IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE S. VAIDYANATHAN
AND
THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

W.A.No. 2499 of 2013 and
M.P. No 1 of 2013

The Chairman,
Coffee Board,
No.1, Veedhana Veedhi,
Banglore-560001

...Appellant/1st Respondent

Vs.

1.R. Munusamy

2.The Secretary to Government of India,
Ministry of Commerce,
New Delhi. ...Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of Letter Patent Act, to set aside the order dated 23.10.2009 passed in W.P.No. 3284 of 2001 and allow the Writ Appeal.

Prayer in W.P.No.3284 of 2001 : This Petition has been filed seeking for a writ of certiorai to call for the proceedings of the first respondent in No.vig 99/387 dated 26.08.99 as confirmed in appeal by the second respondent in this order F.No.1(16)/99-plant (B) dated.31.03.2000 and quash the same.

For Appellant : Mr.J. Pradiv
for M/S.V. Sundareswaran

For Respondents : Mr.R.Ganesh Kumar (R1)
Mr.S. Sathishrajan (R2)
Central Government Standing Counsel

J U D G M E N T

(Judgment of the Court was delivered by S.VAIDYANATHAN,J)

The Writ Appeal is filed against the order passed in W.P.No.3284 of 2001, dated 23.10.2009 in allowing the Writ Petition filed by the first respondent.

2. It is the contention of the learned counsel for the Appellant that five charges were framed against the First Respondent/Employee, out of which the first one relates to "Criminal Breach of Trust", which was duly proved in the enquiry. Though the said factum was not denied by the first respondent before the Writ Court, there was no discussion in the impugned order, warranting interference of the order of the Appellant under Article 226 of Constitution of India. According to the Appellant, the employee has misappropriated a sum of Rs.1,76,563.85/-, on account of short despatch of coffee to one M/s Pandiyan Coffee Curing Works, Theni and he also admitted his guilt before the Enquiry Officer. Further, the employee also agreed to pay the amount, which was initially recovered at Rs.2,000/- per month and thereafter, at Rs.1,000/- per month, pursuant to the letter of the Vigilance Officer dated 30.09.1996. Hence, the learned Single Judge ought not to have interfered with the same, as the misconduct has been duly established by the Appellant.

3. It is the further contention of the Appellant that a plea was taken by the First Respondent/Employee before the Enquiry Officer that due to coercion, he paid the amount and therefore, a denovo enquiry has been conducted, wherein four witnesses were examined, and two charges, out of five were held to be proved. The Disciplinary Authority confirmed the findings of the Enquiry Officer, after affording an opportunity of hearing to the employee, after considering the explanation submitted by the employee and imposed punishment of penalty at Rs.1,78,563.85/- and withholding one increment without cumulative effect. The same punishment was also affirmed by the Appellate Authority. The Appellant further submitted that even though serious charges have been framed against the First Respondent/Employee, minor punishment alone has been imposed and therefore, the learned Single Judge ought not to have interfered with the punishment and he prays to set aside the order of the learned Single Judge.

4. The learned counsel appearing for the First Respondent submitted that the learned Single Judge, by discussing various Judgments of this Court as well as Apex Court, on considering the materials available on record, has rightly allowed the Writ

Petition observing that the Writ petitioner's option for Voluntary Retirement Scheme had been accepted and he was also relieved from service vide order dated 30.11.1999 and the penalty imposed by the Disciplinary Authority i.e., recovery of Rs.1,76,563/- which has been paid by the Writ Petitioner and therefore, according to the learned counsel for the First Respondent, the order of the learned Single Judge does not warrant interference.

5. Heard both sides. Perused the materials available on record.

6. The learned Single Judge has extracted the discussions of the Enquiry officer and held as follows:

> "The analysis of the evidence, with respect to breach of trust and practiced fraud on the alleged fact of misappropriation as discussed by the Enquiry Officer is as follows:
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> From the prosecution side four witnesses viz. Sri K.Arunagiri P.W.1; Sri P.C.John (P.W.2), Sri L.P.Rangan (P.W.3) and Sri Ramaswamy (P.W4) appeared and adduced evidence and they were also cross-examined by the Defence Assistant. As regards short delivery of 155 kgs of Plantation EP bulk coffee and 2940 kgs of Arabica Parchment during 1993-94 season. P.W.1 while adducing evidence confirmed the same. He has also produced the documentary evidence like consolidated statement P1 and P2 and also the delivery challans and acknowledgments issued by the curing works viz.Exs.P3 to P7, while scrutinizing the C1 Register together with Ex.P3 to Ex.P7 it is confirmed that there is a short dispatches of coffee by the charged official. From seeing the records produced and marked as exhibits the charged official was having a stock of 30282 kgs of Arabica parchment, 3018 kgs of Plantation EP bulk, 5429 kgs of Arabica cherry, 47 kgs of Plantation EP blacks/bits, 125 kgs of Arabica cherry bulk, 126 Kgs of Arabica Cherry BBB and 98 kgs of Robusta cherry EP bulk coffee aggregating to 40897 kgs. But while

