



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.08.2024

Pronounced on : 29.11.2024

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THE HONOURABLE MR.JUSTICE MUMMINENI SUDHEER KUMAR**W.P.No.19805 of 2011**

J.Murugesan

... Petitioner

Vs.

1. The Secretary to Government,
Municipal Administration and Water Supply Department
(Holding also the post of Chairman, TWAD Board),
FSG, Chennai – 600 005.

2. The Chairman and Managing Director and
The Board of Directors of Tamil Nadu Water Supply and Drainage Board,
Chennai – 600 005.

3. The Managing Director,
TWAD Board, Chennai – 600 005.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records in the impugned orders passed by the third respondent in Letter No.5034/Estt.(DP)/A2/97-95 dated 04.01.2005 and subsequent orders in B.P.Ms.No.52 dated 02.05.2005 of the second respondent/ appellate authority and Letter No.3010/WS3/2011-3 dated 30.05.2011 of the first respondent and



to quash and the same; consequently to direct the second and third respondents to treat the period of suspension from 20.01.1997 to 25.06.1998 as on duty, to promote the petitioner from the date on which his immediate junior was promoted as Superintendent Engineer in the panel for the year 1999 with all attendant benefits.

For Petitioner	: Mr.R.Singaravelan,Senior Counsel for Mr.R.Jayaprakash
For R1	: Mr.M.S.Premkumar, Government Advocate
For R2	: Mr.S.Ravindran, Senior Counsel assisted by Ms.S.Mekhala

ORDER

While the petitioner was working as 'Executive Engineer' at Collectorate, Kanchipuram District, he was placed under suspension on 20.01.1997, and a Charge Memo No.5034/Estt.(DP-1)/A2/97-19, dated 11.02.1998, was issued to the petitioner containing four charges, requiring him to explain the said charges. In response to the same, the petitioner submitted his reply dated 13.02.1998 and 23.02.1998, denying the charges. It was thereafter, an Enquiry Officer was appointed by the Respondent No.3 through proceedings bearing PROC.No.5054/ESTT (DP.I)/A2/97-31, dated 25.06.1998, for conducting an enquiry into the charges levelled against the petitioner. On the very same date, the petitioner was reinstated into service by



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duly revoking suspension. It was thereafter, an enquiry was conducted into the charges levelled against the petitioner and the Enquiry Officer submitted his report through Letter No.C3/1627/1997, dated 07.04.1999, holding the Charges 1, 3 and 4 as not proved and Charge No.2 as partly proved. The report of the Enquiry Officer was furnished to the petitioner on 28.04.1999, and in response to the same, the petitioner submitted his further defence statement on 19.05.1999. It was thereafter, the Respondent No.3 issued proceedings bearing Proc.No.5034/Estt.(DP)/A2/97-95, dated 04.01.2005, accepting the findings of the Enquiry Officer, insofar as charges 1 and 3 are concerned, while holding the charges 2 and 4 as proved, thereby imposed the punishment of stoppage of increments for a period of three months without cumulative effect, while treating the period of suspension undergone by the petitioner as 'leave for which he is entitled to'. It is aggrieved by the said order dated 04.01.2005, the petitioner filed an appeal before the TWAD Board on 19.01.2005 and 27.01.2005. The said appeals filed by the petitioner were rejected by the appellate authority by issuing B.P.Ms.No.52, dated 02.05.2005. It was thereafter, the petitioner filed further appeal before the Respondent No.1 in the Memorial on 23.05.2005. As the said memorial filed under Regulation 25 of the Tamil Nadu Water Supply and Drainage Board



Employees (Discipline and Appeal) Rules, 1972 was not disposed of by the Respondent No.1, the petitioner approached this court by filing W.P.No.19708 of 2009 and this court, by an order dated 20.01.2011, directing the Respondent No.1 to dispose of the said memorial filed by the petitioner in accordance with law. It was thereafter, the Respondent No.1 through Letter No.3010/WS3/2011/3, dated 30.05.2011, rejected the memorial filed by the petitioner. It is aggrieved by the original order of punishment dated 04.01.2005, as confirmed by the respondents 2 and 1 by orders dated 02.05.2005 and 30.05.2011 respectively, the petitioner approached this court by filing the present writ petition, challenging the punishment of stoppage of increments for a period of three months and also seeking a consequential direction to treat the period of suspension as 'on duty' and also to promote the petitioner to post of 'Superintendent Engineer' and 'Chief Engineer' with effect from the date on which his juniors were promoted to the said post. The petitioner had already retired from service on attaining the age of superannuation as early as on 31.01.2005 in the post of 'Executive Engineer'.

