



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2018

CORAM

THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P.No.32348 of 2003

M.Natarajan

...Petitioner

Vs

1.The Tamil Nadu Civil Supplies Corporation Ltd.,
Rep. by its Chairman & Managing,
Director,
42, Thambusamy Road,
Kilpauk, Chennai 600 010.

2.The General Manager,
(Administration)
Tamil Nadu Civil Supplies Corporation Ltd.,
Head Office, 42, Thambusamy Road,
Kilpauk, Chennai 600 010.

...Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records from the files of the 1st respondent in respect of his impugned proceedings bearing Proc.No.G3/114181/2000 dated 13.03.2001 and quash the same.

For Petitioner : Mr.K.M.Ramesh

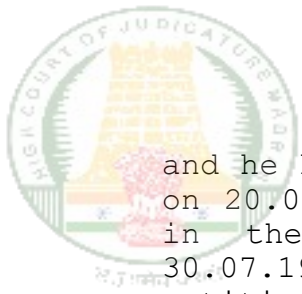
For Respondents : No appearance

O R D E R

The prayer sought for herein is for a Writ of Certiorari, calling for the records from the files of the 1st respondent in respect of his impugned proceedings bearing Proc.No.G3/114181/2000 dated 13.03.2001 and quash the same.

2.The short facts which are to be noticed for disposal of this Writ Petition are as follows:

The petitioner joined the service of the respondent Tamil Nadu Civil Supplies Corporation as Bill Clerk on 01.07.1982. He was then promoted as Assistant Quality Inspector on 01.07.1986



and he had been posted at Trichy region on 07.02.1990. While so, on 20.08.1999, a charge memo was issued against the petitioner, in the result, he had been kept under suspension from 30.07.1999. The sum and substance of the charge against the petitioner is that, he had received recycled rice and PDS rice instead of freshly processed rice for personal gain. There had been some other charges also framed against the petitioner. Petitioner denied all those charges on 30.08.1999. However, an additional charge memo was issued on 29.10.1999 and that charges also had been denied by the petitioner on 09.11.1999.

3. Thereafter, an enquiry was conducted, by appointing an Enquiry Officer, on 17.11.1999. It is the case of the petitioner that, though the disciplinary proceedings to award major punishment had been initiated against the petitioner, the respondents have not conducted the domestic enquiry in the manner prescribed by the Service Regulations governing the Service of the petitioner. The domestic enquiry was conducted only on one day i.e., on 17.11.1999. No documents have been filed and no witnesses have been examined on the side of the management and therefore, the question of cross-examining the witness also on the side of the petitioner did not arise. However, the Enquiry Officer had concluded that, all the charges framed against the petitioner had been proved and accordingly, he had given his report to the Disciplinary Authority. This kind of summary proceedings by way of domestic enquiry ought not to have been conducted for award of major punishment. However, the Enquiry Officer has concluded the enquiry with one day enquiry and based on the Enquiry Officer's report, the Disciplinary Authority i.e., the 2nd respondent had passed an order on 10.08.2000, by which he accepted the finding given by the Enquiry Officer and thereby awarded the major punishment of reduction in rank from the post of Assistant Quality Inspector to the post of Bill Clerk for a period of five years with minimum effect.

4. Aggrieved over the said order of punishment against the petitioner, he preferred an appeal before the 1st respondent Appellate Authority, who, after having considered the merits of the claim made by the petitioner, has ultimately modified the punishment from the reversion/reduction in rank to the one of punishment of stoppage of increment for a period of three years with cumulative effect. As against the said modified order of punishment, the petitioner has filed this Writ Petition with the aforesaid prayer.

5. I have heard, Mr.K.M.Ramesh, learned counsel for the petitioner, who would submit that, admittedly, the disciplinary proceedings initiated against the petitioner was for inflicting the major punishment. Once, the major punishment proceedings is



initiated, definitely as per the Service Regulations governing Service conditions of the petitioner, there should have been a full fledged enquiry as contemplated under the Regulations. However, in the case in hand, according to the learned counsel for the petitioner, only one day enquiry was conducted, where straightaway the Enquiry Officer asked some questions to the petitioner and after solicited the answer from the petitioner, he had concluded the enquiry by way of summary proceedings and accordingly he had given a report that the charges have been proved.

