

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2015

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THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.17836 of 2007
(O.A.No.1866 of 2004)

G.Krishnaswamy

.. Petitioner

-vs-

1. The Principal Chief Conservator
of Forests
Chennai 600 015

2. The Conservator of Forests
Coimbatore Circle
Coimbatore

3. The District Forest Officer
Social Forestry Division
Coimbatore-43

.. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records of the second respondent relating to Pro.7798/2003/Pa.2 dated 28.6.2003, quash the same and to consequently direct the respondents to refund to the petitioner the amount recovered from his pensionary benefits.

For Petitioner :: Mr.M.Ravi

For Respondents :: Mr.N.Inbanathan
Government Advocate (Forests)

ORDER

The petitioner-Mr.G.Krishnaswamy, challenging the impugned order dated 28.6.2003, filed O.A.No.1866 of 2004 before the Tamil Nadu Administrative Tribunal, to quash the same with a consequential direction to refund the amount recovered from his pensionary benefits, on the ground that the entire responsibility for the loss cannot be fixed on him in view of G.O.Ms.No.92, Environment and Forests Department dated 11.3.93, since in terms of the said Government Order, responsibility of the petitioner as Ranger can be

fixed only at 40%, on the District Forest Officer at 25% and on the Forester and Forest Guard at 35% jointly. After sometime, the said original application came to be transferred to this Court and renumbered as the W.P.No.17836 of 2007.

2. Assailing the impugned order, the learned counsel for the petitioner submitted that when a memo dated 22.5.2000 was issued to the petitioner alleging certain irregularities said to have been committed by him, a detailed explanation dated 13.1.2003 was given to the third respondent properly explaining as to how the alleged excess expenditure of Rs.16,425/- cannot be put against him. In the explanation the petitioner has taken a stand that the area of plantation in question related to the year 1998-99 and the workers could not have easy access to the area, since it was very steep. Therefore, a representation was made to the second and third respondents during their inspection that they were unable to meet both ends with the meagre wages. Only after getting their concurrence, the excess expenditure of Rs.16,425/- was incurred. But the second respondent, without considering the said reason, wrongly passed the impugned order directing recovery of a sum of Rs.22,525/- from the pensionary benefits of the petitioner. That apart, in the impugned order of recovery, the second respondent has wrongly mentioned that the petitioner had not even given any explanation, which shows his clear non application of mind. Concluding the arguments, the learned counsel stated that when G.O.Ms.No.92, Environment and Forests Department dated 11.3.93 was already issued fixing the responsibility on the officers, namely, District Forest Officer to the extent of 25%, Forester and Forest Guard to the extent of 35% jointly and Ranger to the extent of 40%, the entire liability has been fixed solely on the petitioner. Therefore, even if it is admitted that the petitioner is found guilty of the charge, he is liable to pay only 40% of the total loss, as per G.O.Ms.No.92, Environment and Forests Department dated 11.3.93. As the said Government Order has not been followed, the impugned order is liable to fail. In support of the submissions, the learned counsel also placed on record an unreported order passed by this Court in W.P.Nos.16703 and 17503 of 2007 dated 27.7.2011 (T.Sundaram and another v. The Conservator of Forests, Dharmapuri Circle and another).

3. A detailed counter affidavit has been filed by the respondents. The learned Government Advocate appearing for the respondents submitted that when the petitioner was serving as Forest Ranger in Udthagamandalam Social Forestry Range between 22.4.98 and 17.4.2000, he was placed under suspension in pursuance of the orders passed by the Conservator of Forests, Coimbatore Circle dated 17.4.2000 for misappropriation of Government money for the works not

actually done. That apart, during the period for which the Ranger was doing the work, raising miscellaneous plantation over an extent of 80 hectare in the middle zone of Nedugal Combai Micro Watershed area of Uthagai SF Range during 1998-99, he had spent about Rs.2,41,279/- as against the technical sanction of Rs.2,30,000/- only. As there was an overall excess expenditure to the tune of Rs.11,279/-, he was fixed responsible for the said Government loss. However, a show cause notice was issued under Rule 17(a) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules on 14.2.2003. After receiving the show cause notice, the petitioner sought for permission to peruse certain documents to submit his defence statement. Although the Divisional Forest Officer, Social Forestry Division, Coimbatore permitted the petitioner to peruse the relevant documents, he has failed to submit his defence statement against the show cause notice. Therefore, the enquiry officer found him guilty. On the basis of the report, the impugned order has been passed. Hence, the petitioner cannot be permitted to contend that the impugned order passed against him is unsustainable. With regard to the applicability of G.O.Ms.No.92 dated 11.3.93, it was stated that the petitioner in the present case is individually responsible. Therefore, the plea of apportionment of liability on other officers cannot be accepted. When the petitioner has been found solely responsible for the loss, G.O.Ms.No.92 cannot be said to be applied against other persons who cannot be held responsible.

4. Heard the learned counsel for the parties.

5. In the present case, the charges levelled against the petitioner in the show cause notice dated 14.2.2003 would show that he had spent over and above the sanctioned amount in respect of the works covered under T.S.O.77/98-99, T.S.O.587/99-2000 and T.S.O.590/99-2000 to an extent of Rs.22,525/-, which clearly indicate that the petitioner was solely responsible for the loss. Therefore, when he was called upon to submit his explanation, although he gave a written representation on 13.1.2003 prior to the issuance of show cause notice, it is not known why the petitioner, after seeking permission to peruse certain records, failed to submit his detailed explanation. Therefore, the disciplinary authority passed the impugned order of recovery of a sum of Rs.22,525/- holding him solely and individually responsible for the loss caused to the department. Therefore, this Court is unable to accept the contentions made by the learned counsel for the petitioner that the impugned order of recovery passed against the petitioner without complying with the G.O.Ms.No.92 dated 11.3.93 cannot be espoused. That apart, as mentioned above, after the issuance of charge memo, when the petitioner had sought permission to peruse the documents, even after perusing the relevant records, he has failed to submit any

explanation whatsoever. In that view of the matter, this Court finds no infirmity with the impugned order of recovery. Accordingly, the writ petition fails and it is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Principal Chief Conservator
of Forests
Chennai 600 015

2. The Conservator of Forests
Coimbatore Circle
Coimbatore

3. The District Forest Officer
Social Forestry Division
Coimbatore-43

1 cc to Spl.Government Pleader, Sr.No8952
1 cc to Mr.M.Ravi ,Advocate, SR.No.9555

W.P.No.17836 of 2007
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