

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.05.2017

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

Writ Petition No.26242 of 2012

S.Santhakumar

.. Petitioner

Vs.

1. The Managing Director,
The Tamil Nadu state Marketing corporation Ltd.,
TASMAC,
4th floor, CMDA Tower No.2,
Egmore,
Chennai - 600 008.
2. The Senior Regional Manager,
The Tamil Nadu State Marketing Corporation Ltd.,
No.56, Brindavan Road,
Azhagapuram,
Salem-16.
3. The District Manager,
TASMAC Lt, (Vellore)
Vellore District.
4. G.Yuvaraj,
Supervisor,
TASMAC Ltd, (Vellore),
No.2, Lingappan Chetty Street,
Kamatchipettah,
Gudiyatham,
Vellore District.
5. D.Jayakumar,
Salesman (TASMAC Ltd.,)
Neelakanda Rayanpet,
Katrampakkam Village,
Ammur jVia.,
Wallajah Taluk,
Vellore District.

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the third respondent in Se.Mu.Na.Ka.A2/1167/C.V.2010 dated 28.01.2012 as confirmed by the orders of the 2nd respondent in Se.Mu.No.865/2011/E dated 10.03.2012 and the consequential order in the Revision Petition issued by the 1st respondent in Na.Ka.No.2776/R1/2012 dated 09.06.2012 and quash the same and consequently, to direct the respondents to reinstate the petitioner into service with all consequential benefits and attendant benefits including arrears of salary with interest. (Prayer amended as per order dated 26.11.2012 by KCJ in M.P.No.3/12 in W.P.No.26242/2012)

For Petitioner : Mr.R.Singaravelan,
Senior Counsel for
Mr.S.Srinivasan

For Respondents : Mr.M.John Kannady
Standing Counsel for TASMAC
(R1 to R3)

O R D E R

The factual matrix, required to be considered in this writ petition, is whether the order of imposition of the penalty of termination on the writ petitioner, is in accordance with the procedures contemplated under the Tamil Nadu Civil Services (Discipline and Appeal) Rules or not.

2. The writ petitioner was working as a Salesman in a TASMAC Shop. Pursuant to the inspection report, holding that the writ petitioner was responsible for adulteration in the liquor bottles, thereby, tampered with the seal of the liquor bottles and noticing the misconduct during inspection, an Analysis Report was submitted on 12.01.2011. Pursuant to the Analysis Report, a charge memo was issued in proceedings dated 08.11.2011.

3. Mr.R.Singaravelan, learned Senior Counsel appearing for the writ petitioner is able to demonstrate that on perusal of two documents, the ratio of alcohol content itself varies with each other. When the discrepancy commenced from the very initiation, the entire proceedings become void because the enquiry and the subsequent proceedings conducted will not stand under the scrutiny, in view of the fact that there is a major discrepancy in identifying the nature of the charge itself.

4. Proceeding further, the learned Senior counsel has taken

this Court to the final order of termination issued by the Disciplinary Authority, whereby, an enquiry conducted and the final report on the domestic enquiry, was submitted on 28.12.2011. Learned Senior counsel contended that the said final report of the Enquiry Officer had not been communicated to the writ petitioner, thereby, deprived of submitting his further explanation on the enquiry report. It is the valuable opportunity for the delinquents to offer their further explanation on the enquiry report. Denial of opportunity will cause prejudice to the delinquents. In certain cases, non-production cannot cause any prejudice. In such cases, the non-serving of the enquiry report may be dispensed with. Such a situation has not arisen on the facts and circumstances of the case, in view of the fact that at the first instance itself, the discrepancy arose and therefore, non-furnishing of the enquiry report will also have certain implication, since the writ petitioner was denied of the opportunity even to explain this discrepancy, if any available in the enquiry report. In support of this ground, the judgment of the Constitutional Bench of the Hon'ble Supreme Court of India in (Managing Director, ECIL v. B.Karunakar) reported in 1993(4) SCC 727 was cited. The relevant portion of the judgment reads thus:

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.

5. This apart, the impugned order of termination is a non-speaking order and the reasons are not assigned. The disciplinary authority, while imposing the major penalty of termination, has to assign reasons for such imposition. The punishment of termination is a civil death to public servant and therefore, the Disciplinary Authority should furnish sufficient

reasons to impose major penalty.

6. On perusal of the order of termination, it is found that except by stating that there are some discrepancies in the report and the petitioner is liable to be punished, no convincing reasons or analysis of the Enquiry Officer has been recorded in the impugned order. Hence, the order is liable to be set aside on the ground that it is a non-speaking order.

