

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 14.03.2019

CORAM:

THE HON'BLE MR. JUSTICE T.RAJA

W.P.No.28077 of 2008

S.B.Kalyanasundaram

.. Petitioner

Vs

1) The Superintending Engineer,
Public Works Department,
Technical Education Circle,
Chennai - 25.

2.The Engineer-in-Chief WRO &
Chief Engineer (General),
Public Works Department,
Chepauk, Chennai - 5.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a writ of certiorari to call for the records of the respondents in connection with the impugned order passed by the respondents 1 and 2 in No.7383/E2/03, dated 19.01.2007 and proceedings No.CII(1)/2903/2007-6, dated 28.09.2007 respectively and quash the same.

For petitioner : Mr.K.Venkataramani, SC
for Mr.M.Muthappan

For Respondents: Mr.N.Srinivasan, AGP

ORDER

This writ petition has been filed challenging the correctness of the impugned order dated 28.09.2007 passed by the second respondent / the Engineer-in-Chief WRO & Chief Engineer (General), Public Works Department (PWD), Chennai, confirming the proceedings dated 19.01.2007 passed by the first respondent / the Superintending Engineer, PWD, Technical Education Circle, Chennai, ordering to recover a sum of Rs.3,40,900/- towards the loss of interest bearing securities from his salary till his retirement and the balance amount from his Death-cum-Retirement Gratuity.

2. Mr.K.Venkatramani, learned Senior counsel appearing for the petitioner submitted that initially, the petitioner was issued with a charge memo dated 03.11.2004 under Rule 17(b) of

the Tamil Nadu Civil Services (Discipline & Appeal) Rules (in short "Rules"). When no part of the charges contained in charge memo dated 03.11.2004 attracted invocation of Rule 17(b), challenging the same, the petitioner had filed a Writ Petition No.5458 of 2005, whereby, this Court, vide order dated 22.02.2005, after considering the case of the petitioner, came to the conclusion that the allegations contained in the impugned charge memo will definitely fall under Rule 17(a) of the Rules, gave liberty to the respondent to convert the charges into under Rule 17(a) instead of under Rule 17(b). Pursuant to the order passed by this Court, the Chief Engineer, PWD, Chennai, issued a charge memo dated 20.01.2006 under Rule 17(a) containing the following charges:-

"1. Thiru.S.B.Kalyanasundaram, Superintendent, was transferred to the office of the Assistant Executive Engineer, PWD, Buildings (C&M) Sub-Division, Kancheepuram. While handing over his charge to his successor Thiru.K.Seethapathy, Junior Assistant, he did not handover the interest bearing securities to a matured value of Rs.3,40,900/- (Rupees Three lakhs forty thousand and nine hundred only) thereby incurred loss to Government to the tune of Rs.3,40,900/- (Rupees Three lakhs forty thousand and nine hundred only). It shows his failure to account for the Interest Bearing Securities entrusted to him for custody.

2. Thiru. S.B.Kalyanasundaram, Superintendent did not handover the Vol.I of the interest bearing security register to his successor thereby miserably failed in his duties. It shows his negligence and failure to observe departmental rules and regulations.

3. Thiru.S.B.Kalyanasundaram, was given ample time by the Executive Engineer, Technical Education Division, Vellore, and Superintending Engineer, PWD., Technical Education Circle, Chennai-25, to handover the balance interest bearing securities and he himself promised to attend the Technical Education Division, Vellore on 29.01.2003 to settle the issue but he had not utilized the opportunities given to him and handover the balance interest bearing securities, and thereby disobeyed the orders of his superiors. It shows that he is incapable of settling the discrepancies and make good the loss caused to the Government."

On receipt of the above said charge memo, the petitioner gave his detailed explanation on 03.02.2006 denying all the charges levelled against him and one of the vital explanations of the petitioner is that under the Rule, if a person hands-over the charge to another person, within 30 days of handing-over, the person, who is taking over the charge, shall intimate the deficit/lapse committed by him, however, in this case, although the petitioner had handed-over the charge on 17.10.2002, he was issued with a memo only on 03.02.2003 stating certain lapse of him. Secondly, the petitioner has not even received the Volume-I of the Interest Bearing Security Register from his predecessor, however, this aspect has been completely overlooked by the respondents while passing the impugned orders. Besides, no enquiry was held to find out the veracity of the charges stated in the charge memo dated 20.01.2006 issued under Rule 17 (a) of the Rules.

