

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 21.04.2019

Delivered on: 08.04.2019

C O R A M

The Honourable Mr. Justice M.VENUGOPAL

and

The Honourable Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.29954 of 2018

and

WMP.No.34960 of 2018

M.Muthukaruppan
(Party in person)

... Petitioner

Vs

- 1.Union of India
Rep. by the Secretary to the
Government of India
Rep. by the Ministry of Railways
Rail Bhavan, New Delhi-110 001.
- 2.The Railway Board
Rep. by the Deputy Secretary E(O),
Railway Board,
New Delhi - 110 001.
- 3.The Union Public Service Commission
(Sangh Lok Seva Ayog)
Dholpur House,
Shahjahan Road,
New Delhi - 110 069.
- 4.The General Manager,
Southern Railway Hqrs,
Park Town, Chennai - 600 003.
- 5.The Registrar,
Central Administrative Tribunal,
Chennai- 600 104.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari cum Mandamus calling for the records relating to the Order dated 23.10.2018 passed by the 5th Respondent in O.A.No.310/001886/2016 and direct the Respondents to release all the monetary and service benefits payable on the date of superannuation retirement falls

on 30.06.2014 with the accrued "appropriate commercial interest" from that due date of 30.06.2014 to till the date of its realization of that amounts and within the "prescribed date".

For Petitioner : Mr.M.Muthukaruppan
Party in person

For Respondent: Mr.P.T.Ramkumar for R1,2 & 4.

Mr.M.Devendran for R3

R5-Tribunal

O R D E R

SENTHILKUMAR RAMAMOORTHY.J.,

This Writ Petition is filed for a Writ of Certiorari cum Mandamus to quash the Order dated 23.10.2018 of the 5th Respondent in O.A.No.1886 of 2016 and consequently direct the Respondents to release all the monetary and service benefits payable on the date of superannuation with accrued appropriate commercial interest from the due date till the date of realisation.

2.The Petitioner was selected for appointment as an Assistant Signal and Telecommunication Engineer in the Junior Scale and joined the Southern Railway on 02.11.1979. He was thereafter promoted to the post of District Signal and Telecommunication Engineer in the Senior Scale on 09.03.1984 and thereafter to the post of Deputy Chief Network Manager on 30.11.2002 in Junior Administrative Grade in the Department of Freight Operation Information System and served in the Department till 30.06.2003. It is stated that a charge memorandum dated 28.12.2004 was issued to the Petitioner in respect of the following charges:

(i) He has refused to carry out written orders of his superior officers and also did not co-operate with vigilance investigation.

(ii) He has nominated Shri C.Chandrasekaran, the then DSTE/MW/PER, (now DSTE/Spl.works/PTJ) in two works tenders No.SG. 304/PH-II/TMS/F.O.I.S/03 (OT/TC/PTJ) and No.SG 304/PH-II/TMS//FOIS/03) (OT/LAN) floated by him as convener cum technical member, who was neither working under his control nor connected with the work at that point of time and Shri.C.Chandrasekaran's nomination was without the knowledge of the competent authority.

(iii) Despite the recommendations of the TC members to discharge the tender No.SG.304/PH-II/TNS/FOIS/03(OT/TC/PTJ) he has awarded the contract at exorbitant rate for provision of datacom centre at S & T training school, Podanur in favour of M/s.Trippl Vee Dot Com without recording valid and justifiable reasons, which resulted in loss of about Rupees Three lakhs to Railways.

(iv) He has awarded the contract vide tender NO.SG.304/PH-II/TMS/FOIS/03/OT/LAN at exorbitant rate, for provision of LAN connectivity in all Divisions ignoring the dissenting notes of finance and the third member without recording acceptable and valid reasons which has resulted in loss of about Rupees Five lakhs fifty thousand to Railways.

(V) He has participated in the Tender No.SG.304/PH-II/TMS/FOIS/03(OT/TC/PTJ) for provision of Datacom centre at S&T Training School, Podanur in benami name and awarded the contract to the benami firm M/s. Trippl Vee Dot Com, by misusing his official position.

