

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 22.10.2018
CORAM
THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.38346 of 2015
and
M.P.Nos.1 and 2 of 2015

K.Rajamani

... Petitioner

-vs-

- 1.The Government of Tamil Nadu,
Rep. by the Additional Secretary to Government,
Environment and Forest Department,
Fort St. George,
Chennai - 600 009.
- 2.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, V.O.C. Nagar,
Park Town,
Chennai - 600003.
3. The Principal Chief Conservator of Forests
And Head of Forest Office,
Panagal Building,
Saidapet,
Chennai - 600 015.

.... Respondents

Writ Petition is filed under Article 226 of the Constitution of India, for the issuance of a Writ of Certiorarified Mandamus, calling for the records relating to the impugned G.O.(D) No. 314, Environment and Forest Department, dated 20.09.2013 from the files of the First Respondent and quash the same and consequently direct Respondents 1 and 3 to promote the Petitioner as Assistant Conservator of Forests on par with his juniors with all consequential service and monetary benefits within a time frame.

For Petitioner :Mr.K.M.Ramesh
For Respondent :Mr.M.Santhana Raman,
Additional Government Pleader
(Forests) For R1 & R3
M/s. C.N.G.Niraimathi
For R2

O R D E R

The enhancement of punishment imposed under the Tamil Nadu Civil Services (Discipline and Appeal) Rules 1955 by the Appellate Authority in G.O.(D)No.314, Environment and Forest

Department, dated 20.09.2013, is under challenge in this writ petition.

2. The learned counsel, appearing on behalf of the writ petitioner, states that the petitioner was holding the post of Forest Range Officer and issued with a charge memo under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. Based on the enquiry report submitted by the Enquiry Officer, the Disciplinary Authority / Third Respondent imposed the punishment of stoppage of increment for six months without cumulative effect. Challenging the said order of punishment, the writ petitioner preferred an appeal to the first respondent under the provisions of the Rules.

3. The first respondent, while considering the appeal filed by the writ petitioner, passed an order enhancing the punishment from stoppage of increment for six months without cumulative effect to the stoppage of increment for one year without cumulative effect.

4. The learned counsel for the writ petitioner contends that such an enhancement cannot be done without providing an opportunity to the writ petitioner as stipulated under the Tamil Nadu Civil Services (Discipline and Appeal) Rules 1955. The writ petitioner mainly states that no notice was given to the writ petitioner before enhancing the penalty. Such a procedure adopted is in violation of rules itself.

5. The learned Additional Government Pleader (Forests) states that the Appellate Authority has got power to enhance the punishment. However, he is unable to establish that a notice and an opportunity was given to the writ petitioner before passing the impugned order enhancing the penalty. In the absence of any notice to the writ petitioner in respect of the proposed enhancement of penalty, the order impugned in this writ petition is liable to be scraped.

6. Let us now look into to the Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, which reads as under:-

"23. Power and procedure of the Appellate Authority -

(1) In the case of an appeal against an order imposing any penalty specified in rule 8 or 9, the appellate authority shall consider--

(a) whether the facts on which the order was based have been established;

(b) whether the facts established afford sufficient ground for taking action; and

(c) whether the penalty is excessive, adequate or inadequate and pass orders--

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case :

Provided that --

(i) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (iv), (v)(c), (vi), (vii) and (viii) of rule 8 and an inquiry under sub-rule (b) of rule 17 has not already been held in the case, the appellate authority shall, subject to the provisions of sub-rule (c) of rule 17, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of sub-rule (b) of rule 17 and thereafter, on a consideration of the proceedings of such inquiry make such orders as it may deem fit;

(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (iv), (v)(c), (vi), (vii) and (viii) of rule 8 and an inquiry under sub-rule (b) of rule 17 has already been held in the case, the appellate authority shall, after giving the appellant a reasonable opportunity of making representation against the penalty proposed on the basis of the evidence adduced during the enquiry, make such orders as it may deem fit ; and

(iii) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of sub-rule (a) of rule 17 of making representation against such enhanced penalty.

(2) Any error or defect in the procedure followed in imposing a penalty may be disregarded by the appellate authority if such authority considers, for reasons to be recorded in writing, that error or defect was not material and has neither cause injustice to the person concerned nor

affected the decision of the case."

7. Rule 23 (1) proviso (ii) and (iii) contemplates that such an opportunity is to be provided to the delinquent officials before enhancing the penalty. In other words, if the Appellate Authority decides to enhance the penalty, then an opportunity to submit his explanations must be provided to the delinquent officials.

