

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : on 24.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

Writ Petition No.10444 of 2016
and
Review Application No.21 of 2018

D.Rajan ... Petitioner in
WP & Review Application

Vs.

1.The Transport Commissioner,
Chepauk, Chennai - 5.

2.The Joint Transport Commissioner,
Chepauk, Chennai - 5.

3.Regional Transport Officer,
Red Hills, Nallur Village,
Chennai - 67.

... Respondents in
WP & Review Application

Prayer in W.P.No.10444/16:- Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorarified mandamus to call for the records pertaining to the order passed by the first respondent in his proceedings R.No.45322/VAI/2011, dated 05.02.2016 and quash the same and direct the respondents to confer all the consequential benefits to the petitioner.

Prayer in Rev.Appln.No.21 of 2018:- Review Application filed under Order 47 Rule 1 read with Section 114 of the Code of Civil Procedure to review the order made in W.P.No.10444 of 2016, dated 31.10.2017.

For Petitioner in both
WP & Rev. Appln. : Mr.G.Sankaran
for M/s.C.S.Associates

For Respondents in both
WP & Rev. Appln. : Mrs.P.Rajalakshmi, AGP

COMMON ORDER

The Hon'ble Division Bench of this Court, vide its judgment dated 26.06.2018 passed in W.A.No.702 of 2018, while setting aside the order passed by the learned Single Judge in W.P.No.10444 of 2016, dated 31.10.2017, has remitted the matter back to the learned Single Judge to dispose of the writ petition on merits and in accordance with law. In view of such remission, this writ petition is before me.

2. Learned counsel for the petitioner submitted that while the petitioner/Mr.D.Rajan was serving as Assistant in Pethikuppam (Incoming) Check Post of Motor Vehicle Inspector (Non-Technical), Transport Department, under the control of the Regional Transport Officer, Redhills, a surprise inspection was conducted by the District Inspection Cell Officer, Kanchipuram, Tiruvallur District, along with the officer of Vigilance and Anti-Corruption, Kanchipuram Detachment, on 06.07.2011, between 4.30 am and 06.00 a.m., whereby an unaccounted money to the tune of Rs.47,245/- was found and the same was seized. When the petitioner was serving as Assistant, 2 other officials, namely, Mr.V.Elangovan, Motor Vehicle Inspector (Non-Technical) and Mr.K.Srinivasan, Office Assistant, were also serving. In the other check post, one Mr.R.Panneerselvam, Motor Vehicle Inspector, was serving as in-charge. In view of seizure of money, a charge memo was issued on 20.08.2013 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules (in short "the Rules") calling upon him to submit his explanation. On receipt of the same, he submitted his detailed representation dated 25.09.2013 requesting to furnish copies of documents and permit him to peruse the connected documents stated in Annexure-III and also to take over copies of documents. It is also the claim of the petitioner that the documents sought for by him were not furnished to him, therefore, such an action of the respondent is in violation of the principles of natural justice.

3. One of the main contentions of the learned counsel for the petitioner is that as per rule 9A of the Rules, the Transport Commissioner is the Appellate Authority, therefore, framing of charges and imposing of penalty against the petitioner by the Transport Commissioner / first respondent herein would amount to denial of the valuable right of appeal. It is further pleaded that as per Rule 9A of the Rules, where more than one Government employee of the same department is involved, the disciplinary proceedings can be initiated by the immediate highest authority in that department. Whiles, when the third respondent herein / Regional Transport Officer, Redhills, Chennai, had issued a charge memo dated 20.08.2013 under Rule 17(b) of the Rules, punishment can be imposed only by the second respondent / Joint Transport Commissioner, who is the appointing authority and immediate highest authority in respect