2. Heard Mr.R.Singaravelan, learned Senior Counsel for



Mr.R.Jayaprakash, learned counsel for the petitioner, Mr.S.Ravindran, learned Senior Counsel appearing for the Respondent No.2, assisted by Ms.Mekala and Mr.M.S.Premkumar, learned Government Advocate appearing for the Respondent No.1.

3. Though the learned counsel for the petitioner argued the matter in elaborate, including on the merits of the Charge No.2, contending that, under no circumstances, the petitioner can be held responsible for the lack of supervision, by placing reliance on the circular dated 01.12.1995 issued by the Respondent No.3 and contended that it is only the Superintendent, who is responsible for the overall supervision of the works in his circle and on various other grounds, this court is not inclined to go into all those aspects in detail and is of the considered view that it would be suffice if the case of the petitioner is concerned in the narrow compass of violation of principles of natural justice in the light of the settled legal position.

4. In all, four charges were framed against the petitioner, which reads as under:-

“Charge 1:-

that he had failed in his duty to check the work properly which resulted in the substandard pumpsets



and PVC pipes etc., supplied by the firm and utilised the same by the Assistant Engineer and Assistant Executive Engineer in the work without testing them then and there and thereby caused a loss of Rs.9,95,785.00/- to Board.

Charge 2:-

that he had neither cared to supervise nor to check the work properly, colluded with the contractor and allowed the Assistant Engineer/ Assistant Executive Engineer to record boosted measurements and check measurements including wrong classification of soil unchecked and thereby caused a loss of Rs.2,04,055.00/- to Board.

Charge 3:-

that he failed in his duty to check the receipt and issue of materials to contractor properly which resulted in the missing of 1044m, 140mm PVC pipes

Charge 4:-

that he failed to maintain high standard of integrity and devotion to duty as expected from an officer of his rank.”

5. Out of the four charges, three charges viz., Charges 1, 3 and 4 were held as not proved by the Enquiry Officer, whereas the Charge No.2 was held as partly proved. The report of the Enquiry Officer was communicated to the



petitioner by the Respondent No.3 for offering his comments. However, there was no disagreement on the findings recorded by the Enquiry Officer by the Disciplinary Authority, when the said report was communicated to the petitioner by the Respondent No.3/ Disciplinary Authority, while furnishing the report of the Enquiry Officer on any of the charge. However, when the petitioner submitted his further defence statement and objections on the report of the Enquiry Officer on 19.05.1999, the Respondent No.3 passed final order, imposing the punishment in question through proceedings bearing Proc.No.5034/Estt.(DP)/A2/97-95, dated 04.01.2005, i.e., after a lapse of more than five years. Absolutely, no plausible explanation is coming forthwith for the said abnormal delay in passing the final order by the Respondent No.3.

6. The operative portion of the order of punishment dated 04.01.2005, reads as under:-

“(11) The charges that were framed, reply of the accused officer, findings of the Enquiry Officer, further defence statement of the accused officer and connected records were analysed in detail. The findings of the Enquiry Officer in



respect of charge No.1 and 3 are accepted and hence, the charges dropped. In respect of Charge No.2, though the Executive Engineer is not directly responsible for the boosted measurement and wrong the classification of soil, as a overall supervising officer he is responsible for the overall performance of the Division and to ensure the correctness of the measurements recorded before admitting the bill. Therefore, Charge No.2 stands proved. Charge No.4, is corollary charge to Charge No.2. Hence, the Charge No.4 is also stands proved. A punishment of stoppage of increment for three months without cumulative effect is awarded to Thiru J.Murugesan Executive Engineer for the proven charges. The suspension period undergone by him be treated as leave to which he is eligible.”

7. From the above, it is noticed that the Respondent No.3/ Disciplinary Authority accepted the findings of the Enquiry Officer, insofar as the charges 1 and 3 are concerned, dropping the said charges. However, in respect of Charge No.2, the Respondent No.3/ Disciplinary Authority, while agreeing that the petitioner is not directly responsible for the boosted measurements and wrong classification of the soil, held him responsible for overall



performance of the Division to ensure the correctness of the measurements recorded before admitting the bill, as a over-all supervising officer. Thus, held the Charge No.2 as proved and consequently, the Charge No.4, being a corollary charge, was also held as proved. It was basing upon the such conclusions, the impugned punishment was imposed on the petitioner.

