

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2016

CORAM:

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.675 of 2015

A.Ekambaram

... Petitioner

vs.

The Joint Commissioner,
Civil Supplies and Consumer Protection Department,
Chepauk,
Chennai 600 005.

... Respondent

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of certiorarified mandamus to call for the records relating to the impugned proceedings issued by the respondent in Na.Ta.No.A3/12237/2014, dated 28.10.2014 and to quash the same and consequently promote the petitioner to the post of Administrative Officer by including his name in the panel for the year 2013-14 with all consequential and other attendant benefits.

For Petitioner : Mr.G.Sankaran

For Respondent : Mr.K.Dhananjayan,
Special Government Pleader

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O R D E R

The petitioner has come up with this Writ Petition seeking to quash the the impugned proceedings issued by the respondent in Na.Ka.No.A3/12237/2014, dated 28.10.2014 and for a consequential direction to promote him to the post of Administrative Officer by including his name in the panel for the year 2013-14 with all consequential and other attendant benefits.

2. According to the petitioner, he was initially appointed as Junior Assistant in Civil Supplies and Consumer Protection Department in the year 1983. Subsequently, he was promoted to the post of Superintendent in the year 2008 based on his seniority and eligibility. He was posted as Superintendent in the Flying Squad Wing of the office of the Commissioner of Civil Supplies, Chennai in October 2010 and he continued to work in the said post till 13.09.2013. Thereafter, he was posted as Superintendent in CCS-G section in the office

of the Commissioner of Civil Supplies for a period of one month. Subsequently, he was transferred and posted as Superintendent in the office of the Assistant Commissioner of Civil Supplies, Avadi Zone on 17.09.2013, where he worked till he was transferred to Thiruvottiyur Zone on 16.06.2014.

3. While the petitioner was working in the office of the Commissioner of Civil Supplies between 2010 and 2013, a complaint was made regarding bogus Ration Card and the same was enquired into by the Assistant Commissioner, Royapuram, who submitted a Report on 13.12.2011. Since it was stated in the Report submitted by the Assistant Commissioner that certain Ration Cards have been left out for verification, the Deputy Commissioner-II, Chennai issued proceedings dated 30.12.2011 to take action against the bogus Ration Cards prevailing in Tondiarpet and Korukkupet areas based on the complaint given by the individuals and the report submitted by the Assistant Commissioner, Royapuram. The said proceedings dated 30.12.2011 issued by the Deputy Commissioner was actually received by the petitioner as Superintendent in the Flying Squad only on 19.02.2012. The copy of the complaint given by the individuals and the copy of the Report of the Assistant Commissioner, Royapuram dated 13.12.2011 were not furnished along with the proceedings dated 30.12.2011. Since the petitioner was called upon to take action based on the complaint and the Report of the Assistant Commissioner, the petitioner submitted an application to the Deputy Commissioner-II along with other members, seeking to furnish the copies of complaint and the Report of the Assistant Commissioner as early as on 22.02.2012, to enable him to proceed further. However, the copies of Report as well as the complaint were not furnished to the petitioner in spite of several representations.

4. Subsequently, the petitioner was transferred from the office of the Commissioner of Civil Supplies on 13.09.2013 and thereafter, transferred to Avadi Zone on 17.11.2013. While so, in the year 2014, when the petitioner was working in the office of the Assistant Commissioner of Civil Supplies, Thiruvottiyur Zone, he was issued with a Memorandum dated 11.06.2014 calling upon him to furnish the report relating to verification of bogus Family Ration Cards as per the earlier communication of the Deputy Commissioner, dated 30.12.2011. Immediately, on receipt of the same, the petitioner appeared before the Joint Commissioner of Civil Supplies and informed that he was not furnished with details of the complaint and the Report of the Assistant Commissioner in spite of request. So far as the other Squad members are concerned, one member has been transferred and another member has retired from service. The petitioner further informed that he was transferred from the post of Superintendent of the Squad as early as on 13.09.2013.

5. In the said circumstances, the petitioner was issued with an order dated 16.06.2014 placing him under suspension in contemplation of the charges. Subsequently, he was issued with a charge memo as per the proceedings of the respondent dated 18.06.2014 on four counts relating to the aspect that while he was working as Superintendent in the Flying Squad in the office of the Commissioner of Civil Supplies, Chennai, he failed to submit a report on verification of bogus Ration Cards based on the complaint and report submitted by the Assistant Commissioner, Royapuram. As against the charge memo, the petitioner submitted a detailed representation by referring to the fact that he was not furnished with the copies of complaint as well as the Report of the Assistant Commissioner, dated 30.12.2011 and in spite of his subsequent request and representation, he was transferred from the Squad.

