

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.31403 of 2016

and WMP.No.27253 of 2016

V.Subramanian

.. Petitioner

vs.

1.The Principal Chief Conservator of Forests,
Head of Forest Force,
No.1, Genies Road,
Panagal Maligai,
Saidapet, Chennai-15.

2.The Conservator of Forests,
Dharmapuri Forest Region,
Dharmapuri,
Dharmapuri District.

3.The Divisional Forest Officer,
Hosur Forest Division,
Hosur, Krishnagiri District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the impugned order passed by the first respondent dated 13.02.2016 (which was communicated only on 12.06.2016) vide in Se.Mu.Order No.Aa Aa2/4698/2015-2 by confirming the order of 2nd respondent dated 06.08.2014, vide Se.Mu. Order No.Po2/5804/2014 by imposing a punishment of postponement of increment for a period of one year, which shall be affecting the pension of the petitioner and quash the same, consequently direct respondents to promote the petitioner as Forest Range Officer on par with his batch mates, provide all service and monetary benefits.

For Petitioner : Mr.M.R.Jothimanian

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

O R D E R

By consent, this Writ Petition is taken up for final disposal.

2. The petitioner was appointed as Forest Guard by the third respondent on 24.03.1997 by way of direct recruitment in accordance with the Tamil Nadu Forest Subordinate Service Rules and posted as Forest Guard at Marandahalli Range of the third respondent division. The petitioner was subsequently promoted as Forester on 07.09.2009 and posted at Sivagangai Forest Division and thereafter, he was transferred to IFF, Krishnagiri Forest Division and again transferred and posted as Forester at Marandahalli Section, Thenkanikottai Forest Range of the third respondent Division on 06.03.2013 and he was working as Forester in the said division till 10.06.2015. The petitioner would state that he is discharging his duties honestly, sincerely and to the satisfaction of the superior officers.

3. The petitioner would further state that on 21.01.2014, an inspection was conducted by him along with other Forest Guards and Watchers and found that an elephant was gunshot down and tusks were removed and immediately, information was given to the Forest Range Officer and thereafter, a report was submitted to the third respondent and a criminal case was registered in W.L.O.R.No.1 of 2014 and the concerned accused persons were arrested and remanded to judicial custody and the contraband, namely tusks were also recovered. Despite the fact that he has performed his duty diligently, to his shock and surprise, he was issued with a charge memo dated 14.02.2014 under Rule 17(b) of the Tamil Nadu Subordinate Services (Discipline & Appeal) Rules, alleging negligence of duty in not taking proper beat/inspection which resulted in death of a male elephant and stealing of tusks.

4. The petitioner has submitted written statement of defence stating among other things that he is in-charge of Marandahalli North Beat 3277.18 hectares, Marandahalli South Beat 2499.37 hectares, Kalikattam Beat 2409.08 hectares, Kembakari Beat 1592.6 hectares, Kodakarai Beat 1651.30 hectares, totalling 11529.53 hectares, which is equivalent to one Forest Range. The petitioner would further state that in respect of beats, he has given necessary instructions to the subordinates and performed duties in a diligent manner and would further add that in terms of the Circular of the District Forest Officer, Hosur dated 07.01.2014, the places which are under elephant usage were inspected and unfortunately, a male elephant was shot in a place which comes within the jurisdiction of Marandahalli South Beat on 21.01.2014 and subsequently, accused was apprehended and tusks were removed and taking into consideration the family and other facts and circumstances, prays for exoneration of the charges.

5. The Enquiry Officer, after taking note of the materials placed before it, found that the petitioner has not filled up anything in the questionnaire form and admitted

about the incident and on receipt of the information about the death of a male elephant around 07.30 a.m on 21.01.2014, they proceeded to the spot and despite in additional charge of the beat, he has failed to perform the duties diligently and therefore, charges framed against the petitioner was proved. The petitioner was furnished with a copy of the Enquiry Report and he has also offered explanation reiterating his earlier stand and once again prayed for exoneration of the charges.

