

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2019

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.22894 of 2008
and M.P.No.1 of 2008

T.Palanichamy

... Petitioner

Vs

1. Tamil Nadu Pollution Control Board
rep.by its Board of Directors,
No.76, Mount Salai, Chennai-600 032.
2. The Chairman,
Tamil Nadu Pollution Control Board,
No.76, Mount Salai, Chennai-600 032.
3. The Member Secretary,
Tamil Nadu Pollution Control Board,
No.76, Mount Salai, Chennai-600 032. Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the concerned records from the respondents, quash the order of the 3rd respondent bearing Proc.No.PER/CS/013041/2006 dated 22.08.2006 conveying the decision of the 1st respondent and the order of the 2nd respondent dated 17.02.2006 bearing Proceeding No. Per/CS/15561/2002 and consequently direct the respondents to restore the increments of the petitioner along with due arrears.

For Petitioner : Mr.Balan Haridass

For Respondents : Mr.A.Ilango for R1 and R3
Mr.Abdul Saleem for R2

O R D E R

The case of the petitioner is that he is a graduate in Engineering from Thiagarajar College of Engineering, Madurai Kamaraj University with distinction and also acquired a post graduate degree in Environmental Engineering (M.Tech.) from

I.I.T., Karagpur. The petitioner joined the services of the respondent Board as Assistant Engineer on 17.06.1991. While so, he was served with a charge memo on 02.05.2002 by the second respondent. The charge relates to an alleged lapse committed by the petitioner during the inspection he made in the premises of M/s.Tamilnadu Chromates and Chemicals Limited, Ranipet, while he was working in the capacity of Assistant Engineer at Vellore.

2.The charge levelled against the petitioner is that he collected the legal sample from the leachate of solid waste dumped within the premises of M/s.Tamilnadu Chromates and Chemicals Limited, Ranipet on 20.03.2001; the sample collected was not of representative nature and the report of analysis revealed the presence of Hexavalent Chromium as Below Detectable Limit; in spite of complaints, the petitioner has not collected samples from other locations to establish the presence of Hexavalent Chromium. Thus, it is stated in the charge memo that the petitioner had acted in connivance with the factory and failed in his duties by not collecting samples of representative nature to establish the complaint against the unit.

3.Enquiry was conducted and the Enquiry Officer gave a finding holding that the petitioner has collected samples along with District Environmental Engineer, Vellore and his statement that there is no proper guidance from his superior officer is not proper; the District Environmental Engineer was also present at the time of collecting samples. The Enquiry Officer has also given a finding that it is proved that the petitioner has failed to discuss the procedure to be adopted while collecting the legal samples which correctly shows that the petitioner lacks application of mind in proper collection of samples from the unit.

4.The petitioner has also given his explanation and thereafter the impugned proceedings dated 17.02.2006 has been passed accepting the findings of the Enquiry Officer and thereby imposing a punishment of stoppage of increment for five years with cumulative effect, on the petitioner. Challenging the same, the petitioner filed an appeal before the second respondent-Chairman, Tamil Nadu Pollution Control Board. Thereafter, the third respondent has issued the proceedings bearing Proc.No.PER/CS/013041/2006 dated 22.08.2006, stating that the petitioner's appeal was placed before the Board and the Board considered and rejected the appeal.

5.Hence this writ petition.

6.The learned counsel for the petitioner has submitted that in the enquiry proceedings on the side of the respondent Board, no witnesses or documents have been filed. The respondent Board

had not placed any material whatsoever in respect of the charge levelled against the petitioner. The learned counsel has also submitted that there is total non-application of mind on the part of the Enquiry Officer, since the sum and substance of the allegation levelled against the petitioner is that he had acted in connivance with the unit and failed in his duties to establish the complaint against the unit, whereas the finding rendered by the Enquiry Officer is that the petitioner had failed to discuss the procedure to be adopted while collecting the legal samples with the District Environmental Engineer. He also submitted that in respect of the allegation of connivance, there had been no material placed by the respondent Board in the enquiry.

7.The learned counsel for the petitioner has filed an additional typed set of papers containing the charge memo and other related papers relating to one Mr.J.Dhanasingh, Joint Chief Environmental Engineer of the respondent Board. In the charge memo issued to him, it is stated that he has not acted in a responsible way in filing a report of analysis which shows Hexavalent Chromium as Below Detectable Limit and thus he had acted in connivance with the unit and failed in his duties to establish the complaint against the unit. The complaint made against the Joint Chief Environmental Engineer is similar to the one made against the petitioner in this writ petition, that too relating to the same incident. The enquiry held against the said officer ended in an order dated 09.06.2005 passed by the second respondent, imposing a warning. Pointing out to this, the learned counsel for the petitioner submitted that if at all the petitioner herein has to be punished, a warning may be given to him like the one which has been given to the said officer.

8.The learned counsel for the respondents have submitted that the Enquiry Officer has conducted the enquiry in a proper manner and rendered his findings holding the petitioner guilty of the charge and that the appeal filed by the petitioner was also properly considered and rightly rejected by the second respondent and therefore, the impugned orders does not require any interference in the hands of this Court.

9.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

10.The charge levelled against the petitioner is that the legal sample collected by the petitioner from the leachate of solid waste dumped within the premises of M/s.Tamilnadu Chromates and Chemicals Limited, Ranipet on 20.03.2001 was not of representative nature and that the report of analysis revealed the presence of Hexavalent Chromium as Below Detectable Limit. It is the specific stand of the respondent Board that the

petitioner had not collected samples from other locations to establish the presence of Hexavalent Chromium and thus he had acted in connivance with the factory and failed in his duties by not collecting samples of representative nature to establish the complaint against the unit. The petitioner filed an appeal before the Chairman of the Board, and the same also got rejected. Thus, the charge imposed against the petitioner had been proved. But it is seen that the complaint made against the Joint Chief Environmental Engineer of the respondent Board who is similarly placed like that of the petitioner, relating to the same incident, ended in warning.

11.Perusal of the records reveal that the petitioner has collected the samples only relying upon the instructions given by his superior officer, who was also collecting such samples. The second respondent considered the case of the superior officer and only warned him, but imposed a punishment of stoppage of increment for five years with cumulative effect on the petitioner, which is not proportionate to the charges levelled against the petitioner.

12.In view of the above stated circumstances, this Court deems it fit to reduce the punishment imposed on the petitioner from the one of stoppage of increment for five years with cumulative effect to the one of stoppage of increment for one year without cumulative effect.

13.The writ petition is allowed in the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1.The Board of Directors,
Tamil Nadu Pollution Control Board
No.76, Mount Salai, Chennai-600 032.

2.The Chairman,
Tamil Nadu Pollution Control Board,
No.76, Mount Salai, Chennai-600 032.

3.The Member Secretary,
Tamil Nadu Pollution Control Board,
No.76, Mount Salai, Chennai-600 032.

+1cc to Mr.Balan Haridass, Advocate, S.R.No.6000

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and M.P.No.1 of 2008

PPA (CO)
CS/04/03/2019



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