

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND

THE HONOURABLE MR.JUSTICE P.D.AUDIKESAVALU

W.A.No.1502 of 2011

S.SHANMUGAVELAYUTHAM

...Appellant/Petitioner

Vs

1 THE SPECIAL COMMISSIONER AND
COMMISSIONER OF REVENUE ADMINISTRATION
CHEPAUK CHENNAI.

2 THE REVENUE DIVISIONAL OFFICER
SIVAKASI VIRUDHUNAGAR DT
VIRUDHUNAGAR.

3 THE TRIBUNAL FOR DISCIPLINARY
PROCEEDINGS (CONSTITUTED BY COMMISSIONER FOR
DISCIPLINARY PROCEEDINGS)
TIRUNELVELI.

...Respondents/Respondent

Appeal filed against the order passed by this Court dated
7.6.2011 in WP No.43406 of 2006.

W.P.No.43406 of 2006:

O.A.No.4569 of 2000 has been preferred before the Tamil Nadu
Administrative Tribunal and on transfer to this court renumbered
as W.P.No.43406 of 2006 praying for the issue of a writ of
certiorari to quash the order of removal from service dated
5.6.2000 in Rc.No.Ser V(3)/66249/99 by the first respondent and
consequently reinstate the Petitioner in department with
backwages and continuity of service.

For appellant : Mr.V.Prakash, Senior Counsel
for Mr.K.N.Nataraja

For Respondents : Mrs.A.Srijeyanthi, Spl.G.P.
For respondents 1 and 2

J U D G M E N T
(made by K.K.SASIDHARAN, J.)

This intra court appeal is directed against the order dated
7 June 2011 in W.P.No.43406 of 2006, dismissing the Writ

Petition filed by the appellant, challenging the major punishment of dismissal from service imposed by the Disciplinary Authority.

2. The appellant was the Village Administrative Officer at Thayilpathy Village, Sattur Taluk. There was a complaint against him alleging that he demanded illegal gratification. The Government directed the Disciplinary Tribunal to examine the entire issue. The Disciplinary Tribunal registered the proceedings in T.D.P.No.18/1997. Before the Tribunal, 26 witnesses were examined on the side of the Government. The Tribunal arrived at a finding that the charges 1,2,3 and 8 were proved. The charges 4, 5, 6 and 7 were not proved. The report was submitted on 15 July 1999. The Disciplinary Authority issued a show cause notice to the appellant and after hearing him, passed the order dated 5 June 2000 imposing the punishment of removal from service. Though there is a provision for filing statutory appeal, it was not availed of by the appellant. The appellant challenged the order before the State Administrative Tribunal, which was subsequently transferred to this Court.

3. The learned Single Judge placed reliance on certain decisions of the Hon'ble Supreme Court and opined that it would not be possible to re-appreciate the reasons given by the Disciplinary Authority for arriving at a finding of guilt. Feeling aggrieved by the said order, the unsuccessful Writ Petitioner has come up with this intra court appeal.

4. The learned Senior Counsel for the appellant contended that even though the charge memo was issued on 11 May 1988, enquiry commenced only after a period of ten years. The learned Senior counsel took us through the contradictory evidences of witnesses and contended that order passed by the Disciplinary Authority is perverse and the same is liable to be quashed. The learned Senior counsel also took us through the evidence of the material witnesses in order to demonstrate that there was no concrete evidence to arrive at a finding of guilt against the appellant.

5. We have also heard the learned Special Government Pleader on behalf of the respondents.

6. The Disciplinary Authority issued a charge memo containing several charges. The crux of the charge relates to the demand of bribe for issuing official sketch of the house to the complainant. The appellant in his explanation to the charge memo, took up a contention that it is not the work of the Village Administrative Officer to issue house sketch to the parties. Even before the Disciplinary Tribunal, similar stand was taken by the appellant.

