

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.11.2016

Date of verdict:22.12.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.27365 of 2014
and M.P.No.1 of 2014

S.Palani

... Petitioner

vs.

1.The Secretary to Government,
Highways HL 1 Department,
Fort St. George, Chennai-9.

2.The Chief Engineer (General),
Highways & Minor Ports HL 1 Department,
Chepauk, Chennai-5.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorari to call for the records of the first respondent in connection with the impugned order passed by him in G.O.(3D) No.73, Highways (HL 1) Department dated 30.6.2003 and G.O.(D) No.75, Highways and Minor Ports (HL 1) Department dated 19.3.2013 and quash the same.

For Petitioner : Mr.M.Muthappan

For Respondents : Mr.K.Dhananjayan,
Spl. Govt. Pleader.

WEB COPY
ORDER

The present writ petition has been filed by the petitioner, challenging the impugned orders of the first respondent in G.O. (3D) No.73, Highways (HL 1) Department dated 30.6.2003 and G.O. (D) No.75, Highways and Minor Ports (HL 1) Department dated 19.3.2013.

2. The case of the petitioner, in brief, is as follows:-

(a) The petitioner entered into the service as a directly recruited Assistant Engineer in Highways Department on 20.10.1991 through the selection conducted by TNPSC. Subsequently, he was promoted as Assistant Executive Engineer on 4.4.2005 and further promoted as Divisional Engineer in February 2013.

(b) While so, the petitioner was issued with a charge memo dated 12.10.1999 under rule 17(a) of TNCS (D&A) Rules by the second respondent on the allegations that he fabricated records between February 1994 and November 1994 by including 15 names of the non-existing and fictitious persons as daily wage mazdoors and recorded to have distributed a huge amount by forging their signatures and misappropriated a sum of Rs.32,425/- and further, he has created records as if he has checked the mazdoors in the work spot even on the date when he was on leave. The said charge memo was issued with a delay of five years. For the said charge memo, the petitioner submitted a detailed explanation denying the same.

(c) When the petitioner was holding the charge of Rural Road of the Highways Department in Wallajah, due to non-availability of the mazdoors to assist him in the execution of the work, he had to engage men on daily wage basis and they were engaged only after getting proper permission from the Divisional Engineer, Rural Road, Vellore. In the first charge, it has been stated that out of 25 mazdoors, 15 were non-existent persons. Since some of the mazdoors did not have permanent residence, they were unable to furnish any specific address. Further, the engagement of the mazdoors were also verified by the superior officers during inspection. Hence, the question of misappropriation of Government money by creating false and fictitious records does not arise.

(d) In respect of the second charge is concerned, as per the Chief Engineer's instructions, the daily attendance of the mazdoors has to be marked and initialed by the Assistant Engineers only. In Wallajah section, the work spot is scattered from one corner to another corner. Hence, it is practically impossible to cover all the spots. Further, the NMRs engaged were asked to meet the Assistant Engineer every morning before going to work spot and get instructions from the petitioner regarding the work to be done by them. As it is routine, the petitioner used to mark their attendance for the days whenever he could not attend the work spot, by ascertaining the work done by them and after satisfying the work done by them. Hence, merely because the attendance has been marked, the same cannot be a ground to hold that there are fictitious and bogus entries in the register.

(e) Thereafter, an enquiry officer in the rank of Divisional Engineer was appointed to conduct the oral enquiry, before whom, the petitioner appeared and explained everything. After

examination, the enquiry officer submitted a report holding that the charges against the petitioner were not proved. However, being not satisfied with the said report, the Government deviated with the views of the enquiry officer in respect of charge Nos.2 and 3 and issued a show cause notice, directing the petitioner to submit a reply. The petitioner submitted a detailed representation and requested to accept the report of the enquiry officer. In spite of the same, the Government vide G.O (3D) No.73, Highways Department dated 30.6.2003, held that the charge Nos.2 and 3 were proved and imposed punishment of stoppage of increment for three months without cumulative effect.

(f) Aggrieved over the same, the petitioner submitted a detailed review petition to the Government on 8.8.2011. Since the same was not disposed of, the petitioner approached this Court by filing a writ petition W.P.No.25705 of 2011 and this Court directed the respondents to pass orders on the review petition within a reasonable time. Pursuant to the said direction, now the Government issued the impugned order rejecting the claim of the petitioner on merits. Hence, challenging the same, the petitioner has come up with the present writ petition.

3. Learned counsel appearing for the petitioner submitted that the enquiry officer submitted a report dated 23.5.2001 holding that the charges levelled against the petitioner were not proved. But, the disciplinary authority, even without issuing a show cause notice, has straightaway held that the charge Nos.2 and 3 have been proved and directed the petitioner to submit his reply, which is total violation of the principles of natural justice. If the disciplinary authority is disagreeing with the views of the enquiry officer, he ought to have issued a show cause notice mentioning the tentative reasons for deviation and directed the petitioner to submit a reply and only after receipt of the reply, the disciplinary authority either has to agree or disagree with the reply of the petitioner. Thereafter only, the disciplinary authority can hold that the charges have been proved and he can direct the petitioner to submit a reply for the charges, which have been held proved. However, in the instant case, admittedly, show cause notice has been issued straightaway holding that the charge Nos.2 and 3 have been proved and the petitioner was directed to submit a reply, which is total violation of principles of nature justice. Hence, on this ground also, the impugned orders are liable to be quashed. In this regard, the learned counsel appearing for the petitioner has also relied upon the judgment of the Hon'ble Supreme Court reported in (2006) 9 Supreme Court Cases 440 - Lav Nigam v. Chairman & MD.ITI Ltd., and another, wherein, it has been held as follows:-

" 11. In Punjab National Bank v. Kunj Behari Misra, a Bench of this Court considered Regulation 7(2) of the Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977. The Regulation itself did not provide for the giving of any notice before the disciplinary authority differed with the view of the enquiry officer. This Court held: (SCC p.97 para 19)

"The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer".