8. From the above, it is evident that the Enquiry Officer held the Charge No.2 as partly proved and Charge No.4 as not proved. But, the disciplinary authority differed with the view of the Enquiry Officer on the said charges and held the Charges 2 and 4 as proved and thereby, imposed the impugned punishment. There was no opportunity that was afforded to the petitioner before the Disciplinary Authority recorded his disagreement with the findings of the Enquiry Officer nor at the time of furnishing the report of the Enquiry Officer. The Disciplinary Authority, on receipt of the report of the Enquiry Officer, is expected to consider the said report and then decide, whether to continue the disciplinary proceedings further or not and it is only in the event of deciding to continue the disciplinary proceedings, furnish a copy of the Enquiry Officer's report to the delinquent, affording an opportunity to submit his objections against the same. In case, if the



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disciplinary authority intends to differ with the findings recorded by the Enquiry Officer in the report, the Disciplinary Authority is under obligation to furnish the reasons for differing with the views of the Enquiry Officer and then afford an opportunity to the petitioner to submit his further representation. But, in the instant case, the Disciplinary Authority has forwarded the report of the Enquiry Officer to the petitioner as it is and called for his objections and there was no disagreement expressed by the Disciplinary Authority, while furnishing the report of the Enquiry Officer. But, surprisingly, the Disciplinary Authority, after having received the further defence statement of the petitioner, on the report of the Enquiry Officer while passing the final order, recorded the findings deviating from the findings of the Enquiry Officer holding the charges 2 and 4 as proved. Thus, the said findings are recorded behind the back of the petitioner and without affording any opportunity to the petitioner.

9. It is settled law that, in case the Disciplinary Authority chooses to appoint an Enquiry Officer to enquire into the charges framed against the delinquent employee, on receipt of the report from the Enquiry Officer, the Disciplinary Authority has to afford an opportunity on the said report to the



delinquent employee and in case, if the Disciplinary Authority intends to deviate from the view of the Enquiry Officer to put such reasons for disagreement to the delinquent employee and then afford an opportunity to the delinquent employee to make his submissions on such reasons for disagreement and then take a final decision in the matter.

10. In this regard, it would be relevant to refer to the case of “**Punjab National Bank and others -vs- Kunj Behari Misra**” reported in (1998) 7 SCC 84, wherein the Hon'ble Apex Court held as under:-

“19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable



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conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

11. The Hon'ble Apex Court in the case of “***S.P.Malhotra -vs- Punjab National Bank and others***” reported in (2013) 7 SCC 251, having taken note of the decision in “***Punjab National Bank and others -vs- Kunj Behari Misra***” reported in (1998) 7 SCC 84, case held as under:-

“16. The view taken by this Court in the aforesaid Kunj Behari Misra case [*Punjab National Bank v. Kunj Behari Misra*, (1998) 7 SCC 84 : 1998 SCC (L&S) 1783 : AIR 1998 SC 2713] has consistently been approved and followed as is evident from the judgments in *Yoginath D. Bagde v. State of Maharashtra* [(1999) 7 SCC 739 : 1999 SCC (L&S) 1385 : AIR 1999 SC 3734] , *SBI v. K.P. Narayanan Kutty* [(2003) 2 SCC 449 : 2003 SCC (L&S) 185 : AIR 2003 SC 1100] , *J.A. Naiksatam v. High Court of Bombay* [(2004) 8 SCC



653 : 2004 SCC (L&S) 1190 : AIR 2005 SC 1218]
, *P.D. Agrawal v. SBI* [(2006) 8 SCC 776 : (2007) 1
SCC (L&S) 43 : AIR 2006 SC 2064] and *Ranjit
Singh v. Union of India* [(2006) 4 SCC 153 : 2006
SCC (L&S) 631 : AIR 2006 SC 3685] .

17. In Canara Bank v. Debasis Das [(2003)
4 SCC 557 : 2003 SCC (L&S) 507 : AIR 2003 SC
2041] this Court explained the ratio of the judgment
in *Kunj Behari Misra* [*Punjab National
Bank v. Kunj Behari Misra*, (1998) 7 SCC 84 : 1998
SCC (L&S) 1783 : AIR 1998 SC 2713] , observing
that it was a case where the disciplinary authority
differed from the view of the inquiry officer.

“26. ... In that context it was held that
denial of opportunity of hearing was per
se violative of the principles of natural
justice.” (*Debasis Das case* [(2003) 4
SCC 557 : 2003 SCC (L&S) 507 : AIR
2003 SC 2041] , SCC p. 578, para 26)”.