6. The second respondent/Disciplinary Authority, vide proceedings dated 06.08.2014, found that the charges framed against the petitioner was proved to the guilt and therefore, imposed the punishment of postponement of increment for a period of one year with cumulative effect and also indicated that it will affect his pension also. The petitioner, challenging the legality of the said punishment, filed an appeal before the first respondent/Appellate Authority, who, on going through the materials and taking note of the fact that the petitioner has failed to fill up the questionnaire form and since the Enquiry Officer held that the charges framed are proved and that the petitioner has admitted the incident, confirmed the order of the second respondent/Disciplinary Authority and challenging the legality of the same, the present writ petition has been filed.

7. Mr.M.R.Jothimanian, learned counsel appearing for the petitioner has drawn the attention of this Court to the Tamil Nadu Forest Subordinate Service Rules and would submit that Rule 3 speaks about the Appointing Authority and the petitioner falls under Category 2 and therefore, the Appointing Authority is the District Forest Officer and as such, the District Forest Officer is the competent authority to impose punishment and not the second respondent. The learned counsel appearing for the petitioner, on merits of the case, would contend that admittedly the petitioner is in-charge of vast extent of lands and due to shortage of staff, it is impossible to detect any untoward incident and immediately on the death of a male elephant and stealing of tusks, he has taken action which resulted in criminal complaint and nabbing of the accused and taking into consideration the petitioner's past record of service and that he is also at the verge of promotion as Forest Ranger and therefore, the impugned order of the Disciplinary Authority, as confirmed by the Appellate Authority, may be set aside and prays for appropriate orders.

8. Per contra, Mr.N.Inbanathan, learned Government Advocate (Forest) has drawn the attention of this Court to the counter affidavit of the third respondent and would submit that though the petitioner was afforded opportunity to fill up the questionnaire form and thereby refute the allegations, he has failed to do so and having admitted the death of an elephant and stealing of tusks, the petitioner has not offered

any tenable reason and therefore, the Disciplinary Authority has rightly imposed the punishment of postponement of increment for a period of one year with cumulative effect and the Appellate Authority, on an independent application of mind, has confirmed the order of punishment passed by the Disciplinary Authority and therefore, this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, may not interfere with the concurrent finding and prays for dismissal of this writ petition.

9. This Court paid its best attention to the rival submissions and also perused the entire materials placed before it.

10. The fact remain that a male elephant was shot dead and tusks were found to be stolen and on detection, a police complaint was lodged and a criminal case was also registered and the stolen tusks were also recovered. It is also not in serious dispute that the petitioner is in-charge of 11529.53 hectacres totally and it is the submission of the learned counsel appearing for the petitioner that with limited staff strength, it is extremely difficult to conduct inspection of the entire area and on coming to know about the death of a male elephant and stealing of tusks, immediate action was taken and the higher officials were also informed and a police complaint was also lodged and accused were also apprehended and it resulted in seizure of tusks also.

11. A perusal of the Enquiry Report would indicate that the Enquiry Officer primarily proceeded on the footing that the petitioner/delinquent has admitted his guilt. In the considered opinion of the Court, admission on the part of the petitioner pertains to death of a male elephant and stealing of tusks and he has not admitted his delinquency. A perusal of the charge memo would also indicate that the report of the Assistant Conservator of Forests has been relied upon and it has not been marked as an exhibit and from the Report of the Enquiry Officer, this Court is not in a position to know the contents of the statement of the said official. Simply because the petitioner did not fill up the questionnaire form, it will not automatically lead to the inference that the petitioner is guilty of the charges.

12. It is also a well settled position of law that even if the delinquent remained exparte, procedural formalities have to be gone into and the findings of the Enquiry Officer should also be based on the evidence adduced during enquiry and the oral and documentary evidence should be weighed and thereafter, finding should be rendered. However, the Enquiry Officer has found that the charges framed against the petitioner have been proved and the second respondent, namely the Disciplinary Authority has imposed the punishment of

postponement of increment for a period of one year with cumulative effect and it is also having an effect on pension.

13. As regard the submission of the learned counsel for the petitioner that the second respondent is not competent to impose punishment, this Court is of the view that the said submission merits rejection for the reason that as per Tamil Nadu Forest Subordinate Service Rules, District Forest Officer is the competent to impose punishment. The petitioner, challenging the legality of the punishment imposed by the Disciplinary Authority, filed an appeal before the first respondent/Appellate Authority.

