

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.01.2020

CORAM

THE HON'BLE Mr. JUSTICE M.GOVINDARAJ

W.P.No.11859 of 2011

J.Keerthivasan

... Petitioner

Vs.

1.The State of Tamil Nadu
Rep.by its Secretary to Government,
Highways & Minor Ports Department,
Fort St.George, Chennai - 600 009.

2.The Chief Engineer (General),
Highways & Rural Works Department,
Chepauk, Chennai - 600 005.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified Mandamus to call for the records pertaining to the G.O(3D).No.38 Highways and Minor Ports (HL2) Department, dated 02.12.2010 of the first respondent herein and quash the same.

For Petitioner : Ms.Dakshayini Reddy for
Ms.P.Rajarajeswari

For Respondents: Mr.A.Kumar,
Additional Advocate General
assisted for Mr.P.Chinnadurai
Additional Government Pleader

सत्यमेव जयते
O R D E R

Challenging the order of punishment dated 02.12.2010 for the lapses happened during 1982-83 on the grounds of delay, violation of principles of natural justice, the petitioner is before this Court.

2. The petitioner was appointed as Overseer in the Highways & Rural Works Department on 24.07.1982. For want of vacancy he was ousted from service on 30.04.1983. In between this period of nine months he was entrusted with work of digging and deepening of 27 open wells. Based on the complaints from the

local residents on 14.08.1983 an inspection was conducted by District Level Audit Cell, on 23.10.1983. On 07.08.1987, the petitioner was reinstated in service. On 30.12.1989, the Divisional Development Officer issued a charge memo for recording false and boosted measurements and thereby causing loss to the Government. The petitioner had submitted his explanation on 24.12.1990 refuting the charges. On 13.04.1993, the petitioner was regularised in service by second respondent.

3. Again on 13.02.2001, the second respondent, without reference to the previous charge memo dated 30.12.1989 had issued a fresh charge memo on the basis of the District Collectors proceedings dated 29.09.1989 and inspection of Audit cell dated 28.06.1984 and Assistant Divisional Engineer dated 27.05.1989. Oral enquiry was contemplated in the charge memo without there being no witnesses and based on the above mentioned documents. The petitioner submitted his explanation to charge memo on 20.08.2003. The enquiry was held on 25.06.2003, 16.07.2003 and 20.08.2003 and enquiry report dated 20.11.2003 was filed by the enquiry officer, holding all the charges proved. After period of two years on 27.05.2005, the petitioner was called upon to submit his further defence statement on the enquiry report. The petitioner submitted his objections on 20.06.2005. Since no final orders were passed, the petitioner filed a writ petition in W.P.No.26910 of 2008, challenging the charge memo. This Court by its order dated 23.06.2010 directed the respondents to pass final orders within three months. However, after six months in G.O(3D).No.38 Highways and Minor Ports (HL2) Department, dated 02.12.2010, the petitioner was imposed with a punishment of stoppage of increment for a period of six months with cumulative effect and a recovery of a sum of Rs.71,088/- in instalments.

4. Challenging the above said order, the petitioner challenges the same on the ground of inordinate delay of 27 years in every stage of proceedings, violation of principles of natural justice and for non-application of mind by the disciplinary authority.

5. The respondents filed a detailed counter affidavit and the learned Additional Advocate General defended the action of the respondents. According to him, action could not be initiated against the petitioner in 1984, as he was not in service between 30.04.1983 and 07.08.1987. Initially a charge memo was issued on 30.12.1989 but the proceedings could not continue as two different departments were involved with three delinquents connected to the irregularity. Hence, the Union Engineer being the highest officer involved in the delinquency a fresh charge memo was issued on 13.02.2001. The Divisional Development Officer was an incompetent officer and hence the

charge memo was not proceed with. Since two departments are involved, the consumption of time was inevitable, inspite of the same as directed by this Court, they passed the orders within six months. The issue of delay raised by the petitioner has already been negatived by this Court in W.P.No.26910 of 2008 and therefore, he is not entitled to raise it again. The punishment was imposed after taking into consideration the opinion of Tamil Nadu Public Service Commission and the punishment was not disproportionate and hence, it does not warrant any interference.