3. However, in respect of such submission, learned Senior counsel has not produced any rule mandating to hold an enquiry for the charge memo issued under Rule 17(a) of the Rules. But, he has produced a judgment of the Hon'ble Division Bench of this Court in the case of C.K.G.Nathan Vs. Assistant Commandant, Central Industrial Security Forces, Chennai [(2009) 5 MLJ 1121] to contend that where a charge memo under Rule 17(a) calling for imposition of minor punishment is issued, the disciplinary authority should hold an enquiry.

4. Again, referring to the impugned order of the Appellate Authority, learned Senior counsel stated that the Appellate Authority has not passed any speaking order. It is also further submitted that the Appellate Authority, while dealing with the appeal filed against the order of the disciplinary authority, shall have to consider the following the aspects as adumbrated under Rule 23 (1) of the Rules, which are quoted below:-

"23(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) -----

(ii) -----"

By citing the above said provision, it is contended that in the present case, the Appellate Authority, while confirming the

order passed by the Disciplinary Authority, did not meet out any one of the requirements set out above, therefore, the impugned order of the Appellate Authority confirming the order passed by the Disciplinary Authority is liable to be set aside.

5. Heard the learned Additional Government Pleader appearing for the respondents.

6. It is not in dispute that the petitioner was originally issued with a charge memo dated 03.11.2004 under Rule 17(b) of the Rules and thereafter, challenging the same, when a writ petition No.5458 of 2005 was filed, learned counsel for the petitioner submitted therein that in no part of the charge memo, there is any allegation which would attract invocation of Rule 17(b) of the Rules. For better appreciation, the submission of the petitioner recorded by this Court in the above said writ petition is quoted below:-

"2. The sum and substance of the contention of the Mr.K.Venkataramani, counsel for the petitioner, is that in no part of the impugned charge memo, there is any allegation which would attract invocation of Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules."

7. Finally, accepting the case of the petitioner that charges under Rule 17(b) have to be framed only in the following types of cases, namely,

(1) cases in which there is reasonable ground to believe that a penal offence has been committed by a Government Servant but the evidence forthcoming is not sufficient for prosecution in a Court of law, e.g. -

a) possession of assets disproportionate to the known sources of income;

b) obtaining or attempting to obtain illegal gratification;

c) misappropriation of Government property, money or shares;

d) obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate etc.

(2) Falsification of Government records

(3) Irregularity or negligence in the discharge of official duties with a dishonest motive.

(4) Misuse of official position for personal gain

(5) Disclosure of secret or confidential information even though it does not fall strictly within the scope of the Official Secrets Act.

(6) Misappropriation of Government funds, false claims of Travelling Allowance, reimbursement of false medical bills, etc."

this Court, taking note of the fact that the allegations contained in the charge memo dated 03.11.2004 will definitely fall only under Rule 17(a) of the Rules, directed the respondent to convert the charges into under Rule 17(a) instead of under Rule 17(b). Therefore, in my considered view, the petitioner has miserably failed to press his prayer for quashing of the charge memo issued against him under Rule 17(b) instead of asking for modification of charge memo into under Rule 17(a). Hence, the petitioner cannot escape from answering the allegations levelled against him. Besides, when the disciplinary authority issued a modified charge memo under Rule 17(a), the petitioner was well aware of the fact that he was not entitled to have the benefit of enquiry, because, Rule 17(a) does not contemplate holding of any enquiry. Secondly, during the first round of adjudication, the petitioner had never asked for holding of an enquiry by the competent authority, therefore, it is not open to him now to say that the disciplinary authority failed to hold any enquiry under Rule 17(a).

