

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.09.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.11377 of 2016

and

WMP.No.9827 of 2016

R.Mahadevan

..Petitioner

Vs

Tamil Nadu State Transport
Corporation (Salem) Ltd,.
Dharmapuri Region
Rep.by its General Manager
Bharathipuram
Dharmapuri.

.. Respondent

PRAYER : Petition filed Under Article 226 of the Constitution of India to issue a Writ of Certiorari Mandamus, calling for the records pertaining to the order No.611/5898/D5/TNSTC/2015, dated 27.02.2016 passed by the respondent quash the same and the enquiry officer report and consequently direct the respondent to hold enquiry afresh by appointing a new enquiry officer who is not lower in rank than the management witness and to give him fair and reasonable opportunity in the enquiry and also to submit his explanation on the enquiry officer's report before decision is taken as to whether it should be accepted or not and also to submit his explanation on the proposed punishment and to take final decision after duly considering his explanations, award costs.

For Petitioner : Mr.V.Ajoy Khose

For Respondent : Mr.P.Paramasivadoss

O R D E R

The second show cause notice issued to the writ petitioner vide proceedings dated 27.02.2016, is under challenge in this writ petition.

2. The learned counsel appearing for the writ petitioner has stated that the writ petitioner is working as Driver in the

respondent Corporation. A charge memo was issued to the writ petitioner in vide proceedings dated 02.09.2015, stating that he has submitted fake certificate for employment. The writ petitioner submitted his explanation on 26.12.2015 and thereafter, enquiry officer was appointed on 29.01.2016. The writ petitioner had participated in the process of enquiry and accordingly, the enquiry officer submitted his final report on 19.02.2016. Based on the enquiry report, second show cause notice was issued vide proceedings dated 27.02.2016.

3. The learned counsel appearing for the writ petitioner contended that the respondent Corporation has conducted enquiry contrary to the established procedures for conducting departmental enquiry. The learned counsel has stated that the second show cause notice was served to the writ petitioner along with a copy of the enquiry report and the procedures contemplated is different. According to the learned counsel for the writ petitioner, the respondent ought to have communicated the enquiry report only after receipt of the explanation and then only, the copy of second show cause notice would be issued to the writ petitioner. The learned counsel relying on the judgment of the Hon'ble Supreme Court in the case of Managing Director, ECIL, Hyderabad and others vs. B.Karunakara and others in report (1993) 4 Supreme Court Cases 727 stated that valuable right is accorded to the delinquent employees and such valuable right of submitting the explanation before issuing the second show cause notice cannot be denied by the second respondent corporation and the procedure adopted in case on hand, is erroneous.

4. The learned counsel appearing for the respondent opposed the contentions raised by the writ petitioner by stating that the respondent has followed the established procedures and they have not followed any other procedure for conducting the departmental disciplinary proceedings. A fair opportunity was provided to the writ petitioner during the course of enquiry and he had denied the allegations by submitting his explanation and he has participated in the enquiry proceedings before the enquiry officer. However, the writ petition is filed in order to prolong the disciplinary proceedings, in view of the fact that the proposed decision is a major penalty. Therefore, the writ petition is devoid of merits, in view of the fact that it is only the second show cause notice, which is under challenge in this writ petition, and along with the show cause notice, the enquiry report was enclosed and it is open to the writ petitioner to submit his explanation\objection on the enquiry report and thereafter, the Disciplinary Authority has to pass final orders in the disciplinary proceedings. In order to prolong the passing of the final order in the disciplinary proceedings, the present writ petition is filed and therefore,

the writ petition is liable to be rejected. Relying on the judgment of the Hon'ble Division Bench in the case of The General Manager Rani Mangammal Transport Corporation Limited Vs. Victor reported in 2003 3LLJ 994, the learned counsel for the respondent states that the judgment of the Hon'ble Supreme Court relied on by the learned counsel for the petitioner was considered by the Hon'ble Division Bench of this Court and the Division Bench has held that the procedure adopted by the respondent corporation is in accordance with Rules. Therefore, the writ petition deserves to be rejected.