7. The evidence of P.W.12, Tahsildar, Revenue Department supports the case pleaded by the appellant. The Tahsildar in his evidence very clearly stated that the application for a copy of the sketch of the house would be submitted to the Tahsildar along with the challan for remitting the fee. The Tahsildar would thereafter forward the papers to the Surveyor for preparing the sketch. The sketch would be issued under the authority and seal of the Tahsildar. The evidence of P.W.12 is therefore clear that the house sketch issued by the Tahsildar alone is valid. There is no evidence tendered by P.W.1 before the Tribunal to the effect that application was sent to the Tahsildar for the house sketch and it was forwarded to the delinquent. This aspect was not considered either by the Tribunal or by the Disciplinary Authority.

8. There are similar contradictions which would go to the root of the matter. We are not extracting such material contradictions elaborately in view of our opinion that the appellant should approach the Appellate Authority with a statutory appeal.

9. The appellant has taken up several substantial contentions in the Writ Petition as well as in the present appeal, on facts. It would not be possible for this Court to consider all such factual contention on facts and arrive at a decision. The Appellate Authority on the other hand would be in a position to appreciate the contentions and arrive at a correct conclusion by proper analysis.

10. The appeal being a statutory appeal, the Appellate Authority would be in a position to consider the proportionality of the punishment also. We are therefore of the view that the appellant should be relegated to the appeal remedy.

11. The appellant is permitted to file an appeal before the concerned Appellate Authority. The appellant is given time till 22 May 2019 for filing appeal. In case any such appeal is filed within the above period, the same shall be considered and disposed of by the Appellate Authority as expeditiously as possible and in any case, on or before 31 August 2019.

12. The intra court appeal is disposed of with the above direction. No costs.

-s/d-

Assistant Registrar(CS-IV)

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Sub-Assistant Registrar

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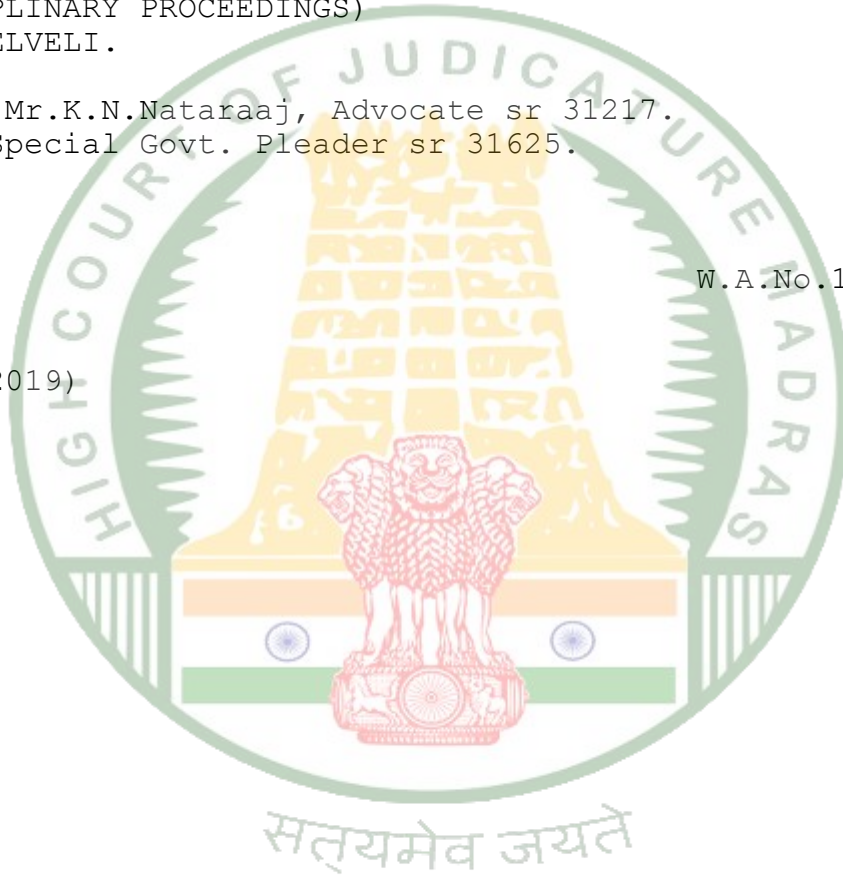
To

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+2 Ccs to Mr.K.N.Nataraj, Advocate sr 31217.
+1 CC to Special Govt. Pleader sr 31625.

W.A.No.1502 of 2011

CNR (CO)
GN (02/05/2019)



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