

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.11.2020

CORAM

THE HON'BLE MR.JUSTICE M.DHANDAPANI

W.P.No.3081 of 2014
and
M.P.No.1 of 2014

K.Senthil Kumar

.. Petitioner

vs.

- 1.The State of Tamil Nadu,
Rep. By its Prinicipal Secretary to Government,
Housing & Urban Development Department,
Fort St. George,
Chennai 600 009.
- 2.The Tamil Nadu Housing Board,
Rep. By its chairman Cum Managing Director,
Nandanam,
Chennai 600 035.
- 3.The Chennai Metropolitan Development Authority,
Rep. By its Member Secretary,
Thalamuthu Natarajar Maligai,
Gandhi- Irwin Bridge Road,
Egmore,
Chennai-600 008.
- 4.The Director of Vigilance & Anti Corruption,
Greenways Road,
Chennai 600 028.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari and Mandamus, to call for the records pertaining to G.O.(10 years) No.131, Housing and Urban Development [Ve.Val(1)] Department, dated 12.08.2013 issued by the 1st respondent, confirming the order of the 2nd respondent in proceedings No.DC2/12953/2009 dated 13.01.2010 modifying the order of the 2nd respondent in proceedings No.DC2/2685/2003 dated 09.01.2009 consequent to the charge memo in No.DC2/2685/2003 dated 27.10.2007 of the 2nd respondent and quash the same and consequently direct the respondents 1 and 2 to restore the petitioner seniority, grant promotion and all other service and monetary benefits.

For Petitioner : M/S.A.Moahmed Ismail
For Respondent(s) : Mr.S.Thangavel, Spl. G.P. for RR1 & 4
: Mr.Bharathkumar for R2
: Mr.Tamilmani for R3

ORDER

This writ petition has been filed by the petitioner to call for the records pertaining to G.O.(10 years) No.131, Housing and Urban Development [Ve.Val(1)] Department, dated 12.08.2013 issued by the 1st respondent, confirming the order of the 2nd respondent in proceedings No.DC2/12953/2009 dated 13.01.2010 modifying the order of the 2nd respondent in proceedings No.DC2/2685/2003 dated 09.01.2009 consequent to the charge memo in No.DC2/2685/2003 dated 27.10.2007 of the 2nd respondent and quash the same and consequently direct the respondents 1 and 2 to restore the petitioner seniority, grant promotion and all other service and monetary benefits.

2.The case of the petitioner is that he is presently working as Surveyor, under the Tamil Nadu Housing Board (herein after referred as TNHB). It is the averment made by the petitioner that while working in the Board, the Chennai Metropolitan Development Authority had introduced a Scheme in 1998 under the name & style of "Manali New Town" and sold plots to prospective purchasers under outright sale. Since there was staff crunch of Surveyor, the Surveyors of TNHB were assigned with the additional duty of surveying the plots allotted and sold by Chennai Metropolitan Development Authority and handing over the same to the said buyers. Being a Surveyor, the petitioner was also assigned with the additional duty of surveying and handing over the plots to the buyers of Chennai Metropolitan Development Authority, in addition to his regular duty of surveying and handing over of TNHB plots. While working as Surveyor in the office of the Special Division-3 (Defunct) now K.K.Nagar Division during the period from 4.4.2002 to 03.07.2003, the records maintained by him were seized by the Department of Vigilance of Anti Corruption on 06.11.2002, based on the complaint lodged by one A.S.Kulasekaran, H/o. Tmt.A.K.Tharabai, allottee of Plot No.92/1, MIG, Manali New Town, S&S Scheme on 05.11.2002 on the allegation that he had demanded illegal gratification of Rs. 750/- for the issue of handing over of the above said plot, which has been reduced to Rs.500/-. A trap was organized by the Vigilance and Anti Corruption Department and since he had not received any bribe, he could not be caught and, therefore, to implicate him, a report was drawn and had forwarded to TNHB. Based on the aforesaid report, he was issued with a charge memo dated

27.10.2007 by the Managing Director of TNHB under Rule 37(b) of Tamil Nadu Housing Board Service Regulations, 1969, leveling 4 charges against him. He denied all the allegations by way submitting his explanation before the inquiry officer, however not considering his explanation, the inquiry officer submitted his report, holding the charges proved. Thereafter he was furnished with a copy of the inquiry report dated 05.08.2008 to which he submitted his objections vide his explanation letter dated 25.11.2008, however the 2nd respondent, without proper application of mind, imposed a punishment of stoppage of increment for 15 years with cumulative effect. Aggrieved against the same the petitioner preferred appeal dated 25.03.2009 to the Appeal Committee of TNHB and the Appeal committee vide its proceedings dated 13.01.2010, modified the punishment to stoppage of increment for 5 years with cumulative effect and not satisfied with the same, he preferred revision to the Government on 22.03.2010 and the first respondent, by G.O.(10 years)No.131, dated 12.08.2013, rejected his revision and confirmed the order of appeal committee. Aggrieved by the same, the petitioner is before this Court by filing this petition with the above said prayer.

