

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 04.05.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.10333 of 2011

V.Dhandapani

.. Petitioner

Versus

- 1.The Personal Assistant (General) to
District-Collector,
Villupuram,
Villupuram District.
2. The District Collector,
Office of the District Collector Office,
Villupuram,
Villupuram District.
3. The Principal Secretary,
cum Commissioner for Revenue Administration,
Ezhilagam,
Chepauk, Chennai - 9. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a writ of certiorarified mandamus, to call for the records in relating to the impugned order passed by the 3rd respondent Na.Ka.Panee 4(2)/84330/2008 dated 25.03.2011, and quash the same, consequently direct the respondents to reinstate the petitioner in his service with continuity of service, backwages and all other attendant benefits.

For Petitioner : Mr.Thiruneelakandan

For Respondents : Mr.K.Dhananjayan
Special Government Pleader

O R D E R

Petitioner has filed the instant writ petition seeking for a writ of certiorarified mandamus, to call for the records in relating to the impugned order passed by the 3rd respondent Na.Ka.Panee 4(2)/84330/2008 dated 25.03.2011, and quash the same and consequently direct the respondents to reinstate him in service with continuity of service, backwages and all other attendant benefits.

2. The facts in nutshell as narrated by the writ petitioner in his affidavit filed in support of the writ petition are that the petitioner was initially appointed as an Office Assistant in the Revenue Department on 03.08.1990 and his services were regularised with effect from 12.06.1992. Pursuant to the special examination conducted by the department he was appointed by way of transfer to the post of Driver and posted to the office of the Assistant Commissioner, Land Reforms, Villupuram. On completion of 10 years of service, selection grade was also granted with effect from 26.12.2005. Thereafter, the writ petitioner was transferred to Villupuram District and posted to District Collector's Camp office as Jeep Driver to drive the VIP's Jeep.

3. The writ petitioner was placed under suspension on 06.12.2007 and a charge memo was issued in proceedings dated 10.12.2007. Three charges were framed against the writ petitioner under Rule 17(b) of the Tamilnadu Civil Services (Discipline and Appeal) Rules. The charges in short are that the writ petitioner had purchased the diesel over and above the requirement and thereby misappropriated the government funds to the tune of Rs.3,63,284/- [the cost for 10417 litres of diesel]. The 2nd charge is that he has not maintained the log book in order to misappropriate the government funds as explained in charge No.1. The third charge is consequential violation of Government Servants Conduct Rule 20.

4. The writ petitioner had submitted his explanation denying the charges and an enquiry officer was appointed to conduct the enquiry and a detailed enquiry was conducted and the final report was submitted. The enquiry officer after providing all reasonable opportunities contemplated under the rules, recorded his findings holding that all the charges against the writ petitioner, are proved. The copy of the enquiry report was communicated to the writ petitioner, seeking his response to the same. On receipt of his explanation, the final order of termination was issued by the 1st respondent in proceeding dated 22.05.2008. Challenging the order of termination, the writ petitioner filed an appeal before the District Collector and the District Collector, considering the facts and circumstances dismissed the appeal in proceeding dated 19.09.2008. The revision petition filed by the writ petitioner before the Principal Secretary-cum-Commissioner for Revenue Administration was also rejected on 30.10.2008. Challenging all these orders viz., original, appeal and revision orders, the present writ petition is moved by the writ petitioner under Article 226 of the Constitution of India.

5. The learned counsel appearing for the writ petitioner contended that the respondents ought to have initiated the disciplinary proceedings under Rule 9(A) of the Tamilnadu Civil Services (Discipline & Appeal) Rules. To sustain the same the learned counsel contended that the officer-in-charge of the log book was also responsible for the irregularities and a separate charge memo was issued to him. Since the charge memo was issued to the officer-in-charge also, the disciplinary authority ought to have invoked Rule 9(A) of the Tamilnadu Civil Services (Discipline & Appeal) Rules, and proceeded with a common enquiry. Instead of conducting a common domestic enquiry, they have conducted a separate enquiry and imposed minor penalty to the officer-in-charge and a major penalty of termination to the writ petitioner. The said argument deserves no consideration in view of the fact that it is the prerogative of the disciplinary authority, to initiate separate disciplinary proceedings or common disciplinary proceedings. In the case on hand, a separate charge memo was issued to the writ petitioner and there is no contemplation of a common enquiry by the department. In the absence of any common enquiry, question of invoking Rule 9 (A) of the Tamilnadu Civil Services (Discipline & Appeal) Rules, does not arise at all. Hence, the said argument is rejected.

6. Secondly the learned counsel contended that it is not the duties and responsibilities of the driver to maintain the log book and therefore, the charge itself, is to be rejected.

7. Learned Special Government Pleader appearing for the Government has taken this Court to the enquiry report, wherein the writ petitioner himself has admitted that the log book was not handed over to him by the previous driver and if the log book was available with him, he would have maintained the same.

