

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Ms.JUSTICE P.T.ASHA

W.P. No.32799 of 2018

A.Vellai Veeran

... petitioner

Vs

- 1 Union of India
Rep. by the Central Provident Fund
Commissioner Employees Provident Fund
Organisation NBCC Towers 15 Bhikaji Cama
Place New Delhi - 110066
- 2 The Additional Central P.F.Commissioner (TN and KE)
Employees Provident
Fund Organisation Zonal Office (Tamil Nadu
and Kerala) 37 Royapettah High Road
Chennai - 600014
- 3 The Regional PF Commissioner
- I Employees Provident Fund Organisation
Regional Office Bhavishya Nidhi Bhavan
Lady Doak College Road Madurai - 625002
- 4 The Regional PF Commissioner
- II Employees Provident Fund Organisation
Sub Regional Office No. 31 Filterbad Road
Vellore
- 5 The Regional PF Commissioner
- II (Admn) Employees Provident Fund
Organisation Regional Office Bhavishya
Nidhi Bhavan Lady Doak College Road
Madurai - 625002
- 6 The Accounts Officer (Admn)
Employees Provident Fund Organisation
Regional Office Bhavishya Nidhi Bhavan
Lady Doak College Road Madurai - 625002

7 The Registrar
Central Administrative Tribunal Madras
Bench IInd Floor City Civil Court Complex
High Court Buildings Chennai - 600104 ... Respondents

Writ Petition filed under Art.226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records relating to the order dated 20.09.2018 made in O.A.No. 310/ 002/ 2015 passed by the Honorable Central Administrative Tribunal Madras Bench under the control of the 7th respondent herein namely the Registrar Central Administrative Tribunal Madras Bench City Civil Court Complex Chennai - 600104 set aside the same as non-est in the eye of law and allow the o.A.No. 310/ 0002/ 2015 filed by the Petitioner as prayed for within a time-frame that may be stipulated by this Honorable Court

For petitioner : Mr.K.S.Govinda Prasad

For Respondents : Mr.V.Vijay Shankar
 for respondents 1 to 6

O R D E R

(made by K.K.SASIDHARAN, J.)

The original application filed by the petitioner challenging the charge memo and the ultimate order passed by the Disciplinary Authority was dismissed by the Central Administrative Tribunal. Feeling aggrieved by the order dated 20 September 2018, the petitioner has come up with this Writ Petition.

2. The petitioner was an employee of EPF Organization. The Organization initiated disciplinary proceedings against the petitioner on the basis of a complaint dated 1 September 2005. The articles of charges contain two charges. It was alleged that the petitioner with a mala fide intention, collected huge amount from the poor, illiterate and gullible P.F. members and supplied them bogus documents for claiming advance under the RPF Scheme. The second charge also proceeds on the basis that the petitioner was involved in supply of bogus documents to the poor and illiterate members, on collection of illegal amounts and thereby, the image of the Department was tarnished.

3. The petitioner denied the charges and defended the disciplinary proceedings. The Enquiry Officer arrived at a finding that the prosecution has not produced any evidence to prove the allegation that the petitioner was responsible for fabricating the documents for claiming advance. However, the

Enquiry Officer opined that there are reasons to presume that charged official was aware of the nature of the documents attached along with the advance application even though he was not directly involved in fabrication of the records. This was the finding with regard to the first charge.

4. The second charge against the petitioner is that he tarnished the image of the organization. Since the first charge was partially proved, the Enquiry Officer opined that the second charge was also proved.

5. The Disciplinary Authority taking into account the enquiry report, imposed a punishment of withholding three increments of pay with cumulative effect which will have an impact on the pension. The order was challenged before the Appellate Authority. Without giving any independent reasons, the Appellate Authority dismissed the appeal by order dated 30 November 2010.

6. When the matter was taken up by way of judicial review, the Central Administrative Tribunal opined that the allegation in the charge sheet corroborated with the allegation of misconduct. The Tribunal therefore dismissed the original application.

7. We have perused the entire materials available on record. We have also gone through the enquiry report and the order passed by the original authority.

8. The report submitted by the Enquiry Officer was considered in extenso by the Disciplinary Authority. The Disciplinary Authority has given a finding that charge no.1 was proved substantially. It was by way of presumption that the charge was proved. The Enquiry Officer and Disciplinary Authority made it clear that the prosecution has not produced any evidence to prove the charges. According to the Disciplinary Authority, the prosecution has succeeded in proving that the documents attached along with the advance applications were all bogus. It was presumed that the petitioner was aware of the nature of the documents attached along with the advance application, even though he was not directly involved in fabricating the documents. The Disciplinary Authority therefore concluded that allegations in charge no.1 was substantially proved. The Disciplinary Authority further opined that the prosecution failed to prove the involvement of the petitioner in fabrication of the documents. The second charge was connected to the first charge.

9. The Disciplinary Authority has given a clear finding that there were no documents to show the involvement of the petitioner in the misconduct relating to the preparation of bogus documents. Such being the evidence on record, the Disciplinary Authority was not correct in imposing the punishment which would have a cascading effect on the pension payable to the petitioner. The petitioner was dealing with the advance applications. Therefore, it cannot be said that he was not in the know of things. However, that alone cannot be a reason to fasten him with liability.

10. The Disciplinary Authority imposed the punishment of penalty of withholding three increments of pay with cumulative effect, which has an impact on the pension. The punishment is clearly disproportionate. It was only under such circumstances, the petitioner filed the appeal. The Appellate Authority was expected to consider the entire factual matrix and pass a speaking order. The Appellate Authority, has reiterated the order passed by the Disciplinary Authority and dismissed the appeal.

11. The core question is as to whether we should remand the matter to the Appellate Authority for fresh consideration.

12. The Disciplinary Authority passed the order on 8 September 2010. The appeal was disposed of by order dated 30 November 2010. It would not be in the interest of the parties to remit the matter for fresh consideration. We are therefore of the view that interest of justice would be sub served by modifying the punishment into one of penalty of withholding increment of pay for three months with cumulative effect. The punishment given by the Disciplinary Authority to the effect that the penalty will have impact on the pension is set aside.

13. The Writ Petition is partly allowed as indicated above. No costs. Consequently, W.M.P.No.38013 of 2018 is closed.

Sd/-

Assistant Registrar(CO)

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To

Sub Assistant Registrar

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+1 cc to Mr.V.Vijay Shankar, Advocate, S.R.No.49211

+1 cc to Mr.K.S.Govinda Prasad, Advocate, S.R.No.49533

PP(CO)
SSM(18/07/2019) .

सत्यमेव जयते

W.P. No.32799 of 2018

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