

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.07.2017

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P.No.10389 of 2013

1. The Secretary
Ministry of Power and Chairman
Governing Council NPTI
Shram Shakti Bhawan
Rafi Marg, New Delhi 110 001
 2. The Director General
NPTI Complex Sector 33
Faridabad 121 003 (Haryana)
 3. Principal Director
National Power Training Institute (SR)
Block 14, Neyveli
- .. Petitioners

-vs-

1. P.Muthusamy
 2. Central Administrative Tribunal
Madras Bench
Chennai
- .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorari, calling for the records in respect of the O.A.No.1265 of 2011 dated 23.01.2013 passed by the second respondent herein and quash the same.

For Petitioner :: Mr.M.T.Arunan

For Respondents :: Mr.N.G.R.Prasad
for M/s Row & Reddy for R1
R2-Tribunal

ORDER

(Order of the Court was delivered by HULUVADI G.RAMESH, J.)

The writ petition has been filed by the National Power Training Institute, Neyveli (Southern Region) challenging the order passed by the Central Administrative Tribunal, Madras Bench in O.A.No.1265 of 2011 dated 23.1.2013.

2. The first respondent is a Deputy Director, who joined the respondent Institute as an Assistant Director on 13.6.96. On the allegation that he had produced false TA bills/hotel charges, when he was deputed for training and undertaken official tours between 22.2.2009 and 3.7.2009 to Salem/Hyderabad/Chennai/Karur, based on anonymous complaints, a charge memo was issued to him and though he denied the charges levelled against him stating that no prior approval was obtained from CVC, the enquiry officer found him guilty in the departmental enquiry. Based upon the findings rendered by the enquiry officer, the disciplinary authority imposed the punishment of reducing his pay by two stages in the pay band of Rs.15600-39100 for a period of two years by his order dated 4.4.2011, which was confirmed by the appellate authority by his order dated 18.8.2011. When the said orders were challenged by the first respondent before the Tribunal, the Tribunal, having found that the petitioners have not followed the CVC Manual scrupulously and also failed to give adequate opportunity to the first respondent to cross examine the relevant witnesses who have given statements against him, set aside the orders of punishment. Aggrieved thereby, the present writ petition has been filed.

3. We have heard the learned counsel for the petitioner and the learned counsel for the first respondent.

4. The total amount involved in the alleged misappropriation by producing false TA bills/hotel charges by the first respondent is said to be Rs.15,000/-. The fact that the officer in question was deputed for outstation training is not in dispute. However, based on anonymous complaints that he had produced some false bill and claimed the amount, he was chargesheeted and the aforesaid punishment was imposed against him. As a matter of fact, the Tribunal noticed that there is an admission on the part of the petitioners that the matter was not referred to CVC seeking their concurrence before commencement of the disciplinary proceedings and it is also admitted that only post-facto approval was obtained from the CVC. It is also pertinent to note that action was initiated only based on anonymous complaints. More than that, immediately after obtaining post-facto approval, within four days, the punishment

was imposed on the first respondent. It also appears that the statutory appeal preferred by the first respondent was also dismissed without analysing the factual situation. The findings rendered by the Tribunal would show that the petitioners have not followed the CVC Manual scrupulously and also failed to give adequate opportunity to the first respondent to cross examine the relevant witnesses who have given statements against him. Based on these findings, the Tribunal allowed the original application filed by the first respondent and quashed the orders of punishment.

5. Even in the grounds raised in the writ petition, the petitioners have admitted that they have obtained only post-facto approval from the CVC. As contended by the learned counsel for the first respondent, the person from the hotel who had issued the report was not made available for cross examination. But the stand taken by the petitioners that the hotel representative was not present for enquiry is no ground at all. It is seen that in the domestic enquiry, some report was obtained from the hotel to the effect that no such person stayed. In our view, when such a report was obtained, at least the petitioners could have called the hotel manager or some responsible staff to speak about its genuineness. What is also not in dispute is that the first respondent, being a Deputy Director, when sent for training purpose, is eligible to claim the DA/hotel charges. When it is very much understood that he has to produce a bill, though would have spent some amount out of his pocket, for his stay, some authenticity is required to claim the amount what he has actually spent. Rather without staying the hotel, he claimed the amount. In most of the departments, as per the procedure, they would give some lumpsum amount for outstation duty and it is for the concerned individual to make his own arrangements either to stay in a three-star hotel or otherwise and any excess spent over and above the lumpsum amount is to be borne by the said individual only. When the amount or allowance fell short of the actual charges, on being a Government servant, one has to be fair enough to produce the bill and in such circumstance, the first respondent has produced the bill, which ultimately was shown to be not acceptable.

