



W.P.No.39189 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 31.03.2023

DELIVERED ON : 28.04.2023

Coram:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P. No.39189 of 2015

G.Ravikumar

..Petitioner

Vs.

- 1.The Additional Chief Secretary to Government
Youth Welfare and Sports Development Department,
Secretariat, Chennai-600 009
- 2.The Deputy Director General
NCC Dte. (TNP &AN)
Fort St.George, Chennai-600 009
- 3.The Group Commander, National Cadet Corps
Head Quarters, Coimbatore.
- 4.The Commanding Officer
2(TN) Air Sqn NCC,
112/A, ATT Colony, Chintamani complex
Coimbatore-641 018



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5.The Commanding Officer

Inquiry Reporting Officer

3 (TN) Air Sqn NCC, Tiruchirapalli.

..Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying to issue a writ of Certiorari calling for the records of the 1st respondent relating to the order dated 10.08.2015 in G.O.(Ms).No.36 and quash the same and to reinstate the petitioner with all back-wages.

For petitioner : Mr.Issac Mohanlal,

Senior counsel for Mr.D.Raja

For respondents : Mr.M.Rajendiran,

Additional Government Pleader

ORDER

This writ petition is filed challenging the punishment of Compulsory Retirement imposed against the petitioner. The petitioner seeks to quash the order passed in appeal dated 10.08.2015 and for reinstatement into service of the respondent.

2. It is averred in the writ petition that petitioner joined service of the



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respondents as Aero Modelling Instructor cum Store Keeper on 11.09.1998. He received All India Gold Medal and National Award and State Award for his achievements. The petitioner was served with suspension order along with charge memo framed u/s.17(b)(i) of Tamil Nadu Civil Service (Discipline and Appeal) Rules, containing five charges on 30.12.2011.

3. The charges against the petitioner would read that:-

(a) the petitioner who served as Aero Modelling Instructor cum Store Keeper was training cadets; the cadets were awarded cash prize of Rs.2000/-; the cadets were forced to pay a sum of Rs.1,000/- each to the petitioner who had collected and misappropriated the money;

(b) The petitioner was found training persons other than NCC cadets and used unit premises to train outsiders not connected with NCC;

(c) petitioner intentionally brought the standard of training to substandard level, resulting in disrepute to the organisation;

(d) petitioner brought certain instruments and had stored in the unit stores without the knowledge and permission of the CO unit. Also involved in repairing



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and modifying his own models, disregarding his commitment to the unit.

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4. The petitioner given his statement of denying all the allegations. The disciplinary authority after taking into consideration the preliminary enquiry report and the allegations made against him, served the order of suspension on 23.12.2011.

5. The petitioner in his reply dated 11.01.2012 requested for an oral inquiry to be held and sought copies of records to submit his statement of defence. The respondent said to have supplied the required documents.

6. The delinquent denied charge No.5 and also requested to drop the charges. Delinquent and witnesses deposition were taken into consideration. The Directorate vide order dated 08.10.2012, found that the charges framed against the delinquent have been proved. As such imposed with punishment of Compulsory retirement from service as provided under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules.



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7. Aggrieved by the said punishment imposed, the petitioner filed appeal petition to the 1st respondent. The petitioner has taken the ground that the Presiding Officer and the three members in the Board of Officer who are from Army possessed irresistible professional affinity towards one S.S.Rajan, Wing Commander, Coimbatore and shown revenging attitude towards him.

8. Petitioner has raised the point before the 1st respondent that nowhere in the charge it has been stated as to who were the complainants and what sort of complaints were received. There was no independent findings of the Presiding Officer of satisfying themselves with the genuineness of the complaint brought before them.

9. The petitioner counsel had stated that serious lapses found in the holding of preliminary enquiry and hence all the accusations against the delinquent officer with regard to his official functioning as mentioned in the statement under the date 08.12.2011 cannot be taken cognizance of as per the Disciplinary Rules in force and all the allegations levelled against the delinquent officer ought to be treated as only an afterthought without any specificity.



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10. The petitioner stated that the findings of the Disciplinary Authority dated 07.12.2011 does not deserve any merit and consideration for want of credibility as there is no corroborative evidence. The petitioner submitted that he had not committed any act of misappropriation as alleged by the Wing Commander. With ulterior motive to punish him, the Wing Commander, magnified simple and ordinary things and gave adverse remarks against him. The petitioner submitted that he had 17 years of service left for regular retirement and requested to take a lenient view and sought to quash the punishment imposed.

11. The 1st respondent-Additional Chief Secretary to Government, on scrutiny of records, found that the delinquent did not deny the charge I, II, III and IV levelled against him but justified his act of collecting money from the cadets, giving training to non-authorised students for pecuniary gain, storing personal belonging in unit store, allowing ex-cadets to train the cadets and of using abusive language at the cadets. On a finding that the charges levelled against the delinquent has conclusively been proved, the disciplinary authority imposed a major punishment of Compulsory Retirement and issued the order of compulsory retirement, as such, taking over liberal approach cannot be accepted and thus rejected the appeal.



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12. Aggrieved by the said rejection of appeal, the petitioner is before this court.

13. Mr.Issac Mohanlal, learned Senior counsel appearing for the petitioner would submit that during the course of enquiry, in the absence of petitioner and without giving opportunity to cross examine any of the witnesses, the statement of witnesses were obtained and the copies of their deposition was not furnished to the petitioner. In violation of principles of natural justice, enquiry was held.

