

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.164 of 2010

V.Thillai Govindan

... Petitioner

Vs.

1. The Managing Director,
The Tamil Nadu Water Supply Drainage Board,
31, Kamarajar Salai, Chepauk,
Chennai 600 005.

2. The Chairman cum Managing Director,
The Tamil Nadu Water Supply Drainage Board,
31, Kamarajar Salai, Chepauk,
Chennai 600 005.

3. Thiru.Swaransingh, I.A.S,
Managing Director and Chairman,
The Tamil Nadu Water Supply Drainage Board,
31, Kamarajar Salai, Chepauk,
Chennai 600 005.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorarified Mandamus, calling for the records relating to orders passed by the 1st respondent in Pro.No.31569/Estt.(DP)/A5/2007 dated 31.12.2007 confirmed by the 2nd respondent in Boards' (Per) Order No.128 (TWAD Board (DP) Sec) dated 21.08.2009 respectively and quash the same thereby direct the respondents to treat the period of suspension as duty and to give notional promotion to the petitioner and to pay all attended benefits to the petitioner.

For Petitioner : Mr.R.Nixon

For Respondent : Ms.Tamizharasi (for R1 to R3)

O R D E R

The present writ petition is for a Certiorarified Mandamus relating to orders passed by the Managing Director, The Tamil Nadu Water Supply Drainage Board, Chepauk, Chennai-05, in Pro.No.31569/Estt.(DP)/A5/2007 dated 31.12.2007 confirmed by the Chairman cum Managing Director, The Tamil Nadu Water Supply Drainage Board, Chepauk, Chennai -05, in Boards' (Per) Order No.128 (TWAD Board (DP) Sec) dated 21.08.2009.

2. The petitioner was worked as Superintendent in the office of the Executive Engineer, Urban Division, Tamil Nadu Water Supply Drainage Board, Villupuram. He had retired from service on 28.02.2009. Prior to his attaining superannuation, the Managing Director, The Tamil Nadu Water Supply Drainage Board, respondent No.1 herein placed the petitioner under suspension in proceeding Pro.No.31569/Estt.(DP)/A5/2007 dated 31.12.2007, on the ground that the petitioner has misappropriated amounts deducted from the salary of staff towards LIC premium. The petitioner gave a representation and the first respondent revoked the suspension order and reinstated the petitioner in service. The petitioner thereafter received a first charge memo dated 31.07.2007 and the petitioner was found guilty and was given the punishment of stoppage of increment for a period of six months without cumulative effect.

3. This order was challenged before the appellate authority which is the Board constituted for this purpose. The Board was confirmed the findings of the first respondent. The main ground of challenge to the order of the Board the learned counsel for the petitioner is one of bias. According to the petitioner, the person who issued the suspension order, the person who framed charges and the person who imposed the punishment is one and the same and he is also an important member of the Board i.e., the appellate authority. The petitioner states that since as no one can be a judge in its own case and the first respondent should not be a member of the Board and the order should be set aside. Be that as it may, the learned counsel for the petitioner also brought attention of this Court to Rule 7 of the Tamil Nadu Water Supply and Drainage Board Employees' (Discipline and Appeal) Regulations, 1972, 7(a)4(ii) which deals with the disciplinary authority and the appellate authority for a person working as a Superintendent, reads as under:

"4.(ii). Chief Engineer's Office-

Punishment	Disciplinary	Appellate
	Authority	Authority

Office Assistants, Junior Assistants, Censure Chief
Engineer MD Steno-typists, Typists and Store-Keepers"

4. Admittedly the petitioner has working as a Superintendent of the Office of the Chief Engineer. The disciplinary authority was the Chief Engineer and appellate authority is the Managing Director. The appellate authority is the Managing Director who was acted as the disciplinary authority. The decision making process therefore faulty. In such circumstances, this Court is of the opinion that therefore the matter is to be sent back to the Chief Engineer who is the disciplinary authority. The learned counsel for the petitioner states that once the appellate authority has taken a view, the Chief Engineer who is subordinate to the Managing Director would not take a view contrary to the view taken by the appellate authority and therefore according to him, it is a completely meaningless exercise remanding the matter back to the Chief Engineer who is the disciplinary authority.

5. The learned counsel for the petitioner is justified in his misgivings. This Court therefore direct the disciplinary authority to look into the matter denovo without being influenced by the order of the appellate authority. It is made clear that the disciplinary authority must independently apply his mind without even referring to the order of the appellate authority should give clear reasons for the conclusions arrived at him. The disciplinary authority is directed to hear and dispose of the matter within a period of six weeks from the date of receipt of a copy of this order.

6. With these observations, the writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Pkn.

To

1. The Managing Director,
The Tamil Nadu Water Supply Drainage Board,
31, Kamarajar Salai, Chepauk,
Chennai 600 005.

2. The Chairman cum Managing Director,
The Tamil Nadu Water Supply Drainage Board,
31, Kamarajar Salai, Chepauk,
Chennai 600 005.

3. The Chairman,
The Tamil Nadu Water Supply Drainage Board,
31, Kamarajar Salai, Chepauk,
Chennai 600 005.

+1cc to M/s.A.R.Nixon, Advocate Sr.79541

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