

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.04.2018

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.710 of 2016

Dr.D.Rajamanickam

S/o. Dharamalingam Mudaliyar,

Formerly Civil Asst. Surgeon

Government Hospital, Karur 639 001.

Karur District.

(Formerly Primary Health Centre Krishnarayapuram)

... Appellant

versus

1. The State of Tamil Nadu

Rep. By the Commissioner and Secretary,
Health and Family Welfare Department,
Fort St. George, Chennai 9.

2. The Director of Public Health and

Preventive Medicine, Chennai 600 006.

3. The Director of Medical and

Rural Health Service,
Chennai 600 006.

4. The Deputy Director of Medical and

Rural Health Service,
Chennai 600 006.

5. The Commissioner of Tribunal for

Disciplinary Proceedings,
Coimbatore.

... Respondents

Appeal filed against the order passed by this Court dated
30.11.2015 in W.P. No.11072 of 2007.

W.P. No.11072 of 2007:-

Writ Petition filed under Article 226 of the constitution of
India for issuance of a writ of certiorarified mandamus to call
for the entire records in connection with the impugned order of
the 1st respondent in G.O.(D) No.729 Health and Family Welfare

(D1) Dept. dt 3.8.2006 quash the same and consequently direct the respondents to confer all the terminal benefits including backwages pension etc. to the petitioner by treating the period of suspension as one of duty.

For appellant : Mr.B.Balavijayan
For Respondents : Mr.V.Anandhamoorthy,
Addl. Govt. Pleader

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The challenge in this Intra Court Appeal is the order of the learned Single Judge dated 30.11.2015, in and by which, the Writ Petition filed by the appellant challenging his dismissal from service was dismissed.

2. The facts that led to the filing of the Writ Petition are as follows:

The appellant joined as Medical Officer in the service of the Health and Family Welfare Department of the Government of Tamil Nadu in 1968. In 1975 while the appellant was working as a Assistant Medical Officer in the Medical Centre, Krishnarayapuram, family Planning Program was organised and several camps were held between 16.08.1975 and 30.09.1975 fixing a target of at least 700 Family Planning Surgeries to be performed by the Department. In 1978, an evaluation was ordered to be done in all the three centers for which, the appellant was in charge of viz. Ammapalayam, Thiruvarangulam and Krishnarayapuram, at the instance of one Dr.David, who is the immediate superior of the appellant. After the evaluation the appellant was placed under suspension by an order dated 31.03.1978. On 27.05.1980, a charge memo was issued to the appellant under Rule 17(b) on five counts. The charges were as follows:

Charge 1: The appellant had issued false certificates to Motivators for vasectomy operation in respect of the following persons without actually doing the vasectomy operation by abusing his position as a Medical Officer and claimed remuneration from the Government.

1. Vairaperumal
2. Shanmugam
3. Sengapillai
4. Sakthi
5. Ponnusamy
6. Omandhu

Charge 2: That he has created bogus records for vasectomy operation and wantonly declared in the applications forms and operation registers of the primary Health Centre, Krishnarayapuram that he had performed vasectomy operation on persons without actually doing so.

Charge 3: That he had declared, without any devotion to duty and moral rectitude, that he had performed vasectomy operation on 672 persons of whom 300 could not be traced or not available in the addresses mentioned in the case cards and 109 found to be ineligible for.

Charge 4: That he had performed vasectomy operations to the following ineligible persons who have crossed the reproductive age:

1. Thiru. Malayalam S/o. Sannasi age 60 years
2. Thiru. Gopala Asariar S/o. Muthusamy age 65 years
3. Thiru Arumugham S/o. Ammasi age 65 years.

Charge 5: That he had caused unnecessary pecuniary loss to the Government by way of payment of compensatory amount to acceptors and honorarium to motivators.