5. This Court is of the view that entertaining the writ petition against the second show cause notice itself can be exercised only on exceptional circumstances. A show cause notice can be challenged only in the event of establishing that the authority issued the second show cause notice is having no jurisdiction to issue any such notice or the allegation of malafides are raised or in case the show cause notice is in violation of statutory Rules, then a writ can be issued. In case of raising allegation of malafides, the person against whom such allegation is made, has to be impleaded as a party respondent in his personal capacity. In the absence of any such violation, no writ can be entertained against the second show cause notice.

6. The intermittent intervention in the departmental disciplinary proceedings ought to be undertaken cautiously and judicial review in this regard are certainly limited. Courts are to be cautious, while granting relief against the disciplinary proceedings, which is in progress. The filing of such writ petition during the interregnum period by the delinquent employee are mostly for the purpose of prolonging and protracting the issue. Thus, the maintainability of the same is to be ascertained at the first instance, even before considering the case on merits. In other words, the preliminary objections in this regard, ought to have been considered.

7. The learned counsel for the petitioner relied on the principles laid down by the Hon'ble Supreme Court in the case of Managing Director, ECIL, Vs. B.Karunakar and others. The relevant paragraphs are extracted better appreciation.

25. While the right to represent against the findings in the report is part of the reasonable opportunity available during the first stage of the inquiry viz., before the disciplinary authority takes into consideration the findings in the report, the right to show cause against the penalty proposed belongs to the second stage when the disciplinary authority has considered the findings in the report and has come to the conclusion with regard to the

guilt of the employee and proposes to award penalty on the basis of its conclusions. The first right is the right to prove innocence. The second right is to plead for either no penalty or a lesser penalty although the conclusion regarding the guilt is accepted. It is the second right exercisable at the second stage which was taken away by the Forty-second Amendment.

26. 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 tenets 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 recorded by the enquiry officer along with the evidence on record. In the circumstances, the findings of the enquiry officer to 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 any additional material before the disciplinary authority of which the delinquent employee has not 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 at 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.

27. It will thus be seen that where the enquiry officer is other than the disciplinary authority, the disciplinary proceedings break into two stages. The first stage ends when the disciplinary authority arrives at its conclusions on the basis of the evidence, enquiry officer's report and the delinquent employee's reply to it. The second stage begins when the disciplinary authority decides to impose penalty on the basis of its conclusions. If the disciplinary authority decides to drop the disciplinary proceedings, the second stage is not even reached. The employee's right to receive the report is thus, a part of the reasonable opportunity of defending himself in the first stage of the inquiry. If this right is denied to him, he is in effect denied the right to defend himself and to prove his innocence in the disciplinary proceedings.

28. The position in law can also be looked at from a slightly different angle. Article 311 (2) says that the employee shall be given a "reasonable opportunity of being heard in respect of the charges against him". The findings on the charges given by a third person like the enquiry officer particularly when they are not borne out by the evidence or are arrived at by overlooking the evidence or misconstruing it, could themselves constitute new unwarranted imputations. What is further, when the proviso to the said Article states that "where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed", it in effect accepts two successive stages of differing scope. Since the penalty is to be proposed after the inquiry, which inquiry in effect is to be carried out by the disciplinary authority

(the enquiry officer being only his delegate appointed to hold the inquiry and to assist him), the employee's reply by the disciplinary authority also constitute an integral part of such inquiry. The second stage follows the enquiry so carried out and it consists of the issuance of the notice to show cause against the proposed penalty and of considering the reply to the notice and deciding upon the penalty. What is proposed and not of opportunity of making representation on the report of the enquiry officer. The latter right was always there. But before the Forty-second Amendment of the Constitution, the point of time at which it was to be exercised had stood deferred till the second stage viz., the stage of considering the penalty. Till that time, the conclusions that the disciplinary authority might have arrived at both with regard to the guilt of the employee and the penalty to be imposed were only tentative. All that has happened after the Forty-second Amendment of the Constitution is to advance the point of time at which the representation of the employee against the enquiry officer's report would be considered. Now, the disciplinary authority has to consider the representation of the employee against the report before it arrives at its conclusion with regard to his guilt or innocence of the charges.

