain promotions. We make it clear that the Appellant would be entitled to only notional promotions and retirement benefits on the basis of notional promotion. He will not be entitled to any other monetary benefits, viz. back wages. The Department/ the second respondent will do well to calculate the benefits that are due to the appellant as expeditiously as possible at any rate within a period of six months from the date of receipt of a copy of this order. There shall be no order as to costs.”

(emphasis supplied)

19. Following the above order of the Division Bench, this Court is of the considered view that the impugned proceedings dated 30.06.2010, 23.07.2010 and 11.01.2011 are set aside inasmuch as it suffers from more than one infirmity which had been explained supra. The Writ



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Petition stands disposed of on the above terms. No Costs. Consequently, connected miscellaneous petitions are closed.

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Internet: Yes/No
Index: Yes/No
Speaking order / Non speaking order
lok/shk

MOHAMMED SHAFFIQ, J.
lok/shk



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