

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2015

CORAM :

THE HONOURABLE MR. JUSTICE T. RAJA

W.P.NO. 13321 OF 2006
(O.A.NO.1597 of 2003)

A. Karikalan

...Petitioner

Vs.

1. Government of Tamil Nadu
rep. by Secretary to Govt.,
Environment and Forest Department,
Fort St. George,
Chennai - 600 009.
2. The Principal Chief Conservator of Forests
Chennai - 600 015.

...Respondents

PRAYER: This Writ petition came to be numbered under Article 226 of the Constitution of India by way of transfer of O.A.No.1597 of 2003 from the file of the Tamil Nadu Administrative Tribunal praying for Certiorarified Mandamus, to call for the records of the 1st respondent relating to G.O. (D) No.236 Environment and Forest Department dated 23.07.2002, quash the same and allow the petitioner to draw the increments in the normal course periodically and pass further orders.

For Petitioner : Mr. M. Ravi

For Respondents : Mr. N. Inbanathan, GA (Forests)

O R D E R

The petitioner aggrieved by the impugned order of punishment in G.O. (D) No.236 Environment and Forest (FR 9A)

Department dated 23.07.2002 issued by the Secretary to Government, Environment and Forest Department, filed O.A. No.1597 of 2003 before the learned Tamil Nadu Administrative Tribunal. This matter came up for hearing, on transfer to this Court as W.P. No.13321/2006.

2. Learned counsel appearing for the petitioner finding fault with the impugned order, has filed the petition on the ground that the first respondent had failed to consider, that the findings of the Enquiry Officer itself would go to show that the charges levelled against the petitioner have not been proved and when the first respondent failed to consider the leave application, there would not have been a charge of disobedience at all. Although the petitioner submitted his leave application by ordinary post instead of registered post, it will not be a ground for framing charges against the petitioner since it is the duty of the office to trace out the leave application and sanction the leave applied for by the petitioner and therefore the petitioner cannot be blamed for this. A reading of the impugned order in G.O. (D) No.236 Environment and Forest (FR 9A) Department dated 23.07.2002 shows that it is a non-speaking order, not dealt with the explanation offered by the petitioner. Therefore, in the light of the ratio laid by the Hon'ble Supreme Court in the case of Roop Singh Negi vs. Punjab National Bank & Ors., reported in CDJ 2008 SC 2147, which holds that a decision must be arrived at based on some evidence which is legally admissible, more particularly without any order of punishment taking away the ending with the civil consequences should be properly passed with the speaking order. As the impugned order does not mention any reason, it is liable to be interfered with.

3. Adding further he contended that for the charge that the petitioner has sent his leave letter by ordinary post instead of registered post, he has been imposed with the punishment of stoppage of increment for two years with cumulative effect which would definitely affect the petitioner's pension, is grave in nature and hence the same should be interfered with, he pleaded.

4. A detailed counter affidavit has been filed. Learned Government Advocate appearing for the respondents would submit that the petitioner who was working as a Forest Engineer was transferred to the post of Divisional Forest Officer, Tamil Nadu Agriculture Development Project, Periyakulam and he was relieved from duty on 03.07.1992. But he could not join in the transferred place as his relieving officer at Periyakulam had obtained an order of stay from learned Tamilnadu Administrative Tribunal. In view of that, necessary alternate posting order was issued to him posting him as

Deputy Conservator of Forests, Vellar Watershed Programme at Attur on 03.08.1992. But, he has entered on earned leave from 17.08.1992 to 21.09.1992 and extended his leave upto 15.11.1992 for settling his property dispute, instead of joining duty as per the said orders. That apart, even on expiry of the said leave he did not join duty. In the meanwhile, Mr. T.Srinivasan, Deputy Conservator of Forests was posted in that place and he joined duty on 29.03.1993. Thereafter, vide G.O. Rt. No.436 Environment and Forest Department dated 17.05.1993, the Government issued orders posting the petitioner as Lecturer in Tamilnadu Agricultural University, Coimbatore and communicated to his leave address but he did not respond to the posting also. Besides, the Registrar of Tamilnadu Agricultural University, Coimbatore in his Lr. No.A1/4300/93 dated 28.06.1993 also requested him to join duty and issued reminders thereon. Again the petitioner did not respond to the posting order and absented himself without any report. Thereafter, he neither submitted any representation nor applied for any posting.