of Motor Vehicle Inspector (Non-Technical). However, in the present case, since the Joint Transport Commissioner is the appointing authority to Motor Vehicle Inspector (Non Technical), who is the highest official involved during the surprise inspection held on 06.07.2011, the Transport Commissioner/first respondent herein, being an Appellate Authority, cannot impose the punishment of stoppage of increment for a period of 3 years with cumulative effect against the petitioner and one Mr.V.Elangovan, Motor Vehicle Inspector (Non-Technical), while exonerating the charges levelled against Mr.R.Panneerselvam, Motor Vehicle Inspector (Non Technical) and Mr.K.Srinivasan, Office Assistant. Therefore, it is further contended that when the allegation is common, namely, recovery of amount from the record room, the order passed by the Transport Commissioner/first respondent herein, who is the Appellate Authority, is liable to be set aside, since the petitioner was deprived of the valuable right of appeal. When an appeal provision is provided to the highest authority concerned against the order of disciplinary authority or of a lower authority and the highest authority passes an order of punishment, the employee concerned is deprived of valuable right of appeal, which is impermissible as per the ratio laid down by the Hon'ble Apex Court in Surjit Ghosh Vs. Chairman & Managing Director, United Commercial Bank and others [(1995) 2 SCC 474].

4. Again, referring to Rule 14(a)(1)(iv)(b) of the Rules, it is submitted that as per the said Rule, the authority, who can impose the penalty of recovery from pay to the extent necessary of the monetary value equivalent to the amount of increments ordered to be withheld on a member of a subordinate service, shall be his immediate superior officer of the State Services. But, in the present case, when an enquiry was conducted against the two Motor Vehicle Inspectors (Non Technical), Assistant (petitioner herein) and one Office Assistant, as per Rule 14(a)(1)(iv)(b), an immediate Superior Officer of the State Services to Motor Vehicle Inspector (Non Technical) is only the Joint Transport Commissioner. Therefore, the impugned punishment order passed by the first respondent/Transport Commissioner, who is not an immediate Superior Officer of the State Services to Motor Vehicle Inspector (Non Technical), is a clear violation of Rules 14(a)(1)(iv)(b) and 9A of the Rules.

5. A detailed counter affidavit has been filed by the respondents. Learned Additional Government Pleader appearing for the respondents submitted that in view of seizure of unaccounted money of Rs.47,245/- during the surprise inspection conducted on 06.07.2011 between 04.30 a.m. and 06.00. a.m. at Pethikuppam Transport Department Check Post (Incoming), Tiruvallur District, the petitioner, who was serving as

Assistant, was issued with a charge memo dated 20.08.2013 calling for an explanation from him for such irregularities. Thereafter, based on the report submitted by the officials of Vigilance and Anti-Corruption, the Government have issued an order in G.O.(2D) No.412, Home (Tr-IIA) Department, dated 28.11.2012, for initiation of departmental proceedings against four delinquents, namely, Mr.V.Elangovan, Motor Vehicle Inspector (Non-Technical), Mr.R.Panneerselvam, Motor Vehicle Inspector (Non-Technical), Mr.D.Rajan (petitioner herein), Assistant, and Mr.K.Srinivasan, Office Assistant. Since more than one Government servant in the same department are involved, as per Rule 9A of the Rules, common disciplinary proceedings were initiated by issuing charge memo against those four delinquents by the third respondent. Since the competent authority to institute disciplinary proceedings shall be the immediate higher authority in that department in respect of the Government servant who holds the highest post among such Government servants, in the present case, the RTO/third respondent herein, being an immediate higher officer to the post of Motor Vehicle Inspector (Non-Technical), issued a charge memo dated 20.08.2013, therefore, the same cannot be questioned. Moreover, all the delinquents were given due opportunity to defend their cases, therefore, the petitioner cannot contend that he was not given due opportunity while conducting the enquiry.

6. Continuing further, learned Additional Government Pleader for the respondent, by referring to Note 5(2)(v) of Rule 14(a) of the Rules, submitted that when the said Rule empowers the first respondent / Transport Commissioner to impose the penalties for major punishments, if at all the petitioner has aggrieved by such punishment, he ought to have preferred statutory appeal before the Government within 60 days from the date of receipt of such punishment. But, without availing such an alternative remedy available, he has straightaway come to this Court with the present writ petition, therefore, it is not open to him to say that he is deprived of valuable right of appeal. It is further submitted that as per Rule 14 IV(b) of the Rules, punishment can be imposed by the appointing authority or any higher authority, therefore, punishment imposed by first respondent/Transport Commissioner, who is administratively higher authority, is legally valid. On this basis, she prayed for dismissal of the writ petition.