3. The learned counsel appearing for the petitioner submitted that though there was no complaint against the petitioner from any of the allottees alleging demand of bribe in surveying or handing over certificates and no complaint from the higher officials of CMDA, regarding any dereliction of duty, in the absence of any such complaints, only based on the assumptions and presumptions of the inquiry officer, the charges have been held proved and the authorities, without proper application of mind, have imposed a major punishment, which is wholly unsustainable. It is the further submission of the learned counsel that though in appeal the punishment was modified, however, in the revision petition against the said order, the Government, merely by reproducing the charge memo and appeal order, without application of mind, by way of a non speaking order, has confirmed the order passed by the Appeal Committee, which is per se unsustainable and is liable to be interfered.

4. Per contra, learned Special Government Pleader appearing for the respondents, denied the submission made by the learned counsel for the petitioner and submitted that the Inquiry Officer after careful consideration of the materials, has submitted his report and the disciplinary authority, though initially imposed stoppage of increment for 15 years with cumulative effect, however, on independent application of mind, the appeal committee, on the appeal by the petitioner, had modified the punishment to one of stoppage of increment for a period of five years with cumulative effect and the revision

before the Government was unsuccessful as the Government confirmed the order passed by the appeal committee. It is the contention of the learned Special Government Pleader that unless the punishment imposed is shocking the conscience of the Court and is disproportionate to the delinquency, the court shall not interfere with the punishment. Accordingly he prays for dismissal of the present petition.

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

6.The main bone of contention of the learned counsel for the petitioner is that inspite of the fact that no materials have been provided in the report of the Vigilance and Anti Corruption, however, without advertng to the same, the enquiry officer has held the charges proved and the disciplinary authority, without independent application of mind has imposed a very severe punishment, which has been modified by the appeal committee, in revision, the Government has not applied its mind independently and, therefore, the non-application of mind hits at the substratum of the punishment imposed on the punishment, which warrants interference. It is the stand of the petitioner that the reviewing authority, viz., the Government has not adverted to the materials in proper perspective and, therefore, the confirmation of punishment imposed on the petitioner on the basis of the flawed application of mind of the disciplinary authority and the appeal committee is wholly unsustainable and deserves to be set aside.

7.It is trite that the disciplinary authority is well within his bounds to appreciate the evidence and imposed punishment. The only issue that needs to be looked at by this Court is whether the punishment has been imposed in accordance with law after following the procedure. In the case on hand, a careful perusal of records reveal that subsequent to the enquiry, the disciplinary authority, following the established procedure imposed the punishment. Further, on appeal, the appeal committee modified the punishment, which is also in accordance with law. The grievance expressed by the petitioner is that the Government, the reviewing authority, in the revision, has not passed a speaking order, on independent application of mind.

8. The Hon'ble Supreme Court, in B.C. Chaturvedi v. Union of India, (1995 (6) SCC 749), while dealing with issue relating to the power of the Court relating to judicial review of the orders imposing punishment passed by the concerned authorities, held as under :

"12. Judicial review is not an appeal from a decision but a review of the manner in which the

decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and not to ensure that the conclusion which the authority reaches is necessarily correct in the eye of the court. When an inquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the inquiry was held by a competent officer or whether rules of natural justice are complied with. Whether the findings or conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. But that finding must be based on some evidence. Neither the technical rules of Evidence Act nor of proof of fact or evidence as defined therein, apply to disciplinary proceeding. When the authority accepts that evidence and conclusion receives support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappraise the evidence and to arrive at its own independent findings on the evidence. The Court/Tribunal may interfere where the authority held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court/Tribunal may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case.

13. The disciplinary authority is the sole judge of facts. Where appeal is presented, the appellate authority has coextensive power to reappraise the evidence or the nature of punishment. In a disciplinary inquiry, the strict proof of legal evidence and findings on that evidence are not relevant. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court/Tribunal. In *Union of India v. H.C. Goel* [(1964) 4 SCR 718 : AIR 1964 SC 364 : (1964) 1

LLJ 38] this Court held at p. 728 that if the conclusion, upon consideration of the evidence reached by the disciplinary authority, is perverse or suffers from patent error on the face of the record or based on no evidence at all, a writ of certiorari could be issued."

