

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.02.2015

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.17837 of 2007
[O.A.No.1867 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 Deputy Conservator of Forest
(Gencties) Coimbatore
Coimbatore 641 043.

...Respondents

This petition came to be numbered by transfer of O.A. No.1867 of 2004 from the file of the Tamil Nadu Administrative Tribunal praying for a Writ of certiorarified mandamus calling for the records of the 2nd respondent relating to the order in (I) Pro.No.4071/2003/Pa.2 dated 11.8.2003 and quash the same and issue directions to refund the amount recovered, if any, to the petitioner.

For petitioner : Mr.M.Ravi

For respondents : Mr.N.Inbanathan, Govt.Advocate

ORDER

This writ petition has been directed against recovery of Rs.1,07,968/- sought to be made from the pensionary benefits of the petitioner by impugned order dated 11.08.2003 bearing Pro.No.4071/2003/Pa-2.

2. The learned counsel appearing for the petitioner would submit that while the petitioner was serving as a Forest Ranger at Pandalur Range, Gudalur Division, received a show cause notice issued under Rule 17(a) of the Tamil Nadu Civil Services [Discipline and Appeal] Rules on 20.11.2002 asking explanation for two allegations, viz., (i) alleged failure to hand over charge of 23 species of forestry seeds worth about Rs.1,62,440/- to his successor after serving as Research Ranger, Coimbatore, from 01.07.1995 to 22.04.1998 and (ii) failure to bring to account for 574 kgs, of Steel angles purchased at a cost of Rs.26,800/- for the erection of attenuation chamber in Mettupalayam Centre.

3. On receipt of the said show cause notice, the petitioner made a representation on 30.12.2002 seeking permission to peruse the connected records so as to submit his reply to the show cause notice. The third respondent/the Deputy Conservator of Forest granted permission to the petitioner by memo dated 07.01.2003. Thereafter, having perused the records, the petitioner submitted his explanation on 23.06.2003 in detail indicating therein, that the seeds in question received from the lessees were of poor quality and they were returned to the respective lessees and seeds of good quality were got from them as per the list attached [Sl.Nos.1 to 20] and handed over to the Ranger. Necessary entries in Form-3 register were not made due to pressure of work. It is also submitted that although the seeds received earlier were worth about Rs.1,62,449/-, the seeds of good quality received were roughly worth about Rs.3,60,000/-. Therefore, the petitioner, in his explanation, clearly submitted that there was no loss to the Government. However, in spite of the detailed reply given, no order was passed.

4. With regard to the second charge, namely the steel angles weighing 574 kgs, the petitioner again pointed out that they were directly procured by the Office of the Deputy Conservator of Forests, Genetics, Coimbatore and payment was also made by the District Conservator of Forest Office itself and the same would have been entered in the Stock Register of the District Conservator of Forest Office and that only an expenditure of Rs.2652/- was incurred by the petitioner towards the work under Lr. No.26 dated 17.03.1998 and the same also had been entered in the measurement book No.1/96-97. On this basis, it was pointed out that there was no loss sustained by the Government. In spite of the above explanation given, the third respondent sent a report dated 30.06.2003 to the Conservator of Forests, Coimbatore Circle and on the basis of the report, the second respondent passed the final order. Therefore, the order of recovery

impugned herein, overlooking the detailed explanation is unsustainable. Hence, the same is liable to be set aside.

5. Adding further, the learned counsel appearing for the petitioner would submit that, when there has been G.O.Ms.No.92, Environment and Forests (Misc) Department dated 03.02.1993, fixing responsibility of financial irregularities on different Officers at the ratio of 25% for District Forest Officer, 40% for Ranger and 35% for Forester and Forest guard, the petitioner if at all found guilty, is liable to pay only 40% of the amount mentioned in the impugned order and the other Officer should be also equally responsible. Ignoring G.O.Ms.No.92 dated 03.02.1993, full responsibility has been fixed only on the petitioner. Therefore, the impugned order is liable to fall to ground. In support of her submission, the learned counsel relied upon the unreported order passed by this Court in W.P. (MD)No.7828/2009 dated 23.12.2009. Opposing the above prayer, a detailed counter affidavit has been filed by the respondent.

6. The learned Government Advocate would contend that the question of applicability of G.O.Ms.No.92 dated 03.02.1993 cannot be accepted in the present case, since the two charges levelled against the petitioner are specifically charging the petitioner responsible. When the petitioner alone was responsible for the lapses committed and which has ultimately caused loss to the Government, no other Officer can be found jointly responsible so as to apply G.O.Ms.No.92. That apart, the District Forest Officer, the Forester and Forest Guard are no way connected to the charges levelled against the petitioner.

