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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.4613 of 2015

1 K.M.Thamizharasu
S/o.Late Munusamy,
Deputy Block Development Officer,
R.K.Pet Panchayat Union,
Res: No.15, Gundumalli Street,
Poonga Nagar, Thiruvallur-602001. ... PETITIONER

Vs.

1 The Commissioner of Rural
Development Panagal Buildings Saidapet
Chennai-15.

2 The District Collector
Panchayat Development Tiruvallur
Tiruvallur District. ... RESPONDENTS

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, to call for the records in RC.No.1495/2011/PA1 dt. 18.08.2014 served on 22.08.2014 passed by the 2nd Respondent and consequential order passed by the 1st Respondent in RC.No.60441 / 2014/DPC1.2 dt. 30.04.2015 and quash the same and consequently direct the 2nd Respondent to reinstate the Petitioner with all attendant and service benefits.

(Prayer amended as per order dated 12.02.2018 in W.M.P.No.1835/2018)

For Petitioner : Mr.M.Abdul Razack
For Respondents 1 & 2 : Mr.J.Ramesh, A.G.P.



O R D E R

Writ petitioner while working as Deputy Block Development Officer, Poondi Panchayat Union was placed under suspension on 25.2.2011 on contemplation of charges under Rule 17(b) of the Tamilnadu Civil Service (D & A) rules. The petitioner was served with three sets of charge memos, dated 20.01.2011, 19.5.2011 and 15.6.2011, consisting of 19 charges framed against the petitioner. A common enquiry was conducted by the enquiry officer on the three charges framed against the petitioner, the enquiry report was submitted to the second respondent. Writ petitioner also submitted a reply to the enquiry report on 6.6.2012 and 7.6.2012 to the second respondent. The enquiry officer recorded a finding that charges were proved against the petitioner and other delinquents. Based on the enquiry report, the second respondent passed the impugned order by removing the petitioner from service. Challenging the dismissal order passed by the second respondent, the writ petitioner has preferred statutory appeal before the first respondent on 9.9.2014. He also preferred writ petition before this Court in W.P.No.18415 of 2012 challenging the impugned suspension order passed by the District Collector, second respondent herein. When the writ petition was pending, the first respondent passed the impugned suspension order by rejecting the appeal preferred by the writ petitioner.

2. The learned counsel appearing for the petitioner raised several grounds in the writ petition by alleging that the writ petitioner made a request to the enquiry officer to furnish copy of the complaint along with documents mentioned in the charge memo, but the said request was not acceded to by the enquiry officer. Similar request was also made before the Tribunal to furnish copy of the documents mentioned in the charge memo. But without furnishing the said documents, the disciplinary authority passed the impugned order. Challenging the said order, appeal has been preferred and in the appeal also, the writ petitioner raised the same ground that the enquiry officer has not furnished the documents sought for by the writ petitioner. Further, writ petitioner also specifically raised a ground that there is no monetary loss to the Government and he admitted before the Disciplinary Authority that the mistake happened at the time of making entries in the NMR register and the petitioner has not obtained signatures from the concerned authorities for making payment before passing the bill. Writ petitioner made payment only to 178 persons, therefore, there is no monetary loss caused to the respondent Panchayat. Insofar as the other charges framed against the petitioner, the writ petitioner made explanation by denying the aforesaid charges.



These aspects are not properly considered by the Appellate Authority. Further, Appellate Authority has not passed the order in consonance with Rule 23(1) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules. According to the petitioner, the the first respondent passed impugned order without considering the ground raised by the petitioner and therefore, the impugned order is non speaking order and the same is liable to be set aside.

3. The learned Additional Government Pleader appearing for the respondents would submit that 19 charges were framed against the petitioner and he submitted explanation to the authorities. Based on the explanation and other materials placed on record, the enquiry officer found that the charges framed against the petitioner were proved and the Disciplinary Authority passed the detailed order by imposing punishment of dismissal from service. The Appellate Authority after considering the findings of the enquiry officer and the order passed by the second respondent passed the detailed final order confirming the order passed by the second respondent.

4. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

5. Pending writ petition, the petitioner has filed an application to raise additional grounds that the first respondent failed to appreciate various grounds raised in the statutory appeal against the order of the second respondent in proper perspective and mechanically rejected the appeal by a non speaking order. Further, the Appellate Authority has not independently and properly exercised the powers vested with the Appellate Authority and mechanically confirmed the order of the Disciplinary Authority with total non application of mind.

