

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2016

CORAM

THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI
AND

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.A.No.124 of 2016

M.Shankar

... Appellant/Petitioner

Vs.

1. Chennai Metropolitan Water Supply
And Sewerage Board,
Rep. By its Employment Committee,
No.1, Pumping Station Road,
Chintadripet, Chennai 600 002.
2. Managing Director,
Chennai Metropolitan Water Supply
And Sewerage Board,
No.1, Pumping Station Road,
Chintadripet, Chennai 600 002.
3. General Manager,
Chennai Metropolitan Water Supply
And Sewerage Board,
No.1, Pumping Station Road,
Chintadripet, Chennai 600 002. ... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent,
against the order of this Court dated 18.04.2013 in W.P.No.15132
of 2003.

Writ Petition is filed under Article 226 of the Constitution
of India to India for the issuance of a Writ of Certiorari to
call for the concerned records from the respondents, quash the
charge sheet issued by the 3rd respondent bearing
Proc.No.CMWSSB/P&A/VC2/36373/2002 dated 05.09.2002 and the order
of the 2nd respondent bearing ProcNo.CMWSSB/P&A/VC2/36373/2002
dated 7.5.2003 reducing the rank of the petitioner from the post
of Depot Manager to Record Assistant for a period of 5 years and
fixing his pay in the post of Record Assistant at the minimum of
time scale in that post as illegal, arbitrary, without
jurisdiction and in violation of principles of natural justice.

For Appellant : Mr.Balan Haridas

For Respondents : Mr.N.Ramesh

JUDGMENT

(Judgment of the Court was delivered by M.VENUGOPAL, J.)

The Appellant has focussed the present intra-Court Writ Appeal as against the order dated 18.04.2013 in W.P.No.15132 of 2003 passed by the Learned Single Judge.

2.The Learned Single Judge, while passing the order, on 18.04.2013 in W.P.No.15132 of 2003 [filed by the Appellant/Petitioner], at paragraphs 9 to 12, had observed the following:

"9.Now coming to the third charge which contains two parts, namely, (i) that in respect of premises No.25, Kavoor Vaithyanathan Street, Chintadripet which comes under 'Metered Partly Commercial Category', he has failed to record the periodical meter readings of the above said premises since the installation of water meter on 4.6.2001 and has taken the meter readings only on 24.7.2002 and however, during the period from June 2001 to July 2002, he has recorded imaginary readings in the meter ledger maintained in the office without actually visiting the above premises thereby failed in his duties as Depot Manager and (ii) that upon the meter reading recorded on 24.7.2002, the petitioner has raised the water supply charge bills under wrong classification i.e. under commercial category in lieu of partly commercial category and also excessively claimed the bill for the month of July, 2002 recording the consumption as 38170 litres instead of 3817 litres thereby causing harassment to the consumer and tarnishing the image of the Board are concerned, it has been held by the Enquiry Officer that this charge may not be insisted in the light of the other two charges were not proved. A reading of the Enquiry Officer's report would further go to show that the ingredients of the third charge has been proved, but the Enquiry Officer has concluded that this can be

termed as negligence on the part of the Depot Manager as he failed to correct the consumer card after clarification obtained by him from the Area Office. Therefore, his finding is an unassailable one.

10. Now coming to the punishment imposed on the petitioner, namely, reduction in rank from the post of Depot Manager to Record Assistant for a period of 5 years and fixation of his pay at the minimum of the time scale of Record Assistant Post, considering the facts and circumstances of the matter, I am of the view that the same is not in accordance with law and it is a severe punishment.

11. Now the learned Counsel for the respondents would submit that the petitioner has already obtained an order of interim stay on 20.5.2003 from this Court and therefore, the impugned order has not been implemented so far by the respondents.

12. In view of the above, the 2nd respondent is directed to pass an order of two years increments cut without cumulative effect to the petitioner in the post of Depot Manager.

and disposed of the Writ Petition.

3. Assailing the correctness, validity and legality of the impugned order passed by the Learned Single Judge in W.P.No.15132 of 2003 dated 18.04.2013, the Appellant/Petitioner has preferred the instant Writ Appeal primarily contending that the Enquiry Officer found that the Charge Nos.1 and 2 levelled against the Appellant/Petitioner were not proved. Further, as regards the 3rd Charge, the Enquiry Officer had rendered a finding that the same was not proved and after saying so, he had merely stated that the charge of negligence was proved and that he is a hardworking employee etc. and that since Charge Nos.1 and 2 were not proved, the 3rd Charge may not be insisted.

