

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.11070 of 2014

and

M.P.No.1 of 2014

M.Sekaran

.. Petitioner

Vs.

1.Secretary to Government,
Housing and Urban Development
Department, Secretariat,
Fort St. George, Chennai - 9.

2.The Commissioner,
Office of Commissioner of Town and
Country Planning,
807, Anna Salai, Chennai - 2.

.. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the first respondent in G.O. (D) No.150 Housing and Urban Development (UD2)(1) Department dated 17.09.2013 and proceedings in ROC No.22254/2010/K1(2) dated 13.12.2012 and proceedings in Rc.No.22254/2010/k1(2) dated 23.09.2010 passed by the second respondent and quash the same as illegal, arbitrary and non-est in law and consequently direct the respondents to grant all monetary service benefits including promotion with effect from 23.09.2010.
(Prayer amended vide order dated 01.09.2017 in W.M.P.No.24578 of 2017 in W.P.No.11070 of 2014)

For Petitioner .. Mr.V.Karthic, Sr. Counsel
for Mr.B.Vijay

For Respondents.. Mr.T.M.Pappiah,
Spl. Govt. Pleader

ORDER

The petitioner has approached this Court seeking the following relief:

to issue a writ of certiorarified mandamus to call for the records of the first respondent in G.O.(D) No.150 Housing and Urban Development (UD2)(1) Department dated 17.09.2013 and proceedings in ROC No.22254/2010/K1(2) dated 13.12.2012 and proceedings in Rc.No.22254/2010/k1(2) dated 23.09.2010 passed by the second respondent and quash the same as illegal, arbitrary and non-est in law and consequently direct the respondents to grant all monetary service benefits including promotion with effect from 23.09.2010.

2.The petitioner was working as Planning Assistant in the Department of Town and Country Planning. He was directly recruited as such on 26.03.1990 by the Tamil Nadu Public Service Commission. He was also promoted as Assistant Director of Town and Country Planning on 21.02.2008 by appreciating his 18 years of meritorious service. On 30.10.2008, the petitioner assumed the charge of Member Secretary of Local Planning Authority, Coimbatore and on joining the post, the petitioner seemed to have given instructions to the subordinate staff to clear all the pending files forthwith in accordance with the rules and regulations.

3.It appears that in November, 2009, a special review meeting was conducted in order to fix outer time limit for clearing the pending files. In the review meeting, it was found that there were some files pending clearance at the office of the Local Planning Authority, Coimbatore. In view of the same, a charge memo was issued to the petitioner on 23.09.2010 under Rule 17(A) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The charges as framed against the petitioner are extracted below:

Charge No.1:

That Thiru.M.Sekaran, Assistant Director/Member Secretary (I/c) has shown negligence and lethargic attitude in disposing of files.

Charge No.2:

That Thiru.M.Sekaran, Assistant Director/Member Secretary (I/c) is irresponsible in discharging his official duties.

4. In response to the charges, the petitioner submitted a detailed explanation. In the said explanation, the petitioner had submitted that there was no delay on his part in clearing the subject files and therefore, he cannot be held responsible for the delay in clearance and it also submitted the charges as such are completely vague and indefinite and did not disclose any specific act of misconduct on his part.

5. The disciplinary authority, without considering the explanation submitted by the petitioner and without conducting an enquiry, in view of the categorical submissions made by the petitioner and his explanation to the charges, had passed a non-speaking order, imposing the punishment of stoppage of increment for a period of two years without cumulative effect on 13.12.2010. The disciplinary authority did not take into consideration the fact that the charges by themselves were vague and indefinite and cannot be sustained in law. In any event, the disciplinary authority did not also appreciate the explanation offered by the petitioner in proper perspective as mandated by the Rules in this regard.

6. As against the order passed by the disciplinary authority, the petitioner preferred a statutory appeal before the first respondent on 27.01.2011. Several issues were raised in the appeal regarding the non-compliance of principles of natural justice and the non-adherence to the mandatory provisions of the Rules by the disciplinary authority while passing the non-speaking order. It appears that the appellate authority, before passing the order in appeal, had called for an opinion from the Tamil Nadu Public Service Commission and had finally passed an order in appeal on 17.09.2013, rejecting the same. From the appellate authority's order, it could be seen that the reliance has been placed on the advice/opinion tendered by the Tamil Nadu Public Service Commission and on the basis of the said opinion, the appeal was rejected.

