

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.11.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SURESH KUMAR

W.P.No.30732 of 2006
& M.P.No. 1 of 2006

K. Iqbal Mohammed

... Petitioner

Vs.

1. The District Forest Officer,
Chengalpattu Division,
Kancheepuram.
2. The Conservator of Forest,
Chennai Circle, DMS Complex,
IIIrd Floor, Teynampet,
Chennai-6.
3. The Additional Principal Chief Conservator
of Forests (Forest Administration)
Office of the Principal Chief Conservator of Forest,
Saidapet, Chennai - 600 15.
4. The State of Tamil Nadu,
rep. by its Secretary to Government,
Forest Department,
Fort St. George,
Chennai - 600 009.

... Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus by calling for the records relating to the proceedings of the third respondent dated 17.06.2005 made in Se.Mu.Anai No.AA1/3796/2004, quash the same and direct the respondents third and fourth to return to the petitioner a sum of Rs.48,605/- which was ordered to be recovered from his pay by the third respondent.

For Petitioner : Mr.K.Rajasekaran

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

ORDER

The prayer in the writ petition is for a writ of certiorarified mandamus calling for the records relating to the proceeding of the third respondent dated 17.06.2005 made in Se.Mu.Anai No.AA1/3796/2004, quash the same and direct the respondents third and fourth, to return to the petitioner a sum of Rs.48,605/- which was ordered to be recovered from his pay by the third respondent.

2. The case of the petitioner is that he was appointed as Forester in the respondents department on 16.02.1973. Thereafter he was promoted as Forest Ranger in the year March 2002 and he has retired from service on 13.11.2005 as Forest Ranger. When the petitioner was working as Forester in Tambaram Section of Tambaram range, a charge memo was issued by the first respondent on 27.08.1998, wherein it was alleged that the petitioner has committed a neglect of duty by not handing over certain stores and stock taken charge from his predecessor one G.Jeevanantam to his successor one V.Sundararaj and thereby causing pecuniary loss to the Government to the tune of Rs. 23,004/-.

3. In this regard actually the charge memo was served on the petitioner on 22.04.1997 and based on which enquiry was conducted and the punishment of stoppage of increment for one year without cumulative effect was imposed on the petitioner. However the respondent has issued one more charge memo for the same mistake alleged to have committed by the petitioner on 27.08.1998. Based on the said charge memo, an order of recovery, dated 02.12.1998 was passed by the first respondent, whereby the first respondent directed the petitioner to pay a sum of Rs. 63,004/-. As against the said order, the petitioner had filed an appeal before the second respondent on 14.01.1999 and the second respondent by proceedings dated 03.8.1999 dismissed the said appeal filed by the petitioner. Thereafter, the petitioner had filed an original application in OA.No.697 of 2000 for redressal of his grievances.

4. Subsequently, the petitioner had filed a review petition on 12.01.2004 as against the order of recovery passed by the first respondent and as confirmed by the second respondent. In the mean time, the petitioner had withdrawn the said original application i.e, OA.No.697 of 2000 filed by him. The said review filed before the third respondent has been considered, and ultimately by the impugned order dated 17.06.2005 the third respondent partly allowed the review, rejecting the remaining claim of the petitioner, whereby the third respondent i.e., the Revisional Authority instead of

recovery of sum of Rs. 63,004/- has directed to recover a sum of Rs. 48,605/- from the petitioner. As against the said impugned order of the third respondent i.e., the Revisional Authority, the petitioner has come out with the present writ petitioner with the prayer aforesaid.

5. Heard both sides.

6. The learned counsel for the petitioner would contend that when the petitioner joined at Tambaram Station at Chengalpattu as Forester on 19.07.1993, his predecessor one G.Jeevanantam did not hand over the actual sandal wood stock and on inspection, the petitioner found that certain trees were felling, and immediately a report was sent by the petitioner to the first respondent on 04.08.1993. Once again the petitioner on 17.09.1993 had reported the first respondent by stating that his predecessor had handed over only cash box B1, B2, cattle permission tickets only and till date no sandal wood and red wood stock were handed over to the petitioner. Once again the petitioner had sent another report dated 27.10.1993, to the Forest Ranger of Chennai - 45 stating that as stated in his earlier complaints, his predecessor had not so far handed over sandal wood and red wood and even the form pertaining to eucoliptus tree cut down, was also not handed over to the petitioner and even the goddow key was not given to him.