4. Advancing his arguments, the Learned Counsel for the Appellant submits that the 3rd Charge levelled against the Appellant/ Petitioner was framed in terms of Regulation 6(23) and 6(38) of the Chennai Metropolitan Water Supply and Sewerage Board General Service Regulations, 1978 which does not relate to negligence. As such, the findings rendered by the Enquiry Officer as if the charge of negligence was proved in respect of 3rd Charge is not correct.

5.Further, it is the contention of the Learned Counsel for the Appellant that an Enquiry Officer cannot hold the Appellant/ Petitioner guilty of charge which was not levelled against him.

6.Proceeding further, the Learned Counsel for the Appellant submits that when all the charges levelled against the Appellant/ Petitioner were not proved, the question of imposing any punishment does not arise. Resultantly, the Learned Single Judge should have allowed the Writ Petition in toto.

7.In response, the Learned Counsel for the Respondents submits that in Memo No.P&A/VC2/36373/2002 dated 05.09.2002, as against the Appellant/Petitioner charges were framed for certain irregularities noticed under Regulation 10(2) of Chennai Metro Water Supply and Sewerage Board General Service Regulations, 1978. As a matter of fact, the Appellant/Petitioner had furnished his explanation denying the charges.

8.At this stage, it is represented on behalf of the Respondents that an Enquiry Officer was appointed in the cadre of Executive Engineer on 17.10.2002 and that the Enquiry Officer submitted his findings on 18.12.2002, to the effect that Charges 1 and 2 were not proved and the Charge No.3 was proved.

9.The Learned Counsel for the Respondents brings it to the notice of this Court that the Report of the Enquiry Officer was communicated to the Appellant on 10.01.2003 and he had submitted his Defence Statement on 13.01.2013. Indeed, the Appellant was reinstated into service on 11.02.2003. In fact, the Appellant's case was placed before the Employment Committee and on examination of the facts and documents, it awarded the punishment to the Appellant in respect of 3rd Charge.

10.The Learned Counsel for the Respondents emphatically submits that the punishment of reversion as Record Assistant from Depot Manager as per order dated 07.05.2003 imposed by the Competent Authority upon the Appellant, is in order. Also, it comes to be known that the Disciplinary Authority had resolved to reduce the rank of the Appellant/Delinquent from Depot Manager to Record Assistant for a period of five years and that his pay in the Record Assistant should be fixed at the minimum of the time scale of that post and accordingly, he was awarded with the said punishment.

11.The categorical plea of the Respondents is that the Enquiry Officer, in his final orders dated 07.05.2003, had rendered a finding that the Appellant/Depot Manager failed to verify the meter reading though the consumption was recorded as

average by his predecessor and further that, while recording the meter reading subsequently, there was some confusion in recording the actual consumption which was stated to have been informed to the consumer by him. Besides these, the entry in the consumer card and actual bill differed and therefore, the Enquiry Officer in his findings had held that the Appellant's negligence was proved as he failed to correct the consumer card after clarification was obtained from Area-VI.

12. In short, it is the stand of the Respondents that the Enquiry Officer found that the 3rd Charge was proved and the same being consequently covered in terms of the Regulation 6(23) and 6(38) of the Chennai Metropolitan Water Supply and Sewerage Board General Service Regulations, 1978.

13. In the instant case, it is to be pointed out that the Learned Single Judge, while disposing of the Writ Petition, had, inter alia, opined that the finding of the Enquiry Officer in regard to the 3rd Charge was an unassailable one. Added further, he also observed that the imposition of punishment on the Appellant viz., reduction in rank from the post of Depot Manager to Record Assistant for a period of five years etc. was not in accordance with law and it is a severe one and directed the 2nd Respondent to pass an order of two years increment cut without cumulative effect on the Appellant in the post of Depot Manager.

14. At this juncture, a cursory perusal of the Enquiry Officer's Report dated 18.12.2002 relating to 3rd Charge points out that the antecedents and the performance of the Depot Manager (Appellant) reveals that he is a hard worker and raised the revenue collection from 38% to 75% during the tenure of four months as Depot Manager-79. Further, the improvements in the revenue collection indicate that the Depot Manager (Appellant) is efficient in his duties. Furthermore, the failure on the part of the Depot Manager (Appellant) was not reading the meter during the given interval and he had followed the record of his office predecessor under assumption that the meter was not functioning etc. and therefore, the 3rd charge may not be insisted in the light of other two charges were not proved.