5. He further submitted that since his conduct amounts to violation of rules, he was issued with a charge memo containing two charges. The petitioner submitted his explanation to the Enquiry Officer. The Disciplinary Authority finding no satisfactory answer in the representation, ordered for enquiry to be held and the petitioner was directed to appear before the enquiry officer. On completion of the enquiry, report was submitted to the disciplinary authority. The enquiry officer found charge No.1 as proved. However, with regard to the first part of the 2nd charge, it was held that the charge cannot be sustained. However, the second part of the 2nd charge was held as proved. Based on the report of the enquiry officer, the disciplinary authority vide the impugned Order in G.O. (D) No.236 Environment and Forest (FR 9A) Department dated 23.07.2002 slapped with the punishment order of stoppage of increment for a period of two years with cumulative effect, making clear that the punishment of stoppage of increment for two years shall be inclusive of the period he went on leave and that it will also affect the pension.

6. Concluding his argument, learned Government Advocate appearing for the respondents would submit that when the petitioner was serving as an Assistant Surveyor of Forests, at that relevant point of time, he did not know how to send a leave letter to the department. The petitioner was issued with the posting order and relieved from duty on 03.07.1992, he has entered into Earned Leave from 17.08.1992 to 21.09.1992 that too by ordinary post. Secondly, he has not joined duty. He has neglected duty by disobeying the

Government order, by not joining duty in the Tamil Nadu Agricultural University, Coimbatore. Therefore, the disciplinary authority accepting the report of the enquiry officer, which was self speaking has thought it fit not to add more, as a reason demanded by the petitioner. That does not mean that the impugned order imposing stoppage of increment for two years with cumulative effect should be interfered.

7. This Court also finds merit on the submissions made by learned Government Advocate. The petitioner was issued with the transfer order on 03.07.1992 while he was serving as a Forest Engineer, Trichy and was posted as Divisional Forest Officer, Tamilnadu Agriculture Development Project, Periyakulam. When the petitioner was unable to join in the transferred place he must know that necessary alternative arrangement should be made, even if he does join in the post. Therefore, in all fairness he should have immediately reported to the department. On the other hand, he had entered on Earned Leave from 17.08.1992 to 21.09.1992. Even on expiry of the leave, it appears he did not join duty. Therefore, the Enquiry Officer found him guilty of the first charge. However, with regard to the second part of the 2nd charge that he had sent the leave letter only by ordinary post, rightly the petitioner was found guilty. Accepting the same, the disciplinary Authority imposed the punishment of stoppage of increment for two years with cumulative effect, affecting his pension.

8. A reading of the impugned order goes to show that the disciplinary authority could have given lengthy order but the charge upon which he has been found guilty being simple and the Enquiry Officer also made it very easy, the disciplinary authority had thought it fit to issue a short order. However, this Court is not inclined to find any infirmity in the impugned order.

9. Therefore, the writ petition fails and the same is dismissed. No order as to costs.

Sd/-

Deputy Registrar(J)

//True Copy//

Sub Assistant Registrar

avr

To

1. Government of Tamil Nadu
rep. by Secretary to Govt.,
Environment and Forest Department,
Fort St. George,
Chennai - 600 009.
2. The Principal Chief Conservator of Forests
Chennai - 600 015.

1 CC to Mr. M. Ravi, Advocate SR.No. 2558

1 CC to the Spl. Government Pleader, SR.No. 1824

W.P.NO. 13321 OF 2006
(O.A.NO.1597 of 2003)

LRS (CO)
PSI (13.03.2015)



WEB COPY