8. This Court is of an opinion that the opportunity provided under the Rules has got a purpose and object. In the present case on hand, the writ petitioner preferred an appeal. In the appeal preferred by the writ petitioner if the Appellate Authority decides to enhance the penalty, then the appellant must be put on notice in respect of such proposed enhancement of punishment. In such circumstances, the appellant must be in a position to submit his objections/explanations, so as to object the enhancement of punishment by the Appellate Authority.

9. Thus, it is a valuable right extended to the delinquent officials under the Rules and the same cannot be taken away by the Appellate Authority by enhancing the punishment without issuing any notice and an opportunity to the appellant who preferred an appeal against the original punishment imposed by the Disciplinary Authority.

10. This being the factum of the case, the grounds raised by the writ petitioner in relation to the non-adherence of the Rules in respect of providing an opportunity is to be considered.

11. Accordingly, the impugned order passed by the first respondent in G.O.(D) No.314, Environment and Forest Department, dated 20.09.2013, is quashed and the matter is remanded back to the first respondent for issuing a Show Cause Notice to the writ petitioner in respect of their decision to enhance the penalty and on receipt of the explanations/objections from the writ petitioner, consider such objections/explanations, take a decision and pass orders on merits and in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order.

12. Accordingly, the writ petition stands partly allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Additional Secretary to Government,
Government of Tamil Nadu,
Environment and Forest Department,
Fort St. George,
Chennai - 600 009.

2.The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, V.O.C. Nagar,
Park Town,
Chennai - 600003.

3. The Principal Chief Conservator of Forests
And Head of Forest Office,
Panagal Building,
Saidapet,
Chennai - 600 015.

+1cc to Mr.K.M.Ramesh, Advocate SR.No.71705

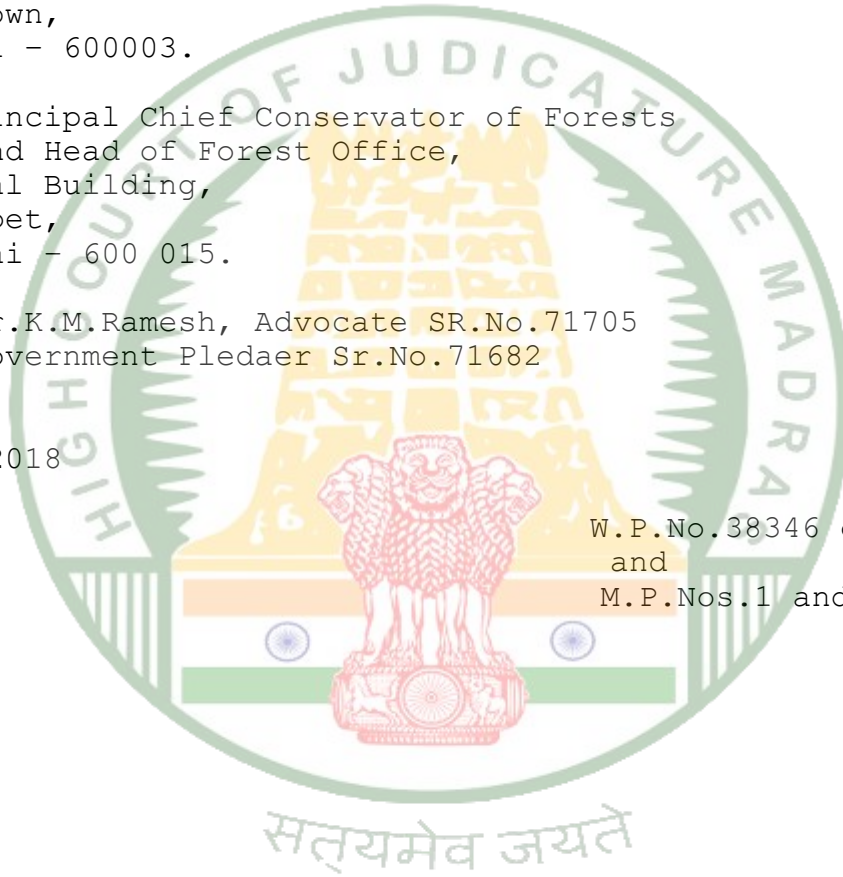
+1cc to Government Pleader Sr.No.71682

MP(CO)
sm:12.11.2018

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