6. Pursuant thereto, an Enquiry Officer was appointed and enquiry was conducted in which the petitioner participated and produced all the details. After conducting enquiry, the Enquiry Officer submitted a Report dated 12.08.2014 holding that all the charges framed against the petitioner are not proved. However, subsequently, the respondent issued the impugned proceedings in Na.Ta.No.A1/12237/2014, dated 28.10.2014 differing with the views of Enquiry Officer and imposing punishment of stoppage of increment for a period of six months with cumulative effect.

7. It is the case of the petitioner that the impugned order imposing punishment against the petitioner came to be issued by the respondent in violation of the principles of natural justice and the procedure established by law. According to the petitioner, in the case on hand, the Enquiry Report has been submitted by the Enquiry Officer by holding that the charges are held not proved against the petitioner. Hence, challenging the impugned order, the petitioner has approached this Court.

8. When the matter is taken up for consideration, learned counsel for the petitioner relying upon a Division Bench judgment of this Court in the case of M.Mohandas vs. State Bank of India, rep. by Deputy General Manager & another reported in 2012 (1) LLN 589 (DB) (Mad.) submitted that if the Disciplinary Authority is dissatisfied with the findings recorded by the Enquiry Officer and proposes to arrive at a different conclusion, he should indicate tentative reasons to the delinquent and the delinquent should be given an opportunity to submit his version with respect to the tentative findings recorded by the Disciplinary Authority. Therefore, it is the contention of the learned counsel for the petitioner that the impugned order is passed against the ratio laid down by the Hon'ble Supreme Court as well as this Court.

9. Per contra, the learned Special Government Pleader appearing for the respondents by filing a counter affidavit, submitted that the petitioner was directed to enquire into the complaints and on the reports of the Assistant Commissioner, Royapuram Zone and though the petitioner was working in the Flying Squad till September-October 2013, he was not bothered to submit a Report even after a lapse of almost two years from the date of receipt of the order. Hence, the petitioner was directed by the respondent to enquire into the complaint and submit a Report on 12.06.2014 at 4.00 p.m. without fail, vide Memorandum C.Spl/20373/2011, dated 09.06.2014. However, the petitioner did not submit the Report on 12.06.2014 as directed by the respondent. Since he blatantly violated the orders of the respondent, a Charge Memo dated 18.06.2014 was served on him and the petitioner submitted his explanation. Though the petitioner was given an opportunity to put forth his grievances, he did not utilize the same.

10. Heard the learned counsel on either side and perused the material documents available on record.

11. It is the main grievances of the petitioner that on the date of personal hearing, the petitioner was neither furnished with the copy of the Report of the Enquiry Officer nor called to offer explanation with reference to the findings of the Enquiry Officer. But, the respondent issued the impugned order dated 28.10.2014 imposing punishment of stoppage of increment for a period of six months with cumulative effect. Thereafter only, the petitioner came to know that the Enquiry Officer has given finding to the effect that the charges are not proved; whereas the respondent proceeded to pass orders imposing the punishment by differing with the findings of the Enquiry Officer in the report unilaterally, without providing any opportunity to him. Therefore, according to the petitioner, the impugned order passed by the respondent is against the statutory Rules as well as the ratio laid down by the Hon'ble Supreme Court in various decisions.

12. However, it was admitted fact that in the present case, before disagreeing with the view taken by the Enquiry Officer, no show cause notice was issued by the Disciplinary Authority to the petitioner by assigning tentative reasons for differing with the findings of the Enquiry Officer. In this regard, a reference could be placed in the decision of the Hon'ble Supreme Court in the case of Lav Nigam v. Chairman & MD. ITI Ltd and Another [(2006) 9 SCC 440], wherein it has been held as follows:-

"11. In Punjab National Bank v. Kunj Behari Misra [(1998) 7 SCC 84 : 1998 SCC (L&S) 1783] 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."

From the dictum laid down in the above cited decision, it is clear that whenever the disciplinary authority disagrees with the findings of the enquiry officer, 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. In the case on hand, without following the above procedures, straight away the impugned orders came to be passed and hence, it is liable to be vitiated.

13. For the foregoing reason, the impugned order dated 28.10.2014 passed by the respondent is quashed and the matter is remitted to the respondent for fresh consideration. The respondent is directed to give notice to the petitioner, setting out his tentative reasons for disagreement with the findings in the report of the Enquiry Officer and thereafter, to pass an appropriate order, by affording an opportunity to the petitioner to submit his version with respect to the tentative findings

recorded by the respondent/Disciplinary Authority, in the light of the decision in Lav Nigam v. Chairman & MD. ITI Ltd and Another [(2006) 9 SCC 440].

This Writ Petition is allowed to the extent indicated above. No costs. Consequently, connected M.P.No.1 of 2015 is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

aeb/ssv

To:
The Joint Commissioner,
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Chepauk,
Chennai 600 005.

+1 cc to Mr.G.Sankaran Advocate sr 70895
+1 cc to Government Pleader sr 71048

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