15. It is to be noted that the scope of 'Judicial Review' is limited and that the power of Judicial Review is to be exercised by a Court of Law with a view to ensure that a person receives a fair treatment. There is no two opinion of the fact that the 'Judicial Review' is not directed against a decision, but it is directed against the 'Decision Making Process' as per decision of the Hon'ble Supreme Court in Union of India V. Upendrasingh reported in 1994 (3) SCC 357.

16.It is to be remembered that the 'Judicial Review' will be competent when the punishment is irrational e.g. in outrageous defiance of logic. Ordinarily, the punishment imposed by a disciplinary authority should not be interfered with by High Court or a Tribunal except in an appropriate case by weighing all factors like nature of charges proved against the past conduct, penalty imposed earlier, nature of duties assigned etc.

17.That apart, notwithstanding the fact that the choice of quantum of punishment is within the domain and discretion of authorities, yet, it must suit the misconduct/offence and it should not be vindictive or unduly harsh nor so disproportionate to the act committed so as to shock the subjective conscience of a Court of Law, as opined by this Court.

18.Indeed, if an administrative action is tainted with illegality, irrationality and procedural impropriety, a Court of Law can certainly interfere. The other potential ground is proportionality in matters of awarding penalties, the principles of 'Proportionality' play a primordial role, in the considered opinion of this Court. The disproportionate penalty would be violative of Article 14 of the Constitution of India. After all, the term 'Proportionality' is not effected a facet of the principle of reasonableness.

19.At this stage, this Court aptly refers to the Book on 'Administrative Law' (WADE & Forsyth) 7th Edition Page 403, wherein it is mentioned that "Where attempts have been made to rely upon proportionality, Judges have tended to equate it with reasonableness".

20.As far as the present case is concerned, this Court is of the considered view that for the proved 3rd charge, the punishment imposed by the Managing Director, Chennai Metropolitan Water Supply and Sewerage Board, Chennai, through his proceedings in Pro.No. CMWSSB/P&A/VC2/36373/2002 dated 07.05.2003 upon the Appellant by reducing his rank from Depot Manager to Record Assistant for a period of five years etc. and the same being reduced by the Learned Single Judge, while disposing of the Writ Petition, by directing the 2nd Respondent to pass an order of two years increments cut without cumulative effect on the Appellant/Petitioner in the post of Depot Manager are highly excessive, unduly harsh, disproportionate and not a fair and rational one, based on the facts and circumstances of the present case, which float on the surface.

21.In this connection, it is not out of place for this Court to make a pertinent mention that the Enquiry Officer, in his Report, had characterised the lapse of the Appellant in regard

to the 3rd Charge as one of 'negligence' and therefore, his negligence was proved. Viewed in that perspective, this Court, to prevent an aberration of Justice and to promote substantial cause of Justice, interferes with the orders of the Learned Single Judge in W.P.No.15132 of 2003 and the order of the 2nd Respondent/Managing Director, Chennai dated 07.05.2003 and set aside the same. Consequently, the Writ Appeal succeeds.

22.In fine, the Writ Appeal is allowed, leaving the parties to bear their own costs. The Respondents are directed to confer all benefits to the Appellant consequent upon the allowing of present Writ Appeal by this Court, within a period of six weeks from the date of receipt of a copy of this Judgment. Before parting with the case, this Court directs the Appellant/Petitioner to turn a new leaf and to be more careful in future while discharging his duties and to act with prudent care and caution, thereby not to give room for any act of omission and commission as the case may be.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

Sgl

To

1. Chennai Metropolitan Water Supply
And Sewerage Board,
Rep. By its Employment Committee,
No.1, Pumping Station Road,
Chintadripet, Chennai 600 002.
2. Managing Director,
Chennai Metropolitan Water Supply
And Sewerage Board,
No.1, Pumping Station Road,
Chintadripet, Chennai 600 002.
3. General Manager,
Chennai Metropolitan Water Supply
And Sewerage Board,
No.1, Pumping Station Road,
Chintadripet, Chennai 600 002.

W.A.No.124 of 2016

VGI (CO)
CA(15/04/2016)