



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.06.2016

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P(MD).No.597 of 2015 and M.P.(MD).No.1 of 2015

P.Ramachandran

... Petitioner

Vs.

1.State of Tamil Nadu

rep.by Secretary to Government,
Public Works Department,
Fort.St.Geroge,
Chennai.

2.The Secretary,

Tamil Nadu Public Service Commission,
Frazer Bridge Road, Chennai.

3.The Engineer in Chief Water

Resources Department,
& Chief Engineer General,
Public Works Department,
Cheapuk, Chennai.

... Respondents

Writ Petitions filed under Article 226 of the Constitution of India for the issuance of a Writ of Certiorarified Mandamus to call for the records relating with the order of the first respondent made in G.O.(D)No.369, Public Works (E1) Department dated 29.12.2014 and quash the same as it is arbitrary and illegal and in consequence to direct the respondents to promote the petitioner as accordance with the petitioner's service seniority from the year 2009 and with all attended benefits.

For petitioner : Mr.D.Selvam for
M/s.R.Suriya Narayanan

For R.1 and 3 : Mr.R.Anandharaj
Government Advocate

For R.2 : Mr.K.K.Senthil

ORDER

Mr.P.Ramachandran, while serving as Assistant Executive Engineer in Public Works Department Buildings (C&M) Sub-division at Dindigul, was issued with a charge memo No.CII(3)/5219/2007-15, dated 10.09.2009, by the third respondent, containing three charges. The first charge is that the petitioner has failed to carry out special repair works had been executed as per the estimated quantity and also failed to check whether the correct



measurement had been recorded in 'M Book' written by the Section Officers and thus violated Article 294 (d) of the Tamil Nadu Financial Code Volume 1; the second charges is that the petitioner has failed to check whether the special repair works to various PHC has been carried out during 2005-2006 as per the specification and quantity of estimate and failed to verify the measurement recorded in 'M Book' with the quantity executed and thus, failed to watch whether the entire cost of the bill amounting to Rs.41,54,386/- has been actually spent to its entirety and the third charge is that the petitioner failed to safeguard the interest of the Government and failed to maintain absolute integrity and devotion to duty as warranted under Rule 20 of the Tamil Nadu Government Servant Conduct Rules, 1973.

2. On receipt of the charge memo, the petitioner has submitted his explanation dated 12.10.2009 stating that all the charges are baseless and incorrect and there was no wilful failure on his part. Further, the petitioner stated that there was no loss caused by him to the Government, as alleged in the charge memo.

3. Not satisfied with the explanation offered by the petitioner, the Disciplinary Authority appointed an Enquiry Officer, who after completion of enquiry, submitted his Report holding all the charges levelled against the petitioner as 'not proved'.

4. Thereafter, the Disciplinary Authority issued a notice to the petitioner calling upon him to submit his further representation as to why the Report of the Enquiry Officer should not be differed. Accordingly, the petitioner gave his reply refuting the reasons for disagreement from the findings of the Enquiry Officer. As there was no progress in his disciplinary proceedings, even after the report of the enquiry officer, the petitioner filed Writ Petition (MD).No.19391 of 2014, to quash the entire disciplinary proceedings, on the ground of delay.

5. However, during the pendency of the said Writ Petition, the first respondent passed a final order in G.O.(D)No.369, Public Works (E1) Department dated 29.12.2014, imposing a punishment of withholding the increment of the petitioner for a period of two years with cumulative effect, besides imposing a recovery of loss caused by him from his salary. Challenging the said order, the petitioner is before this Court.

6. Assailing the correctness of the impugned Government Order, learned counsel for the petitioner has submitted that the Charge Memo dated 10.09.2009, was issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, to which, the petitioner submitted his detailed



explanation on 12.10.2009, making it clear that the charges are baseless and incorrect and there was no wilful default on his part. Further, there was no loss caused by him to the Government, as alleged by the respondents in the charge memo. Although the Disciplinary Authority disagreeing with the explanation offered by the petitioner, for all the charges, ordered for an enquiry despite the fact that the Enquiry Officer submitted his Report dated 09.06.2010, holding that none of the charges levelled against the petitioner are proved. Thereafter, the Disciplinary Authority issued a notice dated 12.08.2010, to the petitioner calling upon him to submit his further representation as to why the Report of the Enquiry Officer should not be differed.

7. He further submitted that when the Enquiry Officer has dealt with each charge on merits after considering the explanation given by the petitioner and the objections raised by the respondents and held that none of the charges are proved, the Disciplinary Authority while differing from the report of the Enquiry Officer, he is duty bound to assign specific reason for disagreeing from the report of the enquiry officer.

