

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE :03.12.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO.12633 of 2014
and
M.P.Nos.2 & 3 of 2014

E.Sivakumar

...

Petitioner

- Vs -

- 1.The State of Tamilnadu represented by
Principal Secretary to Government,
Rural Development & Panchayat Raj Department,
Secretariat, Chennai 600 009.
- 2.The Director,
Rural Development & Panchayat Raj Department,
Panagal Maaligai,
Saidapet, Chennai 600 015.
- 3.The District Collector,
Nagapattinam District,
Nagapattinam.

..Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of Certiorarified Mandamus, calling for the records on the file of the 2nd respondent in proceedings Na.Ka.No.88932/08/DPC-1-1 dated 31.07.2013 and the proceedings of the 3rd respondent in Na.Ka.No.10655/2008/Rd-3 dated 10.11.2008 and quash the same and to direct the firsts respondent herein to include the name of the petitioner in the appropriate place in the panel for promotion to the post of Executive Engineer for the year 2009-2010 as issued in G.O.Ms.(P) No.533 dated 14.10.2009(original dated 14.09.2009) and to consequently promote the petitioner in the said post with retrospective effect from the date of promotion of his immediate junior and to grant all consequential benefits to the petitioner herein.

For Petitioner : M/S.M.Ravi

For Respondents: Mr.S.Thangavel, Spl.G.P.

ORDER

This Writ petition is filed by the petitioner, challenging the impugned order of the 2nd respondent in proceedings Na.Ka.No.88932/08/DPC-1-1 dated 31.07.2013 and the proceedings of the 3rd respondent in Na.Ka.No.10655/2008/Rd-3 dated 10.11.2008 and quash the same and to direct the firsts respondent herein to include the name of the petitioner in the appropriate place in the panel for promotion to the post of Executive Engineer for the year 2009-2010 as issued in G.O.Ms. (P) No.533 dated 14.10.2009(original dated 14.09.2009) and to consequently promote the petitioner in the said post with retrospective effect from the date of promotion of his immediate junior and to grant all consequential benefits to the petitioner herein.

2.The case of the petitioner is that he was initially appointed as Assistant Engineer through Tamil Nadu Public Service commission in the year 1998 and thereafter, he was promoted as Assistant Executive Engineer in the year 2006. While in service, certain allegations were levelled against him and he was issued with a charge memo dated 10.11.2008 by the proceedings of the third respondent and charges were framed under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The grievance of the petitioner is that though none of the charges involved serious allegations of possession of disproportionate assets, obtaining or attempting to obtain illegal gratification, misappropriation of Government properties, money, irregularity or negligence in the discharge of official duties with dishonest motives or any other such allegation that involves moral turpitude, the charge memo was issued to the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (D&A) Rules, instead of framing the charge under Rule 17(a) of the Tamil Nadu Civil Services (D&A) Rules. All the charges are vague and no witnesses were shown in the annexures as witnesses on behalf of the respondents. In such a backdrop, the petitioner made a representation on 30.12.2008, requesting for conversion of the charge memo under Rule 17(b) to one under Rule 17(a), which was rejected by the second respondent by his proceedings dated 31.07.2013. Challenging the same, the present writ petition is filed.

3.Learned counsel appearing for the petitioner submitted that the very same issue was discussed by the Hon'ble Division Bench of this Court in WA.No.2924 of 2019, by order dated 12.09.2019, particularly in paragraphs Nos. 9 and 10 of the order, wherein the Division Bench of this court clearly held that the the charge memo issued under 17 (b) if sought to be proved without examining any witnesses, merely on the basis of

documentary evidence, the same is in contravention of the rules. When statute contemplates a thing to be done in a prescribed manner, the same has to be done in the said manner as is provided under the law. Therefore, the above act of the respondents in rejecting the representation of the petitioner shows wholesome non-application of mind to the legal necessities and, therefore, he prays for allowing the writ petition.

4. Learned Special Government Pleader appearing for the respondents submitted that no serious allegations were made in the charge memo, however conversion of charge under the particular rule is absolutely within the domain of the disciplinary authority and the petitioner cannot insist on the disciplinary authority to convert the charge framed under one rule to another rule.

5. This Court heard the submissions of the learned counsel on either side and perused the materials available on record.

6. It is an admitted legal position that an enquiry is to be conducted against any person in strict adherence to the statutory provisions and principles of natural justice. The charges should be specific, definite and giving details of the incident which formed the basis of charges. No enquiry can be sustained on vague charges and enquiry has to be conducted fairly, objectively and not subjectively. Finding should not be perverse or unreasonable nor the same should be based on conjunctures and surmises. There is a distinction between proof and suspicion. Every act or omission on the part of the delinquent cannot be a misconduct. The authority must record reasons for arriving at the finding of fact. In the present case, the charge memo was issued, which reveals vague allegations against the petitioner alleging various delinquencies. The sum and substance of the charge is that the petitioner has not performed his work diligently and has not discharged his official responsibilities between 2007-08 in a satisfactory and clean manner, which culminated in the issuance of the charge memo in the year 2008. However, a perusal of the charge memo reveals that no annexure is mentioned relating to the documents to be relied on or the witnesses, who are to be examined. It is trite that without placing reliance on documents and examining the witnesses, delinquency cannot be proved, more so in a case in which charge has been framed for major penalty. The decision relied on by the learned counsel for the petitioner is squarely applicable to the case on hand. However, it is open to the respondent to proceed against the petitioner in respect of the charges under Rule 17(a) not under Rule 17(b).

7. For the reasons aforesaid, this writ petition is allowed by quashing the impugned proceedings of the 2nd respondent in Na.Ka.No.88932/08/DPC-1-1 dated 31.07.2013 and the proceedings of the 3rd respondent in Na.Ka.No.10655/2008/Rd-3 dated 10.11.2008 and, accordingly, grant consequential promotion and other monetary benefits, to which the petitioner is duly entitled in accordance with law, as the charges under Rule 17(a) is not a bar to given promotion to the petitioner. The service benefits aforesaid shall be granted to the petitioner and the monetary benefits calculated and paid to the petitioner within a period of twelve weeks from the date of receipt of copy of this order, if not paid. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

jrs

To

- 1.The State of Tamilnadu represented by
Principal Secretary to Government,
Rural Development & Panchayat Raj Department,
Secretariat, Chennai 600 009.
- 2.The Director,
Rural Development & Panchayat Raj Department,
Panagal Maaligai,
Saidapet, Chennai 600 015.
- 3.The District Collector,
Nagapattinam District,
Nagapattinam.

+1 cc to Government Pleader sr39305

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