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W.P.(MD)No.2127 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.2127 of 2019

and

W.M.P.(MD)Nos.1701, 23543 and 23544 of 2019

M.Malarkandan

... Petitioner

vs.

1.The Principal Secretary to Government,
Environment and Forest Department,
Secretariat, Chennai 600 009.

2.The Principal Chief Conservator of Forest,
Head of Forest Force,
Panagal Maaligai Saidapet,
Chennai 600 015.

3.The District Forest Officer,
Theni District, Theni.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the



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records relating to the proceedings of the 2nd respondent made in Proceedings No.AA1/31633/2015, dated 13.05.2016 and the consequential proceedings of the 1st respondent made in G.O.No.(2Pa) No.47, Environment and Forest Department, dated 19.12.2018 and to quash the same and consequentially, to direct the respondents 1 and 2 to promote the petitioner on par with his junior as Assistant Conservator of Forest.

For Petitioner : Mr.KMuthu Ganesapandian
For Respondents : Mr.S.Shanmugavel
Additional Government Pleader

ORDER

This writ petition is filed for issuance of a writ of Certiorarified Mandamus, to quash the impugned order dated 13.05.2016 of 2nd respondent and the consequential proceedings of the 1st respondent made in G.O. No. (2Pa) No.47, Environment and Forest Department, dated 19.12.2018 and consequentially, to direct the respondents 1 and 2 to promote the petitioner on par with his junior as Assistant Conservator of Forest.



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2. The brief facts of the case are that the petitioner was appointed as a Forester on 02.05.1997 and subsequently was promoted to various posts. A charge memo, dated 05.12.2013, was issued alleging four charges which relates to a single incident and the allegation is that the petitioner did not see illegal cutting of four trees in Tamil Nadu Kerala Border during April 2013.

3. The contention of the petitioner is that he joined in the post of Forest Range Officer in Uthamapalayam range on 14.12.2011. During inspection on 07.04.2013 it was found that four trees are removed namely Kannapottu tree, Udyian tree, Narinaval tree and Kannapottu trees in the border of the Tamil Nadu Kerala and to that effect forest O.R. No.24 of 2013 was registered and informed to the 3rd respondent. After proper investigation the accused persons belonging to Kerala were identified and attempts were made to secure them which resulted in injury to the staffs and for that effect an FIR was also filed in the Kerala



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Police Station. Thereafter, the accused persons appeared in person and agreed to pay the fine for the above incident. After discussion with the 3rd respondent over phone and as per the oral instruction of the 3rd respondent for each tree Rs.10,000/- fine was imposed. The jurisdiction to levy the fine is within the limits of 3rd respondent and therefore, the petitioner cancelled the fine receipts after informing the officer who was holding the post on that day as 3rd respondent. Thereafter, for the alleged illegal cutting of trees, the Department issued a charge memo to the petitioner's three subordinates, namely Sonaimuthu, Muthuirulan and R.Kandasamy (Forest guards) under 17(a) of Tamil Nadu Discipline and Appeal Rules and imposed punishment of stoppage of increments for 3 months. Thereafter, on 05.12.2013, charge memo was issued under Rule 17(b) to the petitioner under four heads and in the charge memo the statement of above three persons were relied. The petitioner submitted an explanation. The enquiry officer has held that the 1st charge is proved



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whereas the other charges are held as not proved. However, the 3rd respondent deviated from the report and held all the four charges are proved and decided to impose a major punishment. However, the 2nd respondent who is the disciplinary authority has imposed a punishment of stoppage of increment for one year without cumulative effect. The petitioner preferred an appeal to the 1st respondent. Since no orders were passed, the petitioner preferred W.P.(MD)No.13957 of 2018 and the same was disposed on 29.06.2018 directing the 1st respondent to decide the appeal within a period of 10 weeks. Thereafter, the impugned order, dated 19.12.2018, was passed. Aggrieved over the same, the present writ petition is filed.