29. Hence it has to be held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report before the disciplinary authority arrives at its conclusions with regard to the guilt or innocence of the employee with regard to the charges levelled against him. That right is a part of the employee's right to defend himself against the charges levelled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges is a denial of reasonable opportunity to the employee to prove his innocence and is a breach of the principles of natural justice.

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(iv) In the view that we have taken viz., that the right to make representation to the disciplinary authority against the findings recorded in the enquiry report is an integral part of the opportunity of defence against the charges and is a breach of principles of natural justice to deny the said right,

it is only appropriate that the law laid down in Mohd.Ramzan case should apply to employees in all establishments whether Government or non-Government, public or private. This will be the case whether there are rules governing the disciplinary proceedings or not and whether they expressly prohibit the furnishing of the copy of the report or are silent on the subject. Whatever the nature of punishment, further, whenever the rules require an inquiry to be held, for inflicting the punishment in question, the delinquent employee should have the benefit of the report of the enquiry officer before the disciplinary authority records its findings on the charges levelled against him. Hence question (iv) is answered accordingly.

8. In Paragraph No.29, the Hon'ble Supreme Court has clearly held that when the enquiry officer is not the disciplinary authority, the delinquent employee has a right to receive a copy of the enquiry officer's report, before the disciplinary authority arrives at his conclusions with regard to the guilt or innocence of the employee with regard to the charges leveled against him. That right is a part of the employee's right to defend himself against the charges leveled against him. A denial of the enquiry officer's report before the disciplinary authority takes its decision on the charges is a denial of reasonable opportunity to the employee to prove his innocence and is breach of the principles of natural justice. In the case before the Hon'ble Supreme Court, final decision was about to be taken by the Disciplinary Authority based on the enquiry officer report. Any interim decision taken during the interregnum period cannot be construed as a decision taken during the final stage.

9. Paragraph 29 of the judgment of the Hon'ble Supreme Court refers to the final decision taken by the disciplinary authority and not a decision taken at the early stage of the disciplinary proceedings. Opportunity of hearing is to be decided on the ground of reasonableness. Principles of natural justice requires that before taking a final decision by the Disciplinary Authority, the delinquent is given an opportunity to prove his innocence. The learned counsel for the petitioner has cited the judgment of the Hon'ble Division Bench in the case of The General Manager Rani Mangammal Transport Corporation Limited Vs. Victor reported in 2003 3LLJ 994. The Hon'ble Division Bench has held that non issuance of second show cause notice will pre-judice the rights of the employees and in the event of not issuing the second show cause notice, along with the enquiry report, the same will be in violation of principles as natural justice. In the case on hand, the second show cause

notice was already issued along with the copy of the enquiry report and accordingly, the procedure contemplated has been complied with by the respondent. Therefore, this Court is of the opinion that there is no infirmity in the second show cause notice issued against the writ petitioner and it is for the writ petitioner to submit his explanation/ objection on the enquiry report and thereafter the respondents are at liberty to consider all the materials available on record and take a final decision and thereafter pass final orders in the disciplinary proceedings and communicate the same to the writ petitioner without any further delay.

10. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

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To

The General Manager
Tamil Nadu State Transport
Corporation (Salem) Ltd.,
Dharmapuri Region
Bharathipuram, Dharmapuri.

+ 1 C.C. to M/S.P.Paramasivadosh, Advocate sr.no.68928

+ 1 C.C. to Mr.V.Ajoy khose, Advocate sr.no.68842

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W.P.No.11377 of 2016

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