8. Without going into the merits of the arguments, this Court is of the view that maintenance of log book by the driver as well as by the officer-in-charge is a common responsibility and the writ petitioner cannot plead that he is not under the obligation of maintaining the log book. The enquiry officer had gone into the details and the nature of misappropriation committed by the writ petitioner. The writ petitioner was posted to drive the vehicle for VIPs. There was an arrangement between the driver, officer-in-charge and the petrol bunk owner to issue the required quantity of diesel to the vehicle on credit basis. Such an arrangement was made in order to avoid delay in filling up of diesel to the said Jeep, since the allotment of funds from the Government will not come in time and it will take some time. In view of the delay in sanctioning of the required funds, such an arrangement was made between the

driver, officer-in-charge and the petrol bunk owner. Therefore, the enquiry officer found that the arrangement was misused by the driver and he has misappropriated the government funds to the tune of Rs.3,63,284/- by falsely recording that 16730 litres of diesel were used for the vehicle. As per the calculation made by the department based on the speedometer, the diesel to be utilised should be 6313 litres, but the writ petitioner has purchased 16730 litres of diesel on credit basis and accordingly, caused a huge loss to the Government exchequer. Based on these facts the enquiry officer found that it is a case of misappropriation and accordingly, held all the charges against the writ petitioner are proved.

9. Considering the report of the enquiry officer, disciplinary authority (1st respondent) passed an order imposing the penalty of termination from service in proceeding dated 22.05.2008. The appeal and revision filed by the writ petitioner were also dismissed. The learned counsel appearing for the writ petitioner further contended that there are certain irregularities in conducting the enquiry proceedings and since it is not the duties and responsibilities of the driver to maintain the log book, the same was not considered. This apart, the other drivers who were driving the vehicle were also to be held responsible, but no charge memo has been issued to any of the drivers, who were driving the same vehicle and the writ petitioner alone was penalised. Such a contention cannot be entertained at this point of time. When a charge is framed against a government servant under the Discipline and Appeal Rules, it is his duty to rebut the same and to establish that he is innocent of the allegations. Instead of proving his innocence the writ petitioner cannot blame others or show his finger by stating that others are also responsible. Such a blanket allegations cannot be entertained in this writ petition.

10. Learned counsel in support of his arguments submitted a judgment of this Court rendered in the case of R.Neethirajan, Vs. Secretary to Government, rep. Environment and Forests Department, Chennai & Others, reported in CDJ 2010 MHC 1781 and referred to paragraph No.15 of the judgment, which is extracted hereunder.

"It is also admitted that action is being contemplated against Deputy Conservator of Forest and draft charge memo has been sent to Principal Chief Conservator of Forest. For that purpose, a reading of Rule 9(A) makes it clear that when more than one Government servant of the same Department are involved in a same misconduct the authority competent to institute disciplinary proceedings and impose any of the penalties

specified under Rule 8, shall be the higher authority in the Department in respect of the Government servant who holds higher post and the disciplinary proceedings against all of them shall be taken together."

11. In the judgment cited supra, this Court was dealing with the scope of Rule 9(A) of the Tamilnadu Civil Services (Discipline & Appeal) Rules. As we have earlier considered that Rule 9(A) of the Tamilnadu Civil Services (Discipline & Appeal) Rules, is not applicable to the facts and circumstances of the present case, in view of the fact that a separate disciplinary proceedings was initiated against the writ petitioner and when the disciplinary proceeding was initiated separately, the question of invoking Rule 9(A) of the Tamilnadu Civil Services (Discipline & Appeal) Rules, does not arise at all. Hence, the judgment cited by the learned counsel for the writ petitioner deserves no consideration.

12. In another judgment rendered in the case of A.Rajaram Vs. The State of Tamilnadu rep. by its Secretary & Others, reported in CDJ 2010 MHC 7618, at paragraph No.9, the same rule was under adjudication and by citing the case of R.Neethirajan, Vs. Secretary to Government, rep. Environment and Forests Department, Chennai & Others, reported in CDJ 2010 MHC 1781, Rule 9(A) of the Tamilnadu Civil Services (Discipline & Appeal) Rules, was discussed. Since, this Court is of the view that application of Rule 9(A) of the Tamilnadu Civil Services (Discipline & Appeal) Rules, has no relevance regarding the facts and circumstances of the case on hand and those two judgments referred by the learned counsel for the writ petitioner, need not be considered.

13. It is a case of misappropriation and this Court sitting in the writ jurisdiction cannot appreciate the new facts pleaded by the learned counsel for the writ petitioner. The Court has to go by the records placed before it and the enquiry report and the finding arrived therein are cogent and there is no irregularity or illegality in providing reasonable opportunity to the writ petitioner in accordance with the Tamilnadu Civil Services (Discipline & Appeal) Rules.

14. The writ petitioner was granted all the required opportunities contemplated under the rules and there is no infirmity in the manner in which the enquiry was conducted. In the absence of any such statutory violations, this Court is not inclined to consider the other facts pleaded at the time of arguments by the learned counsel for the writ petitioner.

15. With regard to the case of misappropriation, Courts ought to be strict and no leniency can be shown. Since the case on hand is a case of misappropriation of Government funds to the tune of Rs.3,63,284/-, and the writ petitioner was unable to disprove the same before the Domestic enquiry officer and before the disciplinary authority, this Court is not inclined to consider the other grounds raised by the writ petitioner in his writ petition. Accordingly, there is no merit in this writ petition and stands dismissed. There is no order as to Costs.

-s/d-
Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

To

- 2.The Personal Assistant (General) to
District-Collector,
Villupuram,
Villupuram District.
2. The District Collector,
Office of the District Collector Office,
Villupuram,
Villupuram District.
3. The Principal Secretary,
cum Commissioner for Revenue Administration,
Ezhilagam,
Chepauk, Chennai - 9.

+1 CC to Mr.Thiruneelakandan, Advocate sr 36662

W.P.No.10333 of 2011

NR II (CO)
sp/12/5

WEB COPY