4. Per contra, learned Special Government Pleader appearing for the respondents, by filing a detailed counter, submitted that the impugned orders of the first respondent are just, legal and substantial in the eye of law. Further, he has submitted that the first respondent is empowered to differ from the views of the enquiry officer and the first respondent, only after careful examination of the connected documents, differs from the views of the enquiry officer and held that the charges have been proved. The said order has been passed only after obtaining further representation from the petitioner. The impugned order in G.O (3D) was passed in the year 2003, but the petitioner filed the review petition only in the year 2011, that is after a lapse of eight years from the date of the said GO. Hence, on this ground alone, the writ petition is liable to be dismissed.

5. Keeping the submissions made on either side, I have carefully gone through the entire materials available on record.

6. It is the main submission of the learned counsel appearing for the petitioner that before passing the impugned order, the disciplinary authority has not assigned any tentative reasons for disagreement with the views of the enquiry officer. Further, the disciplinary authority ought to have sent a notice to the petitioner by assigning tentative reasons for taking a different view from the view taken by the enquiry officer and ought to have called for a reply from the petitioner. But, in the instant case, without doing so, the disciplinary authority straightaway has passed the impugned order on merits by holding that the charge Nos.2 and 3 against the petitioner have been proved. Therefore, the impugned orders are liable to be quashed. In this regard, he has also relied upon the judgment of the Hon'ble Supreme Court reported in (2006) 9 Supreme Court Cases 440 - Lav Nigam v. Chairman & MD.ITI Ltd., and another. There cannot be any quarrel for the proposition laid down by the Hon'ble Supreme Court in the said decision. However, in the instant case, the impugned GO was passed in the year 2003. Thereafter, the petitioner has kept quiet for a period of eight years, which would show that the petitioner has accepted the punishment. Thereafter, after eight years, he has filed the review petition, which was rejected by the first respondent. Further, the delay of eight years in filing the review petition was not properly explained by the petitioner. Though it was contented by the learned counsel appearing for the petitioner that as per Rule 37 of the TNCS (D&A) Rules, the review can be preferred to the Government at any time, since no time limit was fixed for preferring a review, this Court is of the opinion that when the delay is inordinate in nature, the said delay has to be properly explained. Moreover, in this case, the punishment period was also already over. Hence, at this juncture, this Court cannot entertain the prayer made in the writ petition. Hence, the writ petition is liable to be dismissed.

7. Accordingly, the present writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sbi

To

1.The Secretary to Government,
Highways HL 1 Department,
Fort St. George, Chennai-9.

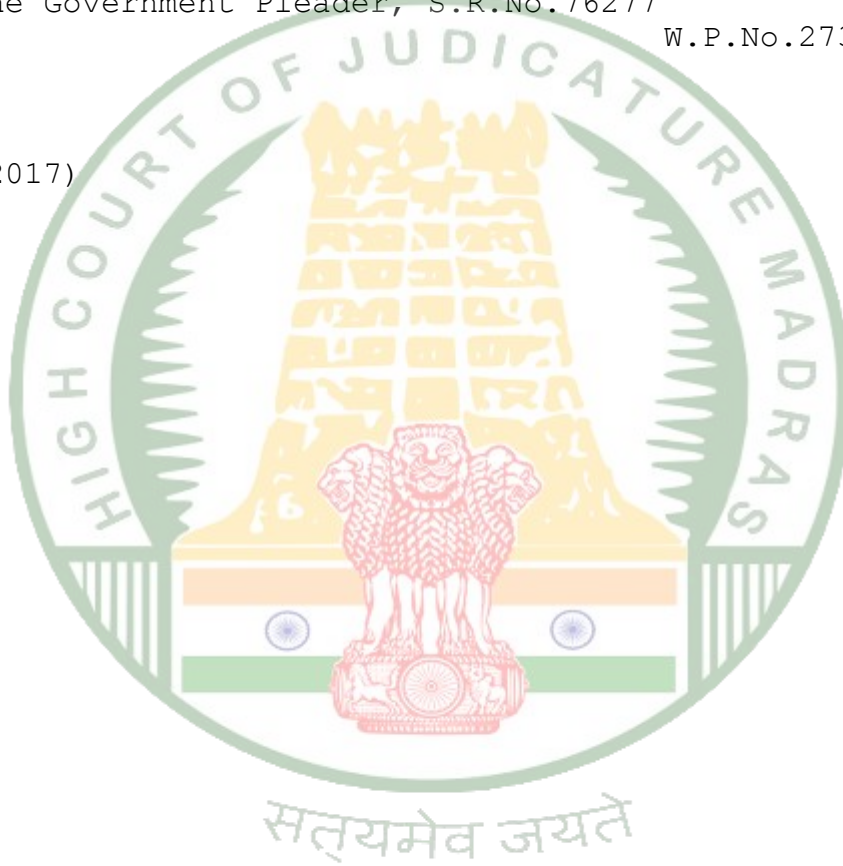
2.The Chief Engineer (General),
Highways & Minor Ports HL 1 Department,
Chepauk, Chennai-5.

+lcc to Mr.M. Muthappan, Advocate, S.R.No.76212

+lcc to the Government Pleader, S.R.No.76277

W.P.No.27365 of 2014

GJ(CO)
CB(20/01/2017)



WEB COPY