7. In support of his contention, learned Senior counsel relied on the decision of *M.Prakash v. District Manager, Tamil Nadu State Marketing Corporation Ltd.* reported in 2011(4) MLJ 828 in which, this Court has held as follows:

(7) The Apex Court, in more than one case, has held that when an order of termination involves civil consequences and consequently amounts to stigma, the same cannot be passed without there being a charge memo, enquiry and the finding as to those charges. This proposition of law has been recently reiterated by the Apex Court in the judgment in *State of Haryana v. Satyender Singh Rathore*, (2005) 7 SCC 518: 2005-III-LLJ-7025. In that judgment, the Supreme Court has relied upon the earlier judgment in *Dipti Prakash Banerjee v. Satyendra Nath Bose National Centre for Basic Sciences*, AIR 1999 SC 983: (1999) 3 SCC 60: 1999-I-LLJ-1054, and has held that if findings were arrived at in an enquiry as to misconduct behind the back of the officer or without a regular departmental enquiry, the simple order of termination is to be treated as "founded" on the allegations and will be bad.

8. Learned Standing Counsel for TASMAC filed counter today and the counter speaks about the allegations. In the counter, it was found that adulterated liquor were sold in the shop at the instance of the writ petitioner. The inspecting authority had seized the adulterated bottles and obtained a statement from the writ petitioner. Considering the seriousness involved in the allegations, the learned Standing Counsel contended that the writ petition deserves to be dismissed.

9. At the outset, there are discrepancies even at the time of framing of charges and the domestic enquiry was not conducted as per Rules contemplated. The Enquiry Report was also not

served to the writ petitioner enabling him to submit his further explanation which is to be construed as denial of opportunity. Supporting this, the judgment of the Hon'ble Supreme Court in the case of Director (Marketing), Indian Oil Corporation Ltd., v. Santhosh Kumar reported in 2006(11) SCC 147 wherein the Apex Court has held as follows:

11. A perusal of the order passed by the Appellate Authority would only reveal the total non-application of mind by the Appellate Authority. We, therefore, have no other option except to set aside the order passed by the disciplinary authority and the Appellate Authority and remit the matter for fresh disposal to the disciplinary authority. The disciplinary authority shall consider the detailed representation made by the respondent and also consider the detailed report of the enquiry officer and the records placed before him in its proper perspective and decide the matter afresh on merits. The disciplinary authority is directed to consider the entire case only on the basis of records already on record. The respondent is not permitted to place any further material or record before the disciplinary authority. The order passed by the High Court is set aside for the above reason. We also set aside the direction issued by the High Court ordering reinstatement into service with continuity in service and all consequential benefits. The disciplinary authority is also directed to dispose of the matter, within three months from the date of receipt of this order, after affording an opportunity to both the parties. The civil appeal is disposed of accordingly. No order as to costs.

10. In the case of Roop Singh Negi. v. Punjab National Bank reported in 2009(2) SCC 570 wherein, the Apex Court held as follows:

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the criminal court on the basis selfsame evidence should not have been taken into consideration. The materials brought on record pointing out the guilt

are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the enquiry officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The inferences drawn by the enquiry officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.

11. The Honble Supreme Court of India in the above said cases reiterated that any order, imposing major penalty, should contain convincing reasons. A non-speaking order will not stand under the scrutiny of this Court and it has to be set aside at the outset. Adopting the legal principles enunciated in the above decisions and considering the facts and circumstances, the present writ petition deserves to be allowed.

12. The order impugned in this writ petition is admittedly, a non-speaking order and the learned Standing Counsel appearing for the respondents 1 to 3 is not able to substantiate that the impugned order contains valid reason so as to impose major penalty of termination.

13. No doubt, the allegations are serious in nature and this Court is of the opinion that the writ petitioner's right, for an opportunity contemplated under law, cannot be denied. More so, the respondents have failed to conduct domestic enquiry in accordance with the procedures contemplated, inspite of the fact that on earlier occasion, disciplinary proceedings was initiated and the matter was remitted back, even while conducting enquiry during the second time, the principles of natural justice have not been followed and even the discrepancies earlier cited existed and not rectified by the Disciplinary Authority. Therefore, the Disciplinary Authority was not serious enough to proceed with the inquiry in accordance with law and by following the principles of natural justice. Except this factual aspect, the counter is silent about the legal grounds raised by the writ petitioner in the affidavit.

14. Such being the factum of the case, this Court is of the firm view that the writ petition deserves to be allowed. Accordingly, the impugned orders are quashed and the writ petition is allowed. However, since the allegations are relating

to adulteration of alcohol, which is severe in nature, liberty is granted to the Disciplinary Authorities to proceed with the disciplinary proceedings, by issuing a fresh charge memo based on the documents available and complete the enquiry, by following the Rules of enquiry contemplated under the Tamil Nadu Civil Services (Discipline and Appeal) Rules. With this liberty, the writ petition stands allowed No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

sr/vsi

To

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TASMAC Lt, (Vellore)
Vellore District.

+1cc to Mr.Johnkennady, Advocate, S.R.No.36712
+1cc to Mr.S.Srinivasan, Advocate, S.R.No.36665

W.P.No.26242 of 2012

SVI (CO)
RS (15/05/2017)