



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.03.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.(MD) No.5757 of 2016

R.Narayanasamy

... Petitioner

Vs.

1.The Agricultural Production Commission and
Principal Secretary to Government,
Agricultural Department,
Secretariat,
Chennai - 600 009.

2.The Commissioner of Agriculture,
Chepauk,
Chennai - 600 005.

3.The Joint Director of Agriculture,
Tallakulam,
Madurai - 625 002.

4.The Joint Director of Agriculture,
Ramanathapuram.

... Respondents

(The 4th respondent is impleaded as per the order of this Court dated 17.03.2020 in W.M.P.(MD).No.6009 of 2016)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records of the first respondent ie., the Agricultural Production Commissioner and Principal Secretary to Government, Chennai relating to G.O.(3D)No.01, dated 05.01.2016 and quash the same and consequently direct the Government to promote the petitioner as Assistant Director of Agriculture on par with his juniors within a specified time frame.

For petitioner
For respondents

: Mr.S.Visvalingam
: Mr.K.Mu.Muthu,
Additional Government Pleader

ORDER

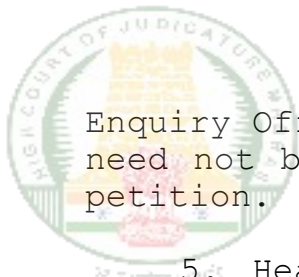
This writ petition has been filed by the petitioner challenging the order imposing punishment of stoppage of increment for one year without cumulative effect by the disciplinary authority.



2. The learned counsel for the petitioner submitted that the petitioner is presently working as Agricultural Officer, Bio Production Lab, Melur, Madurai District, under the third respondent herein. While he was working as Agricultural Development Officer, Kamudhi, on 11.02.2009 the third respondent issued a charge memo alleging four charges against the petitioner for the occurrences of the years 1998-99 and 1999-2000. The charges against the petitioner is that while he was working as Agricultural Officer, Kamuthi, he, colluding with other staff, alleged to have misappropriated subsidy amount totally to the tune of Rs.85,945/- by creating bogus records. The petitioner submitted his explanation on 18.04.2009. After enquiry, the Enquiry Officer submitted his enquiry report on 04.05.2012 stating that the petitioner has failed to make supervision and thereby, he has committed dereliction of duty and thus, all the charges were proved. The report of the Enquiry Officer has been communicated to the petitioner only on 29.05.2014. The petitioner submitted his further explanation on 28.07.2014. The disciplinary authority, by the impugned order dated 29.01.2016, has imposed the punishment of stoppage of increment cut for one year without cumulative effect. Challenging the said order, the petitioner is before this Court.

3. The learned counsel for the petitioner submitted that the disciplinary proceeding has been initiated after a delay of about 9 years from the date of alleged occurrence and it has completed after seven years from the date of initiation and thus, totally 16 years have gone. The respondents have not assigned any reason for the delay of initiation of disciplinary proceeding and also completion of the same. He would further submit that the impugned order is a non speaking order and no reason has been assigned by the disciplinary authority for imposing the punishment, except extracting the enquiry report. He would further submit that the explanation given by the petitioner to the report of the Enquiry Officer has not been considered by the disciplinary authority. Thus, he prayed to set aside the impugned order.

4. The learned Government Advocate appearing for the respondents submitted that the petitioner has not assigned valid and acceptable reasons in the explanations submitted by him in respect of the charge memo and the report of the Enquiry Officer, and that the disciplinary authority, after considering the report of the Enquiry Officer and also the explanations submitted by the petitioner, has imposed punishment of increment cut for one year. Further, the delay in concluding the disciplinary proceeding has happened only due to the non cooperation of the petitioner by adducing false and fabricated evidences at the time of enquiry and hence, the disciplinary authority cannot be found fault with for the same. After giving due opportunities and sufficient time to produce the evidences to disprove the charges framed against him by the



Enquiry Officer, final order has been passed and therefore, the same need not be interfered with. Thus, he prayed to dismiss this writ petition.

5. Heard the learned counsel for both sides and perused the records carefully.

6. A perusal of record shows that the petitioner has been issued with a charge memo on 11.02.2009 for the occurrence alleged to have been happened during the financial years 1998-1999 and 1999-2000 ie., after nearly about nine years from the date of occurrence. As rightly stated by the petitioner, the respondents have not assigned any reason for such huge delay in initiation of the proceedings. Hence, the submission of the petitioner that due to such huge delay in initiation of the proceeding, he could not recollect all the happenings and properly defend the charges, has force.

7. In similar circumstances, in the case of **State of Punjab and others Vs. Chaman Lal Goyal** reported in **1995 (2) SCC 570**, the Hon'ble Supreme Court has held as follows:

"9. Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the court has to indulge in a process of balancing... "

8. In the case of **P.V. Mahadevan v. M.D. Tamil Nadu Housing Board** reported in **2005 (4) CTC 403**, this Court, after referring to various decisions, has held that,

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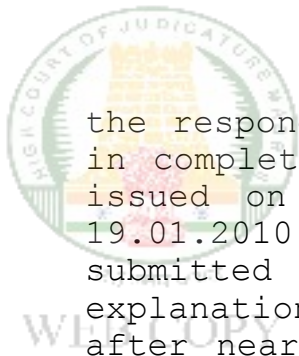
"The protracted disciplinary enquiry against a Government employee should, therefore, be avoided not only in the interest of the Government employee but in public interests and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

15. We therefore, have no hesitation to quash the charge issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retiral benefits in accordance with law. The retiral benefits shall be disbursed within three months from this date. No cost."