6. The lacuna in the process of conduct of enquiry by the petitioners is that the hotel person who issued the report was not subjected to be cross examined by the first respondent. Without considering the said lapse, the enquiry officer appointed by the petitioners held the first respondent guilty of the charges and imposed the punishment as referred to earlier. But, however, the Tribunal, having found that there is procedural irregularity/illegality for not allowing the first

respondent to cross examine the hotel person who issued the report, exonerated him from the charges. As already noted, there are two defects in the conduct of enquiry by the petitioners. One is that the commencement of the enquiry proceedings can only be after getting the concurrence from the CVC. But in the case on hand, the petitioners have admitted that they have obtained only post-facto approval. Another is that the enquiry has been held without allowing the first respondent to cross examine the hotel person who is said to have issued the report. In these circumstances, since the incident is said to have happened in 2009, we feel that no useful purpose would be served in remanding the matter at this point of time to hold a de novo enquiry. However, on the basis of irregularity being committed in the procedural aspect, a right decision has been taken by the Tribunal in negating the stand taken by the petitioner-Department for conducting the enquiry in a slipshod manner. In such circumstances, we do not find any scope for interference with the impugned order to negate the findings rendered by the Tribunal. In this context, we may also refer to the judgment of the Apex Court in *Hardwari Lal v. State of U.P. and others*, (1999) 8 SCC 582, wherein the Apex Court has held that the failure to examine the material witness would render the enquiry vitiated being in violation of natural justice.

7. For the above reasons, the writ petition is dismissed. However, the first respondent shall not give any room for untoward incident in future, taking advantage of this order. Consequently, M.P.No.1 of 2013 is also dismissed. No costs.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

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To

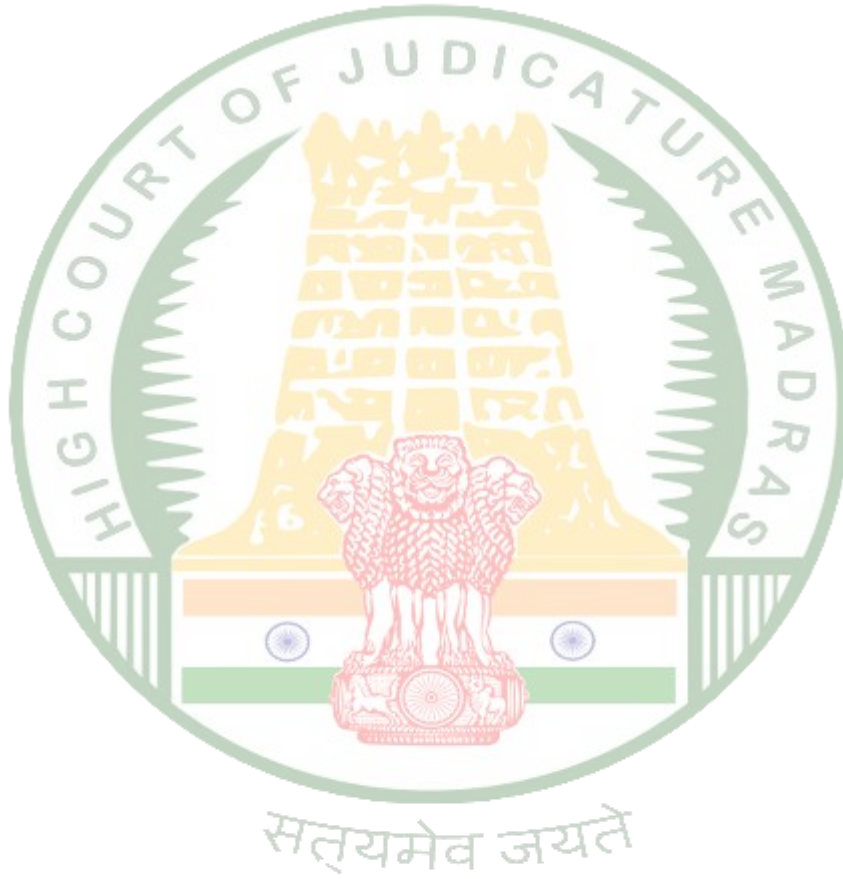
1. The Registrar
Central Administrative Tribunal
Chennai Bench
Chennai

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+1cc to M/s.M.T.Arunan, Advocate, S.R.No.49260
+1cc to M/s.Row & Reddy, Advocate, S.R.No.49180

W.P.No.10389 of 2013

AR(CS II)
CU(01/08/2017)



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