



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 24.01.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.(MD)No.6301 of 2011

WEB COPY

A.Pitchaiah

... Petitioner

vs.

1.The Secretary to Government
Highways Department
Chennai 600 009

2.The Chief Engineer (General)
Highways Department
Chepauk, Chennai 600 005

3.The Secretary
Tamil Nadu Public Service Commission
Greams Road
Chennai 600 006

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Certiorarified Mandamus, to call for the records relating to the proceedings in G.O(D).No.210, Highways & Minor Ports (HC1) Department, dated 03.11.2010 and quash the same and further directing the respondents to pay the deducted amount by way of penalty and interest on the petitioners retirement benefits in accordance with Pension Rules.

For Petitioner	: Mr.I.Robert Chandra Kumar for for Mr.G.Prabhu Rajadurai
For R1 & R2	: Mr.S.Dhayalan Government Advocate
For R3	: Mr.K.K.Senthil

O R D E R

The Writ petition has been filed to call for the records relating to the proceedings in G.O(D).No.210, Highways & Minor Ports (HC1) Department, dated 03.11.2010 and quash the same and further directing the respondents to pay the deducted amount by way of penalty and interest on the petitioners retirement benefits in accordance with Pension Rules.

2.The case of the petitioner is that he joined the Highways Department, Government of Tamil Nadu as an Assistant Draughtsman on 27.07.1973 and he was promoted as Junior Draughting Officer and thereafter as Draughting Officer. Subsequently, he became the



Senior Draughting Officer on 07.12.2004 and on 30.04.2006, he reached the age of superannuation and 3 days before the date of superannuation, the petitioner was issued with the charge memo and on the date of superannuation, he was suspended from service. The contention of the petitioner is that three contractors gave a complaint in the year 2004 alleging that they were not issued with tender schedule even after they allegedly paid bribe of Rs.50,000/- and Rs.8,000/- and Rs.5,000/-. After two years from the date of complaint, the petitioner was issued with the charge memo on 27.04.2006 three days before his retirement and he was placed under suspension on 30.04.2006 and he was not allowed to retire. The petitioner submitted his explanation to the charge memo on 15.05.2006 and 24.07.2006. The Divisional Engineer to whom, the petitioner had to report, was also charged along with the petitioner under rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, and the enquiry was conducted by the Superintending Engineer (National Highways), Tirunelveli. After conducting detailed enquiry, the enquiry officer submitted his report on 31.12.2006 stating that the charges against the petitioner were not proved. After one year from the date of enquiry report, the disciplinary authority, 1st respondent without assigning any valid reason stated that he did not accept the report of the enquiry officer and differed with the findings and held by his order dated 24.12.2007 that the charges, 1, 2, 4, 5 and 6 were proved and called upon the petitioner to submit his reply on the said findings.

3. According to the petitioner, the above order of the 1st respondent is a non speaking order and there is no cogent reason to deviate from the findings of the enquiry officer and therefore, the petitioner submitted a detailed reply on 10.02.2008 stating that the contractors who had filed the complaint, had failed before the writ court in W.P.Nos.370 and 371 of 2004 and thereafter given complaint stating that the petitioner received bribe, whereas no such averment was filed in the above writ petitions. The respondents had also filed counter before the Writ Court and after the dismissal of the writ petition on 23.09.2004 after two years therefrom and before 3 days from the date of his retirement, the petitioner was issued with the charge memo and he was not allowed to retire. However, without considering the above reply, the respondents by order dated 18.07.2008 imposed the punishment of cut in pension @ Rs.250/- per month for a period of one year and since the petitioner retired from service, he was directed to inform whether he accepts the said punishment.

4. Learned counsel for the petitioner would submit that the entire proceedings initiated against the petitioner is vitiated for the gross time limit prescribed under Government Letter dated 22.11.1987. The petitioner lost substantial amount both by way of interest and by way of depreciation of the value of money from 2006 when he retired, to 2011 when his retirement benefits and pension



said three contractors and no other independent evidence was adduced and no other materials was relied to support the case of the complainants except their oral evidence. Except the above complainants, no other witness deposed that the said three contractors came to meet the Divisional Engineer also and without considering the same, the above impugned order came to be passed and therefore, the writ petitioner prayed for interference of this Court to quash the above order and to direct the respondents to pay interest on the belated payment of retirement benefits.

5.The respondents 1 and 2 have filed counter and would state that the evidence of the four contractors, the attitude of the petitioner in not making any entry regarding the application of four contractors, demanding and accepting bribe from them for discharging official duties and causing revenue loss to the Government exhibited lack of integrity and devotion to duty on the part of the petitioner, thereby, he violated rule 20(1) of the Tamil Nadu Government Servants Conduct Rules 1973 and Chief Engineer (H) General, Proceeding No.2234/Con.II/2006-3 dated 28.04.2006 and therefore, he was punished by way of cut in pension @ Rs.250/- per month for one year. Thus, he would pray that the interference of this Court is not necessary.

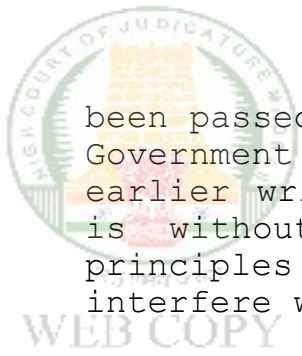
6.Heard both sides.