6. The writ petitioner raised several grounds challenging the order of the District Collector as well as the Appellate Authority, the first respondent herein. According to the learned counsel appearing for the petitioner, the enquiry officer has not conducted enquiry as contemplated under Rules. Charges framed against the petitioner were served to the petitioner, but the documents as stated in the charges were not furnished to the petitioner. The petitioner made a request before the enquiry officer to furnish copy of the complaint and documents related to the charges. But there is no response from the enquiry officer. Without taking note of the request made by the petitioner, the Disciplinary Authority passed the final order. Writ petitioner raised grounds in the appeal before the



Appellate Authority and the Appellate Authority also not considered the request of the petitioner. It is relevant to extract Rule 23(1) of Tamil Nadu Civil Service (Discipline & Appeal) Rules which reads as follows:

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'23. (1) In the case of an appeal against an order imposing any penalty specified in rule 8 or 9, the appellate authority shall consider--

(a) whether the facts on which the order was based have been established;

(b) whether the facts established afford sufficient ground for taking action; and

(c) whether the penalty is excessive, adequate or inadequate and pass orders- -

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case ;

7. Considering the aforesaid Rule, the Appellate Authority ought to have passed an order by considering the grounds raised by the petitioner in the appeal. The Appellate Authority, while confirming the order of punishment, must consider whether the penalty is excessive, adequate or inadequate. Therefore, on perusal of the impugned order, the first respondent incorporated the findings of the enquiry officer and confirming the order passed by the District Collector, the second respondent herein. But, there is no discussion in the order passed by the Appellate Authority on the grounds raised by the petitioner in the appeal, wherein the Appellate Authority simply confirmed the order of the Disciplinary Authority. It is also useful to extract the grounds raised by the petitioner in the appeal which reads as follows:

' 'GROUNDS OF APPEAL' '

(a)

(b)

(c)It is submitted that Para 10(4) of Chapter 11 part 11 of the Handbook on Disciplinary Procedures prescribed by the Government in P & AR Department provides that copies of complaints made by the and copies of the statement of witnesses which forms basis on which charge or charges are framed against the delinquent officer should be furnished to him at the time of communication of the



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charge memo itself. But these documents were not furnished to me even after the request was made by me during enquiry or till the date of issuance of final orders. Though I have raised these grounds in my defense statement the disciplinary authority did not consider the same. Such action of enquiry officer and the Disciplinary Authority is denial of reasonable opportunity which is violation of principles of natural justice. Hence, the major punishment of removal of service passed against me without following the principles of natural justice is liable to be set aside.

- (e) The enquiry conducted by the enquiry officer on 19.1.2012 in respect of all 19 charges arising out of the aforesaid three charge memos was fictitious since enquiry officer did not follow the procedure contemplated in Rule 17(b) of TNCS (D&A) rules which says, 'the oral enquiry shall be held by the Authority concerned in respect of charges which are not admitted by the person charge and which can be proved only through the evidences adduced by the witnesses. The delinquent officer shall be entitled to cross examine such witnesses who adduced evidence against the delinquent officer. In this case of the Appellant the enquiry officer failed to follow the procedure established by law and did not examine any witnesses but concluded the enquiry and sent his report to the District Collector and the District Collector without examining the legal flaw committed by the enquiry officer and without considering the reply statement of the delinquent officer had passed the major punishment of removal from service and such an order is bad in law and liable to be set aside.
- (f) The Disciplinary proceedings were initiated against me along with other officials alleging that I have committed grave irregularities in execution of MGNREGS works in Poondi Panchayat Union while I was working there as Deputy Block Development Officer. Such allegation against me were



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made with total non application of mind since I was not incharge of the execution of works in the Panchayat Union. I was entrusted with the work of stationary job of compilation of progress reports in respect of MGNREGS collected from the Panchayat and forwarding to the DRDA. Hence, the entire charges against me is made with total non application of mind and the subsequent proceedings based on the unfound charges and impugned final order passed by the Disciplinary Authority removing me from service is unsustainable and liable to be set aside.

- (i) The revised replies dated 25.7.2011 to the first charge memo (Annexure-3) dated 27.7.2011 to the second charge memo (Annexure-6) and reply dated 1.8.2011 to the third charge memo (Annexure-8) and my further explanation to the enquiry report dated 6.6.2012 and 7.6.2012 (Annexure-10) were conveniently suppressed and omitted by the Enquiry officer and the Disciplinary Authority and hence the impugned order passed without considering the these vital documents vitiates the entire proceedings and hence liable to be set aside.

8. It is useful to extract the final order passed by the first respondent which reads as follows:

'Further, the order of the District Collector, Tiruvallur clearly reveals that the delinquent officer violated the instructions and guidelines issued by the DRD & PR to Deputy Block Development Officer (MGNREGS) in the implementation of MGNREGS scheme and had caused monetary loss to Government. The delinquent officer has also agreed the lapses committed by him in passing the NMR without any signature during the personal enquiry conducted by the District Collector on 04.08.2014.