7. The learned counsel for the petitioner would contend that, in spite of these factors that his predecessor did not hand over any wood item of sandal wood or red wood and the same was informed to the department, at least by three times by written communication by the petitioner, no action was taken. Ultimately, the petitioner, as stated supra, while the he was relived from the station at Tambaram on 11.09.1996, he had not handed over this sandal wood and red wood stock kept in the goddow to his successor, and only on that basis the charge was framed against the petitioner. Therefore, absolutely the charges framed against the petitioner has no basis, the learned counsel contend.

8. On the other hand, the learned Government Pleader appearing for the respondents would state that initially the charges were framed against the petitioner for not handing over certain stock and the punishment was imposed on the petitioner. Subsequently only, it was noticed that the difference in the those stock of sandal wood and Red wood, would create the loss to the department to the extent of Rs. 63,004/- and therefore, the second charge memo was issued and only after that recovery proceedings were initiated which was confirmed by the Appellate Authority. The Revisional Authority, after considering the claim filed by the petitioner, has reduced the recoverable amount from

Rs.63,004 to Rs.48,605/-. Therefore, the learned Government Pleader submits that the Revisional Authority justifiably arrived at an amount of Rs. 48,605/- to be recovered from the petitioner, as the said loss actually was incurred by the department because of the non-handing over of the wood stock by the petitioner. Therefore the learned Government Pleader requests that the writ petition is liable to be dismissed.

9. This Court has considered the rival submissions made by the parties and the materials available before this Court. On perusal of the aforesaid documents, it is found that the stock of sandal wood and red wood which is mentioned in the impugned order, was actually not handed over to the petitioner, as the same is evident from the several complaints given by the petitioner ie., 04.08.1993, 17.09.1993 and 27.10.1993. But, absolutely there is no discussion or evidence to that effect by the respondents and that aspect has not been taken into account by them.

10. Further, in the revisional order which is impugned herein, at paragraph No.5(2), it is stated that the petitioner had handed over 44.55Kg of sandal wood pieces which were received from his predecessor on 01.09.1996 and it was also found that the petitioner had handed over an excess of sandal wood pieces to his successor. On that basis only, the loss to be occurred to the department was calculated by the revisional authority. When that being the position, the actual calculation of loss said to be sustained by the department, because of the non-handing over of the stock namely, sandal wood and red wood pieces to his successor by the petitioner, has no basis. Absolutely, there is no evidence to state that those stocks were handed over originally to the petitioner at the time of the petitioner taking charge at Tambaram Office.

11. When the specific complaints were made by the petitioner, the authority should have taken action and the findings should have been given by the respondents, before taking proceedings against the petitioner. The respondents have failed to appreciate the said factors i.e., the petitioner could not maintain the stock because of non-handing over of the woods.

12. When the very basis of making the charge against the petitioner is not acceptable this Court finds that there is no plausible reason on the part of the respondents for the said charge, as the petitioner could not be held responsible for the alleged loss, even for a sum of Rs.48,605/-

13. More over, in spite of the non-handing over of the store stock already charge was framed as stated above and the punishment had also been imposed and the petitioner has also

undergone the same. Therefore, the same set of charges cannot be issued once again.

14. Therefore, this Court without any hesitation can interfere with the impugned order and accordingly, the impugned order is set aside. Since, the petitioner has already retired from service on 13.11.2005, an amount of Rs. 48,605/-, which was erroneously recovered from the petitioner, shall be refunded to the petitioner within a period of two months from the date of receipt of a copy of this Order.

15. With these directions the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The District Forest Officer,
Chengalpattu Division,
Kancheepuram.
2. The Conservator of Forest,
Chennai Circle, DMS Complex,
IIIrd Floor, Teynampet,
Chennai-6.
3. The Additional Principal Chief Conservator
of Forests (Forest Administration)
Office of the Principal Chief Conservator of Forest,
Saidapet, Chennai - 600 15.
4. The Secretary to Government,
State of Tamil Nadu,
Forest Department,
Fort St. George,
Chennai - 600 009.

+1cc to Mr.K.Rajasekaran, Advocate, S.R.No.64317

+1cc to the Special Government Pleader(Forest), S.R.No.64095

W.P.No.30732 of 2006

& M.P.No. 1 of 2006

GMI (CO)

CA(20/12/2016)