

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

WP.No.4701 of 2011

MP.No.1 of 2011

N.Palanivel

... Petitioner

Vs

1.The Deputy General Manager
Tamil Nadu Cement Corporation Limited
Ariyalur

2.The Chairman and Managing Director
Tamil Nadu Cement Corporation Limited
Chennai-2

... Respondents

Prayer:- This Writ Petition is filed, under the Article 226 of Constitution of India, to issue a Writ of Certiorari to call for the records, relating to the orders, passed by the 2nd Respondent in RC.No.4213/A3/2009-2, dated 11.02.2010 and Letter No.9070-A3-2010, dated 10.12.2010 and to quash the same.

For Petitioner:Mr.G.Murugendran for Mr.R.Selvakkodi

For Respondents:Mr.A.Sivaji

ORDER

The prayer in this Writ Petition is to quash the order, passed by the 2nd Respondent, dated 11.02.2010 and the Letter No.9070-A3-2010, dated 10.12.2010. In and by the said order and letter, the punishment of reduction to the lower rank/post of Assistant Manager (Materials)(SG) for a period of one year for the acts of omissions and commissions committed by the Petitioner, awarded by the proceedings, dated 21.04.2009, of the 1st Respondent, was confirmed and the request of the Petitioner for exonerating from the charges relating to unauthorised disposal of reusable old gear boxes as cast iron scrap was not agreed to, respectively.

2. The case of the Petitioner is that he was working as the Manager, Materials In-charge in the year 2006 in the 1st Respondent Corporation. To dispose of the scrap, the scrap yard

had been fenced and subdivided into various yards for storing various types of scraps. On 9.4.2007, the 1st Respondent had promoted the Petitioner as Deputy Manager (Materials) with effect from 9.4.2007 and in the said post, he served for seven months. A petition through fax message was sent by an unknown person, against the Petitioner and one V.Rangaraj, alleging that they came to workshop and brought three gear boxes to inside the scrap yard and loaded in the scrap loaded lorry on 14.09.2006. The Petitioner had appeared for enquiry and the said enquiry was not conducted, in accordance with law and a cryptic enquiry report was submitted. On the basis of the enquiry report, the impugned punishment of reduction to the lower rank of Assistant Manager (Materials) (SG) was imposed. As against the same, the Petitioner had preferred an appeal to the 2nd Respondent. By the impugned order, the punishment was confirmed. Hence, this Writ Petition has been filed, seeking the relief as stated above.

3. The learned counsel for the Petitioner would submit that the alleged complaint made through fax message was not properly proved and the Respondents did not conduct the enquiry, by affording sufficient opportunity to the Petitioner, on the basis of the alleged fax message dated 9.4.2007. The learned counsel would further submit that the Enquiry Officer had not enquired the scrap dealer and not confirmed the three gear boxes, mentioned in the fax message, dated 9.4.2007, as to whether the said materials were loaded or not loaded in the scrap lorry on 14.9.2006. He would further submit that there was no complaint preferred against the Petitioner before the authority for the alleged charges made against the Petitioner and that the report of the Enquiry Officer is totally baseless and in violation of principles of natural justice and therefore, the impugned orders are liable to be quashed.

4. On the other hand, the learned counsel for the Respondents would submit that on the basis of the complaint, the enquiry was conducted against the Petitioner in a proper manner. On the basis of the complaint received by the Respondent Corporation, proper and relevant charges were framed. He would further submit that no witness had been examined by the Petitioner before the Enquiry Officer and cross examination of as many as 9 witnesses examined on the side of the Respondent Corporation was also not done by the Petitioner, to disprove the charges levelled against the Petitioner. He would further submit that only on the basis of the statements of the said witnesses, the enquiry report was submitted and that on the basis of the enquiry report, explanation was sought from the Petitioner and thereafter, the impugned punishment was imposed, which was also rightly confirmed in the appeal, which warrants no interference by this Court.

5. This court heard the learned counsel on either side and considered carefully their rival submissions and also perused the materials placed on record.

6. It is seen that on the basis of the complaint received by the Respondent Corporation, the following charges were framed:-

"Thiru.N.Palanivel and Thiru.K.Rajendran, in connivance with each other, disregard of the objections raised by the user Department officers and other employees, who witnessed the related incidents, had managed to move the two reusable old gear boxes from outside the scrap yard to inside the scrap yard, and then disposed it along with the other cast iron materials to the scrap contractor, which act constitutes misconduct under rule 5.2(C) and 5.2(s) of Service Rules of TANCEM."

