BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 17.08.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Writ Petition(MD)No.15076 of 2015
and
M.P(MD)Nos.1 to 4 of 2015
and
W.M.P(MD)No.11026 of 2016

P.Manimegalai .. Petitioner

Vs.

1.The Government of Tamil Nadu,
rep by its Secretary to Government,
Revenue Department,
Secretariat, Chennai 600 009.

2.The Additional Chief Secretary,
Commissioner of Revenue Administration,
Chepauk, Chennai 600 005.

3.The District Collector,
Madurai District, Madurai 625 020

4.The District Revenue Officer,
Madurai District, Madurai 625 020

5.The Revenue Divisional Officer,
Madurai Division, Madurai 625 020 .. Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus and call for the records relating to the order Na.Ka.No.Pani.3(2)/22220/2013 dated 12.11.2013 passed by the 2nd Respondent and further G.O(2D) No. 1048 Revenu (Pani.4(1)) Department dated 27.11.2014 passed by the 1st respondent and quash the same and consequently directing the Respondent to grant all the service benefits regular promotion as Tahsildar and monetary benefits to the petitioner within a time limit to be fixed by this Court.

For Petitioner : Mr.D.Selvam
for Mr.R.M.Makesh Kumaravel

For Respondents : Mr.M.Murugan,
Government Advocate.

ORDER

The petitioner herein was subjected to disciplinary proceedings pursuant to a charge memo containing five charges, issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, calling upon her to submit explanation on the charges. On receipt of the same, the petitioner, who was working as Deputy Tahsildar, Madurai North Taluk, submitted a detailed explanation on 29.05.2012, denying all the charges. The Disciplinary Authority, not satisfied with the explanation offered by the petitioner, appointed an Enquiry Officer who, in turn, after completing the enquiry, submitted a report on 03.09.2012, finding her "not guilty" of any of the charges. While so, the District Collector, who is the Disciplinary Authority, without differing from the view taken by the Enquiry Officer and even without calling for any explanation over the said report, issued another charge memo containing two more charges and called upon the petitioner to submit her explanation on 29.10.2012. Interestingly, the Disciplinary Authority, did not appoint any Enquiry Officer to go into the allegations mentioned in the charge memo, dated 29.10.2012. When the petitioner denied the said charges, he came to his own conclusion that all the charges stood proved against the petitioner and finally imposed a punishment of stoppage of increment for three years with cumulative effect.

2.Aggrieved thereby, when the petitioner filed an appeal against the said order on the ground that the Disciplinary Authority, without applying mind and following the rules and regulations and also without recording any reason over his disagreement with the report of the Enquiry Officer, dated 03.09.2012, wrongly issued a fresh charge memo containing two additional charges, with reference to which, admittedly, no Enquiry Officer was appointed. Ironically, the Appellate Authority, viz., the second respondent herein, in his order dated 12.11.2013, even though fully agreed with the petitioner, without giving any reason whatsoever, reduced the punishment into stoppage of increment for two years without cumulative effect. Aggrieved over the same, the petitioner preferred a revision petition before the first respondent under Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules who, in turn, without assigning any reason, rejected the case of the petitioner, hence, the present writ petition.

3.Learned counsel appearing for the petitioner sharply assailed the impugned order by arguing that all the three authorities namely, Original Authority, Appellate Authority and Revisional Authority did not fairly appreciate the matter, when the law is very clear that, after the report of the Enquiry

Officer is made available holding that none of the charges levelled against the petitioner was proved, the only avenue open for the Disciplinary Authority, who wants to over-turn the finding of the Enquiry Officer, is to issue a notice to the delinquent seeking explanation from the delinquent as to why he should not differ from the report of the Enquiry Officer. But, in the present case, the Disciplinary Authority, after receiving the report of the Enquiry Officer, dated 03.09.2012, issued another charge memo, 29.10.2012, without even showing his disagreement to the report of the Enquiry Officer and calling upon the petitioner to submit her explanation. The petitioner, being a subordinate officer, again submitted her explanation on 15.11.2012, refuting both the charges. Again, unfortunately the disciplinary authority without appointing any Enquiry Officer to go into the fresh charges, unilaterally came to the conclusion that the charges levelled against the petitioner were proved and so concluding, imposed the punishment of stoppage of increment for three years with cumulative effect. Such serious flaws on the part of the Disciplinary Authority have been completely and conveniently over-looked by both the Appellate Authority as well as the Revisional Authority, in their proceedings dated 12.11.2013 and 27.11.2014 respectively.

4.The Appellate Authority/second respondent, although fully agreed with the case of the petitioner, erroneously disallowed the appeal and reduced the punishment into stoppage of increment for two years without cumulative effect. In a similar fashion, the review petition filed before the first respondent under Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, also came to be rejected.