9. In the case of **Special Commissioner and Commissioner of Commercial Taxes, Chepauk v. N.Sivasamy** reported in **2005 (5) CTC 451**, a Division Bench of this Court held as follows:

"Though the alleged lapse occurred in the year 1995 and certain charges related to the period 1993-94, the charge memo was issued on 15.07.1997 and served on 23.07.1997, just 7 days before the date of retirement. The contention of the appellant that only with a view to cause hardship, agony and anguish, the charge memo was issued cannot be ignored..... We have already pointed out that though the applicant filed Original Application No.6284/97, challenging the charge memo, dated 15.07.1997, admittedly, no stay was granted. Despite the above fact that the department had not proceeded with the disciplinary proceedings, there is an inordinate and unexplained delay on the part of the department. According to the applicant, he is 67 years of age as on the date and had rendered 38 years of service in the department. He had undergone sufferings from mental worry, agony, anguish and hardship for all these years. We are satisfied that there is no need to pursue the charge memo, dated 15.07.1997."

10. The above decisions are squarely applicable to this case, as In this case also, the charge memo has been issued after 9 years of the occurrence and the delay has not been properly explained by



the respondents. Further, in this case, there is delay of 7 years in completion of the disciplinary proceedings. For the charge memo issued on 11.02.2009, an Enquiry Officer was appointed only on 19.01.2010 and after completing enquiry, the Enquiry Officer submitted his report as early as on 04.05.2012. However, the explanation to the report of the Enquiry Officer was called for after nearly two years ie., on 29.05.2014. Even after receipt of explanation to the Enquiry Officer's report on 28.07.2014, there is a delay of about one and half years in passing orders on the disciplinary proceedings. Thus, there is totally 7 years delay in completing the disciplinary proceedings also. The said delay has also not been explained by the respondents. For the delay committed by department in initiation and completion of disciplinary proceeding, the mental agony and sufferings undergone by the petitioner would be much more than the punishment.

11. According to the respondents, the delay in concluding the disciplinary proceeding has happened only due to the non cooperation of the petitioner by adducing false and fabricated evidences at the time of enquiry. But, the fact remains that the Enquiry Officer was appointed nearly after one year ie., in the year 2010 from the date of initiation of disciplinary proceeding and though the Enquiry Officer completed his enquiry in the year 2012 itself, the disciplinary proceeding has been completed in the year 2016 by the disciplinary authority. Therefore, the said submission of the respondents cannot be accepted.

12. A perusal of the impugned order shows that the disciplinary authority, only after referring to the report of the Enquiry Officer, has imposed punishment without assigning any reason. The explanations given by the petitioner to the report of the Enquiry Officer has been rejected merely stating that there is no new reason assigned. As rightly stated by the petitioner, the impugned order is a non speaking order and there is also non application of mind on the part of the disciplinary authority.

13. Reasoning is the soul of the order. The order which does not contain any reason for conclusion can be termed to be a non speaking order. The Hon'ble Supreme Court in the case of **East Coast Railway and another vs. Mahadev Appa Rao and others**, reported in (2010) 7 SCC 678, has held in paragraph No.23 as follows:

"23.Arbitrariness in the making of an order by an authority can manifest itself in different forms. Non application of mind by the authority making the order is only one of them. Every order passed by a Public authority must disclose due and proper application of mind by the person making the order. This may be evident from the order itself or the record contemporaneously maintained. Application of mind is best



demonstrated by disclosure of mind by the authority making the order. And disclosure is best done by recording reasons that led the authority to pass the order in question. Absence of reasons either in the order passed by the authority or in the record contemporaneously maintained, is clearly suggestive of the order being arbitrary hence legally unsustainable."

14. In the case of **N.S.Jayaraman & Sons Vs. the Government of India**, reported in **2010 (2) CWC 485**, a learned Single Judge of this Court has held that reasoning is the heartbeat of every conclusion and without any reasoning, the conclusion becomes defunct and that the rationale behind is that the affected party can know why the decision has gone against him and that one of the salutary requirements of natural justice is spelling out reasons for the order made. But, in the case on hand, the disciplinary authority has imposed the punishment without considering the explanations and assigning any valid reasons for such conclusion. Therefore, the impugned order of punishment is liable to be set aside.

15. Apart from that, a perusal of the charge memo shows that all the four charges are related to misappropriation of subsidy amount. Admittedly, no criminal case has been registered against the petitioner. Further, the Enquiry Officer has found that the petitioner has failed to make supervision and thereby committed dereliction of duty. The Enquiry Officer has not found and stated anything about the misappropriation. However, he has held that all the charges are proved and the disciplinary authority also, without assigning any reason, has imposed the punishment of stoppage of increment for one year without cumulative effect.

16. In view of the above, the impugned order dated 05.01.2016 is set aside and the respondents are directed to promote the petitioner on par with his immediate junior within a period of twelve weeks from the date of receipt of a copy of this order.

17. This Writ Petition stands disposed of accordingly. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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To

1.The Agricultural Production Commission and
Principal Secretary to Government,
Agricultural Department,
Secretariat,
Chennai - 600 009.

2.The Commissioner of Agriculture,
Chepauk,
Chennai - 600 005.

3.The Joint Director of Agriculture,
Tallakulam,
Madurai - 625 002.

4.The Joint Director of Agriculture,
Ramanathapuram.

+1 CC to M/s.S.VISVALINGAM, Advocate (SR-12057[F]

Order made in
W.P.(MD) No.5757 of 2016
17.03.2020

SMA/01/06/2020/7P/6C