3. The appellant had submitted his detailed written explanation to the charges. The enquiry into charges was handed over to the Commissioner of Disciplinary Proceedings at Chennai, initially and subsequently the same was transferred to the Commissioner of Disciplinary Proceedings, Coimbatore. The Commissioner of Disciplinary Proceedings, Coimbatore, submitted his report on 07.01.1989, wherein, he had concluded that none of the five charges were proved. On receipt of the Report, the Secretary to Government, viz., the 1st respondent, by his proceedings dated 22.04.1991 decided to deviate from the findings of the Commissioner of Disciplinary Proceedings with reference to charge Nos. 2, 3 and 5. In and by the same proceedings dated 22.04.1991, the Government had called for an explanation from the appellant. The appellant had submitted his explanation on 20.07.1991. It is also seen from the records that the appellant had challenged the proceedings dated 22.04.1991, in and by which, the Government decided to deviate from the findings of the Enquiry Officer, viz. the Commissioner of Disciplinary Proceedings, before the Tamil Nadu

Administrative Tribunal in OA No.4954 of 1991 and had obtained stay of further proceedings. The said Original Application came to be disposed of by the Tribunal on 15.12.2003, with a direction to the authorities to complete the enquiry within a period of 12 weeks and pass appropriate orders. Once the decks were cleared, the Government passed the impugned Government Order in G.O.D.No.729 dated 03.08.2006, holding that the charges 2, 3, 5 were proved and imposing a punishment of dismissal from service on the appellant. Aggrieved the appellant had filed WP No.11072 of 2007, challenging the said order of dismissal. It is not in dispute that the appellant attained the age of superannuation on 30.09.1997, but he was not allowed to retire.

4. The respondents in the Writ Petition resisted the Writ Petition contending that the appellant being a Medical Officer cannot claim that he was not responsible for assessing the age of the beneficiaries. It was also contended that on verification of the beneficiaries, it was found that nearly 300 beneficiaries were not available in the addresses found in the records. It is also concluded that some of the persons shown as beneficiaries were included in the list of beneficiaries without actually performing the vasectomy surgery, on such individuals. It is also claimed that even unmarried persons have been shown as beneficiaries of family planning surgeries. Claiming that the appellant was responsible for all these irregularities, the Authorities would contend that the punishment of removal from service was justified. The above Writ Petition came to be dismissed on 30.11.2015 by the learned Single Judge.

5. The challenge in this Writ Appeal is to the said order dated 30.11.2015, in and by which, the learned Single Judge had dismissed the Writ Petition filed by the appellant, challenging the order imposing a punishment of removal from service on the appellant.

6. We have heard Mr.B.Balavijayan, learned counsel appearing for the appellant and Mr.V.Anandhamoorthy, learned Additional Government Pleader appearing for the respondents.

7. Mr.B.Balavijayan, learned counsel appearing for the appellant would contend that the learned Single Judge has not considered the serious procedural irregularities, in the manner in which, the findings of the Enquiry Officer, were sought to be deviated from by the Disciplinary Authority. Conceding the power of the Disciplinary Authority, to disagree with the findings of the Enquiry Officer, the learned counsel for the

appellant, would contend that if the Disciplinary Authority decides to deviate from or disagree with the findings of the Enquiry Officer, it is mandatory that the Disciplinary Authority should consider the evidence on record and give the reasons for arriving at different findings based on the evidence.

8. According to the learned counsel Mr.B.Balavijayan, the impugned Government Order, does not disclose any reason or the factual basis on which the findings of the Enquiry Officer were sought to be rejected. There is no reason assigned by the Disciplinary Authority for coming to a different conclusion. Pointing out the relevant portions of the Government order dated 03.08.2006, in and by which, the appellant was removed from service, Mr.B.Balavijayan would contend that it only reproduces the findings of the Enquiry Officer, the reasons for deviating the further representation of the appellant and finally concludes that the Government having examined the charges framed the defence statement, the findings of the Tribunal for disciplinary proceedings, the further representation on the deviated decisions from the findings of the Tribunal for the disciplinary proceedings, carefully and independently with connected records and held the charges 2, 3 and 5 as proved and the charges 1 and 4 as not proved. This, according to Mr.B.Balavijayan, is wholly insufficient and does not meet the requirements of the principles of natural justice. The Disciplinary Authority, while imposing a serious punishment of dismissal from service is obliged to give reasons for its conclusions and also for imposing the punishment. In the absence of such reasons in the order impugned cannot be said to be in compliance with the mandatory requirements of the disciplinary proceedings.