In the light of the above settled legal position, the impugned order dated 04.01.2005 is liable to be declared as the one passed in violation of the principles of natural justice for want of affording an opportunity to the petitioner on the disagreement by the Disciplinary Authority on the findings



recorded by the Enquiry Officer causing great prejudice to the petitioner. On this ground alone, the impugned order dated 04.01.2005 is liable to be set aside.

12. When the petitioner filed an appeal against the said order dated 04.01.2005, as seen from the resolution passed by the respondent Board, it is noticed that, there is absolutely no application of mind, nor the grounds raised by the petitioner were considered and the order dated 02.05.2005 was passed in a mechanical manner. So also, the memorial filed by the petitioner was also rejected the Respondent No.1 by passing an order dated 30.05.2011 in the same fashion.

13. Then, coming to the contention raised by Mr.S.Ravindran, learned Senior Counsel appearing for the respondents 2 and 3, placing reliance on an order dated 02.12.2022 passed in W.P.No.30491 of 2019. The said writ petition was filed by the petitioner herein seeking the following relief:-

“Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for all the connected records in the impugned orders passed by third respondent in 1) orders



in BP MS 347 dated 22.8.1997 of the MD TWAD Board, Chennai -5, 2) Ir.No. 5034/Estt.(DP)/A2/97-95 dated 04.1.2005 and 3) BP Ms No.52, dated 02.05.05 of the MD, TWAD Board, Chennai -5 and to quash them; consequently to direct to the Respondents herein more particularly, the 3rd respondent to correct the wrong entry in the SR from EE, Cheyyar Division to that of EE, Thiruvannamalai to enable the petitioner to get the promotions deferred as SE, CE etc., in the panel of 1999, to place him over and above his known junior for fixation of his pay (without any arrears) – to have revision in the pension of the petitioner together with arrears thereon.”

14. The said writ petition was dismissed by a learned Single Judge of this court by an order dated 02.12.2022 on the ground that the said writ petition was filed after a lapse of 14 years after the petitioner retired from service, on the ground of delay and laches. Mr.S.Ravindran, learned Senior Counsel contended that the petitioner has challenged the very same impugned proceedings dated 04.01.2005 and 02.05.2005, which are impugned in the present writ petition, in the said writ petition also and in view of the dismissal of the said writ petition, the said order would operate as *res judicata* and therefore, this writ petition is also liable to be dismissed.



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15. This court has carefully considered the said contention, but is unable to agree with such contention.

16. The present writ petition was filed as early as in the year 2011 immediately after an order was passed by the Respondent No.1, confirming the orders passed by the Respondents 2 and 3 herein. No doubt, during the pendency of this writ petition, the very same petitioner has filed W.P.No.30491 of 2019, challenging B.P.Ms.No.347 dated 22.08.1997, as well as the impugned orders dated 04.01.2005 and 02.05.2005. As already noted above, the said writ petition was dismissed only on the ground of delay and laches and the matter was not examined on merits. It is only a decision rendered *inter-se* parties on merits would only operate as *res judicata* in terms of Section 11 of Code of Civil Procedure. Hence, the said decision, under no circumstances, can be said to be the one operate as retrospective.

17. Be that as it may, the petitioner has questioned the impugned orders herein in the present writ petition and during the pendency of the present writ petition, the above W.P.No.30491 of 2019 was filed without disclosing the



pendancy of the present writ petition. Therefore, this writ petition cannot be thrown out on the ground that the other writ petition filed by the petitioner was dismissed on the ground of delay and laches.

18. Furthermore, it is also necessary to notice that the petitioner was placed under suspension on 20.01.1997 and continued under suspension till 25.06.1998 i.e., almost for a period of 1½ years and ultimately, the punishment that was imposed on the petitioner is stoppage of increment for a period of three months, the value of which comes to Rs.1500/-. Though, the punishment appears to be trivial in nature, the consequence is that the petitioner was kept out of service for about 18 months and the said period is directed to be treated as 'leave for which the petitioner is entitled to', rather than the main punishment that was imposed, the continuation of the petitioner under suspension and not treating the said period as 'on duty' would operate as major punishment against the petitioner.

