

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.02.2017

CORAM

THE HONOURABLE MR. JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR. JUSTICE V. PARTHIBAN

Writ Petition No.14320 of 2014

S.JACINTHA

.. Petitioner

Versus

- 1 UNION OF INDIA
REP. BY THE DIRECTOR OF
POSTAL SERVICES
O/O. THE POSTMASTER GENERAL
CHENNAI CITY REGION (TN)
TAMIL NADU, CHENNAI-2.
- 2 THE SUPERINTENDENT OF POST OFFICES
THIRUVANNAMALAI DIVISION
THIRUVANNAMALAI-606 601
- 3 THE REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI-104.

... Respondents

Writ Petition has been filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the order of the 3rd respondent, which is made in O.A.No.815 of 2010 dated 28.8.2012 and R.A.No.42 of 2012 in O.A.No.815 of 2010 dated 20.11.2012 and quash the same, consequently to direct the respondents 1 & 2 to reinstate the petitioner into service and thereafter to conduct the De-nova Inquiry against the charges levelled against the petitioner after affording reasonable opportunity to her.

For Petitioner : Mr.R.Malaichamy

For Respondents 1 & 2 : Mr.Christopher Kishore Vincent

ORDER

(Order of the Court was delivered by V.PARTHIBAN,J.)

The Writ Petition is filed against the order passed by the Central Administrative Tribunal, Madras Bench in O.A.No.815 of 2010 dated 28.08.2012 and R.A.No.42 of 2012 dated 20.11.2012 filed by the petitioner herein.

2. The case and circumstances, which gave rise to the filing of the present Writ Petition, are stated hereunder:-

The petitioner herein, a postal employee, was charge sheeted on 30.06.2009 for certain acts of misconduct. An inquiry was held into the charges and it appears, during the course of inquiry, the petitioner herein had admitted all the charges levelled against her and in view of her admission, no further inquiry was conducted. The Inquiry Officer held that all the six charges framed against the petitioner are proved. Thereafter, the Disciplinary Authority imposed the penalty of dismissal from service, vide order dated 22.10.2009. An appeal was preferred to the Appellate Authority on 21.01.2010, but the same was rejected vide order dated 16.04.2010. The penalty of dismissal from service, as confirmed by the Appellate Authority, was the subject matter of challenge before the Tribunal.

3. Before the Tribunal, it was contended on behalf of the petitioner that the petitioner was not given proper opportunity to put forth her defence and even if those charges were admitted, it was imperative on the part of the prosecution to conduct inquiry in terms of the Service Rules and Regulations. This was more so, while the inquiry proceedings had culminated in issuing penalty of dismissal from service, which penalty was the severest one contemplated under the Rules. In such circumstances, the petitioner prayed that she ought to have been granted a reasonable opportunity of being heard in the inquiry and in the absence of opportunity, the entire disciplinary action stood vitiated.

4. Per contra, it was contended on behalf of the official respondents that the petitioner was given full opportunity and on her own volition, she admitted all the charges before the Inquiry Officer and the admission being unconditional, there was no necessity to pursue the inquiry to its logical end. Since the charges were severe in nature, the punishment imposed on the petitioner was appropriate, not calling for interference. Moreover, it was contended that there was no procedural irregularity or illegality. The learned Tribunal, after taking note of the submissions of the parties, has dismissed the Original Application and holding that there was no procedural

illegality or irregularity or infirmity in the orders passed by the Disciplinary and Appellate Authorities. In fact, several judgments of the Hon'ble Supreme Court of India had been cited in order to substantiate the claim of the petitioner herein that no proper opportunity was afforded to her before the impugned decisions were taken and implemented. However, the learned Tribunal appears to have found those decisions were of no help to the case of the petitioner. It appears also that the learned Tribunal has relied on the admission of the petitioner before the Inquiry Officer and found that once charges were admitted, there was nothing for the administration to continue the inquiry and in that view of the matter, the learned Tribunal dismissed the Original Application. As against that order dismissing the application, a Review Application has been filed by the petitioner saying that in her appeal dated 21.01.2010, the petitioner requested for denovo inquiry and in view of the request, the Appellate Authority ought to have ordered a fresh inquiry into the charges. It was also contended in the Review Application that the Disciplinary Authority, who passed the order of penalty of dismissal from service, was not a competent authority, as he was holding the post on an adhoc basis. However, the Review Application was rejected as being devoid of merit. The present Writ Petition has been filed against the order passed in the Original Application as well as in the Review Application.

