

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2019

CORAM

THE HON'BLE Mr. JUSTICE V.PARTHIBAN

W.P.No.2302 of 2011

Dr.N.Chelladurai

... Petitioner

Vs.

1.The Commissioner of Indian Medicine
in Homeopathy,
Chennai 16.

2.The Secretary to Government,
Health and Family Welfare Department,
Fort St.George,
Chennai 9.

... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari, to call for the records of the respondents in connection with the impugned orders passed by the second respondent in G.O(D) No.1194, Health and Family Welfare I (1) Department dated 23.11.2010 and quash the same.

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

For Respondents: Mr.J.Ramesh,
Additional Government Pleader

O R D E R

The petitioner has filed the present writ petition against the impugned order of penalty passed by the second respondent in G.O(D) No.1194, Health and Family Welfare I(1) Department dated 23.11.2010, imposing the penalty of stoppage of increment for a period of one year with cumulative effect.

2. According to the petitioner, he was appointed as an Assistant Medical Officer (Siddha) in the Government Primary Health Centre, Agasteeswaram. When he was working as such from 06.04.1995 to 22.12.1998, a complaint was received from the public that the Siddha Primary Health Centre was not functioning properly and further the

petitioner was not attending the duty properly. In view of the malfunction of the Siddha Unit, proper treatment to the general public has been denied. Further, the petitioner had applied for half-a-day Casual Leave in the afternoon on 13.07.1998. While availing Casual Leave, he had not informed the proper authority before leaving the work place. In the said circumstances, the petitioner was issued with the charge memo on 10.11.1998, containing two charges which reads as follows:-

"Charge-I : That complaint has been received from public that the siddha wing, Agastheeswaram is not functioning properly. It shows that Dr.N.Chelladurai, Assistant Medical Officer (Siddha) is not attending duty properly and ultimately lead to denial of medical treatment to the General public who have attended the siddha wing for ailment.

Charge II : That Dr.N.Chelladurai, Assistant Medical Officer (Siddha) has not obtained prior permission of District Siddha Medical Officer to leave the Headquarters and proceeded to other state (Kerala State) by availing the leave himself on the afternoon of 13.07.1998 without making any alternate arrangements for the maintenance of Siddha dispensary. He has not closed the attendance properly on 13.07.1998 and 14.07.1998. He has deputed the hospital servant to take delivery of the Tampcol medicine from Nagercoil and without waiting for his return, he has proceeded on leave."

3. The petitioner submitted an explanation denying the charges on 30.11.1998. However, not satisfied with the explanation, an enquiry was initiated and conducted and on conclusion of the enquiry, the Enquiry Officer submitted his report. In the enquiry, no witnesses were examined. On the basis of the enquiry report dated 15.11.1999, the first respondent after agreeing the finding of the Enquiry Officer, imposed a punishment of stoppage of increment for one year without cumulative effect by order dated 23.12.1999.

4. The petitioner therefore preferred an appeal to the second respondent on 13.03.2000. The Government thereafter obtained an advice from the Tamil Nadu Public Service Commission and the Public Service Commission has observed that the Enquiry Officer's report did not specifically come to any conclusion whether the charges

were proved or not and no explanation had been recorded from the petitioner to the enquiry report. In the said circumstances, it has opined to set aside the order of penalty and to initiate de novo proceedings from the stage where the mistake had crept in.

5. On the basis of the advice by the Public Service Commission, the Government had issued G.O (D) No.537, Health and Family Welfare (I-1) Department dated 21.06.2006, by setting aside the punishment and thereafter, the Enquiry Officer's report was furnished to the petitioner. The petitioner submitted a representation to the Enquiry Officer's report on 11.11.2009. The Government once again vide G.O (D) No.1194, Health and Family Welfare (I-1) Department dated 23.11.2010, held the charges proved against the petitioner and imposed a punishment of stoppage of increment for a period of one year with cumulative effect. The said order is the subject matter of challenge in the present writ petition.