8. Thirdly, the further contention of the learned Senior counsel for the petitioner is that the Appellate Authority, while confirming the order passed by the disciplinary authority, has not followed any one of the conditions mentioned under Rule 23(1) of the Rules cited supra. It is settled law that an order of affirmation need not contain as elaborate reasons as an order of reversal. In the present case, on a perusal of the impugned order of the Appellate Authority, this Court is able to see that the Appellate Authority, after considering the charge memo and also the explanation offered by the petitioner and also after perusing the connected records relevant to the proceedings, has rightly come to the conclusion that the petitioner has not handed over the interest bearing securities of Technical Education Division, Vellore, in a complete shape to his successor, and thereby caused a loss of Rs.3,40,900/- to the Government. This apart, the Appellate Authority has also recorded a reason that the disciplinary action under Rule 17(a) has been initiated and after obtaining explanation, final orders were passed by the disciplinary authority to recover the loss of interest bearing securities of Rs.3,40,900/-, which is, in my considered view, in compliance of the principles of natural justice.

9. Thus, for the reasons stated above, the writ petition fails and the same is dismissed. No Costs.

Sd/-
Assistant Registrar (CS IV)

//True Copy//

Sub Assistant Registrar

rkm

To

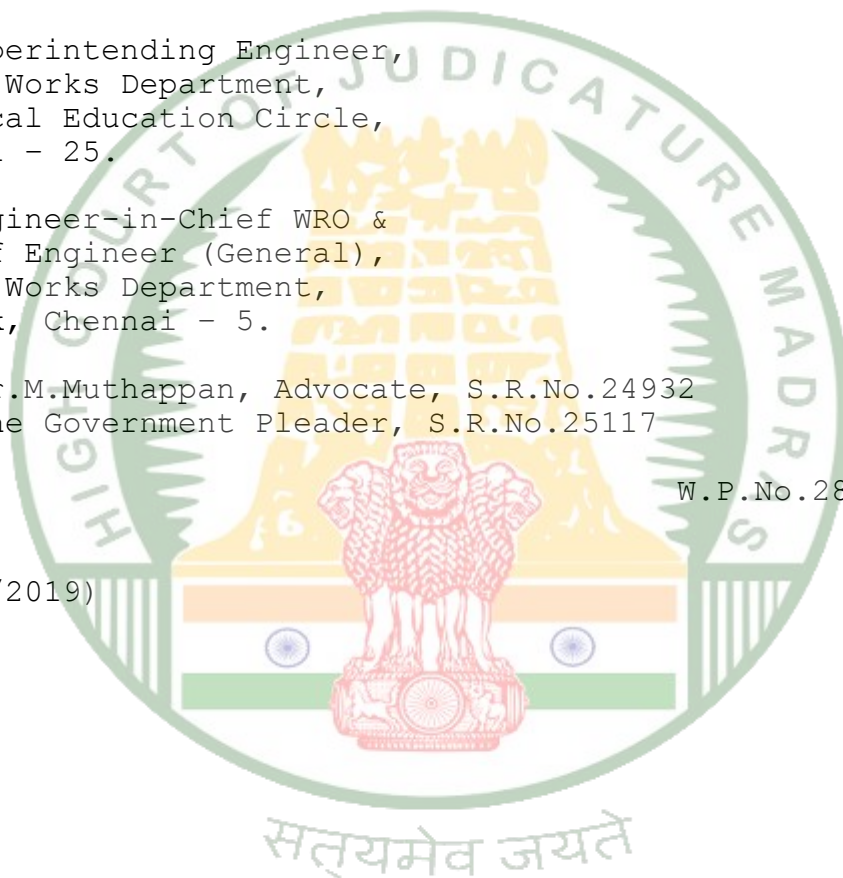
1. The Superintending Engineer,
Public Works Department,
Technical Education Circle,
Chennai - 25.
2. The Engineer-in-Chief WRO &
Chief Engineer (General),
Public Works Department,
Chepauk, Chennai - 5.

+1cc to Mr.M.Muthappan, Advocate, S.R.No.24932
+1cc to the Government Pleader, S.R.No.25117

W.P.No.28077 of 2008

KS (CO)

RRS (03/05/2019)



WEB COPY