6. The facts as narrated above are not disputed.

(i) Validity of the proceeding:-

Admittedly the petitioner was out of employment between 30.04.1983 and 07.08.1987. The misconduct committed by the petitioner was that he recorded false measurements and boosted the measurements resulting in excess payment thereby causing a loss of about Rs.70,000/- and thereby acted with lack of devotion of duty. It is not in dispute that an inspection was conducted by the District Level Audit Cell on the basis of complaints on 14.08.1983. Though the petitioner was not in service, the co-delinquents namely the Union Engineer and another overseer were in service. However, there is no explanation for taking any action on the issue. Be that as it may, inspite of receiving a report from the District Level Audit Cell dated 23.10.1983, the petitioner was reinstated in service on 07.08.1987, and the charge memo was issued on 30.12.1989. A reading of the charge memo reveals that the charges were specific to the misconduct committed by the petitioner alone and the involvement of other individuals were not disclosed. The learned Additional Advocate General would submit that two departments were involved due to bifurcation of Highways and Rural Works Department and the petitioner came under the Control of Rural Development Department and the Union Engineer belonged to Highways Department. Since the Union Engineer happened to be the highest officer belonging to Highways Department a charge memo dated 13.02.2001 was issued by the second respondent. However, the charge memo dated 13.02.2001 does not disclose any of the details. If that be so a joint enquiry should have been conducted. But the enquiry report refers to the charges against the petitioner alone and there is no iota evidence of having conducted a joint enquiry. It is well settled that any order cannot be improved by explanations and additions. Further there is no whisper about the disciplinary proceedings and punishments imposed on the other delinquents clarifying that the petitioner alone was responsible for the irregularities. When a delinquency or misconduct or irregularity involving two or more persons, a joint enquiry shall be conducted. Insofar as the present case on hand, inspite of the submission made by the respondents that one Mr.R.V.Thangaraj, Union Engineer, Mr.G.Rajendran - Overseer

and the petitioner were involved, the procedure adopted by the respondents does not follow the rules. Hence the proceedings, can safely be held, are not validity constituted.

(ii) Principles of Natural Justice:-

The present charges are framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules for major punishment. The charge memo dated 13.02.2001 contemplates oral enquiry. When an enquiry officer is appointed for conducting an enquiry, the prosecution shall present the documents relied on by them through witnesses. Especially, the allegations against the petitioner was that he recorded false measurements and boosted the same and made excess payments to the contractors and thereby caused loss. These irregularities came to light based on the complaints made by locals and based on the report of the District Level Audit Cell. Eventhough, it is difficult to catch hold of the complaints, the officials of District Level Audit Cell who conducted the inspections should have been produced as witnesses to prove the same. The petitioner would have got an opportunity to cross - examine them to prove his innocence.

Be that as it may, the enquiry officer has considered the measurement books and the report of the Assistant Divisional Engineer dated 27.05.1989. The inspection was conducted after the reinstatement of the petitioner in service on 07.08.1987. The inspection conducted by the cell without notice to the petitioner, when he was out of service could be justified. But the inspection conducted by the Assistant Divisional Engineer in the absence of the petitioner was not at all explained. The petitioner had raised specific objections to the inspection conducted in his absence. He would also object the timing and method in which the inspection was conducted. Before his ouster from service i.e., 30.04.1983, he took measurements of dry wells. It was rechecked and counter signed by the Union Engineer and Assistant Divisional Engineer. Curiously, the Assistant Divisional Engineer, Union Engineer and the other Overseer were not examined as witness. Without considering the objections the enquiry officer held the charges proved. The disciplinary authority, without considering the correctness of the procedure followed, held the petitioner guilty of charges and imposed the punishment. In doing so the disciplinary authority mechanically reproduced the charge memo, explanation, enquiry report and punishment. There is no reasoning for accepting the findings of the enquiry officer. The order without assigning the reasons, by itself is violation of principles of natural justice.

Therefore, the punishment imposed on the basis of inspections held in the absence of the petitioner, without proof

of difference in measurement, without opportunity of cross - examining the witnesses, on the face of it is violative of principles of natural justice.

(iii) Delay & Non - application of mind:-

Admittedly the inspection was conducted in the year 1983 and a report was also filed. There were three individuals involved in the delinquency. There is no explanation on the side of the respondents for not initiating the disciplinary proceedings. There is not even a whisper about the initiation of proceedings against the other two officials, who were in service and the action taken against the petitioner who was not in service. Had the petitioner not been reinstated, no action could have been taken. It is also interesting to note that the involvement of higher officials were taken note of only on the explanation submitted by the petitioner that the measurements were counter signed by the Assistant Divisional Engineers. A fresh charge memo was issued on 13.02.2001, still leaving out the Assistant Divisional Engineer. Obviously, it appears that the delay was not due to bifurcation of department, but due to involvement of higher level officials. The disciplinary authority has not applied his mind to this aspect, inspite of objections raised by the petitioner. Even assuming that the point of delay against the charge memo was rejected by this Court, there is delay at each and every stage of the proceedings. For a charge memo issued in the year 2001, the enquiry was commenced and completed in the year 2003. The enquiry report was served on the petitioner on 27.05.2005 and the further defence statement was called for, which was submitted on 20.06.2005 within a period of one month. Thereafter for a period of five years the matter was kept in cold storage. That is to say that from 27 years from the date of delinquency, nine years from the date of charge memo, 7 years from the date of enquiry report and 5 years from the date of service of enquiry report, lent for the intervention of this Court in the year 2010.