6. The learned senior counsel appearing for the petitioner would submit that the impugned order of penalty suffers from various infirmities right from the stage of issuance of charge memo. He would submit that the first charge itself is rather vague which does not spell out any specific details as to how the petitioner was responsible for the improper functioning of the Siddha Unit of the primary Health Centre concerned. Moreover, as regards the second charge is concerned, it cannot be considered as a charge at all, since the petitioner was entitled to take half-a-day leave and factually, the information was given to the person who was there in the work spot and thereafter only the petitioner had taken leave. Therefore, both the charges have no basis at all.

7. The learned senior counsel would further submit that no witnesses were examined in the enquiry, but, in any event, when the Enquiry Officer submitted his report, there was no definite or specific finding in regard to the guilt of the petitioner. In fact, the Enquiry Officer did not come to any conclusion to say whether the charges have been established or not. Initially, the report itself was not furnished to the petitioner and without giving any opportunity, the punishment was imposed on 23.12.1999. The said punishment was rightly set aside on the basis of the advice given by the Tamil Nadu Public Service Commission, by G.O. D No.537, Health and Family Welfare I(1) Department dated 21.06.2006 and the matter was remitted back for conducting de novo enquiry.

8. The learned senior counsel would also submit that while so, instead of remitting the matter to the disciplinary authority, the second respondent viz., the appellate authority himself has taken up the issue and passed the impugned order by imposing the punishment of stoppage of increment for a period of one year with cumulative effect. The disagreement by the second respondent is not on the basis of any evidence let in before the departmental enquiry, but, on the basis of his own conclusion which was unsupported by any materials. The disagreement in regard to the second charge is completely flawed and factually incorrect. Prima facie there is non application of mind on the part of the second respondent.

9. Moreover, when the second respondent is the appellate authority, the matter ought to have been remitted to the disciplinary authority, the first respondent herein, instead of that, the second respondent taken up the task and decided the case which is contrary to the mandatory procedure contemplated in the service rules. Even otherwise, the order passed by the second respondent is a non-speaking order and not on the basis of any evidence at all, particularly, in view of the admitted position that the Enquiry Officer does not give any definite finding in regard to the guilt of the petitioner. When such is the case, the second respondent without any iota of evidence against the petitioner, has arrived at a finding of the guilt of the petitioner and imposed the impugned penalty. When the second respondent is the appellate authority under the service rules, it is not open to him to pass orders of punishment at the first instance. Therefore, such procedure adopted by the second respondent is contrary to the rule position and on that ground alone, the impugned order is liable to be interfered with.

10. At this, the learned Additional Government Pleader appearing for the respondents would submit that the petitioner has committed an act of misconduct as referred in the charge memo issued against him. An enquiry was conducted on the charge memo and ultimately from the findings of the Enquiry Officer, it could be deduced that the guilt of the petitioner stood established. Although there is no definite conclusive statement by the Enquiry Officer, but yet, it could be seen in the enquiry report that the Enquiry Officer has found the charges were established. Therefore, the appellate authority has given his own reasons in order to clarify the enquiry report and found the petitioner guilty of the charges. The appellate authority's finding

is only by way of abundant caution in order to elucidate the ambiguity in the findings given by the Enquiry Officer.

11. Moreover, the learned Additional Government Pleader would also submit that the Government is the ultimate authority in respect of the petitioner's case. Therefore, nothing wrong in the order passed by the second respondent. In any event, for the act of misconduct, the punishment imposed is only a minor in nature. Therefore, the petitioner cannot have any right to seek relief in the present writ petition against the penalty imposed on him.