7. In the said circumstances, the petitioner has approached this Court seeking to challenge both the orders passed by the disciplinary authority as well as the appellate authority.

8. When the matter was taken up for hearing earlier, the petitioner had also taken out a petition for amending the writ petition prayer for challenging the charge memo issued against him on 23.09.2010 on the ground that the same being vague and indefinite. The said amendment has also been allowed by this Court in W.M.P.No.24578 of 2017 on 01.09.2017.

9. Mr. V. Karthic, learned senior counsel appearing for the petitioner would at the outset submit that the charges being extremely vague and indefinite, the same cannot be countenanced

both in law and on facts. The charges do not disclose any specific instances pointing out any act of misconduct on the part of the petitioner in his discharge of duties during the relevant time. He would point out that the charge as it is cannot be understood and its implication cannot be inferred by any employee, who is as such charged with. In the said circumstances, the charge memo itself has to be interfered with.

10. Learned senior counsel for the petitioner would rely on the decision passed by the Supreme Court in *Surath Chandra Chakrabarty Vs. State of West Bengal* (1970 (3) SCC 548), wherein, in para 5, the Supreme Court has held that no punishment can be imposed unless a member of service is informed of definite charge or charges. The observation made by the Supreme Court in a para 5 of the order is extracted below:

"5..... no order of dismissal removal or reduction shall be passed on a member of service unless he is informed in writing of the grounds on which it is proposed, to take action and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has also to be stated. This rule embodies a principle which is one of the basic contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him....."

11. Learned senior counsel would also rely on yet another order passed by the Supreme Court in *Sawai Singh Vs. State of Rajasthan* ((1986) 3 SCC 454) and paragraphs 16 and 17 relied on by the learned senior counsel are extracted below:

16. It has been observed by this Court in *Suresh Cbandra Chakrabarty v. State of West Bengal* [1971] 3 S.C.R. 1 that charges involving consequences of termination of service must be specific, though a departmental enquiry is not like a criminal trial as was noted by this Court in the case of *State of Andhra Pradesh v. S. Sree Rama Rao* [1964] 3 S.C.R. 25 and as such there is no such rule that an offence is not established unless it is proved beyond doubt. But a

departmental enquiry entailing consequences like loss of job which now-a-days means loss of livelihood, there must be fair play in action, in respect of an order involving adverse or penal consequences against an employee, there must be investigations to the charges consistent with the requirement of the situation in accordance with the principles of natural justice in so far as these are applicable in a particular situation.

17. The application of those principles of natural justice must always be in conformity with the scheme of the Act and the subject matter of the case. It is not possible to lay down any rigid rules as to which principle of natural justice is to be applied. There is no such thing as technical natural justice. The requirements of natural justice depend upon the facts and circumstances of the case, the nature of the enquiry, the rules under which the Tribunal is acting, the subject matter to be dealt with and so on. Concept of fair play in action which is the basis of natural justice must depend upon the particular lis between the parties. (See K.L. Tripathi v. State Bank of India Ors., [1984] 1 S.C.C. 43) Rules and practices are constantly developing to ensure fairness in the making of decisions which affect people in their daily lives and livelihood. Without such fairness democratic governments cannot exist. Beyond all rules and procedures that is the sine qua non.

12. Learned senior counsel for the petitioner would further contend that the advice by the Tamil Nadu Public Service Commission, which was relied on by the appellate authority ought to have been furnished to the petitioner and non-furnishing of the same has vitiated the order passed by the appellate authority. In support of the said contention, he would rely on the order passed by the Supreme Court in Union of India and Others Vs. R.P. Singh ((2014) 7 SCC 340). Learned senior counsel would also rely on the order passed by this Court in N. Sivakumaran Vs. State of Tamil Nadu rep. by the Secretary to Government and Others ((2009) 1 MLJ 701), wherein the learned Judge of this Court has held that the word "consider" in Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules emphasizes application of mind and postulates consideration of all the relevant aspects of the matter. According to the learned senior counsel, in the instant case, neither the disciplinary authority nor the appellate authority have applied their minds and in view of the same, the entire disciplinary action is vitiated.