9. Mr.B.Balavijayan, would also invite our attention to the judgments of the Hon'ble Supreme Court in Narinder Mohan Arya v. United India Insurance Company Ltd, reported in 2006 (4) SCC 713; Lav Nigam v. Chairman and Managing Director, ITI Ltd., and another, reported in 2006 (9) SCC 440; G. Vallikumari v. Andhra Education Society and others, reported in 2010 (2) SCC 497 and the judgment of the Division Bench of this Court in The Join Commissioner of Police and The Deputy Commissioner of Police v. G.Anandan, reported in 2008 Writ LR 86. It is also the contention of Mr.B.Balavijayan, that there was no show cause notice (2nd show cause notice) before imposing the punishment.

10. Per contra Mr.V.Anandhamoorthy, learned Additional Government Pleader appearing for the respondents would submit that the charges against the appellant were very serious. Out

of 692 beneficiaries on whom the appellant claims to perform the surgery nearly 300 were missing and several persons were found to be ineligible. Enough and more evidence is available to show that the claim was made to the effect that even unmarried persons had undergone Family Planning Surgeries. These irregularities, according to the learned Additional Government Pleader, are very severe irregularities, which require the maximum punishment of dismissal from service. The appellant being a Medical Officer cannot be allowed to shrug his responsibilities and claim that it was for the motivators to have looked into the age and other requirements of the beneficiaries. Mr.V.Anandhamoorthy, learned Additional Government Pleader would also contend that the impugned order dated 03.08.2006 meets all the requirements of Law and as such the learned Single Judge was justified in dismissing the Writ Petition.

11. We have considered the rival submissions. The question that would arise on the facts discussed above is as to,

1. What is the nature of the duties and obligations that are imposed upon the Disciplinary Authority when the Disciplinary Authority decides to deviate from the findings of the Enquiry Officer?

The 2nd question that would arise is

2. Whether the proceedings are vitiated by non issuance of the 2nd show cause notice which should have been issued prior to the order imposing punishment?.

Point No.1:

12. It is settled law that the Disciplinary Authority has got every right and power to deviate from the findings of the Enquiry Officer in a disciplinary proceedings. What is the requirement of law, when the Disciplinary Authority decides to deviate from the findings of the Enquiry Officer is no longer res integra. The Hon'ble Supreme Court in Punjab National Bank v. Kunj Behari Misra, reported in 1998 (7) SCC 84, while considering the procedure that is to be adopted, by the Disciplinary Authority, when it decides to deviate from the findings of the Enquiry Officer had, despite the fact that the regulations of the employer viz. Punjab National Bank did not provide for giving of any notice before the Disciplinary Authority differed with the view of the Enquiry Officer, read into the said Rule the principles of natural justice and held as follows:

"The result of the aforesaid discussion would be that the principles of natural justice have to be read

into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

13. This view of the Hon'ble Supreme Court was reiterated in *Yoginath D. Bagde v. State of Maharashtra and another*, reported in 1999 (7) SCC 739, considering the language of Rule 9 (2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, the Hon'ble Supreme Court held that even if the Rules do not specifically provide for the Disciplinary Authority to give an opportunity of hearing to the delinquent officer, before deviating from the findings of the Enquiry Officer. The principles of natural justice will have to be read into the provision and the procedure suggested in *Punjab National Bank v. Kunj Behari Misra's* case should be followed. In *State Bank of India and K.P. Narayanan Kutty*, reported in 2003 (2) SCC 449, the Hon'ble Supreme Court again reiterated the principles laid down in *Punjab National Bank v. Kunj Behari Misra's* case.

14. Now coming to the facts of this case on receipt of the findings of the Enquiry Officer, the Disciplinary Authority issued a notice to the appellant on 22.04.1991, in the said notice, of course, tentative reasons for deviating from the findings of the Enquiry Officer are set out. But the said notice though requires the appellant to furnish his explanation, however, concludes that the Government holds that charges 2, 3 and 5 are proved. Mr. B. Balavijayan would rightly contend that even before issuing the show cause notice dated 22.04.1991, the Government had concluded that the charges 2, 3 and 5 have been established. The delinquent employee has in fact questioned the said proceedings dated 22.04.1991, after filing his explanation, before the Tamil Nadu Administrative Tribunal and the Tribunal has rejected his challenge holding that all his objections can

be raised before the Disciplinary Authority. Therefore, the said objections of the learned counsel for the appellant that there is a predetermination of the issue by the Government cannot be gone into by us, at this stage.