4.The 2nd respondent has filed a counter affidavit stating though the charges are serious in nature, by taking a lenient view, minimum punishment was imposed. Moreover, the petitioner did not follow the



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rules and regulations properly while dealing with the case which was booked by him. As per the instructions in APPENDIX 10 (Section 89) of Tamil Nadu Forest Department Code, on the occurrence of a forest offence, the Forest Range Officer will submit a report in Form A to the District Forest Officer with all records pertaining to the case. On receipt of Form A from the Forest Range Officer, the District Forest Officer will pass orders as to whether the case may be prosecuted, compounded or withdrawn considering the circumstances of the case. These orders will be recorded in combined Forms C and G which will be sent by the District Forest Officer to the Forest Range Officer. If the District Forest Officer's ordered for compounding the offence, the Forest Range Officer will at serve the copy on the accused and execute the order. If the District Forest Officer's order in Form G when compounding fees are paid by all the accused within the prescribed period of 15 days, the Forest Range Officer will write on the back of Form C sent to him the



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result of the action taken to carry out the District Forest Officer's order and return it to that officer. This procedure was not followed by the petitioner. The petitioner has consulted the 3rd respondent over phone. Based on his oral institutions, he has imposed a fine which is against the said rule. Therefore, the action was taken. Moreover, the petitioner has imposed compounding fees of Rs.40,000/- at the rate of Rs.10,000/- per tree on his own which is beyond his power. He has not taken any steps to confirm the oral orders of the 3rd respondent and issued receipt suo moto violating the rules as stated supra. As far as other co-delinquents are concerned, lesser punishment was imposed because they are not empowered to pass any orders. Hence, the punishment is disproportionate. Therefore, the respondents prayed to dismiss the writ petition.



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5. Heard Mr.KMuthu Ganesapandian, learned Counsel appearing for the petitioner and Mr.S.Shanmugavel, learned Additional Government Pleader appearing for the respondents and perused the records.

6. The learned Counsel for the petitioner submitted that the enquiry officer has rendered a finding that the very drafting of the charge memo itself is erroneous and the relevant portion is extracted hereunder:



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“இக்குற்றச்சாட்டில் ஒரே குற்றத்தினை நான்கு குற்றங்களாக பாவித்து ஒரே குற்றத்தாளில் நான்கு குற்றச்சாட்டுகள் குற்றம் சுமந்தப்பட்ட அலுவலர் ஒரு குற்றச்சாட்டினை நான்கு குற்றச்சாட்டுகளாக குறிப்பிட்டு குற்றத்தான் வழங்கியிருப்பது ஏற்புடையதன்று. ஏனெனில் குற்றம் சுமந்தப்பட்ட அலுவலர் உயர் அலுவலர் இணக்கக் கட்டண ஆணையின்றி இணக்கக்கட்டணம் வசூல் செய்திருப்பது நடைமுறை அலுவலக விதிமுறைகளை மீறிய செயலாக இருப்பதாக குற்றச்சாட்டு தெரிவித்து இருந்தால் போதுமானது. இணைக்கப்பட்டணம் வசூல் செய்த குற்றம் சுமத்தப்பட்ட அலுவலருக்கு அதிகாரம் இல்லாதபோது வசூல் செய்த தொகை குறைவாக இருப்பதாகவும், அரசிழப்பு தொகை குறைவாக கணக்கிட்டதாகவும் மற்றும் தவறான நபர்களிடம் இரசீதில் கையொப்பம் பெற்றதாகவும், சம்பந்தமில்லாத மூன்று குற்றச்சாட்டுகளை குற்ற நடவடிக்கை அலுவலர் குற்றத்தாளில் குறிப்பிட்டிருப்பது குற்றச்சாட்டிற்கு தொடர்பில்லாதது ஆகும்.

10. குற்றச்சாட்டுகள் வாரியாக விசாரணை அலுவலர் முடிவு:

குற்றச்சாட்டு 1 : நிரூபிக்கப்பட்டது.

குற்றச்சாட்டு 2 : நிரூபிக்கப்படவில்லை.

குற்றச்சாட்டு 3 : நிரூபிக்கப்படவில்லை.

குற்றச்சாட்டு 4 : நிரூபிக்கப்படவில்லை.”

On perusing this finding of the enquiry officer's order this Court is of the considered opinion that when the framing of the charge itself is erroneous then the respondents ought not to have imposed punishment at



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all.