14. Learned senior counsel would submit that the enquiry report simply relies on the statements given by the so called witnesses which were obtained behind the back of the petitioner and the copies of the same not furnished to the petitioner and there was no independent assessment or discussion to the said evidence.

15. The learned senior counsel would also submit that the enquiry was conducted by the officers who have served in the Indian military and that no



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civilian officer was there. The petitioner even though asked for a state officer to assist him, the request was not considered and reasonable opportunity to defend his case has not been given.

16. The learned Senior counsel argued that the 1st charge pertaining to misappropriation of collecting money from the cadets is concerned, as to when the so-called payment was made by the 2 cadets and what the quantum and the denomination etc. were not given in the charge and the amount collected for conducting a party to felicitate their achievement that too at their request cannot be termed as misappropriation of their prize money.

17. The learned senior counsel submitted that the punishment of compulsory retirement is a major punishment inflicted on the petitioner and it is grossly disproportionate to the charges levelled against him. The appellate authority had also passed a cryptic order and a non-speaking order without considering various aspects.

18. The learned senior counsel, in support of his submission relied on the following decisions:-

(i) (2010) 2 SCC 772 [*State of Uttar Pradesh and others*]



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(ii) 2012 SCC online Mad 658 : (2012) 3 Mad LJ 233 [*V.Jayabalan Vs.*

The Governemnt of Tamil Nadu, rep. by its Secretary to Government of Education Department and 3 others].

19. Per contra, the learned Additional Government Pleader, appearing for the respondent-Department reiterated his submissions as contained in the counter affidavit and submitted that the petitioner committed grave error in not following ethics. The petitioner appeared before the enquiry authority and submitted statement in writing dated 07.12.2011 on his own volition to the effect that he had forced the cadets to pay him a sum of Rs.2000/- and the petitioner had admitted that he had demanded and accepted money from the cadet and therefore, he was suspended from service by order dated 22.12.2011.

20. The learned Additional Government Pleader would further submit that the petitioner being an employee of the Government has no locus-standi to demand and accept money from the cadets. Further, the petitioner is a subordinate employee and his services was entirely under the disposal of the 4th respondent. NCC is a disciplined force enduring to ensure unity and discipline among the student community of the Nation and the instructors employed by the



Government to train the cadets cannot be given liberal approach.

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21. He further submitted that the inquiry officer conducted the inquiry proceedings as established under Tamil Nadu Civil Services (Discipline and Appeal) Rules. The 1st respondent examined all the relevant and required documents involved in the disciplinary proceedings and confirmed the punishment imposed.

22. Heard both sides and perused the records carefully.

23. It is settled law that when a departmental enquiry is conducted against the government servant, it cannot be treated as a casual exercise. The inquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but it manifestly seen to be done. In the case on hand, the argument raised on the side of the petitioner is that evidence of the opponent ought to have been taken in the presence of the petitioner and that he should have been given the opportunity of cross-examining the witnesses. Further, materials relied on by the respondent-department in respect of the charges were not furnished to the petitioner to take his defence.



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24. The verbatim statement of the letters dated 20/12/2011 given by the schools would go to show that those letters have been obtained for the purpose of foisting charges against the petitioner.

25. The report of the enquiry officer relies on number of documents, however, according to the petitioner, such documents have not been furnished to him and except for the enquiry officer report, the enquiry proceedings seem to have been conducted behind the back of the petitioner. The petitioner was not subjected to examination about the documents which had been gathered for conduct of enquiry and as such the enquiry appears to be vitiated one.

26. The first charge relating to misappropriation of collection of money from the cadets is concerned, there was no proper enquiry except for the statement of the petitioner stating that he has admitted the collection of amount. It is not known as to for what purpose amount has been given and as to whether the cadets were enquired about the same. Further relating to other charges that he trained outsiders and imparted training in the substandard manner etc, there is no oral evidence to corroborate the same. No documents have been placed and



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proved to substantiate the said charges. Even though the charges are serious in nature as to whether the petitioner committed the same has not been proved by clear cut evidence. The admission of guilt by the petitioner and the statements obtained by him cannot be established against him as there is a possibility of obtaining such statement by force and threat. As regards the charge relating to being harsh with the cadets, the same cannot be taken as a grave charge to impose punishment that too compulsory retirement against the petitioner for the reason that the training requires discipline and as a member of the disciplined force cannot take liberal approach for training the cadets when they lack discipline and efficiency.

27. In the considered opinion of this court, the charges are not relating to any specific incident and does not give details which form the basis of charges. The holding of enquiry in the instant case is vitiated and there is no fair play and adherence of principles of natural justice. The admissibility and veracity of the documents in the enquiry proceedings were not subjected to strict proof as the copies of documents were not furnished to the petitioner. The denial of reasonable opportunity to the petitioner to defend himself would render the



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findings perverse. Therefore, this court has no hesitation to hold that the enquiry was not a fair and proper enquiry.

28. For the reasons stated above, this writ petition is allowed. The impugned order is set aside. The respondents are directed to reinstate the petitioner into service and grant the pay and other benefits available to him. The said exercise shall be completed within a period of three months from the date of receipt of a copy of this order. No costs.

28.04.2023

Index:Yes/No
Internet:Yes/No
Speaking Order: Yes/No
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To:

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