15. However, the next contention of Mr.B.Balavijayan, that the Disciplinary Authority has not complied with the mandatory requirements of the procedure that is to be adopted by the Disciplinary Authority, when it seeks to deviate from the findings of the Enquiry Officer deserves consideration. The appellant had in fact furnished his reply to the show cause notice dated 22.04.1991 and 20.07.1991 and thereafter, the present impugned Government order G.O. Ms. No.729 dated 03.08.2006 came to be passed. The said Government Order which actually imposes a serious punishment of dismissal from service on the employee, in our opinion is laconic. The facts that led to the enquiry are narrated and the charges, the defence for delinquent officer, the findings of the Commissioner, Tribunal for disciplinary proceedings, viz. the Enquiry Officer have been reproduced in respect of charges 2, 3 and 4, the reasons for deviating from the findings of the Commissioner for Disciplinary Proceedings are set out and thereafter, the further representation of the delinquent officer is also reproduced. After reproduction of the above facts, in paragraph 6 of the Government Order, it is stated as follows:

"6. The Government have examined charges framed the defence statement of the delinquent officer, the findings of the Tribunal for Disciplinary proceedings, the further representation on the deviated decision from the findings of the Tribunal for disciplinary proceedings carefully and independently, with all connected records, and held the charges 2, 3 and 5 as proved and charges 1 and 4 as not proved. For the proven charges, the Government arrived at a provisional decision to remove Dr.D.Rajamanickam, from service."

16. Thereafter, the view of the Public Service Commission had been obtained. Then the impugned Government order refers to the filing of the Original Application No.4954 of 1992, before the Tribunal and at para 10 its observed as follows:

"10. The Government taking into account the views of the Tamil Nadu Public Service Commission, examined the case carefully with connected records and have decided to confirm the views of the Commission. The Government accordingly, do, and hereby direct that the punishment of removal from service be imposed on

Dr.D.Rajamanickam, formerly Medical Officer, Primary Health Centre, Krishnarayapuram, Karur District for the proven charges."

17. From the above extracts, it could be seen that the Government had not considered the evidence on record independently and has not given its reasons for differing with the conclusions of the Enquiry Officer. As already stated there is nothing on record to show that the appellant was given a personal hearing, after the issuance of the 2nd show cause notice. As per the law laid down by the Hon'ble Supreme Court in various cases, referred to above, when a Disciplinary Authority disagrees with the Enquiry Officer on any article of charge, before it records its own findings on such charge, it must

(i) Record its tentative reasons for such disagreement and its findings.

(ii) The report of the Enquiry Officer containing its findings will have conveyed to the delinquent officer and the delinquent officer will have an opportunity to persuade the Disciplinary Authority to accept the favourable conclusion of the Enquiry Officer.

(iii) The principles of natural justice require the authority, which has to take a final decision and can impose penalty to give an opportunity to the officer charged with a misconduct, to file a representation before the Disciplinary Authority records its findings on the charges framed against the officer.

18. A Division Bench of this Court in Joint Commissioner of Police and The Deputy Commissioner of Police v. G.Anandan reported in 2008 Writ LR 86, had held that any quasi judicial or any Administrative Authority is bound to give reasons for its conclusions while imposing the punishment. In G.Vallikumari v. Andhra Education Society and others, cited supra, the Hon'ble Supreme Court while reiterating the requirements of service jurisprudence with reference to disciplinary proceedings had observed as follows:

"Therefore, there is no escape from the conclusion that the order of punishment was passed by the Chairman without complying with the mandate of the relevant Statutory Rule and the principles of natural justice. The requirement of recording reasons by every quasi judicial or even an administrative authority entrusted with the task of passing an order adversely affecting an individual and communication thereof to

the affected person is one of the recognized facets of the rules of natural justice and violation thereof has the effect of vitiating the order passed by the concerned authority."

19. In *Narinder Mohan Arya v. United India Insurance Company Ltd*, reported in 2006 (4) SCC 713, the Supreme Court had pointed out that even when an Appellate Authority agrees with the findings of the Disciplinary Authority in a departmental enquiry, it should give reasons so as to enable the Writ Court to ascertain there was an application of the mind as required by the relevant rules. The Hon'ble Supreme Court had while doing so observed as follows:

"33. An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regard the compliance of the requirements of law while exercising his jurisdiction under Rule 37 of the Rules."