7.Perusal of record shows that based on the complaint given by the contractors, a charge memo has been issued against the petitioner. On 09.08.2004, the contractors filed W.P.Nos.370 and 371 of 2004 for a Mandamus against the Government, Chief Engineer and Superintending Engineer and Divisional Engineers, alleging that even though they have approached the respondent for issuance of tender schedule, they were not furnished with the same. The Divisional Engineer(H), NABARD & Rural Work, Tirunelveli, 4th respondent therein, filed counter specifically stating that as per the tender notification, prescribed forms of tender schedule shall be purchased on written application upto 02.08.2004 during working hours from the 4th respondent's office on producing necessary receipted Treasury Challan or demand draft drawn from the scheduled bank in favour of the 4th respondent towards the cost of the tender schedule. The tender schedule will be supplied through registered post or courier to the contractors who makes a written request on payment of cost fixed for the schedule along with postal charges, but the petitioners therein had not submitted application along with the challan or demand draft upto 02.08.2004 either in person or through post and they had not made any attempt till the closure time for the issue of tender schedule upto 05.45 p.m on 02.08.2004. It was further contended that the details of the persons who approached the office and got the tender schedule were recorded in the sale register and that was also brought before the court.



8.It was the specific contention of the respondents therein that the complainants approached the office of the 4th respondent only on 05.08.2004, whereas, the sale of tender documents were closed on 02.08.2004 at 05.45 p.m. and therefore, the very initiation of the charge against the petitioner itself is erroneous. Though the petitioner was allowed to retire from service, disciplinary proceedings were initiated against him three days before the date of retirement and an enquiry officer was appointed. The enquiry officer after elaborately discussing the same, has held that the charges were not proved and the disciplinary authority without stating any reason for deviating from the charges and without any cogent reasons, has simply held that the charges 1, 2, 4, 5 and 6 were proved and had sought for reply from the petitioner. The petitioner submitted his detailed reply and also brought to the notice of the disciplinary authority about the filing of the writ petitions by the contractors in W.P.Nos.370 and 371 of 2004, where no averment has been stated as to the receipt of any bribe by the petitioner herein, and the subsequent dismissal of the above writ petitions. After the petitioner retired from service, the 1st respondent has passed the impugned order dated 03.11.2010 vide G.O.Ms.No.210, Highways and Minor Ports (HL1) Department. In none of the references cited in the impugned order, either the letter to the TNPSC or the letter from the TNPSC or in the Government Order, the above writ petitions filed by the contractors, have been referred to which shows the total non application of mind. All the more, the above writ petitions did not speak any thing about the receipt of bribe by the petitioner and the specific contention of the respondents in the counter affidavit filed therein was that the above contractors applied for tender schedule only on 05.08.2004 after the closure date on 02.08.2004. Filing of the writ petitions was never considered by any of the respondents and it has not been referred to in any of the proceedings. Further, the order in the above writ petitions became final and no appeal was filed thereagainst.

9.Reading of the whole impugned order shows that it has been dealt with based on the complaint of the contractors who failed in the writ petition and no cogent reasons have been stated. It has been simply stated that the enquiry officer rather than a fact finding officer, has filed his report which is more or like a written argument and accordingly, the disciplinary authority differed with the findings of the enquiry officer and stated that the charges were not proved, but interestingly, he has not stated why he deviated from the findings of the enquiry officer nor they have found that the petitioner was at wrong. It is well settled that the reasoning is the soul of the order. There is no reasoning given by the disciplinary authority nor the TNPSC nor the Government while passing the impugned order and therefore, it is a very unfortunate case where after failing in the writ petitions, the contractors had given complaint and totally contradicting the



been passed. None of the orders or the communications either by the Government or the TNPSC or the disciplinary authority reflect the earlier writ petitions filed by the contractors. The order passed is without any application of mind and in violation of the principles of natural justice and therefore, I am inclined to interfere with the order.

10. For all the above reasons stated above, the impugned order in G.O(D)No.210, Highways & Minor Ports (HC1) Department, dated 03.11.2010, is set aside and the respondents are directed to refund the entire amount which was deducted from his retirement benefits and pay the same to the petitioner with 12% interest from the date of his superannuation till the date of payment, within a period of twelve weeks from the date of receipt of a copy of this order.

With the above direction, the writ petition is allowed. No costs.

Sd/-

Assistant Registrar (AD-I)

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Sub Assistant Registrar(CS)

bala/msa

To

1. The Secretary to Government,
Highways Department
Chennai 600 009.

2. The Chief Engineer (General),
Highways Department
Chepauk, Chennai 600 005

3. The Secretary,
Tamil Nadu Public Service Commission
Greens Road
Chennai 600 006.

+1 CC to Mr.G.PRABHU RAJADURAI, Advocate (SR-3111[F] dated 27/01/2020)

+1 CC to SPL.GP (SR-3172[F] dated 27/01/2020)

+1 CC to Mr.K.K.SENTHIL, Advocate (SR-3512[F] dated 28/01/2020)

ORDER MADE IN
W.P. (MD)No.6301 of 2011
DATED : 24.01.2020

MK (14.02.2020) 5P 7C

<https://hcservices.ecourts.gov.in/hcservices/>