3. On receipt of the said charge memo, the Petitioner submitted representations dated 29.12.2004 and 24.02.2005. In the latter representation dated 24.02.2005 the Petitioner denied all the five charges. After considering the representations of the Petitioner and other relevant documents, the Disciplinary Authority, namely, the General Manager, Southern Railway ordered an enquiry on 06.05.2005. This preliminary hearing before the Enquiry Officer, namely, Shri R.Viswanathan was attended by the Petitioner. At the said preliminary meeting, the charged officer, namely, the Petitioner herein admitted that he received the charge memo along with its annexures and that he understood the charges but denied the same. At the said hearing, he also submitted a letter dated 20.07.2005 requesting that a particular witness should be deleted and certain listed documents signed by the said witnesses should also be removed from the purview of the enquiry.

4. After the preliminary hearing on 20.07.2005, Mr.R.Viswanathan did not hold any further meeting in connection with the enquiry and withdrew from the enquiry. Accordingly, Mr.J.K.Thapar was appointed as enquiry officer instead of Mr.R.Viswanathan. The said enquiry officer J.K.Thapar, issued a communication to the Petitioner on 03.04.2006 requesting the Petitioner to attend the hearing in connection with the enquiry on 19.04.2006. However, the Petitioner did not attend the said meeting and, instead, by letter dated 10.04.2006 requested for a certified copy of the report of the earlier enquiry officer, namely, R.Viswanathan. By reply dated 13.04.2006, the Petitioner

was informed by the 4th Respondent that it is not possible to send the certified copy of the enquiry officer's report. Meanwhile, in view of the fact that the Petitioner did not attend the hearing on 19.04.2006, the hearing was re-scheduled to 25.04.2006 and the Petitioner was informed about the same by letter dated 20.04.2006. However, the Petitioner did not attend the hearing on 25.04.2006 and on subsequent dates fixed by the enquiry officer.

5. Meanwhile, a CBI Case, namely, C.C.No.18 of 2006 was filed before the IX Additional Special Judge for CBI Cases against the Petitioner for dishonestly and fraudulently awarding contracts by abusing his official position and thereby causing wrongful loss to the Southern Railway. After the said CBI Case was filed, the Petitioner submitted a representation dated 21.09.2006 stating that the charges both in the Departmental enquiry and in the CBI case are the same and therefore the Departmental proceedings should not be proceeded with until the Criminal Case is decided. By reply dated 30.10.2006, this request was refused on the ground that as per extant instructions, the Departmental proceedings need not be stayed pending criminal proceedings.

6. In view of the non participation of the Petitioner in the enquiry, the enquiry officer conducted the proceedings ex-parte and submitted an enquiry report dated 20.11.2006. At the enquiry, 14 witnesses were examined on behalf of the prosecution (P.W.1 to P.W.14) and 77 documents were marked (Ex.P1 to Ex.P77). In addition, 4 Court documents were marked as Ex.C1 to Ex.C4. The enquiry report records that after holding 4 preliminary hearings between 20.07.2005 and 25.04.2006, regular hearings were held on 4 days between 05.06.2006 and 08.06.2006. On the basis of the said enquiry, the enquiry officer concluded that all 5 charges were proved. The said enquiry officer's report dated 20.07.2006 was forwarded to the Petitioner by letter No.P(G)CON/I/39/2004 dated 31.12.2008 followed by reminder dated 29.01.2009 and 03.03.2009. Although the Petitioner received the letter dated 03.03.2009 he did not submit an explanation thereto.

7. Accordingly, the Disciplinary Authority, namely, the General Manager, Southern Railway, examined the enquiry report and related documents and agreed with the enquiry officer that all the charges against the Petitioner were proved. In view of the gravity of the offences, the General Manager recommended the penalty of removal from service on 21.04.2009. Because the penalty of dismissal from service could not be imposed by the General Manager, the records of the case were forwarded to the appropriate Disciplinary Authority as per Rule 10(3) of the Railway Servants (Discipline and Appeal) Rules, 1968. After a

provisional decision was taken with regard to the penalty by the Disciplinary Authority, namely, the President of India, the UPSC, namely, the 3rd Respondent was consulted as per Article 320 (3)(c) of the Constitution r/w Rule 10(5) of the Railway Servants (Discipline and Appeal) Rules, 1968. The Third Respondent submitted its advice dated 18.11.2010 stating that the penalty of removal from service may be imposed without disqualification for future employment under the Government or Railway Administration.