7. Heard the learned counsel appearing on either side and perused the materials available before this Court.

8. The only crux of the issue raised in the present case is, whether the impugned order of punishment passed by the first respondent/Transport Commissioner against the petitioner,

who was serving as Assistant in the respondent department, has deprived the petitioner the valuable right of appeal before the Appellate Authority. To find an answer to this issue, it is relevant to extract Rules 9A of the Rules, which is quoted below:-

9A. In any case where more than one Government servant of the same Department are jointly involved or whose cases are interconnected, the authority competent to institute disciplinary proceedings shall be the immediate higher authority in that Department in respect of the Government servant who holds the highest post among such Government servants and the disciplinary proceedings against all of them shall be taken together. Where inquiry is to be conducted in terms of rule 17(b), the said authority may either himself conduct the inquiry or get the inquiry conducted by an Inquiring Officer appointed by the authority competent to impose major penalty in respect of the Government servant who holds the highest post among such Government servants. The said authority shall remit the case, at the appropriate stage, to the authority competent to impose any of the penalties specified in rule 8 in respect of the Government servant who holds the highest post among such Government servants in that Department for passing final orders:

Provided that in the case of Government Servants belonging to different departments who are jointly involved or whose cases are interconnected, the Government shall be the authority competent to initiate disciplinary proceedings and impose any of the penalties specified in rule 8 and in such cases the administrative department of Secretariat in respect of the Government servant who holds the highest post will initiate such disciplinary proceedings and issue final orders after complying with the entire procedure laid down in these rules:"

A careful reading of Rule 9A vividly shows that where more than one Government servant of the same department are jointly involved, the authority competent to institute disciplinary proceedings shall be the immediate higher authority in that department in respect of the Government servant who holds the highest post among such Government servants. However, as per proviso to Rule 9A, in case of Government Servants belonging to

different departments, who are jointly involved, in such cases, the Government shall be the authority competent to initiate disciplinary proceedings and impose any of the penalties. In the present case, all the four delinquents, namely, two Motor Vehicle Inspectors (Non-Technical), Assistant/petitioner herein and one Mr.K.Srinivasan, Office Assistant, were working in the same department viz. Transport Department, therefore, as per Rule 9A of the Rules, immediate higher authority to the Motor Vehicle Inspector (Non-Technical) is the Regional Transport Officer/third respondent herein, hence, the charge memo dated 20.08.2013 issued by the third respondent to all those four delinquents holds good as per Rule 9A. Suppose, if all the four delinquents belong to different departments, then, in that case, as per proviso to Rule 9A, the Government is the competent authority to initiate disciplinary proceedings against all those four delinquents. This has not been properly appreciated by the first respondent while passing the impugned order of punishment against the petitioner.

9. While coming to the second part, i.e., imposition of impugned punishment against the petitioner by the Transport Commissioner, it is pertinent to refer to Rule 14(a) (1) (iv) (b) of the Rules, which is quoted below:-

"14.(a) (1) The authority which may impose suspension referred to in rule 17(e) or penalties of-----

(b) recovery from pay to the extent necessary of the monetary value equivalent to the amount of increments ordered to be withheld, where such an order cannot be given effect to, on a member of a Subordinate Service shall be his immediate superior Officer of the State Services or, where the appointing authority for such members is an Officer of the Subordinate Services, such officer or any higher authority;"

A mere reading of the above said Rule depicts that the authority, who may impose the penalty of recovery from pay to the extent necessary of the monetary value equivalent to the amount of increments ordered to be withheld on a member of a subordinate service, shall be his immediate superior Officer of the State Services. But, in the present case, when two Motor Vehicle Inspectors (Non-Technical) are also delinquents along with one Assistant/petitioner herein and Office Assistant/K.Srinivasan, as per the above said Rule, immediate superior Officer/appointing authority to Motor Vehicle Inspector (Non-Technical), who holds higher post amongst four delinquents, is the Joint Transport Commissioner. However, instead of the Joint Transport Commissioner, now the order of impugned punishment has been passed by the Transport Commissioner / first

respondent herein, who is the Appellate Authority to the petitioner. For better understanding, it is apposite to extract below the relevant portion of G.O.Ms.No.958, Home (Transport II) Department, dated 02.05.1978 :-