8. It is further contended that the Report of the Team of Engineers of Public Works Department, which according to the respondents is the foundation for framing the charges, has not been served upon the petitioner and therefore, he pleaded that the entire disciplinary proceedings initiated against the petitioner are vitiated, hence, the impugned proceedings are liable to be quashed.

9. *Per contra*, learned Government Advocate based on the averments made in the counter affidavit has submitted that the Enquiry Officer has failed to take into account the Inspection Report of the team of Engineers of the Public Works Department, pointing out the discrepancies in the works executed by the petitioner and the loss alleged to have been caused by him. When the charges itself emanate from the said report, the disciplinary authority is perfectly satisfied in issuing the show cause notice to the petitioner calling upon his further explanation as to why the report of the enquiry officer should not be differed, on the basis of the above-said report of the team of Engineers. Although the petitioner has sought for a copy of the Report of the team of Engineers, he was allowed to peruse the same. He also recorded in his own handwriting that he perused the said report. In such circumstances, the contention that the petitioner has not been provided with the aforesaid Report, does not arise.

10. Considered the rival submissions made on either side and perused the materials available on record.



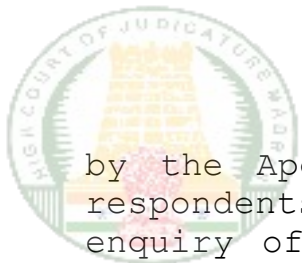
11. This Court agrees with the Inspection Report of the team of the Engineers pointing out certain discrepancies in the works executed by the petitioner, but, when the Enquiry Officer has held that none of the charges levelled against the petitioner are proved, of course, the Disciplinary Authority is legally entitled to differ from the Report of the Enquiry Officer, provided, he is expected to assign specific reasons for disagreement. In the present case, reasons should have been given as to why the Disciplinary Authority is differing with the findings of the Enquiry Officer, which he has failed to do so.

12. In this context, it is more useful to refer a decision of the Apex Court judgment reported in **(1998) 7 SCC 84, Punjab National Bank Vs. Kunj Behari Misra**, wherein, at paragraph No.19, it is held as follows:-

".....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.

20. The aforesaid conclusion which we have arrived at is also in consonance with the underlying principle enunciated by this Court in the case of Institute of Chartered Accounts. While agreeing with the decision in Ram Kishan case we are of the opinion that the contrary view expressed in S.S.Koshal and M.C.Saxena cases do not lay down the correct law."

13. If the ratio of the above judgment is applied to the present case on hand, it appears that the respondents / disciplinary authority has not recorded his tentative reasons for disagreeing with the report of the Enquiry Officer, as mandated



by the Apex Court cited supra. In essence, it seems that the respondents appears to have once bitten twice shy. When the enquiry officer has submitted his Report to the effect that the charges are not proved, the Disciplinary Authority should have been more careful and vigilant in issuing a notice dated 12.08.2010 assigning reasons for differing from the report of the enquiry officer. In other words, he should have recorded clear reasons in black and white for differing the views of the Enquiry Officer so that the petitioner can effectively put forth his case. It is well settled law that the disciplinary authority is required to record his tentative reasons for his disagreement and to provide an opportunity to the delinquent officer to represent his case before he records his ultimate findings. However, a perusal of the notice of the first respondent issued on 12.08.2010 does not throw any light on the reasons to differ from the Report of the Enquiry Officer. Moreover, the impugned order, imposing the punishment of withholding of increment for two years with cumulative effect also does not mention any reason whatsoever, for inflicting the punishment.

14. For all the foregoing reasons, this Court is not inclined to sail with the impugned order of the first respondent dated 29.12.2014. Consequently, the order impugned in this Writ Petition stands set aside and this Writ Petition is allowed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/
Assistant Registrar(Records)

/TRUE COPY/

Sub Assistant Registrar

To

- 1.The Secretary to Government,
State of Tamil Nadu,Public Works Department,
Fort.St.Geroge, Chennai.
 - 2.The Secretary,Tamil Nadu Public Service Commission,
Frazer Bridge Road, Chennai.
 - 3.The Engineer in Chief Water Resources Department,
& Chief Engineer General,Public Works Department,Cheapuk,
Chennai.
- +1cc to Special Government Pleader in SR.No.34665
+1cc to M/S.R.Suriya Narayanan, Advocate in SR.No.34507
+1cc to M/S.K.K.Senthil, Advocate in SR.No.34582

W.P(MD).No.597 of 2015
30.06.2016

ssm

PA/KP/SAR I/24.08.2016/5P/7C (IT)