12. Heard the learned senior counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents.

13. From the pleadings and materials as disclosed in the writ petition, it could be seen that the first charge as framed against the petitioner is ultimately vague, since no specific instances or details have been given in the charge memo as to how the petitioner was responsible for the improper running of the Siddha Unit in the Public Health Centre. Merely citing the complaint in the charge memo does not point out the dereliction of duty on the part of the petitioner, unless specific instances are brought out in the charge memo. Therefore, the first charge as it is could be interfered with on the ground of vagueness. This Court and the Hon'ble Supreme Court of India time and again have pointed out that the charges must be specific and definite and cannot be vague. In this case, the first charge framed against the petitioner is a stark example as how the charge could be as vague as vagueness could be. Therefore, the first charge is liable to be interfered with.

14. Even otherwise, it could be seen that the Enquiry Officer has conducted the enquiry without any oral evidence and his findings could be hardly relied on for the purpose of rendering any decision one way or the other. The Enquiry Officer ultimately has not given any definite finding in regard to the proving of charges against the petitioner. He has only narrated his personal opinion in the enquiry findings and unfortunately, the disciplinary authority originally relied on such enquiry finding and imposed him with the penalty, which was of course set aside. Further, this Court is unable to appreciate as to how the second respondent could become the authority to decide the findings of the Enquiry Officer stepping into the shoes of the disciplinary

authority, as ultimately the second respondent is an appellate authority and he cannot choose the role of disciplinary authority and record disagreement in regard to the finding of the Enquiry Officer. Further, the very act of recording disagreement itself would amply prove that the enquiry finding was not against the petitioner. In which case, even assuming the appellate authority, the second respondent herein, has jurisdiction to record disagreement, he ought to have give supportive reasons for his conclusion on the basis of evidence which was let in, in the departmental enquiry and not on the basis of his own presumption and opinion.

15. In this case, it is quite clear that the appellate authority, the second respondent herein has concluded against the petitioner on the basis of his own opinion and not on the basis of any evidence with reference to the charges. As far as the second charge is concerned, which was a very trivial incident where the petitioner was forced to take half-a-day leave for personal reasons and unfortunately, that was made as a charge by the authorities concerned. Even otherwise, the petitioner gave some explanation for taking half-a-day Casual Leave on a particular day and the defence of the petitioner was that he had informed the person who was present in the work spot at that point of time.

16. From the contents of the charge, this Court is unable to appreciate as to what basis the act of misconduct said to have been committed by the petitioner on that count. It appears that the trivial matter has been blown out of the portion, the respondents have converted the same into a charge against the petitioner. Besides, this Court is unable to appreciate the procedure adopted by the second respondent imposing the penalty on the petitioner when the Public Service Commission has given an opinion that the procedure adopted by the respondents was not fair and proper and on the basis of such opinion, originally the impugned order of penalty was set aside and the matter ought to have been remitted back to the disciplinary authority and not to the appellate authority. Unfortunately, the appellate authority has remitted back the matter to himself and decided the case and ultimately imposed the impugned penalty. Such procedure in the opinion of this Court is absolutely unjustifiable. Therefore, on this ground alone, the order passed by the second respondent is liable to be interfered with.

17. Even otherwise, this Court is of the view that this is a case of no evidence and even on merits, the petitioner is entitled to succeed. The procedure as followed by both the respondents, is unacceptable under any circumstances and therefore, the entire disciplinary action commencing from the issuance of charge memo till the imposition of the impugned penalty is vitiated by various infirmities. Therefore, this Court is unable to convince itself to sustain the order passed by the respondents.

18. For the above said reasons, this Court set aside the impugned order passed by the second respondent and the petitioner shall be entitled to restore his pay and allowance as a consequence of the writ petition being allowed by this Court and the respondents are directed to pass a consequential order within a period of four weeks from the date of receipt of a copy of this order.

19. With the above direction, the writ petition stands allowed. No costs.

Sd/--

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Commissioner of Indian Medicine
in Homeopathy,
Chennai 16.

2.The Secretary to Government,
Health and Family Welfare Department,
Fort St.George,
Chennai 9.

+1 CC TO GOVERNMENT PLEADER SR.NO. 17005
+1cc to Mr.M.Muthappan , Advocate SR.No. 17200

W.P.No.2302 of 2011

A.SK(29/03/2019)