20. If this is the Law, even with reference to orders where the Appellate Authority concurs with the Original Authority, it is fundamental that an order which seeks to deviate from the conclusions of the Enquiry Officer must contain reasons for such deviation. Except narrating the proceedings on the contents of the reply given by the appellant, the Disciplinary Authority, viz. the Government has not adverted to any of the material on record to justify its conclusion that the appellant is guilty and to hold that charges 2, 3 and 4 were stood proved. The Hon'ble Single Judge has also not addressed the above issue. Therefore, we find that the order impugned in the Writ Petition viz. Government Order dated 03.08.2006 suffers lack of application of mind and it is liable to be set aside.

Point No.2:

21. The second contention of Mr.B.Balavijayan is that the Disciplinary Authority has not given a second show cause notice. We see much force in the said contention of the learned counsel for the appellant. The facts narrated above would show that after the submission of the report of the Enquiry Officer on 07.01.1989, the 1st respondent issued the notice dated 22.04.1991 expressing its intention to deviate from the findings of the Enquiry Officer and setting out the tentative findings and further explanation was called for from the appellant. The appellant furnished his further explanation filed on 20.07.1991,

thereafter, the impugned order came to be passed on 03.08.2006, imposing a punishment of removal from service.

22. From the above, it is very clear that the second show cause notice, which has been held to be mandatory in cases, where a major penalty is sought to be imposed by the Disciplinary Authority, was not issued. This in our considered opinion vitiates the enquiry. Therefore, we find that the impugned Government order dated 03.08.2006 cannot be sustained and the same is liable to be quashed and accordingly it is quashed. The Writ Appeal is allowed the Writ Petition in WP No.11072 of 2007 will stand allowed.

23. Normally, when this Court interferes with the punishment imposed to the departmental enquiry on technical grounds or on procedural infirmities, the matter will be remitted back to the Disciplinary Authority for fresh consideration in accordance with law. But, in the case on hand, the proceedings were initiated in 1978 and the charge memo came to be issued in 1980.

The Disciplinary Proceedings were concluded in 1989, therefore, nearly 38 years are lapsed from the date of framing of charges. In the mean time, the appellant had also attained the age of superannuation. Therefore, we do not think that any useful purpose will be served by remitting the matter for fresh consideration.

24. The Hon'ble Supreme Court in Narinder Mohan Arya's case taking note of the facts of the case nearly 30 years old, held that the order of remand is not necessary and granted the relief of reinstatement to the petitioner. While doing so, the Hon'ble Supreme Court had observed as follows:

"Although, the consequence of setting aside of the said orders would have been to remit the matter back to the disciplinary authority for consideration of the matter afresh on merit, but having regard to the fact that the disciplinary proceedings were initiated against the appellant as far back in 1976, we refrain ourselves from doing so. He indisputably, have suffered a lot. However, the question which arises is what relief should be granted to the appellant. The appellant shall be reinstated in service. We, however, while directing reinstatement of the appellant, keeping in view of the fact that no work had been taken from him, direct that only 50% of the back wages shall be payable. The appeal is allowed with the above mentioned directions."

25. In view of the same, while setting aside the impugned order of punishment dated 30.08.2006, we direct that the appellant should be deemed to have retired from service on attaining superannuation and would be entitled to all monetary benefits as if he had been in service till date of superannuation. However, taking note of the fact that the appellant was also partially responsible for the delay in the disposal of the Enquiry Proceedings, we hold that the appellant will be entitled only 50% of the back wages for the period of his suspension. The Writ Appeal is disposed of with the above directions and the circumstances of the case, there will be no order as to costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Commissioner and Secretary,
Government of Tamil Nadu
Health and Family Welfare Department,
Fort St. George, Chennai 9.
2. The Director of Public Health and
Preventive Medicine, Chennai 600 006.
3. The Director of Medical and
Rural Health Service, Chennai 600 006.
4. The Deputy Director of Medical and
Rural Health Service, Chennai 600 006.
5. The Commissioner of Tribunal for
Disciplinary Proceedings,
Coimbatore.

+1cc to Mr.B.Balavijayan, Advocate, S.R.No.27327
+1cc to the Government Pleader, S.R.No.27246

W.A.No.710 of 2016

SG(CO)
CS/07/06/18