8. Thereafter, the Hon'ble Minister of Railways, acting for and on behalf of the President of India considered the enquiry report, relevant records and the advice of the UPSC and imposed the penalty of removal from service on the Petitioner. A copy of the advice of the Third Respondent with regard to the quantum of punishment was communicated to the Petitioner along with the final order dated 16.03.2011 as per Rule 28 of the Railway Servants (Discipline & Appeal) Rules, 1968.

9. On 21.03.2011, the Petitioner submitted a representation dated 18.03.2011 to the General Manager, Southern Railway stating that he was acquitted from the Criminal Case by Judgment dated 09.03.2011 and therefore requested that the disciplinary case against him should be dropped. In response, the Second Respondent, namely, the Railway Board, by letter dated 04.10.2011 stated that Criminal Proceedings and Departmental Proceedings are different and that the standard of proof, nature of evidence etc. are different. More importantly, it was also stated in the said communication that the Petitioner was acquitted because benefit of doubt was given to the Petitioner as evidenced by paragraph 51 of the CBI Case judgment. Accordingly, the Railway Board advised that the Presidential Order dated 16.03.2011 may be given effect to and that, if a representation is received from the charged officer thereafter, such representation should be forwarded to the Railway Board.

10. Subsequently, the penalty advice removing the Petitioner was served on the Petitioner by office letter dated 17.10.2011, which was acknowledged on the same day on receipt thereof. The Petitioner submitted a representation dated 02.11.2011 requesting for pension and gratuity. The Petitioner also submitted an Appeal dated 08.11.2011 requesting for provisional and regular full pension, gratuity etc. In response, the Railway Board by letter dated 14.12.2011, advised that the Petitioner may seek review of the order of the Competent Authority. The Railway Board communication was forwarded to the Petitioner under Office letter dated 23.12.2011 and in response thereto the Petitioner submitted a Review Petition dated 26.12.2011 to the Hon'ble President as Reviewing Authority. Upon review, by order No.E(O)I-2012/AE-3/SR/13 dated 03.12.2012, the

President confirmed the penalty of removal from service by stating that the Petitioner's request for grant of compassionate allowance cannot be acceded to. Thereafter, the Petitioner submitted a second Review Petition dated 19.12.2012 and on the basis of advice from the Railway Board by letter dated 22.01.2013, the Petitioner was informed by letter dated 27.01.2013 that the second Review Petition cannot be taken up for consideration unless there are new materials or evidence which was not available at the time of passing the order under review.

11. Aggrieved by the order of removal and the rejection of the Review Petition, the Petitioner filed O.A.No.608 of 2014 before the 5th Respondent seeking reinstatement with consequential benefits. The said Application was disposed of by order dated 16.07.2015 by remitting the matter to the Department for reconsideration in light of the observation by the National Human Rights Commission and pass orders there on within a period of four months. In compliance of the said order dated 16.07.2015 and corrigendum thereon, the Competent Authority passed a detailed speaking order dated 12.04.2016. The said order was challenged by the Petitioner in O.A.No.1886 of 2016 before the 5th Respondent and the said Application was dismissed by Order dated 23.10.2018. The order dated 23.10.2018 of the 5th Respondent is impugned in the present Writ Petition.

12. The Petitioner appeared as a party in person and submitted that the report of the first enquiry officer, namely, Mr.R.Viswanathan, was not provided to the Petitioner in spite of requesting for the same and that, therefore, he was unable to defend himself in the enquiry conducted by the second enquiry officer, namely, Mr.J.K.Thapar. In this connection, the Petitioner relied upon the judgment of the Hon'ble Supreme Court in Civil Appeal Nos.1078 and 1079 of 2013, A.SAVARIAR Vs. THE SECRETARY, TAMIL NADU PUBLIC SERVICE COMMISSION AND ANOTHER, wherein the Hon'ble Supreme Court had re-produced Rule 17(B) which states that whenever an enquiry authority is succeeded by another enquiry authority, the succeeding authority is entitled to rely upon the evidence recorded by the predecessor. On this basis, the Petitioner submitted that he would be prejudiced if the report of the first enquiry officer is not provided to him in as much as the second enquiry officer is entitled to rely upon the report of the first enquiry officer. He also referred to the letter dated 12.04.2016 of the Railway Board which records at paragraph 3 that the Petitioner did not take part in the enquiry proceedings and that the said proceedings were held ex-parte. He also referred to the Proceedings/Daily Order Sheet dated 20.07.2005 in respect of the preliminary hearing conducted by the first enquiry officer, Mr.R.Viswanathan, and to the Petitioner's letter dated 10.04.2006 requesting for a copy of