14. Therefore, the incidental question arises for consideration is whether the Appellate Authority has given disposal of the appeal in accordance with the relevant Rules or not ?

15. Rule 23 of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, deals with power and procedure of the Appellate Authority and it is relevant to extract the same:

23. (1) In the case of an appeal against an order imposing any penalty specified in rule 8 or 9, the appellate authority shall consider--
- (a) whether the facts on which the order was based have been established;
 - (b) whether the facts established afford sufficient ground for taking action; and
 - (c) whether the penalty is excessive, adequate or inadequate and pass orders--
 - (i) confirming, enhancing, reducing, or setting aside the penalty; or
 - (ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case ;

Provided that --

(i) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (iv), (v)(c), (vi), (vii) and (viii) of rule 8 and an inquiry under sub-rule (b) of rule 17 has not already been held in the case, the appellate authority shall, subject to the provisions of sub-rule (c) of rule 17, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of sub-rule (b) of rule 17 and thereafter, on a consideration of the proceedings of such inquiry make such orders as it may deem fit;

(ii) if the enhanced penalty which the

Appellate Authority proposes to impose is one of the penalties specified in clauses (iv) (v) (c), (vi), (vii) and (viii) of Rule 8 and an inquiry under sub-rule (b) of Rule 17 has already been held in the case, the Appellate Authority shall, after giving the appellant a reasonable opportunity of making representation against the penalty proposed on the basis of the evidence adduced during the inquiry, make such orders as it may deem fit; and

(iii) no order imposing an enhance penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of sub-rule (a) of Rule 17 of making representation against such enhanced penalty.

(2) Any error or defect in the procedure followed in imposing a penalty may be disregarded by the Appellate Authority if such Authority considers, for reasons to be recorded in writing, that error or defect was not material and has neither cause a injustice to the person concerned nor affected the decision of the case."

16. It is also a well settled position of law that the Appellate Authority must deal with the points raised in the appeal and pass a speaking order. A perusal of the memorandum of appeal as well as the impugned order passed by the Appellate Authority would disclose that the Appellate Authority has not independently applied his mind to the materials placed before it and merely confirmed the findings rendered by the Disciplinary Authority, once again taking into consideration of the fact of non-filing up of the questionnaire form by the petitioner. Therefore, in the considered opinion of the Court, disposal of the appeal by the Appellate Authority is not satisfactory and therefore, this Court inclines to remand the matter for fresh consideration and adjudication.

17. At this juncture, the learned counsel appearing for the petitioner pointed out that the punishment imposed on the petitioner has already been over and since it is also having the effect on pension and taking into consideration of the fact that the petitioner is aged about 50 years and also expecting further promotion as Forest Ranger, some leniency in punishment may be shown.

18. Heard the submissions of Mr.N.Inbanathan, Government Advocate (Forest) appearing for the respondents also.

19. This Court, in the light of the above findings is inclined to remand the matter to the Appellate Authority/First Respondent, is of the view that it may take some time for disposal of the appeal and considering the fact that the petitioner is at the verge of promotion and in the light of the infirmities pointed out, is of the view that the order of punishment passed by the Disciplinary Authority, as confirmed by the Appellate Authority, requires modification.

20. In the result, this Writ petition is partly allowed and the impugned order of punishment passed by the second respondent dated 06.08.2014 in Se.Mu. Order No.Po2/5804/2014, as confirmed by the first respondent dated 13.02.2016 in Se.Mu.Order No.Aa Aa2/4698/2015-2 is modified and the punishment imposed on the petitioner is modified to one of postponement of increment for a period of one year without cumulative effect and it shall not have the effect on the pensionary benefits. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

jvm

To

- 1.The Principal Chief Conservator of Forests,
Head of Forest Force,
No.1, Genies Road,
Panagal Maligai,
Saidapet, Chennai-15.
- 2.The Conservator of Forests,
Dharmapuri Forest Region,
Dharmapuri, Dharmapuri District.
- 3.The Divisional Forest Officer,
Hosur Forest Division,
Hosur, Krishnagiri District.

+1cc to M/s M.R.Jothimanian, Advocate Sr.72423
+2cc to Special Government Pleader Sr.72450 & 61019

W.P.No.31403 of 2016

NM(CO)
RVR 06/01/2017