7. The next contention of the petitioner is that the enquiry officer namely Marimuthu was holding the post of DFO Madurai and has held that the first charge alone is proved and other charges are not proved. But the same enquiry officer was posted as DFO Theni who acted as disciplinary authority and has held that all the four charges are proved. But the disciplinary authority is the 2nd respondent who is having jurisdiction to take action against the petitioner, but the action was taken by the 3rd respondent, hence the disciplinary action was taken without jurisdiction. But the contention of the respondent is that the 3rd respondent is the enquiry officer who has also acted as disciplinary authority and nowhere in the rule it is prohibited. Moreover the 3rd respondent has assisted the 2nd respondent and finally the 2nd respondent has imposed the punishment. After hearing the rival submissions this



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Court is of the considered opinion that the 3rd respondent has acted as enquiry officer and has held only first charge alone is proved. But while recommending to the 2nd respondent as disciplinary authority has held that the four charges are proved. But the final order is passed by the 2nd respondent who is the appropriate authority to impose punishment. Even though there are traces of violation of principles of natural justice, the same cannot be taken that the punishment is imposed without jurisdiction. Moreover, the 2nd respondent who is the disciplinary authority has analyzed separately and agreed with the enquiry officer's report by stating that first charge alone is proved and imposed a punishment of stoppage of increment for one year without cumulative effect. Therefore, on this ground the petitioner is bound to fail.

8. Aggrieved over the punishment order, the petitioner had preferred an appeal to the Government. The contention of the petitioner



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is that the Government has not considered the grounds raised by the petitioner. The learned Counsel for the petitioner relied on Rule 23 of Tamil Nadu Civil Service (Discipline and Appeal) Rules, 1955 wherein it has been stated as under:

23. (1) In the case of an appeal against an order imposing any penalty specified in rule 8 or 9, the appellate authority shall consider--

(a) whether the facts on which the order was based have been established;

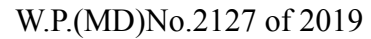
(b) whether the facts established afford sufficient ground for taking action; and

(c) whether the penalty is excessive, adequate or inadequate and pass orders-

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case;”

The Government has passed one paragraph order. There is no absolute discussion of any of the grounds that were raised by the petitioner.



9. Moreover, when the respondents are accusing the petitioner for not following the procedures, the higher authority under whom the petitioner had sought institutions should also be subjected to disciplinary proceedings. Since the respondents have discriminated in taking proceedings on this ground, the petitioner is in an advantageous position and this Court is inclined to quash the punishment. At this juncture the learned Additional Government Pleader for the respondents vehemently opposed for quashing or reducing the punishment and submitted that the matter may be remanded back to the Government for reconsideration in order to pass a speaking order. The said contention of the learned



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Additional Government Pleader is rejected for the sole reason that the respondents have not taken action against the higher authorities, i.e., 3rd respondent, who has instructed orally through phone to levy penalty and directed to impose a penalty. In fact, the higher authority is supposed to direct the petitioner to fill up the above said forms and circulate the same. After perusing the same, the higher authority ought to have passed an order. The higher authority has also failed to follow the procedure, hence, the respondents have taken discriminatory action. Therefore, the contention of the learned Additional Government Pleader is not acceptable. Hence, the plea for remanding back is rejected.

10. For these reasons, this Court is quashing the impugned order of punishment. Consequently, the petitioner is entitled to promotion on par with his juniors. The respondents are directed to fix the petitioner's seniority before his junior and grant promotion and the consequential



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service and monetary benefits shall be granted and the said exercise shall be completed within the period of eight weeks from the date of receipt of the copy of the order.

11. With the above said observation, the writ petition is allowed.

No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
Internet : Yes
NCC : Yes / No

05.04.2023

Tmg

To

- 1.The Principal Secretary to Government,
Environment and Forest Department,
Secretariat, Chennai 600 009.
- 2.The Principal Chief Conservator of Forest,
Head of Forest Force,
Panagal Maaligai Saidapet,
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3.The District Forest Officer,
Theni District, Theni.

S.SRIMATHY, J

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