6. In this context, the learned counsel for the petitioner has relied upon two decisions of this Court. The first one is in W.P.No.12897 of 1986 and etc., batch dated 14.11.1996, wherein this Court has held against the very same respondents i.e., Tamil Nadu Civil Supplies Corporation, that, when disciplinary proceedings are initiated against the erring employee, the principles of natural justice cannot be violated and if it is found that such a principle has been violated in completing the disciplinary proceedings, certainly the punishment awarded against the employee would get vitiated.

7. The next judgment in W.P.No.11145 of 1987 dated 19.02.1991, of course, this is also against the very same respondent i.e., Tamil Nadu Civil Supplies Corporation, it has been held that, the Enquiry Officer without giving opportunity or permitting the petitioner to make a statement, ought not to have straightaway cross-examined the delinquent and this kind of cross-examination by the Enquiry Officer directly with the delinquent without permitting him to make his statement in his favour would not be acceptable and therefore, following a decision in Union of India Vs. Mohammed Ramzankhan, 1991-I L.L.N 380, the learned Judge had concluded that the disciplinary proceeding was vitiated.

8. By relying upon these two decisions, the learned counsel for the petitioner would submit that, in the case on hand, since it is a major penalty proceedings, proper opportunity should have been given to the petitioner and without giving such opportunity and without having any evidence either orally or document wise, the Enquiry Officer ought not to have completed the major penalty proceedings by way of summary proceedings on one day and therefore, if the aforesaid principle underlined in the said decisions referred to above are applied to the facts of the present case, certainly the disciplinary proceedings initiated against the petitioner which culminated in the punishment as referred to above could also be adjudged as vitiated.



9. I have considered the said submissions made by the learned counsel appearing for the petitioner. In spite of opportunities having been given, no one was appearing for the respondent Corporation. Hence, the case is taken up for hearing and decided on merits based on the available records.

10. There had been 10 charges totally against the petitioner, both original charges as well as additional charges. In so far as the original charges consisting of 5 charges, I have gone through the explanation given by the petitioner himself. In so far as the 1st charge is concerned, his defense was that he verified the stock periodically and found fresh processed rice only. Thereafter, the stocks were accepted by the Corporation during night hours, which enabled the hulling agent to cheat and deposit Food Corporation of India rice. Therefore in this regard, the petitioner cannot be blamed that he had been in the dereliction of duties for the personal gain.

11. The very such statement given by the petitioner defending himself from the 1st charge itself shows that there had been an inferior quality rice deposited in the respondent Corporation. The duty of the petitioner being an Assistant Quality Inspector is to check the quality of the rice being supplied to the Corporation and merely because he verified the stock during day hours and night hours some other stock had been deposited, it cannot be accepted that the petitioner has no duty to verify during the time of supply of the rice to the Corporation, whether the stock being supplied to the Corporation was proper stock or an inferior one. Since, this factor had been admitted by the petitioner that the inferior quality rice had been supplied during night hours, it can be easily found that the 1st charge framed against the petitioner is said to be proved as he had some dereliction of duty in this regard.

12. Like that, insofar as the charge number 3 is concerned, the petitioner had shifted the responsibility to a Bill Clerk to look after the standardization. In so far as the standardization of the stock or rice being supplied to the stock is concerned, it is the duty of the Quality Inspector like the petitioner to look into, verify and certify that whether or not the stock being supplied to the Corporation, is proper. In this regard, the attitude on the part of the petitioner to shift the responsibility to a Bill Clerk cannot be accepted.

13. Like that, insofar as the charge 4 is concerned, it is the defense of the petitioner that even though he had undertaken disinfection measure, he was unable to disinfectate the stock fully. That means, there had been stocks which were not disinfectated. Therefore, in this regard also, the charge to some extent has been accepted by the petitioner.



