

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.11.2017

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.26187 of 2006

A.Mariadhasan

... Petitioner

vs

1.The Director of Rural Development,
Panagal Buildings,
Saidapet, Chennai-600015.

2.The District Collector,
Kanyakumari District,
at Nagercoil.

... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the second respondent's order made in E4/46210/05 dated 27.12.2005 and as confirmed by the first respondent in Se.Mu. Order No.5132/06/TPC 2.2 dated 6.7.2006, to quash the same and consequently direct the respondents to extend all benefits both service and monetary.

For Petitioner : Mr.L.Chandrakumar

For Respondents : Mr.Duraisolaimalai,
Additional Government Pleader

O R D E R

The petitioner has approached this Court seeking the following relief:

'To call for the records relating to the second respondent's order made in E4/46210/05 dated 27.12.2005 and as confirmed by the first respondent in Se.Mu. Order No.5132/06/TPC 2.2 dated 6.7.2006, to quash the same and consequently direct the respondents to extend all benefits both service and monetary'.

2.The petitioner was appointed as Driver on 04.11.1982 and has been working as such till date. On 11.08.2003, a charge memo was issued against the petitioner alleging misbehaviour on the part of the petitioner against the higher official. In response to the charge memo dated 11.08.2003, a detailed explanation was submitted on 19.08.2003 denying the charges. Thereafter, not satisfied with the explanation, an enquiry was ordered. Before the enquiry, the petitioner had

demanded to furnish certain documents in order to prove his innocence. According to him, on the said date he was alleged to have misbehaved with his higher official, he was not there in the office as he was deputed for out-station work and this fact would be proved by the log book maintained in the office. This crucial document was not made available to him in support of his defence.

3. When the enquiry was conducted on 13.02.2004, the petitioner has demanded for furnishing of the crucial document, but the same was not produced and however, the enquiry officer proceed to complete the enquiry as ex-parte and ultimately held that the charge proved against the petitioner. On the basis of the ex parte report submitted by the enquiry officer, disciplinary authority, by proceedings, dated 27.12.2005, imposed a penalty of stoppage of increment for a period of two years with cumulative effect.

4. Aggrieved against the order of the disciplinary authority, an appeal has been preferred on 13.01.2006. Since thereafter, no order was passed in the appeal, the petitioner herein filed a writ petition in W.P.No.10852 of 2006 and thereafter, an order was passed by the first respondent on 06.07.2006, rejecting the appeal by a non-speaking order. Aggrieved by the orders passed by the enquiry officer and the appellate authority, the petitioner is before this Court.

5. Mr. L. Chandrakumar, the learned counsel for the petitioner at the outset would submit that non-furnishing of the crucial document required by the petitioner, would vitiate the entire disciplinary proceedings and therefore, the report of the enquiry officer, suffers from perversity and the said perversity finding cannot be the basis for disciplinary authority to impose the punishment of penalty of stoppage of two years of increment with cumulative effect. According to him, since the punishment imposed was with cumulative effect, it will have financial impact during his service and even after his retirement for his entire life time.

6. Learned counsel for the petitioner would also submit that when the specific grounds were raised in the appeal, the first respondent viz., the appellate authority had passed a non-speaking order without consideration of any of the grounds raised in the appeal by the petitioner in a proper perspective. According to him, the order passed by the appellate authority being a non-speaking, which is contrary to the rule position, the same is liable to be interfered with.

7. After notice, Mr. S. V. Duraisolaimalai, the learned Additional Government Pleader entered in appearance and filed a detailed counter affidavit. As per the counter affidavit, the documents sought for by the petitioner were not relevant to the charges framed against him and therefore, no prejudice

was caused to him by not furnishing the documents to the petitioner. In any event, it was averred in the counter affidavit that in spite of opportunity that has been granted to the petitioner, he has failed to avail of the same and allowed the enquiry officer to proceed ex parte.

8. The learned Additional Government Pleader appearing for the respondents has reiterated the averments contained in the counter affidavit and would submit that the proceedings of both the disciplinary authority and the appellate authority, are in order and they do not call for any interference by this Court.

9. Per contra, the learned counsel for the petitioner would strongly contend that the entire enquiry proceedings was conducted behind the back of the petitioner and in the absence of proper opportunity being afforded, the entire proceedings were vitiated. In which event, the penalty imposed by the disciplinary authority and confirmed by the appellate authority would also stand vitiated.

10. This Court has given its anxious consideration to the rival submissions of the learned counsels for the parties and perused the materials and pleadings placed on record.

11. Although there is force in the contention put forth by the counsel for the petitioner that no reasonable opportunity had been afforded to the petitioner, by non-furnishing the crucial document to him, nevertheless, it has to be held that the petitioner was given an opportunity to peruse the documents, but he did not choose to peruse the same. The petitioner having failed to exercise his right to peruse the document, cannot turn over and complain that he was not given reasonable opportunity.

12. At the same time, it has to be seen that even in the absence of any document furnished to the petitioner to peruse, the enquiry officer and disciplinary authority ought to have provided copies of the documents demanded by the petitioner in order to put forth the defence effectively by the petitioner. In the absence of such action, it has to be held that the petitioner's right to have effective defence has been prejudiced.

13. Be that as it may, the fact of the matter is that the appellate authority while considering the appeal, has not chosen to pass a detailed order in terms of the rule position. The order of the appellate authority is per se a non speaking order and therefore, the same cannot be countenanced both in law or on facts. However, the petitioner having failed to utilize the opportunity to participate in the enquiry and failed to establish his innocence, cannot expect this Court to give a clean chit to his conduct. At the same time, as rightly pointed out by the learned counsel for the petitioner that the punishment of stoppage of increment for two years

with cumulative effect appears to be little harsh. Considering the financial difficulty which would follow rest of petitioner's career and thereafter till his life time, in the interest of justice, this Court is of the view that on equitable reasoning, the punishment of stoppage of increment for a period of two years has to be modified as stoppage of increment for two years without cumulative effect.

14.The respondents are directed to modify the penalty as above, i.e. stoppage of increment for a period of two years without cumulative effect. The said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order.

15.With the above observation, this writ petition stands disposed of. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Director of Rural Development,
Panagal Buildings,
Saidapet, Chennai-600015.

2.The District Collector,
Kanyakumari District,
at Nagercoil.

+lcc to Mr.L.Chandrakumar, Advocate SR.No.85551/17
+lcc to Government Pleader SR.No.85836/17

W.P.No.26187 of 2006

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