

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.21724 of 2013

N.Natrajan

.. Petitioner

Vs.

1.The Managing Director,
Tamil Nadu State Transport Corporation,
(Salem Division) Ltd., Salem-7.

2. The General Manager,
Tamil Nadu State Transport Corporation,
(Salem Division) Ltd., Salem-7.

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Certiorarified Mandamus, calling for the records connected with the orders dated 24.08.2010 passed by the 1st respondent in Memo No.A17-454-22843/D3/TNSTC/2009-10 confirming the punishment of stoppage of increment for one year with cumulative effect passed by the 2nd respondent in Proc.No.454/22843/d1/TNSTC/ dated 30.12.2002 quash the same and consequently direct the respondents to grant all the service benefits including service review and other attendant monetary benefits for which the petitioner is legitimately entitled.

For Petitioner : Ms.S.Girija

For Respondents: Ms.S.Rajeni Ramadoss (for R1&R2)

O R D E R

The instant writ petition is filed for issuance of a Certiorarified Mandamus calling for the records connected with the orders dated 24.08.2010 passed by the Managing Director, Tamil Nadu State Transport Corporation (herein referred to as TNSTC) in Memo No.A17-454-22843/D3/TNSTC/2009-10 confirming the punishment of stoppage of increment for one year with cumulative effect passed by the General Manager, TNSTC in Proc.No.454/22843/d1/TNSTC/ dated 30.12.2002 quash the same and consequently direct the respondents to grant all the service benefits including service review and other attendant monetary benefits for which the petitioner is legitimately entitled.

2. The Shorn of details and facts narrated in the writ petition are as under:-

a. The petitioner joined as Driver in the TNSTC, Salem Division, on 16.07.1986. The petitioner states that he was driving a bus bearing registration number TN 27 1044 on the Salem to Attur route. On 31.08.2001 and 01.09.2001 after being driven the bus two days, he was entitled to one day compensatory leave on 02.09.2001. However, on 02.09.2001 when the petitioner went to receive his monthly salary, he was asked by the Controller to drive the bus on the Salem to Pondy route due to shortage of drivers.

b. The petitioner states that he explained his position to the Controller that he had driven the vehicle continuously for two days and he was exhausted. The Controller directed the petitioner to drive the bus on 02.09.2001. The petitioner states that he operated bus and reached Salem after 12.15AM on the next day. He states that once again he was instructed to drive the bus on 03.09.2001 also. The petitioner refused to do so, which made the Assistant Branch Manager to abuse and threaten the petitioner with dire consequences. The Assistant Manager also directed the Traffic Controller and the Conductor to give statements against the petitioner.

c. The petitioner states that a charge memo was given to the petitioner on the ground of indiscipline and insubordination. The petitioner states that the charge memo which was given to him was not accompanied with the statements made against him. The petitioner states that in the absence of these documents the petitioner did not give reply to the charge memo. The petitioner states that after repeated representations, he was provided with the statements of the conductor and the Assistant Manager, but was not given the statement of the controller. The petitioner was given notice of enquiry on 30.08.2002. The petitioner sought for the requisite documents but he was not given the same. The petitioner did not attend the enquiry and was set exparte. An enquiry report dated 25.09.2002 was prepared. The report dated 25.09.2002 is not on record.

d. The disciplinary authority passed an order on 30.12.2002 imposing the punishment of stoppage of increment for one year with cumulative effect. The order dated 30.12.2002 does not give any reasons at all. The order only states that the petitioner did not give his reply on the charge memo and that he did not appear before the Enquiry Officer. Without discussing anything regarding his conduct, the order imposing punishment has been approved. However, the order states that the show-cause notice has given to him as to why the stoppage of increment for one year with cumulative effect should not be given to him, but the

explanation given by the petitioner was not accepted. This order was taken in appeal before the first respondent. The first respondent confirmed the order. The petitioner is therefore challenging the order dated 30.12.2002 and the order of the Appellate Authority being first respondent dated 24.08.2010.