14. Like that, insofar as the additional charges are concerned, i.e., from charges 6 to 10, in respect of charge Nos. 6, 7 and 9, some admissions are there on the side of the petitioner. However, he had made denial that he had not willingly done this violation and because of such alleged violation, he had not personally been gained.

15. After having gone through the charges framed against the petitioner as well as the defense he had taken in his defense statement, this Court finds that, if not all the 10 charges framed against the petitioner, at least some charges as has been referred to above had been proved, because of the own admission on the part of the petitioner. In such circumstances, even though domestic enquiry was conducted on one day, in view of the categorical admission on the side of the petitioner, the Enquiry Officer had once again enquired the petitioner and sought for a defense, for which the petitioner once again filed his explanation, defending himself against the charges framed against him.

16. Only in that context, the Enquiry Officer had come to a conclusion that all the charges framed against the petitioner had been proved.

17. Insofar as some of the charges are concerned, even though there had been no evidence either in oral or document wise, the Enquiry Officer in toto had given a statement that all the charges framed against the petitioner had been proved.

18. This kind of summary decision taken by the Enquiry Officer in respect of all the charges may not be justifiable. At the same time, insofar as the proven charges based on the admission given by the petitioner or statement given by him are concerned, the Enquiry Officer's conclusion that those charges also had been proved can be accepted.

19. So far as the said judgments cited supra by the learned counsel for the petitioner is concerned, this Court has no quarrel with regard to the said proposition. In one case, the proposition was that when there had been a proceedings for major punishment, proper opportunity should have been given. In another case, the proposition was that, when given an opportunity to make a statement, the delinquent cannot be straightaway cross-examined by the Enquiry Officer directly. These two propositions are settled propositions, in which, as said above, this Court has no hesitation or quarrel to hold that these propositions have to be accepted.

20. However, insofar as the facts of the present case are



concerned, as set out above, some of the charges are definitely proven and the remaining charges might not have been proved. Therefore, insofar as the proven charges are concerned, the Disciplinary Authority has got every right to inflict the punishment, ofcourse, in commensurate to the proven charges.

21. Herein the case in hand, the Disciplinary Authority has awarded a punishment of reversion to the lower post for five years. That punishment in fact has been considerably modified by the Appellate Authority, the 1st respondent from reversion to withholding the increment for three years with cumulative effect. Since the charges framed against the petitioner and the Disciplinary Authority have awarded major punishment, in view of the proven charges are concerned, certainly the petitioner is liable to be inflicted atleast to the minimum major punishment. In this context, by taking into account the over all situation of the case, this Court is inclined to make some modification of the punishment awarded against the petitioner by the 1st respondent Appellate Authority.

22. In the result, this Writ Petition stands disposed of with the following direction:

That the impugned order of punishment of reversion as modified by the 1st respondent into cut in increment with three years with cumulative effect is hereby modified to withholding of increment for one year with cumulative effect and such punishment would meet the ends of justice. Taking into account the factual matrix of this case, this modification is made by this Court, by taking into account the disciplinary proceedings which had been conducted for one day as summary proceedings and for most of the charges, there had been no evidence available orally and documentary, otherwise, this Court would not have interfered with the modified punishment of the 1st respondent Appellate Authority.

23. In the result, the Writ Petition is allowed in part by modifying the punishment as indicated above. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

gsa/mp



To

1.The Chairman & Managing Director,
Tamil Nadu Civil Supplies Corporation Ltd.,
42, Thambusamy Road,
Kilpauk, Chennai 600 010.

2.The General Manager,
(Administration)
Tamil Nadu Civil Supplies Corporation Ltd.,
Head Office, 42, Thambusamy Road,
Kilpauk, Chennai 600 010.

+1cc to Mr.K.M.Ramesh, Advocate, S.R.No. 65357

W.P.No.32348 of 2003

NRJK (CO)
GN(18/07/2019)