the enquiry report of the first enquiry officer. He also invited the attention of the Court to the charges framed against Shri C.Chandrasekaran and pointed out that the charges against the Petitioner and those against C.Chandrasekaran are connected. The Petitioner, thereafter, referred to the Review Petition submitted by him to the Hon'ble President of India on 26.12.2011 and in particular, to his request for personal hearing. He, thereafter, invited the attention of the Court to his Annual Confidential Report (ACR) for the year 2010-2011 and submitted that both the reporting and reviewing authority had graded his performance as good. The Petitioner, thereafter, referred to the Judgment of the Hon'ble Supreme Court which is reported in (2011) 4 SCC 589, UNION OF INDIA AND OTHERS Vs. S.K.KAPOOR wherein it was held that if the authorities consult the UPSC and rely on his report for taking disciplinary action, then the copy of the UPSE report should be supplied in advance to the employee concerned, otherwise there will be a violation of the principles of natural justice. The Petitioner also relied upon the judgment of the Hon'ble Supreme Court in AVTAR SINGH Vs. UNION OF INDIA (2016) 8 SCC 471. In particular he invited the attention of the Court to Paragraph 38.4.3 (at page 320 of the typed set), which reads as under:

"If acquittal had already been recorded in a case involving moral turpitude or offence of heinous/serious nature on technical ground and it is not a case of clean acquittal or benefit of reasonable doubt has been given the employer may consider all relevant facts available as to antecedents and may take appropriate decision as to the continuance of the employee"

13. The Petitioner, thereafter, invited the attention of the Court to the letter dated 28.04.2011 from the CBI Anti Corruption Branch, Chennai to the Chief Vigilance Officer, Southern Railway whereby a copy of the Judgment of the CBI Court in C.C.No.18 of 2006 was enclosed and it was stated that CBI is not preferring an appeal against the said judgment. He also invited the attention of the Court to the recommendation of the National Human Rights Commission by letter dated 04.07.2012. Finally, the Petitioner referred to the 2nd Review Petition that was submitted by him to the Hon'ble President of India under Rule 25(a) of the Railway Servants (Discipline and Appeal) Rules 1968 and submitted that he had requested that his punishment be reduced from removal to compulsory retirement with full pension gratuity and other terminal benefits.

14. In response to the submissions of the Petitioner, the learned counsel appearing for the Respondents 1, 2 and 4 submitted that the charges against the Petitioner were grave by drawing reference to the charge memo dated 28.12.2004 and the reply thereto dated 05.09.2005. The learned counsel, thereafter, referred to the proceedings of the preliminary

hearing before the first enquiry officer on 20.07.2005 and submitted that no further hearings were conducted by the said first enquiry officer and that, therefore, the first enquiry officer did not submit a report with regard to the enquiry. He further submitted that the charged officer, namely, the Petitioner did not attend any hearing before the second enquiry officer and also pointed out the final conclusion of the second enquiry officer as to how all five charges were proved. He thereafter referred to the letter dated 03.03.2009 by which the enquiry officer's report dated 20.11.2006 was forwarded to the Petitioner. He also referred to the advise of the UPSE dated 18.11.2010 and the order of the President dated 16.03.2011. With regard to the enquiry, he pointed out from the enquiry report as to how 77 documents were marked and 14 witnesses examined on behalf of the prosecution. After drawing reference to the first proceedings before the 5th Respondent, he also referred to the first Review Petition to the President of India. He pointed out from the said first Review Petition dated 26.12.2007 that the Petitioner has acknowledged receipt of the Railway Board order dated 16.03.2011 and the UPSC opinion dated 18.11.2010 and submitted that the Petitioner had not only acknowledged the receipt of the documents but also enclosed a copy thereof along with the Review Petition. He also invited the attention of the Court to paragraph 6 of the Order dated 03.12.2012 of the President rejecting the Review Petition dated 26.12.2011. Finally, the learned counsel appearing for the Respondents 1,2 and 4 invited the attention of the Court to the Impugned Order and submitted that paragraph 5 of the Impugned Order deals extensively with the merits. In particular, he submitted that the 5th Respondent has recorded that the Petitioner did not co-operate with the enquiry and that the Respondents had tried to ensure the co-operation of the Petitioner at every stage and that, therefore, the principles of natural justice were not violated. On that basis he submitted that the 5th Respondent held that there are no merits in the contentions of the Petitioner.