5. Sri.R.Malaichamy, learned counsel appearing for the petitioner, contended that the punishment being extremely severe and harsh, the petitioner without knowing the implications, has admitted the charges, under compelling circumstances. Had she known that such admission would entail dismissal from service, the petitioner would not have admitted the charges. In any event, no prejudice would be caused to the Department if the petitioner is given one more opportunity to defend herself against the charges. Per contra, the respondents contended that this was a clear case of proved misconduct for which, the appropriate penalty can only be dismissal from service. The charges related to certain irregularities in respect of cash balance and gross dereliction of duty, while discharging her function as Grand Dak Sevak - Branch Post Master. Therefore, any lenient view in the matter would not bring the interest of administration or would not serve any public interest. However, Sri.R.Malaichamy, learned counsel pleaded that the entire disciplinary action ended against the petitioner was solely on the basis of her admission and though such admission was made by the employee herself, the same cannot be held against her request for fresh inquiry. According to the counsel, that if any inquiry is conducted afresh into the charges, she would be in a position to put forth her defence against the alleged irregularities as mentioned in the charge memo.

6. We gave our anxious consideration to the submissions of the counsels appearing for either parties.

7. We do feel that there is considerable force in the contention of Sri.R.Malaichamy, the learned counsel appearing for the petitioner that the entire disciplinary action has been concluded only on the basis of the admission of the petitioner herself and the learned Tribunal has also decided the case against the petitioner on such basis. We, therefore, feel appropriate to extend one more opportunity to the petitioner to defend herself against the charges framed against her and in that view of the matter, We hereby set aside the order passed by the learned Tribunal in O.A.No.815 of 2010 dated 28.02.2012 and in R.A.No.42 of 2012 dated 20.11.2012 and allow the Original Application as prayed for only to the extent that the entire matter has now remanded back to the Authority to conduct a denovo inquiry into the charges. The petitioner should be afforded all opportunities to put forth her defence. The inquiry should be proceeded in terms of the relevant regulations governing the service conditions of the petitioner and the Inquiry Officer, the Disciplinary Authority and the Appellate Authority, as the case may be, may take a fresh decision on the basis of the conclusion of the inquiry, without being influenced by the earlier admission of the charges by the petitioner. We direct the Department to conclude the entire disciplinary action as expeditiously as possible and in any case within the period of six months from the date of receipt of a copy of this order.

8. With the above direction, the Writ Petition stands allowed. No costs.

Sd/-

Assistant Registrar(CS VI)

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Sub Assistant Registrar

mra

To

1 THE DIRECTOR OF POSTAL SERVICES
UNION OF INDIA
O/O. THE POSTMASTER GENERAL
CHENNAI CITY REGION (TN)
TAMIL NADU, CHENNAI-2.

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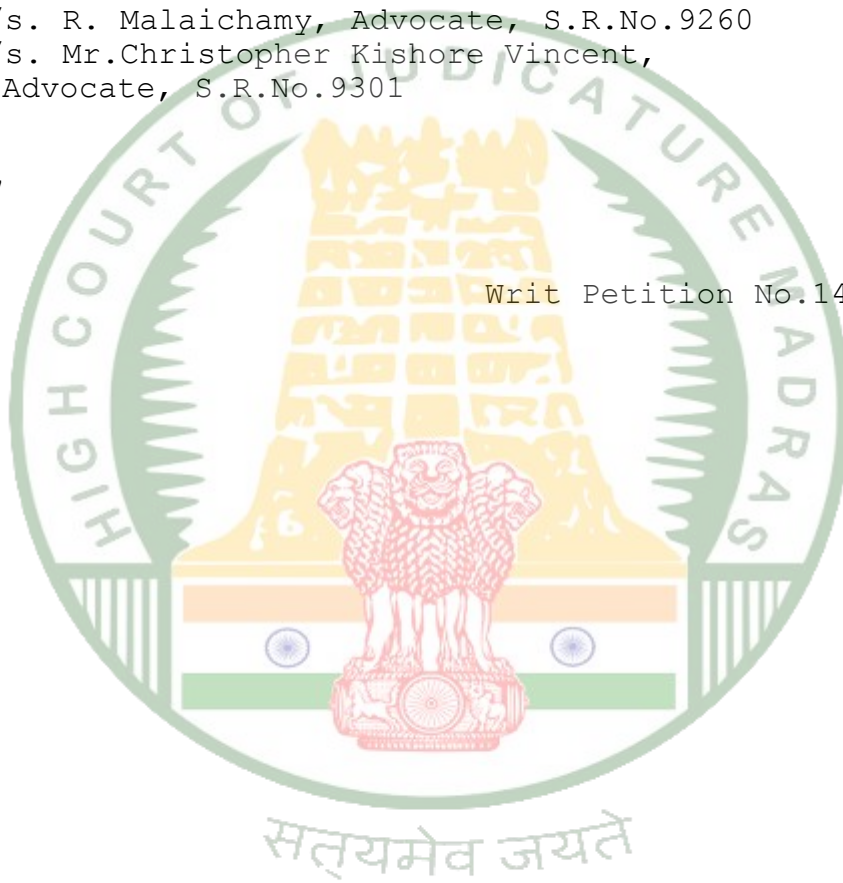
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3 THE REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
CHENNAI-104.

+1cc to M/s. R. Malaichamy, Advocate, S.R.No.9260
+1cc to M/s. Mr.Christopher Kishore Vincent,
Advocate, S.R.No.9301

ALA(CO)
EU 14.3.17

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