“The appointing authorities for various posts in the Transport Department shall be as detailed below:-

Name of Post	Office	Appointing Authority
Motor Vehicles Inspector, Superintendents, Selection Grade Superintendents and P.A. to Regional Transport Officers	All Officers	Joint Transport Commissioner
Assistant	Regional Transport Officers and Deputy Transport Commissioner's office (Promotion to category of Assistant in the respective divisions shall be made out of persons allotted to the particular Divisions	Deputy Transport Commissioner concerned
Junior Assistant, Steno Typist, Typists	i) Transport Commissioner's office ii) Regional Transport Office iii) Deputy Transport Commissioner's office iv) Transport Commissioner's Office	i) Joint Transport Commissioner ii) Regional Transport Officer concerned iii) Deputy Transport Commissioner iv) Assistant Secretary dealing with matter

The above said G.O. vividly indicates that the Joint Transport Commissioner is the appointing authority to the post of Motor Vehicle Inspector, Superintendent, Selection Grade Superintendent and P.A. to the Regional Transport Officers. Therefore, in the present case, in my considered view, the Joint Transport Commissioner should have passed the order of impugned punishment of stoppage of increment for 3 years with cumulative effect, for, had the Joint Transport Commissioner passed the

order of impugned punishment, the petitioner would not have any grievance, as he has got an alternative remedy of filing an appeal before the Appellate Authority/Transport Commissioner. However, in the case on hand, since the punishment has been imposed by the Transport Commissioner/Appellate Authority, the petitioner has been deprived of his valuable right of appeal.

10. While considering the similar issue, the Hon'ble Apex Court in Surjit Ghosh's case (cited supra) held that when an appeal is provided to the higher authority concerned against the order of disciplinary authority, the higher authority cannot pass an order of punishment as this would deprive valuable right of appeal to the employee concerned, which is a substantive right given to him by the Rules/Regulations. Paragraph No.6 thereof is quoted below:-

"6. The respondent-Bank in its submission contended that although it is true that the Deputy General Manager had acted as the disciplinary authority when he was in fact named under the Regulations as an appellate authority, no prejudice is caused to the appellant because the Deputy General Manager is higher in rank than the disciplinary authority, viz., the Divisional Manager/AGM [Personnel]. According to the Bank, it should be held that when the order of punishment is passed by a higher authority, no appeal is available under the Regulations as it is not necessary to provide for the same. It was also contended that there is no right to appeal unless it is provided under the Rules or Regulations. Although the argument looks attractive at first sight, its weakness lies in the fact that it tries to place the Rules/Regulations which provide no appeal on par with the Rules/Regulations where appeal is provided. It is true that when an authority higher than the disciplinary authority itself imposes the punishment, the order of punishment suffers from no illegality when no appeal is provided to such authority. However, when an appeal is provided to the higher authority concerned against the order of the disciplinary authority or of a lower authority and the higher authority passes an order of punishment, the employee concerned is deprived of the remedy of appeal which is a substantive right given to him by the Rules/Regulations. An employee cannot be deprived of his substantive right. What is further, when there is a provision of

appeal against the order of the disciplinary authority and when the appellate or the higher authority against whose order there is no appeal, exercises the powers of the disciplinary authority in a given case, it results in discrimination against the employee concerned. This is particularly so when there are no guidelines in the Rules/Regulations as to when the higher authority or the appellate authority should exercise the powers of the disciplinary authority. The higher or appellate authority may choose to exercise the power of the disciplinary authority in some cases while not doing so in other cases. In such cases, the right of the employee depends upon the choice of the higher/ appellate authority which patently results in discrimination between an employee and employee. Surely, such a situation cannot savour of legality. Hence we are of the view that the contention advanced on behalf of the respondent-Bank that when an appellate authority chooses to exercise the power of disciplinary authority, it should be held that there is no right of appeal provided under the Regulations cannot be accepted."

