



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.02.2015

CORAM

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.(MD)No.2816 of 2011

P.Nagarajan

... Petitioner

Vs.

The Secretary to Government
Public Works (E-1) Department,
Secretariat,
Chennai 600 009.

... Respondent

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, call for the records of the respondent relating to G.O(D) No.21 Public Works (E-1) Department dated 21.01.2011 and quash the same.

For Petitioner : Mr.S.Visvalingam

For Respondent : Mr.M.Murugan
Government Advocate

ORDER

The petitioner has come up with this writ petition to call for the records of the respondent relating to G.O(D) No.21 Public Works (E-1) Department, dated 21.01.2011 and quash the same.

2.The petitioner recruited through TNPSC in the year 1972 and appointed as Assistant Engineer in the Public Works Department. The petitioner joined duty on 21.09.1972 as Assistant Engineer in the Office of the Executive Engineer, Public Works Department, Madurai Division, Madurai and he was promoted as Assistant Executive Engineer in the year 1995 and as Executive Engineer in the year 2002. The petitioner was deputed to the Fisheries Department on Foreign Service and posted as Assistant Executive Engineer, Ramanathapuram in the Department of Fisheries. He was working in the Foreign Service from 1997 to 2002 as Assistant Executive Engineer and was working as Executive Engineer.

3.The petitioner's date of superannuation is 31.05.2007. As per G.O. (D) No.270 Public Works (E-2) Department dated 31.05.2007, the petitioner was allowed to retire on 31.05.2007 without prejudice to the disciplinary proceedings pending against him. The Charges were framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules for the alleged delay in submission of transfer Entry Orders relating to transfer of materials from one work spot to another work spot which is purely a book adjustment involving no monetary loss to the Government. The charges were framed on 30.05.2007 one day prior to his date of superannuation.



4. The petitioner submitted his explanations, dated 04.06.2007, 13.09.2007 and 22.05.2008. The Enquiry Officer in his report, dated 24.06.2008 held that the first charge was proved and the second charge was partly proved. The petitioner submitted his further explanation on 31.12.2008 to Enquiry Officer's report. He also further submitted his explanation on 18.09.2009 and 07.10.2010 to the show cause notice issued to him in respect of provisional conclusion arrived at by the respondent and the proposed punishment.

5. The respondent by the impugned order, dated 21.01.2011 confirmed the proposed punishment pension cut of Rs.400/- per month for a period of three years.

6. The petitioner has challenged the impugned order, dated 21.01.2011 on the grounds that:-

a) there are lot of errors and discrepancies in the charge memo dated 30.05.2007.

b) wide variations between the actual delay and the delay alleged in the charge memo.

c) the Department witness one Mr.P.Tamil Selvan, Assistant Executive Engineer, Public Works Department has also accepted the variations.

d) the respondent did not consider the above facts and deviation pointed out by the petitioner.

e) The impugned order is a non-speaking order, the respondent has not given any reason and passed orders without application of mind.

7. The respondent has filed the counter affidavit denying the various averments made by the petitioner in the affidavit and contended that:-

a) The petitioner himself admitted the delay in Transfer Entry Orders.

b) In the explanations submitted by the petitioner to the show cause notice with regard to the provisional conclusion and proposed punishment to be imposed on the petitioner, he denied the charges. The issue was referred to Tamil Nadu Public Service Commission. The Tamil Nadu Public Service Commission up-held the provisional conclusion of the Government with regard to proposed punishment as petitioner admitted the delay. The respondent accepted the views of the Tamil Nadu Public Service Commission.

c) There is no delay in issue of charge memo. There is no error or discrepancies in the charge memo.

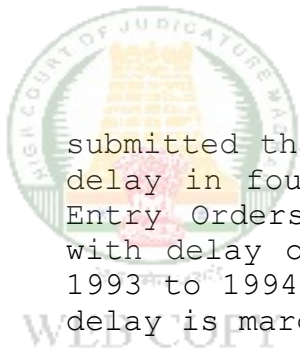
d) The respondent has passed the speaking order giving reasons for imposing punishment.

8. Heard Mr.S.Visvalingam, learned counsel appearing for the petitioner and Mr.M.Murugan, learned Government Advocate appearing for the respondents.

9. The counsel for the petitioner and the respondents reiterated the averments made in the affidavit and counter affidavit.

10. I have carefully perused the materials on record and considered the arguments of the learned counsel for the petitioner and the respondent.

11. The charges leveled against the petitioner is that he did not take
<https://hservices.ecourts.gov.in/hservices/> subordinates for the delay in sending Transfer Entry Orders. This amounts to grave misconduct and the petitioner failed to maintain absolute integrity and devotion to duty. The petitioner has



submitted that there is no delay in three Transfer Entry Orders. One month delay in four Transfer Entry Orders and two months delay in nine Transfer Entry Orders. The petitioner submitted that two Transfer Entry Orders with delay of 22 months relates to the work done during 1992 to 1993 and 1993 to 1994 and do not relate to him as he joined duty on 16.06.2007. The delay is marginal and occurred due to Administrative reasons.

12. The impugned order reveals that the respondent has not given any reason for not accepting the explanation given by the petitioner. The respondent extracted the charges, explanation of petitioner and findings of enquiry officer and passed the impugned order. Paragraph 8 of the impugned order reads as follows:-

"8.The Government after careful and independent examination of the case once again with the relevant records and the views of the Tamil Nadu Public Service Commission have decided to accept the views of the Tamil Nadu Public Service Commission to impose the punishment of withholding of pension at the rate of Rs.400/- (Rupees four hundred only) per mensem for a period of three years on Thiru.P.Nagarajan, Executive Engineer (Retired), for the charges held proved/partly proved against him. Accordingly, the Government order that the punishment of withholding of pension at the rate of Rs.400/- (Rupees four hundred only) per mensem for a period of three years be imposed on Thiru.P.Nagarajan, Executive Engineer (Retired) for the charges held proved/partly proved against him."

13. "Even though the respondent has stated that careful and independent examination of the case once again with relevant records" the respondent has not passed the impugned order by applying his mind. The respondent extracted the findings of the enquiry officer and considered the view of the Tamil Nadu Public Service Commission and passed the impugned order. The respondent has not considered any submissions of the petitioner. The respondent has not given any independent reason of his own. Hence the contention of the learned counsel for the petitioner that the impugned order is not a speaking order and passed without application of mind is well founded and tenable.

12. In the result, the writ petition is allowed and the impugned order of the respondent dated 21.01.2011 is set aside. No costs.

Sd/
Assistant Registrar

/True copy/

sub Assistant Registrar(c.s)

To

The Secretary to Government Public Works (E-1) Department,
Secretariat, Chennai 600 009.

+1cc to M/S.S.Visvalingam ,Advocate in SR.No. 6485

+1cc to Special Government Pleader in SR.No 7328.

TS/02.03.2015/3P-4C

W.P. (MD) No.2816 of 2011