13. Per contra, Mr. T. M. Pappiah, learned Special Government Pleader appearing for the respondents, apart from reiterating the averments contained in the counter affidavit, would also rely on the decision of the Supreme Court in Deputy Inspector General of Police Vs. K. S. Swaminathan ((1996) 11 SCC 498), wherein the Supreme Court has held that examining the correctness of charges, particularly at the stage of framing of charges is beyond the scope of judicial review and Courts must be refrained from quashing the charge memo at that stage. Therefore, he would submit that this Court cannot go into the correctness of the charge memo as the same has been understood by the petitioner and he has given his explanation and therefore, no interference is called for on that ground.

14. This Court has given its anxious consideration to the submissions of the learned counsels appearing for the parties, perused the relevant materials and the pleadings placed on record.

15. At the outset, it has to be seen that the charges cannot be countenanced both in law and on facts. As extracted supra, the charges as it is appeared to be extremely vague and does not spell out any specific instances where the petitioner had defaulted with in discharge of his duties. The charges merely alleged that the petitioner had been lethargic without any supporting imputations or materials. In the absence of proper imputations, the charges as such cannot be held to be valid and the judgments relied on by the learned senior counsel for the petitioner would squarely cover the case in favour of the petitioner.

16. As regards the other contentions put forth by the learned senior counsel that there has been non-application of mind both on the part of the disciplinary authority and the appellate authority, this Court finds there is considerable force in the contention. From the records, it is seen that both the disciplinary authority and the appellate authority have not followed the mandatory procedure contemplated in the Service Rules and the defence put forth by the petitioner had not been appreciated by proper examination of the explanation of the delinquent employee viz., the petitioner herein. Moreover, as rightly contended by the learned senior counsel for the petitioner, the appellate authority had passed a non-speaking order more than the disciplinary authority and he relied entirely on the advice given by the Tamil Nadu Public Service Commission without furnishing a copy of the same to the petitioner. This fact has not been disputed by the respondents. When the authority relies on the opinion/advice by the external agency, it is incumbent upon the administration to furnish a copy of the same before any adverse order is passed against the

employee concerned. In the instant case, non-furnishing of the advice tendered by the Tamil Nadu Public Service Commission is unjust and that by itself vitiates the order passed by the appellate authority.

17.As regards the contention putforth by the learned Special Government Pleader regarding the Court's power to examine the correctness of the charge memo, it must be seen that as far as the case in hand is concerned, the merit of the charges has not been examined at the stage of issue of charge memo but the petitioner has gone through the entire disciplinary proceedings which was put in place in pursuance of the charge memo and he has approached this Court only after final order was passed by the appellate authority. Therefore, this Court has not only examined the correctness of the charges but also examined the validity of the disciplinary action as a whole, with reference to the charge memo, with reference to the conduct of the enquiry and with reference to the orders passed by the disciplinary and appellate authorities.

18.In the upshot of the above discussion and the narrative, this Court has no hesitation to hold that the disciplinary action from the stage of charge memo until the appellate authority's order is vitiated by several legal infirmities and therefore, this Court is constrained to hold that the entire disciplinary action initiated by the respondents as against the petitioner has to be set aside. In the said circumstances, the charge memo dated 23.09.2010 and the impugned orders dated 13.12.2012 and 17.09.2013 are set aside and there shall be a consequential direction to the respondents to restore the pay of the petitioner as stood before the imposition of penalty with all consequential and attendant benefits. The said order shall be passed by the respondents within a period of two months from the date of receipt of a copy of this order.

19.The writ petition stands allowed on the above terms. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Housing and Urban Development
Department, Secretariat,
Fort St. George, Chennai - 9.

2.The Commissioner,
Office of Commissioner of Town and
Country Planning,
807, Anna Salai, Chennai - 2.

+1 cc to the Government Pleader sr 64132
+2 ccs to Mr.B.Vijay Advocate sr 63791

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