

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P.No.5794 of 2013

R.Venugopal

.. Petitioner

Vs.

The Chairman and Managing Director,
Tamil Nadu Minerals Ltd.,
Kamarajar Salai, Chepauk,
Chennai - 600 005.

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorari to call for the records relating to the order passed by the respondent bearing Na.Ka.No.7945/E1/11-4, dated 05.03.2013 and quash the same.

For Petitioner : Mr.K.M.Ramesh

For Respondent : Mr.A.Srijayanthi

O R D E R

Writ petition has been filed challenging the order of punishment of reversion.

2. The petitioner was working as Mine Mate in the respondent Tamil Nadu Minerals Limited (TAMIN). While the petitioner was working as Mine Mate in Siruvalai Black Granite quarry in Villupuram district, disciplinary proceedings were initiated against him and a chargememo was issued on 12.09.2011, levelling the following charges:

"1. That in respect of two granite blocks loaded on 21.06.2011, in two lorries bearing No.2912 and 2943, the measurements noted in the delivery challans did not tally when the said lorries were inspected by Revenue Divisional Officer while it was seized and I was responsible for change of measurements and I was therefore charged under Clause 31(1)(12) of the Certified Standing Orders; and

2. That due to wrong measurements RDO and kept in the Villupuram Police Station and

the news regarding this had appeared in the news papers. Due to the above the TAMIN has been put to financial loss and its name and reputation was spoiled and I am responsible for the same which is in violation of Clause 31(21) of the Certified Standing Orders."

3. As far as the first charge is concerned, on 21.06.2011, two lorries load of granite blocks were transported from the quarry. While the lorry was checked by the Revenue Divisional Officer (RDO), Villupuram it was found that the measurement of two granite blocks bearing Nos.2912 and 2943, hugely varied from the measurement mentioned in the delivery challan issued by the petitioner and thereby he violated Clause 31(1)(12) of the Certified Standing Orders. The second charge was that the vehicles transporting the above said granite blocks were seized by the RDO and a criminal case was also registered, which was published in the newspapers, thereby causing disrepute and revenue loss to the respondent.

4. After receipt of the explanation from the petitioner, an enquiry was conducted, in which, the Enquiry Officer has held that Charge No.1, is not proved, however the Enquiry Officer has held that Charge No.2, has been proved. Thereafter, the Disciplinary Authority viz., the respondent while disagreeing with the findings of the Enquiry Officer has held that both the Charges were proved and imposed a punishment of reversion to the post of Skilled Labour and refixed his salary as for the post of Skilled Labour. Challenging the same, the present writ petition has been filed.

5. Mr.K.M.Ramesh, learned counsel appearing for the petitioner would submit that the first charge only relates to some negligence in loading granite blocks. As per the delivery challan, there is no variation in the measurements and the lorry was seized by the RDO on the way and held that the petitioner was responsible for the same and charge has been framed against him.

6. According to the learned counsel for the petitioner, as far as the second charge is concerned, by alleging that granite blocks were seized by the RDO, registration of a criminal case, which was also published in the newspapers has caused disrepute and revenue loss to the TAMIN and therefore, the petitioner was guilty of violation of Clause 31(21) of the Certified Standing Orders.

7. The learned counsel appearing for the petitioner further submitted that after enquiry, the Enquiry Officer has held that the first charge has not been proved but surprisingly the

Enquiry Officer has held that the second charge has been proved on a different aspect holding that there is no TAMIN emblem on the granite blocks. After seizure of the granite blocks on 21.06.2011, again 28 blocks of granite has been dispatched to the same person on 23.06.2011, hence the Enquiry Officer held that the said charge has been proved. But it was not the charge against the petitioner, the second charge is while dispatching, different granite block was seized and seizure of the vehicle has caused disrepute and revenue loss to TAMIN, but the Enquiry Officer has held that the second charge has been proved on extraneous considerations.

8. The learned counsel appearing for the petitioner further contended that when the Disciplinary Authority disagreed with the findings of the Enquiry Officer with regard to Charge No.1, without seeking further explanation from the petitioner, simply issued a show cause notice for imposing the punishment and thereafter, imposed the punishment of reversion, which is not permissible in law and hence the impugned order is liable to be set aside.