(Emphasis Supplied)

9.The above view has been reiterated by the Hon'ble Supreme Court in Principal Secy. Govt. of A.P. v. M. Adinarayana, (2004 (12) SCC 579), wherein, it has been held as under :-

"23. We have read this charge in the light of allegations in support thereof. In the instant case, it is not disputed that the respondent has neither supplied any prior information on the Government nor did he send any prior intimation to the Government. By not doing this, he has contravened the provisions of Rule 9. The Tribunal has also categorically held that the respondent has not applied for prior information before he purchased the items from the competent authority nor he intimated to the competent authority forthwith soon after the purchase of the several items. Therefore, in our view, the charged officer has violated Rule 9 of the Conduct Rules and thus is guilty of misconduct within Rule 2-H (sic) of the Andhra Pradesh Disciplinary Amendment Act, 1993. In view of the abovesaid finding we hold that respondent is guilty of both the charges framed against him within Rule 2 (b) of the Conduct Rules of 1961 framed under the Amendment Act, 1993.

* * * * *

26. In our opinion, judicial review cannot extend to the examination of the correctness of the charges as it is not an appeal but only a review of the manner in which the decision was made. We have, therefore, no hesitation in setting aside the order of the Andhra Pradesh Administrative Tribunal and the judgment of the Division Bench of the High Court for reasons stated (supra). The order passed by the Government removing the respondent from service is in order and, therefore, the appeal filed by the appellant State stands allowed. Further, there will be no order as to costs."

10.From the above, it is implicitly clear that this Court, in exercise of its power of judicial review cannot extend the examination of the correctness of the act of the disciplinary

authority, but only limit itself to the manner in which the decision has been arrived at by the authorities and whether the same is in accordance with law. This Court is to test only the correctness of the decision arrived at by the authorities on the basis of the evidence before it and not proceed with the case as if it is an appeal against the impugned order.

11. On consideration of the totality of the materials available on record, it is clear that the disciplinary authority, after browsing through all the materials, on an independent application of mind, has imposed the punishment, which, on being found to be too severe, has been modified by the appeal committee on appeal. The Government, on review by the petitioner, has also applied its mind to the materials placed before it and also adverting to the orders passed by the authorities below, has confirmed the modified order passed by the appeal committee. Therefore, this Court is of the considered view that there being no procedural violation, sitting in judicial review, this Court is not inclined to interfere with the orders passed by the concerned authorities imposing punishment on the petitioner and the contention put forth on behalf of the petitioner deserves to be rejected.

12. Insofar as the punishment imposed on the petitioner is concerned as to its just and reasonableness, this Court would like to advert to the ratio laid down by the Courts under Article 226 of the Constitution with regard to the punishment imposed.

13. It has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the delinquency. Only when the punishment is disproportionate and shocking the conscience, should the courts interfere in the same in exercise of powers under Art. 226 of the Constitution. In Prem Nath Bali - Vs - High Court of Delhi (2015 (16) SCC 415), the Hon'ble Supreme Court held as under :-

"20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority."

(Emphasis Supplied)

14. In the case on hand, a careful perusal of the entire records right from the conduct of the enquiry, the imposition of punishment, the modification of punishment and confirmation of the punishment, reveal that there has been proper and independent application of mind on the part of the concerned authorities, who dealt with the files and the gravity of the offence committed by the petitioner is so very grave, that punishment, which was too severe in nature was inflicted. However, the appeal committee modified the punishment on appeal, which has been confirmed by the reviewing authority, viz., the Government, which clearly exhibits independent application of mind. The delinquency of the petitioner in the present case is receiving of illegal gratification for performing his official duties. The gravity of the offence, in the present day scenario, does not call for any iota of sympathy at the hands of the courts. As already stated, this Court, sitting in judicial review, is not required to go through the entire materials as if the matter is in appeal before this Court, but only to arrive at a subjective finding as to whether the enquiry has been conducted in a fair and proper manner and whereupon, the authorities have independently applied his mind while imposing the punishment. The punishment imposed on the petitioner is just and reasonable considering the nature of delinquency and no sympathy can flow from this Court for such an act. Therefore, the punishment imposed on the petitioner is no way shocking or disproportionate to the delinquency and, therefore, this Court is not inclined to interfere with the same.

15. For the reasons aforesaid, this writ petition is devoid

of merits and, accordingly, the same is dismissed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Jrs

To

- 1.The Prinicipal Secretary to Government,
The State of Tamil Nadu,
Housing & Urban Development Department,
Fort St. George, Chennai 600 009.
 - 2.The chairman Cum Manaiging Director,
The Tamil Nadu Housing Board,
Nandanam, Chennai 600 035.
 3. The Member Secretary,
The Chennai Metropolitan Development Authority,
Thalamuthu Natarajar Maligai,
Gandhi- Irwin Bridge Road,
Egmore, Chennai-600 008.
 - 4.The Director of Vigilance & Anti Corruption,
Greenways Road, Chennai 600 028.
- +1cc to Mr.R.Bharath Kumar, Advocate, S.R.No. 37320
+1cc to the Government Pleader, S.R.No. 37400

सत्यमेव जयते

W.P.No.3081 of 2014

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