

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE B.RAJENDRAN

WP.Nos.23868 and 24150 of 2011

MP.Nos.1,2 and 2 of 2011

P.Ratnakumar
WPs

Petitioner in both

Vs

- 1.State of Tamil Nadu by Secretary to Government
Environment and Forest Department, Chennai-9
- 2.The Principal Conservator of Forests, Chennai-15
- 3.The Deputy Director of Arignar Anna Zoological Park
Vandalur, Chennai-48.
- 4.The Tamil Nadu Public Service Commission
by Secretary, Chennai-2 Respondents in both
WPs

Prayer:- This Writ Petitions are filed u/a.226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the Respondents 3 and 1 in Na.Ka.No.3725/99/Pa2, dated 10.8.1999 and GO(3D)No.77, Environment and Forest (F9) Department dated 9.11.2010 respectively and to quash the same and to direct the Respondents to settle all the service and monetary benefits to the Petitioner withheld by the order of punishment to the Petitioner and to call for the records of the Respondents 1 and 3 in Na.Ka.No.9976/97/U1, dated 31.12.1998 and GO(D) No.373, Environment and Forest (F9) Department dated 10.12.2009 respectively and to quash the same and to direct the Respondents to settle all the service and monetary benefits to the Petitioner withheld by the order of punishment to the Petitioner, respectively.

For Petitioner : Mr.R.Singgaravelan,
Sr.Counsel for Ms.Srividhya, Advocate

For Respondent : Mr.M.Inbanathan, GA-RR1to3
Mr.M.Devendran, SC-R4

ORDER

<https://hcservices.ecourts.gov.in/hcservices/> This Writ Petition is filed issue a Writ of

Certiorarified Mandamus to call for the records of the Respondents 3 and 1 in Na.Ka.No.3725/99/Pa2, dated 10.8.1999 and GO(3D)No.77, Environment and Forest (F9) Department dated 9.11.2010 respectively and to quash the same and to direct the Respondents to settle all the service and monetary benefits to the Petitioner withheld by the order of punishment to the Petitioner and to call for the records of the Respondents 3 and 1 in Na.Ka.No.9976/97/U1, dated 31.12.1998 and GO(D) No.373, Environment and Forest (F9) Department dated 10.12.2009 respectively and to quash the same and to direct the Respondents to settle all the service and monetary benefits to the Petitioner withheld by the order of punishment to the Petitioner, respectively.

2. The Petitioner is facing two charges. Firstly, the Petitioner has been charge sheeted for the offence of abusing the officer after consuming liquor and after due enquiry, punishment of reduction of pay to the bottom scale with cumulative effect for four years was imposed. The revision filed as against the same was dismissed on the ground of limitation. Thereafter, he preferred an appeal to the 1st Respondent, who on the basis of the opinion of the 4th Respondent (Tamil Nadu Public Service Commission) rejected the appeal. As against the same, WP.No.23868 has been filed.

3. Secondly, the Petitioner was charge sheeted for another offence of unauthorised absence for 19 days, for which, he was imposed with punishment of stoppage of increment for 3 years with cumulative effect. The appeal filed as against the same was dismissed as time barred. The revision filed to the Government was rejected by the impugned order confirming the order of punishment based on the recommendation of the 4th Respondent. Hence, WP.No.24150 of 2011 has been filed.

4. The only ground raised by the Petitioner is that a copy of the recommendation of the 4th Respondent (Tamil Nadu Public Service Commission), based on which the Government has passed the impugned order, was not served on him and further, in the impugned orders, no reason has been given and straight away the orders have been passed simply relying on the recommendation of the 4th Respondent. Therefore, he would contend that the impugned orders are not in accordance with law, in view of the decisions of the Honourable Supreme Court reported in 2011 4 SCC 589 (Union of India and others Vs. S.K.Kapoor) and 2011 4 SCC 591 (S.N.Narula Vs. Union of India and others), wherein it has been laid down that if any material is to be relied upon in the departmental proceedings, then the copy of the same must be supplied in advance to the charge sheeted employee. He would further contend that in the case on hand, since the copy of the recommendation of the 4th Respondent is not served on the Petitioner that too when there is no reason given in the impugned orders, they are vitiated.

5. On the other hand, the learned Additional Government Pleader for the Respondents would contend that the revision petitions were rightly dismissed on the ground of limitation and that it is not mandatory for furnishing the copy of the recommendation of the 4th Respondent and the impugned orders have been passed taking consideration all the evidence and the fact that the Petitioner has been a chronic absentee and therefore, the impugned orders are in order.