9. Per contra, Ms.A.S.Jayanthi, learned counsel appearing for the respondent would submit that charges against the petitioner are that when he was working as Mine Mate in the granite quarry he dispatched two big size granite blocks other than that mentioned in the delivery challan and thereby caused revenue loss to TAMIN. The same was found when the vehicles were seized by the RDO and ended in a criminal case, which has caused disrepute to TAMIN and hence disciplinary proceedings have been initiated against the petitioner. But the Enquiry Officer did not considered the materials properly and held that the first charge is not proved. But while disagreeing with the findings of the Enquiry Officer, the Disciplinary Authority sent disagreement note to the petitioner calling for his explanation and after obtaining his explanation he has verified the entire records, the vehicle and the seized granite blocks and the Disciplinary Authority found that in the seized granite blocks, there are huge difference in the measurement along with one additional granite block more than that mentioned in the delivery challan was dispatched to one M/s.Mani Omega Granites (Pvt) Ltd., Namakkal in collusion with other officials. Thus, the Disciplinary Authority after considering the entire materials has rightly held that charges have been proved, the learned counsel also referred to paragraph 9 of the counter affidavit. Further, according to the learned counsel for the respondent, the procedure has been thoroughly followed while imposing punishment and fair opportunity has been given to the petitioner, hence there is no illegality or irregularity in the order passed by the respondent.

10. I have considered the rival submissions and also perused the records.

11. Charges levelled against the petitioner are under two grounds. The petitioner was working as Mine Mate and he was responsible for loading granite blocks from the quarry for being transported to the third parties. The granite blocks loaded in the lorry was not in accordance with the delivery note issued by him, which was subsequently intercepted by the revenue authorities. While the granite blocks have been transported, the revenue authorities found that the petitioner deliberately transported different granite blocks there by causing revenue loss and also disrepute to TANMIN.

12. The Enquiry Officer after enquiry has held that, the first charge was not proved. However, while considering the second charge, the Enquiry Officer gave a different reason for coming to the conclusion that the second charge has been proved. As per the chagememo, the second charge is only consequential to the first charge by allowing different granite blocks being loaded in the lorry, seizure of the lorry by the RDO and registration of a criminal case thereby causing disrepute and revenue loss to TAMIN. Whereas, the Enquiry Officer gave a different reason for holding the second charge as proved. Disagreeing with the findings of the Enquiry Officer, the Disciplinary Authority/respondent has held that both the charges were proved and imposed the punishment of reversion.

13. It is settled law that while the Disciplinary Authority disagrees with the Enquiry Officer, he has to prepare disagreement note giving reasons for his disagreement, ask for further explanation from the delinquent officer and after considering the objections, he has to give valid reasons for his disagreement for holding the charges as proved. But, in the instant case, while the Disciplinary Authority disagrees with the findings of the Enquiry Officer no separate disagreement note has been prepared and he has not even communicated to the petitioner or called for his further explanation but simply sent a show cause notice seeking petitioner's objection for imposing the punishment. After obtaining his explanation, without giving any valid reason for disagreement with the findings of the Enquiry Officer, the Disciplinary Authority has held that the charges have been proved and imposed the punishment of reversion. The procedure followed by the Disciplinary Authority is not legally sustainable and hence it is only liable to be set aside.

14. At this stage, the learned counsel appearing for the petitioner would submit that pending writ petition, the order of reversion has been stayed by this Court and by virtue of the

interim order granted by this Court, the petitioner was discharging the duties of Mine Mate, subsequently on 31.10.2014, the petitioner was also permitted to retire subject to the outcome of the writ petition. The learned counsel further submitted that even though the petitioner was discharging the duties of Mine Mate, he was paid the salary of that of Senior Labour only and his retirement benefits was also settled only on the scale of pay of Senior Labour.

15. Normally when the Disciplinary Authority has not followed the procedure, the matter should necessarily be remanded to the Disciplinary Authority for considering the matter afresh and pass orders after following due process. However, considering the peculiar facts and circumstances of the case that, the petitioner has already been permitted to retire from service in the year 2014 itself, and it is also admitted that by virtue of the interim order, the petitioner has been discharging the duties of the Mine Mate till his retirement, no purpose would be served by remanding the matter back to the Disciplinary Authority.

16. Considering the above facts and circumstances of the case, I am of the view that the impugned order is liable to be set aside and accordingly set aside. The respondent is directed to settle the retirement benefits and arrears of salary to the petitioner in the scale of pay of Mine Mate.

17. In the result, the writ petition is allowed on the above terms. No costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Chairman and Managing Director,
Tamil Nadu Minerals Ltd.,
Kamarajar Salai, Chempauk,
Chennai - 600 005.

+1 CC to Mr. Ramesh, Advocate sr 22356
+1 CC to M/s. Sri Jayanthi, Advocate sr 22597.

W.P.No.5794 of 2013

MG (CO)
SP(04/08/2020)