15. In his rejoinder submissions, the Petitioner submitted that he was in the post of Deputy Chief Network Manager only till 03.06.2003 and was succeeded by Smt. Navita Singh who was in-charge when the work under the contracts in question were executed. He also submitted that, as per Rule 25-A, the President is entitled to Review an order passed under these Rules either suo-moto or otherwise.

16. This Court has carefully considered the affidavit, counter affidavit, documents and oral submissions of both parties.

17.It is very clear that the Petitioner was provided with a copy of the charge memo and at least four preliminary hearings were conducted so as to ensure the participation of the Petitioner in the enquiry proceedings. However, the Petitioner did not participate in the enquiry proceedings in spite of receipt of notices and, therefore, the enquiry officer was constrained to proceed ex-parte. The contention of the Petitioner that he did not participate in the enquiry proceedings because he was not provided a copy of the first enquiry officer's report is liable to be rejected because it is evident from the record that the first enquiry officer did not proceed with the enquiry or hold meetings after the first preliminary meeting on 20.07.2005. Therefore, the first enquiry officer did not submit a report and the second enquiry officer conducted the enquiry from the out set. It is also clear from the enquiry officer's report dated 20.11.2006 that 14 witnesses were examined and about 81 documents (including Court documents) were marked on behalf of the prosecution. It is also clear that the charges against the Petitioner are grave charges and upon due enquiry, the enquiry officer concluded that all five charges were proved. Even thereafter, the Petitioner was provided with a copy of the enquiry officer's report and given an opportunity to submit an explanation thereto.

18.The submission of the Petitioner that he was acquitted in the Criminal Case and that, therefore, the Departmental proceedings should be dropped cannot be countenanced. The law is well settled in cases such as TNCS CORPORATION LTD. Vs. K.MEERABAI, (2006) 2 SCC 255 that Criminal Proceedings and Departmental Proceedings are separate and the standard of proof that is applicable in these two proceedings are different. It is also clear from the judgment of the CBI Court that the Petitioner was acquitted on technical grounds by giving him benefit of doubt because the offence could not be proved by the prosecution beyond all reasonable doubt.

19.The further contention that the ACR of the Petitioner for the year 2010-2011 is positive is factually incorrect. In fact, the reporting authority has stated that the officer had practically no involvement in the planning works and that he is ambiguous, vague, irrelevant and indisciplined with disregard to the superior officers. The report of the reporting authority has been endorsed by the reviewing authority. Accordingly, the Petitioner cannot rely upon the ACR. In any event, the ACR for the year 2010-2011 cannot be relied upon by the Petitioner to defend himself against charges of mis-conduct that have been proved through the enquiry officer and, thereafter, confirmed by the Disciplinary Authority. In addition, the reliance by the Petitioner on the Judgment of the Hon'ble Supreme Court in (2011) 4 SCC 589(cited supra) is also untenable because, in the

instant case, the Petitioner has acknowledged receipt of the advice of the UPSC and, in fact enclosed the same with the Review Petition dated 26.12.2011.

20.The 5th Respondent has carefully considered the facts and relevant documents and concluded that principles of 'Natural Justice' were not violated in the instant case. Also, the said 5th Respondent had also concluded that the Disciplinary Authority's decision to remove the Petitioner from service was not liable to be interfered with. This Court is in agreement with the finding of the 5th Respondent because the order of the 5th Respondent is not vitiated by any infirmity and is not liable to be interfered with by this Court in exercise of plenary supervisory jurisdiction under Article 226 of the Constitution of India.

21.In fine, the Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected W.M.P. is closed.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1.The Secretary to the Government of India,
Union of India
The Ministry of Railways
Rail Bhavan, New Delhi-110 001.

2.The Deputy Secretary E(O),
The Railway Board
Railway Board,
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5.The Registrar,
Central Administrative Tribunal,
Chennai- 600 104.

+lcc to Mr.P.T.Ram Kumar, Advocate sr.34166

+lcc to Mr.M.Devendran, Advocate sr.33884

+lcc to Mr.M.Muthukaruppan, (Party in person) Advocate sr.33807

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