7. Secondly when the show cause notice was issued on 20.11.2002 alleging that there was a failure to hand over charges of 23 species of forestry seeds worth about 1,62,440/- to his successor and also indicating his failure to bring into account 574 kgs of steel angles purchased at the cost of Rs.26,800/- for the erection of attenuation chamber in Mettupalayam Centre, in his explanation submitted on 23.06.2003, the petitioner has not even sought the support of G.O.Ms.No.92 to hold the District Forest Officer or the Forester and the Forest Guard responsible. Therefore, when the petitioner has not even taken any plea in the initial stage in his explanation for joint responsibility to recover the amount, it is not open to him to take such a plea belatedly for the first time before this Court.

8. Adding further, he has submitted that the petitioner, in his representation also, has stated that since the seeds of good quality were not supplied, the same were returned by him. The second respondent, after ascertaining that the quantity of seeds handed over to the Seeds Centre by the petitioner was less and after finding out the balance quantity of the seeds which were not handed over, which was rightly arrived at and reported by the third respondent to the Conservator of Forests (Research) Chennai, has rightly passed the final order. The explanation given by the petitioner that he could not make necessary entries in Form-3 Register is wholly unacceptable, as the petitioner has not even maintained any proof whatsoever for handing over the seeds back to the Seeds Centre.

9. With regard to the second charge, out of 574 kgs of "L" angles handed over to the petitioner, only 402 kgs were found utilised for the work with a shortage of 172 kgs. Thus, the shortage of 172 kgs caused a loss of Rs.6364/- at the rate of Rs.37/- per kg to the Government. Therefore, the total loss worked out to the Government which comes to Rs.1,07,968/- alone has been put against the petitioner for recovery. Therefore, the impugned order passed after following all the principles of natural justice need not be interfered with.

10. After issuance of the show cause notice dated 20.11.2002 under Rule 17(a) of Tamil Nadu Civil Services (Disciplinary and Appeal) Rules calling upon the petitioner to submit his explanation to the two charges, namely (a) failure to hand over charges of 23 species of forestry seeds worth about Rs.1,62,440/- to his successor after serving as Research Ranger, Coimbatore from 01.07.1995 to 22.04.1998 and (b) failure to bring to account 574 kgs of steel angles purchased at the cost of Rs.26,800/- for the erection of attenuation chamber in Mettupalayam Centre, the petitioner made a representation on 30.12.2002 seeking permission to peruse the connected records before submitting his reply to the show cause notice. Accordingly, the third respondent granted permission to the petitioner by memo dated 07.01.2003. Thereafter, the petitioner perused the records and later on submitted his explanation on 23.06.2003 in detail pointing out that the seeds in question received from the lessees were of poor quality and they were returned to the respective lessees and the seeds of good quality got from them as per the list attached were handed over to the Ranger. But the explanation further says that necessary entries in Form-3 Register were not made due to pressure of work. Therefore, the Enquiry Officer refused to accept the explanation.

11. This Court also finds no justification for the petitioner to say that the seeds in question of poor quality received from the lessees were returned to the respective lessees and seeds of good quality handed over to the Ranger have not been entered in the Form-3 Register. When the petitioner has received 23 species of forestry seeds worth about Rs.1,62,440/-, at the time of returning the respective seeds to the Ranger, ought to have obtained proper endorsement or acknowledgment therefor. As the petitioner has not received any such endorsement, the first charge holding him guilty cannot be interfered.

12. Though the petitioner has mentioned that as per the report of the concerned work, the entire quantity of 574 kgs. has been utilised, actually, 402 kgs have been found utilised leaving shortfall of 172 kgs. Even that has also not been handed over by the petitioner during the time of lease. Therefore, the second respondent has issued the recovery order to meet only the loss caused to the Department. Finding no other explanation, this Court is not able to see any infirmity in the impugned order.

13. Therefore the writ petition fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar(AD-I)

//True Copy//

Sub Assistant Registrar

gms

To

1.The Principal Chief Conservator of Forests
Chennai 600 015.

2.The Conservator of Forests
Coimbatore Circle
Coimbatore.

WEB COPY

3.The Deputy Conservator of Forest
(Gencities) Coimbatore
Coimbatore 641 043.

1 CC to Mr.M.Ravi, Advocate SR.No. 9554

1 CC to the Government Pleader, SR.No. 8951

W.P.No.17837 of 2007
[O.A.No.1867 of 2004]

RV (CO)
PSI (30.03.2015)



WEB COPY