7. Further admittedly a charge memo was issued on 31.12.1989. The petitioner had also submitted his explanation. The disciplinary authority cannot hold two parallel enquires for the same set of charges. One of the proceedings should have been withdrawn by recording reasons. Even though, it is submitted now that two different departments and too may officials involved in the incident, it is not found in the charge memo. The charge memo cannot be improved by filing counter affidavit. The disciplinary authority had failed to apply his mind as to the pendency of the other disciplinary proceedings for the same set of charges, and failed to apply his mind of the lapse in not conducting the joint enquiry, and also failed to apply his mind

to the enquiry report which does not consider the objections and held the charges proved without there being proof through witnesses. The Hon'ble Supreme Court in Roop Singh Negi Vs. Punjab National Bank [2009 (2) SCC 570], referring to various judgments it is held as under:

".....

(6) Suspicion or presumption cannot take the place of proof even in a domestic enquiry. The writ court is entitled to interfere with the findings of the fact of any tribunal or authority in certain circumstances.

.....

...Indisputably, the writ court will bear in mind the distinction between some evidence or no evidence but the question which was required to be posed and necessary should have been as to whether some evidence adduced would lead to the conclusion as regard the guilt of the delinquent officer or not. The evidence adduced on behalf of the management must have nexus with the charges. The Enquiry Officer cannot base his findings on mere hypothesis. Mere ipso dixit on his part cannot be a substitute of evidence."

8. The Disciplinary Authority should have ordered conduct of proceedings in conformity with principles of natural justice. Above all, he should have applied his mind and set out reasons as to why he accepts the findings of the enquiry officer. The absence of all the above shows that the order came to be passed without application of mind. The opinion of Tamil Nadu Public Service Commission cannot substitute the application of mind as it is only directory and it is not binding on the Disciplinary Authority. In spite of the opinion the Disciplinary Authority can take an independent decision in given circumstances of the individual case.

Hence, I am of the considered opinion that the impugned order is not sustainable for delay, violation of principles of natural justice, non-application of mind and the improper and invalid proceedings from the threshold and accordingly set aside the same. The petitioner is entitled to all service, monetary and attendant benefits on par with his immediate junior, which he was deprived of the above disciplinary proceedings.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The State of Tamil Nadu
Rep.by its Secretary to Government,
Highways & Minor Ports Department,
Fort St.George, Chennai - 600 009.

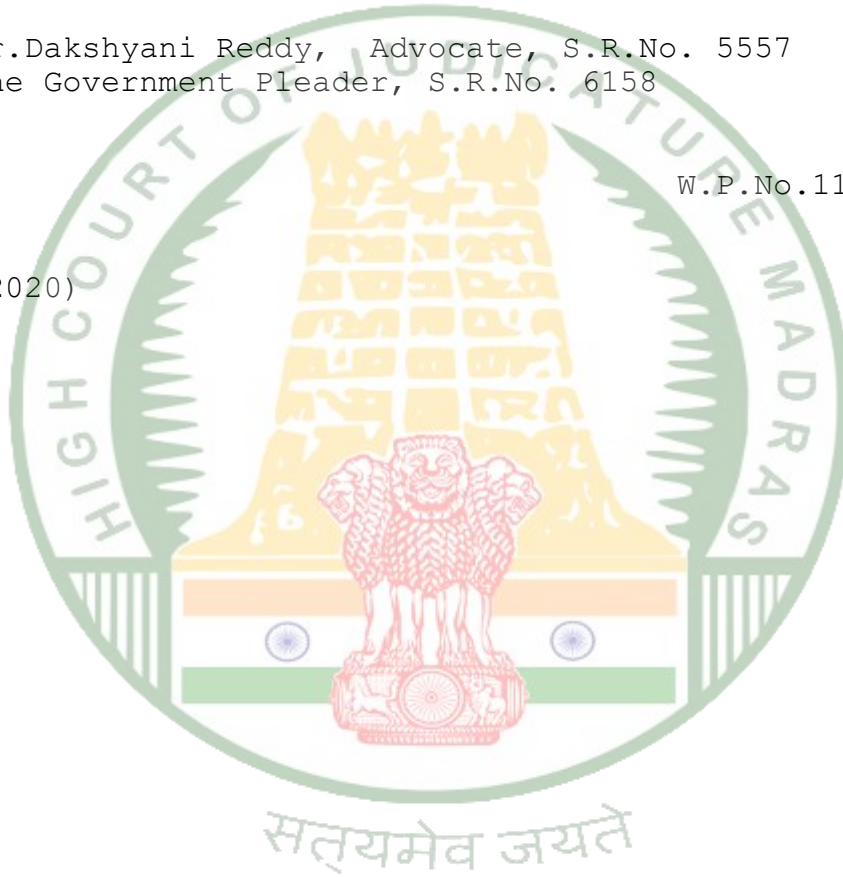
2.The Chief Engineer (General),
Highways & Rural Works Department,
Chepauk, Chennai - 600 005.

+1cc to Mr.Dakshyani Reddy, Advocate, S.R.No. 5557

+1cc to the Government Pleader, S.R.No. 6158

W.P.No.11859 of 2011

SPD(CO)
GN(31/07/2020)



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