



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.01.2020

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.7477 of 2011

K.Rajendran

... Petitioner

vs.

1)The Chief Conservator of Forests,
1, Jennis Road,
Panagal Salai,
Saidapet, Chennai.

2)The Conservator of Forests,
Madurai Division,
Madurai.

... Respondents

Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the 1st respondent in his proceedings Se.Mu.Order No.BB1/38965/2010 dated 25.05.2011 confirming the order of punishment passed by the 2nd respondent in his proceedings in Se.Mu.Order No.B2/2063/08 dated 19.02.2008 and quash the same as illegal.

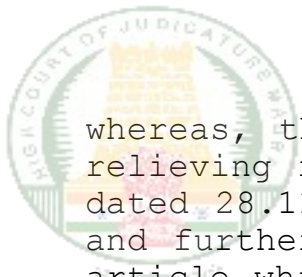
For Petitioner : Mr.M.E.Ilango

For Respondents : Mr.S.Dhayalan, Government Advocate

ORDER

The prayer in the writ petition is to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the 1st respondent in his proceedings Se.Mu.Order No.BB1/38965/2010 dated 25.05.2011 confirming the order of punishment passed by the 2nd respondent in his proceedings in Se.Mu.Order No.B2/2063/08 dated 19.02.2008 and quash the same as illegal.

2.Learned counsel for the petitioner would submit that the petitioner was initially appointed as a Forester on 20.10.1980 in Vaigai Soil Conservation Division, Periyakulam. Thereafter, he was transferred to Chinnamanur Range, Theni Division and he retired from service on 30.03.2009. On 08.10.2007, the 2nd respondent issued a charge memo against the petitioner alleging that when he was relieved from Megamalai Forest Range, Theni Division, he failed to hand over some articles confiscated during his tenure as Ranger in Megamalai and the 2nd respondent assessed the worth of the seized goods at Rs.2,01,286/-. According to the petitioner, he was working as Forest Ranger in Megamalai from 19.05.2003 to +12.05.2006,



whereas, the above show cause notice was issued one year from his relieving from Megamalai. The petitioner submitted his explanation dated 28.11.2007 to the 2nd respondent refuting the said allegation and further stated that his predecessors did not hand over all the article while they were relieved and the same was also intimated by him to the District Forester as early as on 28.02.2004, but no action was taken at that point of time. However, the 2nd respondent has passed the impugned order dated 19.02.2008 directing recovery of Rs.1,57,700/- from the petitioner in instalments. According to the learned counsel, the impugned punishment order of recovery has been passed without conducting any enquiry. It is further stated that the entire amount has been recovered from the petitioner and against the recovery order, he filed appeal before the 1st respondent on 07.04.2008 and pending appeal, the petitioner retired on 17.03.2009.

3.He would further submit that in the year 1990, Megamalai Forest Range headed by Chinnamanur was divided into three ranges viz., Chinnamanur, Varushanadu and Megamalai and the petitioner worked at Megamalai between 19.05.2003 and 12.05.2006 and the District Forest Officer, Theni, failed to monitor the seized goods from the year 1990 to 08.10.2007. However, without considering the above, the 1st respondent confirmed the punishment order of recovery by dismissing the appeal by way of impugned order dated 25.05.2011. Thus, he would pray for setting aside the impugned orders.

4.The respondents filed counter affidavit. Learned Government Advocate appearing for the respondents would state that the petitioner did not produce any evidence to show that he had handed over the seized goods to the respondents and even in the appeal, he did not adduce any evidence to that effect. It is further stated that there is no provision for conducting enquiry under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and therefore, the petitioner was given opportunity to peruse the connected records to defend himself and thereafter he submitted his explanation. After considering the explanation of the petitioner and other documentary evidence, the 1st respondent/appellate authority rightly confirmed the recovery order passed by the 2nd respondent. Thus, he would pray that the interference of this Court is not necessary.

5.Heard the learned counsel for the petitioner as well as the learned Government Advocate for the respondents.

6.Perusal of record shows that it is the admitted fact in the counter affidavit that no enquiry has been conducted. It is well settled that before passing any order resulting in civil consequences, detailed enquiry has to be conducted even if it is a 17(a) charge. Here, admittedly, the petitioner has stated that his predecessors had not handed over any articles to him. It is the contention of the petitioner that in 1990, Megamalai Forest Range



headed by Chinnamanur was divided into three ranges viz., Chinnamanur, Varushanadu and Megamalai and he worked at Megamalai between 19.05.2003 and 12.05.2006, whereas, the show cause notice dated 08.10.2007 was issued after a period of one year of his relieving from Megamalai and the District Forest Officer, Theni, failed to monitor the seized goods from the year 1990 to 08.10.2007 and it is also the specific contention of the petitioner that he intimated the confiscated items available in Chinnamanur Range by his representation dated 27.12.2007 and handed over the charge to the in-charge Ranger on 17.03.2006 itself and handed over the confiscated items on 20.09.2006. Therefore, in the nature of this case, though the charges have been issued under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules since it results in civil consequences, the authorities ought to have conducted enquiry and only if enquiry is conducted, the petitioner would be able to putforth his defence before the enquiry officer. But without conducting the enquiry, recovery order has been passed which is against the principles of natural justice and the petitioner filed an appeal against the order of the disciplinary authority. The petitioner filed a writ petition in W.P(MD)No.4809 of 2011 and this Court by order dated 26.04.2011 directed to dispose of the appeal. The appellate authority without reference to the order of this Court and without considering the grounds of appeal raised by the petitioner, has simply rejected the appeal without any application of mind stating that no new grounds raised in the appeal therefore, on violation of principles of natural justice and for non application of mind, I am inclined to interfere with the impugned orders.

7. Accordingly, impugned order passed by the 1st respondent in his proceedings Se.Mu.Order No.BB1/38965/2010 dated 25.05.2011 and the original order of punishment passed by the 2nd respondent in his proceedings in Se.Mu.Order No.B2/2063/08 dated 19.02.2008 are set aside. It is brought to the notice of this Court that the entire amount has already been recovered from the petitioner and therefore, the respondents are directed to refund the entire amount recovered from the petitioner 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 (CS-III)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

1) The Chief Conservator of Forests,
1, Jennis Road,
Panagal Salai,
Saidapet, Chennai.

2) The Conservator of Forests,
Madurai Division,
Madurai.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-643[F]dated 08/01/2020)

+1 CC to SPL.GP (SR-687[F] dated 08/01/2020)

ORDER MADE IN
W.P(MD)No.7477 of 2011
DATED : 07.01.2020

VB(03.02.2020) 4P 5C