From the above said ratio of Hon'ble Apex Court, it is clear that when a right of appeal has been provided to a delinquent employee, such an invaluable right of appeal cannot be taken away nor a delinquent Officer can be deprived thereof. Thus, there cannot be any doubt whatsoever that a valuable right of appeal shall not be taken away except in accordance with law. In the present case, as highlighted above, the Joint Transport Commissioner/second respondent herein is the appointing authority to the post of Motor Vehicle Inspector, who is one among four delinquents, therefore, in my considered view, the Joint Transport Commissioner ought to have passed the order of impugned punishment, but, contrary to the Rules 9A and 14(a)(1) (iv)(b) of the Rules, the Transport Commissioner/first respondent herein, being an Appellate Authority, has passed the impugned order depriving the valuable right of appeal to the petitioner, hence, on this count, the same is liable to be set aside.

11. Further, the stand taken in the counter affidavit that the petitioner can prefer statutory appeal before the Principal Secretary to Government, Home Department, within 60 days from the date of receipt of the impugned order of punishment is not supported with any provision or rule or regulation. Therefore, the said stand taken by the respondents cannot be sustained in the eye of law.

12. Again, given the facts and circumstances of the case, it is relevant to take note of the dictum laid down by the Hon'ble Apex Court in A.R.Antulay Vs. R.S.Nayak and another [AIR 1988 Supreme Court 1531] and for better appreciation, paragraph No.85 thereof is quoted below:-

"85..... The basic fundamentals of the administration of justice are simple. No man should suffer because of mistake of Court. No man should suffer a wrong by technical procedure of irregularities. Rules or procedures are the hand-maids of justice and not the mistress of the justice. Ex debito justitiae, we must do justice to him. If a man has been wronged so long as it lies within the human machinery of administration of justice that wrong must be remedied....."

13. Besides, it is seen that the common allegation amongst four delinquents, namely, Mr.V.Elangovan, Motor Vehicle Inspector (Non-Technical), Mr.R.Panneerselvam, Motor Vehicle Inspector (Non-Technical), Mr.D.Rajan (petitioner herein), Assistant, and Mr.K.Srinivasan, Office Assistant, is that "recovery of amount from the record room". But, while exonerating/dropping the said charge levelled against Mr.R.Panneerselvam, Motor Vehicle Inspector (Non Technical)/ Mr.K.Srinivasan, Office Assistant, the first respondent/the Transport Commissioner, encroaching into the power given to the Joint Commission, who is appointing authority to Motor Vehicle Inspector (Non Technical) as per G.O.Ms.No.958, Home (Transport II) Department, dated 02.05.1978, has passed the different punishment, which is impugned herein, against the petitioner alone and in my considered view, there cannot be different punishment especially when the allegation against the four delinquents is common.

14. Moreover, for the occurrence took place on 06.07.2011, after a lapse of more than 2 years, the third respondent issued a charge memo only on 20.08.2013 and subsequently, disciplinary proceeding was ended only on 05.02.2016, which is 5 years after such alleged incident took place. It is settled law that the inordinate delay in initiating the departmental proceeding will cause more prejudice to the delinquent than the punishment itself. Therefore, in my considered view, as the department took unduly five years to conclude the disciplinary proceedings and in the meanwhile, the petitioner has lost several avenue of promotions and increments, that itself would be a sufficient punishment.

15. Thus, for the reasons stated above, the impugned order is set aside and the writ petition is allowed. Consequently, the review application filed by the petitioner is closed in view of the order passed in the present writ petition itself. Connected miscellaneous petitions are also closed. No Costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

rkm

To

1.The Transport Commissioner,
Chepauk, Chennai - 5.

2.The Joint Transport Commissioner,
Chepauk, Chennai - 5.

3.Regional Transport Officer,
Red Hills, Nallur Village,
Chennai - 67.

+2 cc'S to M/s.C.S.Associates, Advocate, Sr.No. 39354
+1 CC to Govt. Pleader sr 40641(06/09/2019)

Writ Petition No.10444 of 2016
and
Review Application No.21 of 2018

CSL/07.05.2019

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