19. As already noted above, the petitioner has already retired from service on 31.01.2005 and the Disciplinary Authority has taken about six



years to pass the final order of punishment, after the petitioner has submitted his further defence statement as early as in the year 1999. The Charge No.2 framed against the petitioner is that the petitioner had neither cared to supervise nor to check the work properly, colluded with the contractor and allowed the Assistant Engineer/ Assistant Executive Engineer to record boosted measurements and check measurements including wrong classification of soil and thereby caused a loss of Rs.2,04,055/-. As against the said finding, the Enquiry Officer recorded as under:-

“Though the incumbent Thiru.J.Murugesan Executive Engineer is not directly responsible for the boosted recording of measurement and wrong classification of soils, as the supervising officer. He is responsible for the overall performance of the Division and to ensure the quality of work. As such, this charge is treated as PARTLY PROVED.”

20. From the above, it is evident that the Enquiry Officer has come to the conclusion that the petitioner, being an Executive Engineer, is not responsible for the misdeeds of the Assistant Engineer and Assistant Executive Engineer, but the charge was held as partly proved on the ground that he is responsible for the overall performance of the Division and to



ensure equality of the work. But, there is no discussion for arriving at such conclusion by the Enquiry Officer. As against the said finding recorded by the Enquiry Officer, the Disciplinary Authority held the Charge No.2 as proved, while agreeing that the findings of the Enquiry Officer that the Executive Engineer is not directly responsible for the boosted measurement and wrong classification of the soil. He being held Charge No.2 as proved on the ground that the Executive Engineer, being the overall supervising officer, responsible for the overall performance of the Division. Thus, it is evident that on one hand, the Disciplinary Authority agreed that the petitioner is not directly responsible, but held the charge as proved. These two findings cannot go together. Having held the Charge No.2 as proved, as a corollary, the Disciplinary Authority held the Charge No.4 also as proved. Except recording the finding that, as Charge No.2 as proved, the Disciplinary Authority failed to assign any reason nor referred to any material in support of such conclusion in the impugned order.

21. In the absence of any justification by simply recording the final conclusion, holding the charge as proved, cannot be sustained, as the same would suffer from the vice of arbitrariness violating the Article 14 of the



Constitution of India.

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22. In the light of the above, in the considered view of this court, the findings recorded by the Disciplinary Authority on Charges 2 and 4 cannot be sustained.

23. As already noted above, the petitioner has already retired from service on 31.01.2005 and the said punishment that was imposed on the petitioner is only trivial in nature and hence, this court is not inclined to remit the matter back to the Disciplinary Authority for re-doing the entire exercise by complying with the principles of natural justice.

24. The Hon'ble Apex Court, under similar circumstances, in the case of “***Punjab National Bank and others -vs- Kunj Behari Misra***” reported in (1998) 7 SCC 84, held as under:-

“21. Both the respondents superannuated on 31-12-1983. During the pendency of these appeals, Misra died on 6-1-1995 and his legal representatives were brought on record. More than 14 years have elapsed since the delinquent



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officers had superannuated. It will, therefore, not be in the interest of justice that at this stage the cases should be remanded to the disciplinary authority for the start of another innings. We, therefore, do not issue any such directions and while dismissing these appeals, we affirm the decisions of the High Court which had set aside the orders imposing penalty and had directed the appellants to release the retirement benefits to the respondents. There will, however, be no order as to costs.”

In the light of the above, the impugned orders bearing Letter No.5034/Estt.(DP)/A2/97-95 dated 04.01.2005, B.P.Ms.No.52, dated, 02.05.2005 and Letter No.3010/WS3/2011-3, dated, 30.05.2011 cannot be sustained and accordingly, they are hereby quashed. Consequently, the Respondent No.3 is directed to pass appropriate consequential orders treating the period of suspension from 20.01.1997 to 25.06.1998 as on duty and release all the consequential benefits that would be payable to the petitioner within a period of eight weeks from the date of receipt of a copy of this order. Further, the respondents are also directed to consider the case of the petitioner for promotion to the post of 'Superintendent Engineer', in case if any of his junior was promoted, and extend benefit of notional promotion on



par with his junior.

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25. Accordingly, the writ petition is allowed. No costs. Connected miscellaneous petitions, if any, shall stand closed.

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Index : Yes / No

Speaking order / Non-speaking order

Neutral Citation : Yes / No

To

1. The Secretary to Government,
Municipal Administration and Water Supply Department
(Holding also the post of Chairman, TWAD Board),
FSG, Chennai – 600 005.
2. The Chairman and Managing Director and
The Board of Directors of Tamil Nadu Water Supply
and Drainage Board,
Chennai – 600 005.
3. The Managing Director,
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Pre-Delivery Order made in
W.P.No.19805 of 2011

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