7. The Petitioner had submitted an explanation to the Respondents. No witness was examined by the Petitioner. But, on the side of the Respondent Corporation, as many as 5 Officers and 4 employees were examined as witnesses. Only on the basis of the statements of the said witnesses, the enquiry report was submitted and that on the basis of the enquiry report, explanation was sought from the Petitioner. The Petitioner had also submitted an explanation, dated 8.9.2008 and a representation, dated 19.9.2008. On receipt of the explanation of the Petitioner, a show cause notice was issued on 14.03.2009 to the Petitioner, as to why punishment of reduction to the lower rank / post of Assistant Manager (Materials) should not be imposed on him. The Petitioner had also sent further explanation to the said communication on 23.03.2009 and the second show cause notice was issued on 02.04.2009 and thereafter, finally, the impugned punishment was imposed, by order dated, 21.04.2009 by the 1st Respondent.

8. In the explanation to the charge, the Petitioner had stated that the Materials Management cannot enter into any section to bring any materials to scrap yard because during entry to Plant, the vehicle should be handed over to the Security Department. After handing over the vehicle, the Manager (Materials) should not give any outside materials to scrap yard. The Petitioner being the Manager (Materials) did not interfere with the control of security and did not give instructions to anybody to bring gear boxes from Workshop to the scrap yard. The aforesaid charges were made only with a mala fide intention to stall the promotion of the Petitioner.

9. It was stated by the 2nd Respondent in the impugned order that the explanation of the Petitioner was not satisfactory and the witnesses had clearly spoken about the two old reusable gear boxes available in the scrap yard being taken from outside the scrap yard to inside the scrap yard by the Petitioner and then disposed it along with the other cast iron materials to the scrap contractor.

10. According to the witness, T.Vaithianathan, Manager (TM), the materials available inside the scrap yard alone were taken up for disposal. Even an attempt was made on 13.09.2006 to load the two gear boxes that were placed near the workshop but outside the scrap yard. The said attempt was made by the loadman of the scrap dealer on the direction of the Petitioner, without getting any concurrence from the Respondent Management. Yet another witness, M.Nagarajan, Foreman, had deposed that he saw two gear boxes on 14.09.2006, but on 15.9.2006, the said two gear boxes were not available. It was stated that the said gear boxes could have been taken away by the scrap dealer or by the Department or stolen by some other people.

11. Further, during the cross examination of another witness, S.Ganesan, AM(TM), by N.Palanivel, the said witness stated that usually the workshop people will leave by 3.45 p.m. in the evening to finish the 8-4 shift and therefore, 15 minutes before the end of the shift, they will leave the work spot and it will take 15 minutes to reach the workshop for those who come for the 4-12 shifts. There is a time gap of 30 minutes between 3.45 p.m. to 4.15 p.m. during which time, none were available around the place where the said gear boxes were located. The said witness was available at 4.30 p.m. on 14.9.2006 in the Workshop.

12. On the basis of the statements of the witnesses and the findings of the , the Original Authority, the 2nd Respondent had come to the conclusion that all circumstantial evidences proved beyond doubt that there was an overt or covert act to move the two gear boxes from outside the scrap yard to inside the scrap yard by the Petitioner. Accordingly, the 2nd Respondent had confirmed the impugned punishment.

13. Further, before the Enquiry Officer, the Petitioner has not examined any witness nor placed any material to disprove the charges levelled against him. The witnesses examined on the side of the Respondent Corporation had made specific statements against the Petitioner for the alleged charges. The Petitioner had not taken any efforts to disprove such allegations, by cross examining the witnesses and by producing valid documents. For the reasons stated above, this Court is of the considered view that the Respondents had proved

the charges framed against the Petitioner beyond doubt, by letting in valid evidence.

14. It is the contention of the Petitioner that though the charges were made against the Petitioner and the other worker V.Rangaraj, punishment was imposed against the Petitioner alone. The Petitioner has now pleaded before this Court to re-consider the said punishment and to modify the same to a lesser punishment, in the event of this Court coming to the conclusion that the charges levelled against the Petitioner were proved by the Respondents. The learned counsel for the Respondents has also not raised any serious objection to the said plea of the learned counsel for the Petitioner. To this extent, this Court will consider the plea of the Writ Petitioner and remit the matter back to the Appellate Authority.

15. For the submissions stated above, the plea of the Petitioner for reconsidering the impugned punishment and modifying the same to lesser one alone, shall be considered, by the Appellate Authority concerned, after giving opportunity to the parties concerned, within a period of three months from the date of receipt of a copy of this order.

16. This Writ Petition is allowed with the above terms. The impugned order is quashed in so far as the major punishment awarded to the Petitioner is concerned and the matter is remitted back to the Appellate Authority for consideration for imposing lesser punishment, as stated above. No costs. Consequently, the connected MP is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

Srcm
To

- 1.The Deputy General Manager, Tamil Nadu Cement Corporation Limited, Ariyalur.
- 2.The Chairman and Managing Director, Tamil Nadu Cement Corporation Limited, Chennai-2.

+1cc to Mr.R.Selvakodi, Advocate sr.3372
+2cc to Mr.A.Sivaji, Advocate Sr.3438, 3613

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