5.Assailing the impugned orders, learned counsel for the petitioner, by referring to a decision of the Apex Court in ***Punjab National Bank and others Vs.Kunj Bihari Mishra (1998 (5) SCC 548),*** would submit that when the Enquiry Officer submits his report in favour of the delinquent officer holding that no charges proved, the disciplinary authority although is entitled to differ from the report of the Enquiry Officer, is bound to issue notice, calling upon the delinquent officer to submit explanation as to why the Disciplinary Authority should not differ from the report of the Enquiry Officer. The said course of action as laid down in the aforesaid judgment has been completely given a go-by. It is pertinent herein to extract below the relevant portion from the above judgment:-

"...... The reason why the right to receive the report of the enquiry officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the enquiry officer form an important material before the disciplinary authority which along with the

evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. the findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is negation of the tenants of justice and a denial of fair opportunity to the employee to consider the findings recorded by a third party like the enquiry officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the enquiry officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the enquiry officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute an additional material before the disciplinary authority of which the delinquent 4 employee has no knowledge. However, when the enquiry officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary authority while arriving on its conclusions. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the enquiry officer's findings. the disciplinary authority is then required to consider the evidence, the report of the enquiry officer and the representation of the employee against it."

These observations are clearly in tune with the observations in Bimal Kumar Pandit's case (supra) quoted earlier and would be applicable at the first stage itself. the aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse

> *finding to give a hearing to the delinquent officer. If the inquiry officer had given an adverse finding, as per Karunakar's case (supra) the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the inquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be over-turned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the inquiring officer holds the charges to be proved then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the inquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings what is of ultimate importance is the findings of the disciplinary authority.”*

6.In the case on hand, as against the first charge memo containing five charges against the petitioner, the petitioner submitted her explanation and after enquiry, the Enquiry Officer found her not guilty and submitted his report to that effect on 03.09.2012. While so, the Disciplinary Authority, who seemed to have disagreement over the report of the Enquiry Officer, did not issue any notice to the petitioner, calling her to submit explanation as to why he should not differ from the report of the Enquiry Officer. Therefore, the impugned punishment of stoppage of increment for three years with cumulative effect is ex facie erroneous. As mentioned above, when the enquiry officer was directed to find out the correctness of the charges, on completion of the enquiry, it was found that none of the five charges levelled against the petitioner was proved. Thereafter, if the disciplinary authority has got any disagreement with the findings of the enquiry officer, notice of disagreement has to be given to the delinquent officer calling upon him to submit her explanation, which has not been done. Secondly, another fresh charge memo dated 29.10.2012 has been issued calling for an explanation from the delinquent officer/petitioner herein, who also submitted an explanation on 15.11.2012 refuting all the charges. But again no enquiry officer was appointed on the fresh charges. However, all of a sudden, the disciplinary authority imposed a punishment of stoppage of increment for three years with cumulative effect, which is ex facie impermissible. The reason is that no one should be condemned unheard. This is the first and foremost principle, which is commonly known as audi alteram partem rule. Since this important principle of natural justice was flagrantly violated by the disciplinary authority, an appeal was filed. The appellate authority also, wrongly reduced the period of punishment to two years without cumulative effect by his order dated 12.11.2013 and subsequently, such order has been wrongly confirmed by the revisional authority. Thus, in my considered view, it is a well deserving case for interference.

7.Mr.M.Murugan, learned Government Advocate appearing for the respondents, would submit that, after the report of the Enquiry Officer, dated 03.09.2012, giving a clean chit in favour of the petitioner in respect of five charges, the Disciplinary Authority, has issued another charge memo dated 29.10.2012 calling upon the petitioner to submit her explanation for the two fresh charges, whereupon, the petitioner also submitted her explanation. The Disciplinary Authority found the same not convincing and hence, he imposed the aforesaid punishment.

8.But, the aforesaid contentions made by the learned Government Advocate cannot be accepted for the simple reason that the notice dated 29.10.2012 issued after the submission of the report of the Enquiry Officer dated 03.09.2012 was not pertaining to the same charges, rather, it was in respect of two new charges. It is not known as to how those two charges came to be slapped against the petitioner. Even if those charges are fresh allegations, as highlighted above, an Enquiry Officer should have been appointed to go into the same for submitting a report. Admittedly, that has not been done. Further, the approach of the authorities at the hierarchy in dealing with the matter arising from the first charge memo shows that there is a clear deviation by all of them from the established procedure as indicated in the judgment of the Apex Court, cited supra. Therefore, this is a fit case for interference by this Court.

9.For the foregoing reasons, the impugned orders are set aside and the writ petition is allowed. No costs. Consequently, M.P(MD)Nos.1 to 4 of 2015 and W.M.P(MD)No.11026 of 2016 are closed.

Sd/
Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1.The Secretary to Government,
Government of Tamil Nadu,
Revenue Department,
Secretariat, Chennai 600 009.

2.The Additional Chief Secretary,
Commissioner of Revenue Administration,
Chepauk, Chennai 600 005.

3.The District Collector,
Madurai District, Madurai 625 020

4.The District Revenue Officer,
Madurai District, Madurai 625 020

5.The Revenue Divisional Officer,
Madurai Division, Madurai 625 020

+1 cc to M/S.R.M.MAKESH KUMARAVEL, Advocate SR.No.45140

+1 cc to Special Government Pleader Sr.No.45985

Writ Petition(MD)No.15076 of 2015
17.08.2016

SMA/DB/23/09/2016 :7P/8C