It will be a liability and detrimental to the public interest if such office continues in Government service and it is also essential that such officers are kept away from the Government service. The order of the Collector is well within the



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jurisdiction of law. Considering the amount of misappropriation of Government funds with the intention of cheating the Government and the delinquent officer's mode of misappropriation, deserves removal from Government service. Hence, I order that the appeal petition of Thiru K.M.Tamizharasu, formerly Deputy Block Development officer, Poondi Panchayat Union, Tiruvallur District is dismissed as devoid of merits and the order of the Collector, Tiruvallur issued in Rc.No.1495/2011/PA1, dated 18.08.2014, for 'Removal from service' is upheld.

Therefore, the order passed by the Appellate Authority is not in consonance with Rule 23(1) of the Tamilnadu Civil Service (Discipline & Appeal) Rules.

9. This Court in an identical issue in W.P.No.8782 of 2013, dated 3.2.2020 elaborately discussed about the role of the Appellate Authority who is expected to record the reasons even though not elaborately, but indicating as to how the appellate authority has satisfied himself with the reasons given by the disciplinary authority and held as under:

'16. In another judgment of this Court in the case of K.Kandasamy Vs. Deputy I.G. of police, reported in 2006 (4) MLJ 1382 in para 7, has held as follows :-

"It is seen from the aforesaid portion of the impugned order that the Appellate Authority did not deal with any of the grounds of appeal raised by the petitioner. A departmental appeal is a continuation of the original proceedings. It is needless to point out that the last opportunity available for a delinquent, to canvass his case on merits, is at the appellate stage. After the appeal, a delinquent loses his right to challenge any disciplinary proceedings on merits, since the scope of interference on a revision or on a writ petition is very limited. Therefore, the rules themselves contemplate Appellate Authorities to go into the factual details and consider all the grounds of appeal before deciding an appeal. Unfortunately, the first respondent has chosen to dismiss the



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appeal by a non-speaking order and hence, the Appellate Authority's order is liable to be set aside."

17. It is also pertinent to refer the Judgment of the Hon'ble Supreme Court in Narinder Mohan Arya Vs. United India Insurance Company Ltd, reported in 2006(4) SCC 713, wherein the Hon'ble Supreme Court has held that even when an Appellate Authority agrees with the findings of the Disciplinary Authority in a departmental enquiry, it should give reasons so as to enable the Writ Court to ascertain there was an application of the mind as required by the relevant rules. The relevant portion is extracted hereunder;

"33. An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regard the compliance of the requirements of law while exercising his jurisdiction under Rule 37 of the Rules."

18. In view of the decisions cited supra and Rule 6(1) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, it is clear that the appellate authority is the final fact finding authority and he is expected to assess the evidences available on record by due application of mind and also record the reasons even though not elaborately, but indicating as to how the appellate authority has satisfied himself with the reasons given by the disciplinary authority. When Rule 6 (1) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules mandates that the appellate authority should consider all those materials, in the instant case, no such finding has been given by the appellate authority except simply saying that he has perused some documents and came to the



conclusion that the punishment awarded by the 1st respondent is not an excessive and rejected the same.''

10. In the instant case, writ petitioner admitted before the Enquiry officer that there is lapse in obtaining signature before making payment to the NMRs. Even though there are 19 charges framed by the respondent, there is no finding in respect of the other charges to come to the conclusion of dismissal from service. However, the Appellate Authority did not deal with any of the grounds of appeal raised by the petitioner, except simply saying that he has perused the documents and came to the conclusion that the punishment awarded by the respondent is not an excessive and rejected the same.''

11. This Court is of the view that the Appellate Authority confirmed the order of the District Collector without taking note of the grounds raised by the petitioner in the appeal and hence, the order passed by the Appellate Authority is liable to be quashed. Therefore, this Court is inclined to pass the following order:

(i) The impugned order passed by the first respondent in Rc.No.1495/2011/PA1, dated 18.8.2014 is quashed and remitted back to the first respondent to consider afresh and pass appropriate orders.

(ii) The first respondent shall afford opportunity to the writ petitioner and pass appropriate orders as expeditiously as possible preferably within a period of four months from the date of receipt of copy of the order.

12. The writ petition is allowed to the aforesaid extent. No costs.

Sd/-
Asst.Registrar (CS III)

/true copy/
Sub Asst. Registrar

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To

1 The Commissioner of Rural Development,
Panagal Buildings, Saidapet, Chennai-15.

9/15



2 The District Collector,
Tiruvallur District.

+1 cc to Mr.M.Abdul Razack Advocate sr9451
+1 cc to the Government Pleader sr10402

W.P.No.4613 of 2015

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