3. Heard the counsel for the parties and perused the material on record.

4. A perusal of the order imposing punishment and the order confirming the punishment is completely without any reasons. The enquiry report dated 25.09.2002, is not in record. It is not known as to whether in the domestic enquiry report dated 25.09.2002, reliance has been made on the statement of the controller. The petitioner has not been given the document of the controller. It is settled law that if the documents based on which the charge memo has framed is not supplied to the delinquent employee, it amounts to infringement of the principles of natural justice. The Hon'ble Supreme Court in the case of Kashinath Dikshita Vs. Union of India, reported in 1986 (3) SCC 229, has observed as under:-

"When a government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies the concerned employee cannot prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible. Whether or not refusal to supply copies of documents or statements has resulted in prejudice to the employees facing the departmental enquiry depends on the facts of each case. In the facts and circumstances of the present case the appellant had been prejudiced in regard to his defence on account of the non-supply of the statements and documents. The appellant would have needed those documents and statements in order to cross-examine the 38 witnesses and to make effective arguments. Although the disciplinary authority gave an opportunity to the appellant to inspect the documents and take notes, but even in this connection the reasonable request of the appellant to have the help of his stenographer was refused. Thus the appellant had been denied reasonable opportunity to defend himself."

5. The same proposition is stated by the judgment in the case of Tirlok Nath Vs. Union of India, reported in 1967 SLR

759, the Hon'ble Supreme Court has observed as under:-

"Had he decided to do so, the documents would have been useful to the appellant for cross-examining the witnesses who deposed against him. Again had the copies of the documents been furnished to the appellant he might, after perusing them, will have exercised his right under the rule and asked for an oral inquiry to be held. Therefore, in our view the failure of the Inquiry Officer to furnish to the appellant with copies of the documents such as the FIR and statements recorded at Shidhipura house and during the investigation must be held to have caused prejudice to the appellant in making his defence at the inquiry. "

6. The Supreme Court in *State of Punjab v. Bhagat Ram*, reported in 1975 (1) SCC 155 has stated as under :

"The meaning of a reasonable opportunity of showing cause against the action proposed to be taken is that the government servant is afforded a reasonable opportunity to defend himself against the charges on which inquiry is held. The government servant should be given an opportunity to deny his guilt and establish his innocence. He can do so when he is told what the charges against him are. He can do so by cross-examining the witnesses produced against him. The object of supplying statements is that the government servant will be able to refer to the previous statements of the witnesses proposed to be examined against the government servant. Unless the statements are given to the government servant, he will not be able to have an effective and useful cross-examination.

It is unjust and unfair to deny the government servant copies of statements of witnesses examined during investigation and produced at the inquiry in support of the charges levelled against the government servant. A synopsis does not satisfy the requirements of giving the government servant a reasonable opportunity of showing cause against the action proposed to be taken."

7. In any event, a copy of the second show-cause notice also does not demonstrate as to how the misconduct alleged against the petitioner is established. The order imposing punishment dated 30.12.2002, does not even discuss the explanation given by the petitioner. The order in appeal has also been passed without any reasons and it only affirms the order of the second respondent which has stated earlier is bereft of any details.

8. In the result the writ petition is allowed. The order of the appellate authority dated 30.12.2002 and order of the disciplinary authority dated 24.08.2010 is set aside. The matter is remanded back to the first respondent with the direction to the respondents to give all the relevant documents to the petitioner and conduct a fresh enquiry against the petitioner. Since 17 years have passed after the incident, the second respondent is directed to conclude the enquiry within a period of six weeks from the date of receipt of a copy of this order. However, the petitioner would not be entitled for any back wages, since he has not worked on the post. The writ petition is allowed. No Costs.

s/d-

Assistant Registrar (CS VIII)

True Copy

Sub-Assistant Registrar

Pkn.
To

1. The Managing Director,
Tamil Nadu State Transport Corporation,
(Salem Division) Ltd., Salem-7.

2. The General Manager,
Tamil Nadu State Transport Corporation,
(Salem Division) Ltd., Salem-7.

+1 CC to M/s. Rajeni Ramadoss, Advocate sr 88567
+1 CC to Govt. Pleader sr 88712.

W.P.No.21724 of 2013

SJ(CO)
SP(26/11/2019)

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