6. This court heard the learned counsel on either side and considered their submissions and also perused the materials placed on record.

7. As rightly pointed out by the learned Additional Government Pleader for the Respondents, since the appeal of the Petitioner was not preferred in time, they were rightly rejected and therefore, the orders passed thereon cannot be interfered with.

8. Whereas the Revisional Authority, namely, the Government, of course, has taken into consideration the opinion or recommendation of the 4th Respondent. But, as per the decisions of the Honourable Supreme Court reported cited supra, a copy of the same ought to have been given to the Petitioner before passing the impugned orders.

9. In 2011 4 SCC 589 (Union of India and others Vs. S.K.Kapoor), it has been held as under:-

"5. It is a settled principle of natural justice that if any material is to be relied upon in departmental proceedings, a copy of the same must be supplied in advance to the charge sheeted employee so that he may have a chance to rebut the same.

7. In the aforesaid decision, it has been observed in para 25 that 'the provisions of Article 320(3) (c) of the Constitution of India are not mandatory'. We are of the opinion that although Article 320(3)(c) is not mandatory, if the authorities do consult the Union Public Service Commission and rely on the report of the commission for taking disciplinary action, then the principles of natural justice require that a copy of the report must be supplied in advance to the employee concerned so that he may have an opportunity of rebuttal. Thus, in our view, the aforesaid decision in T.V.Patel's case is clearly distinguishable.

8. There may be a case where the report of the Union Public Service Commission is not relied upon by the disciplinary authority and in that case it is certainly not necessary to supply a copy of the same to the concerned employee. However, if it is

relied upon, then a copy of the same must be supplied in advance to the concerned employee, otherwise, there will be violation of the principles of natural justice. This is also the view taken by this Court in the case of S.N.Narula vs. Union of India."

10. In 2011 4 SCC 591 (S.N.Narula Vs. Union of India and others), it has been held as under:-

"6. We heard the learned counsel for the Appellant and the learned counsel for the Respondent. It is submitted by the counsel for the Appellant that the report of the Union Public Service commission written statement not communicated to the Appellant before the final order was passed. Therefore, the Appellant was unable to make an effective representation before the disciplinary authority as regards the punishment imposed.

7. We find that the stand taken by the Central Administrative Tribunal was correct and the High Court was not justified in interfering with the order. Therefore, we set aside the judgement of the Division Bench of the High Court and direct that the disciplinary proceedings against the Appellant be finally disposed of in accordance with the direction given by the Tribunal in paragraph 6 of the order. The Appellant may submit a representation within two weeks to the disciplinary authority and we make it clear that the matter shall be finally disposed of by the disciplinary authority within a period of 3 months thereafter."

11. Even de hors the plea of non supply of the copy of the recommendation of the 4th Respondent, on a reading of the impugned orders, it is crystal clear that except one sentence, saying that the report of the Tamil Nadu Public Service Commission is accepted, no independent reason has been given.

12. Reason is the heart beat of every conclusion and without the same, it becomes lifeless, as has been laid down by the Honourable Supreme Court in 2008-16-VST181-SC (SAI1 Vs. Sales Tax Officer, Rourkela) and 2003 (11) SCC 519) Raj Kishore Jha v. State of Bihar.

13. In the absence of any discussion or explanation having been given by Revisional Authority for confirming the impugned punishments and in the light of the propositions laid down in the decisions cited supra, the impugned orders of the appellate authority can be said to be non speaking orders and accordingly, they are liable to be set aside.

14. Accordingly, the impugned order passed by the Revisional Authority alone is set aside and the matter is remitted back to the Revisional Authority for consideration afresh, who in turn after serving a copy of the report of the Tamil Nadu Public Service Commission to the Petitioner, shall dispose of the same, on merits and in accordance with law, by a speaking order, as expeditiously as possible.

15. With the above directions, these Writ Petitions are disposed of. No costs. Consequently, the connected MPs are closed.

Sd/-

Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To:

- 1.State of Tamil Nadu by Secretary to Government
Environment and Forest Department, Chennai-9
 - 2.The Principal Conservator of Forests, Chennai-15
 - 3.The Deputy Director of Arignar Anna Zoological Park
Vandalur, Chennai-48.
 - 4.The Secretary, Tamil Nadu Public Service Commission,
Chennai-2
- +1 cc to Ms.Srividhya, advocate,sr.48006.
- +1 cc Spl.Govt.Pleader,sr.47998.

ctk(co)
krd 15/9

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