despatching the charged official short despatched 2940 kgs of Arabica parchment and 155 kgs of Plantation EP bulk to M/s.Pandyan coffee curing works, Theni. The acknowledgment was also given by the Curing works for the actual quantity received. The charged official also accepted the acknowledgment given by the curing works for the receipt of coffee less the above short despatch. As per the schemes of the Board the duty of the charged official was to collect coffee from growers at the prescribed rates of the Board. The charged official has to dispatch such coffee collected from the growers to the pool agent as directed by the Board. In the instant case, the charged official short dispatched the coffee to the tune of Rs.1,76,563.85 this has been established by the relevant documents produced by the prosecution witnesses P.W.1 and P.W.2 at the time of enquiry. Even the P.W.4 Sri.G.Ramaswamy confirmed in his deposition that the charged official short despatched the coffee to M/s. Pandyan coffee curing works, Theni and to that effect, he had recorded his statement. But the recorded statement was not produced by the witness at the time of the enquiry. The value of coffee i.e. 1,76,563.85 short dispatched by the charged official was worked out on the basis of supplementary and final payment declaration circular issued by the Board exhibited as Ex.P38 A to J.

Perusal of the findings of the enquiry Officer shows that the petitioner was alleged to have short despatched coffee to the tune of Rs.1,76,563.85. However, analysis of the evidence does not show as to how the petitioner had committed misconduct of misappropriating the above said sum. Further more, charge 5 reads that in order to misappropriate the Board's money to the tune of

Rs.83,821.15 and the value of 2940 kgs. of Arabica Parchment and 155 kgs of Plantation EP bulk pooled with the India Coffee Depot, Periyakulam to the tune of Rs.1,76,563.85, the petitioner had tampered with the documents, receipts of the Board including coffee pass. As rightly pointed out by the learned counsel for the writ petitioner that if the charge 5 (i.e.) tampering with the documents/receipts of the Board, including coffee pass in order to misappropriate the Board's money to the tune of 1,76,563.85, is held as not proved, then this Court is unable to subscribe as to how the enquiry officer could render an independent finding that the petitioner had misappropriated Rs.1,76,563.85, being the value of 2940 kgs of Arabica parchment and 155 kgs of Plantation EP bulk by short despatch as alleged. In this context, it is reproduced the findings recorded by the enquiry officer in respect of charge 5, which reads as follows:

8.4. Made records for the excess payment to the tune of Rs.78,321.15 in the name of 162 growers while making supplementary/final payment and caused corresponding loss to the Board:

Regarding excess payments made to the growers, it may be stated that the charged official was expected to pay the value of the coffee pooled by the growers on the basis of the payment circular issued by the Board as and when the payments were declared. While making payment, the charged official was expected to deduct whatever the payments made to a particular grower and pay the balance amount. In the instant case, as enlightened by the prosecution witness Sri P.C.John, P.W.2, that the charged official has made excess payment to various growers to the tune of Rs.78,321.15. The receipts showing the excess payment made by the charged official are marked as Ex.P14 to Ex.P37 (bunch of receipts) the allegation is accepted by the charged official. Further, he contended that whatever the excess payment made by him was later recovered while disbursing the subsequent payments to the growers. In the deposition made by the prosecution witness Sri.G.Ramaswamy, P.w.4 confirmed that the excess payment to the growers was a common phenomenon among the pool agents and same could be recovered at the time of subsequent payment. The prosecution witness P.W.4 also agreed in the cross-examination that whatever amount recovered after 4.3.1997 (date of charge sheet made) could not be a loss to the Board subject to proof. It is seen from the above, the excess payment made by the charged official shows his negligence in discharging his official duties. However, we cannot say that he has misappropriated the amount of Rs.78,321.15 excess paid to the growers.

3.5: In order to misappropriate Board's money to the tune of Rs.5,500/- he has tampered the office copy of the receipt No.63465, 63466 and 63467 dated 18.3.1994 and shown inflated amounts than what has been paid to the planters and thereby practiced fraud on Board:

As regards tampering of office copies of the receipts issued to the planter Sri L.P.Rangan and L.P.Alagarajan, Sri L.P.Rangan was produced as P.W.3. During his deposition, he confirmed the contents of the statement given by him, which is exhibited as Ex.P12. But in the cross-examination he totally denied his statement and also informed that the statement was obtained by the ACMO and his staff. He also confirmed that whatever stated in the statement was false and he also confirmed that the statement was written by one Sri Subramaniam attached to ACMO's office and not by him. In the cross-examination he further informed that the statement whatever said to have been recorded by the ACMO was not read over to him as well as his brother and they signed the statement only out of belief. By seeing the deposition given in the cross-examination of Sri L.O.Rangan, P.W.3, it is clearly established that the statement said to have been obtained from P.W.3 and his brother by the ACMO. Sri G.Ramaswamy is totally false. As such, it is established that the charged official had not tampered the office copy of the receipts issued to Sri L.P.Rangan, P.W.3 and his brother Sri.L.P.Alagarajan. Further, the investigating officers have not obtained the office copy of the said receipts instead they produced only the photocopy of the receipt. Hence, it is difficult from the available photo copy of the receipt that the Charged officer had tampered the receipts.

25.The enquiry report was drawn up on 28.7.1999 and that the same was communicated to the petitioner on 4.8.1999. On receipt of the same, the petitioner has submitted his representation dated 11.8.1999, objecting to the findings of the enquiry Officer, wherein he has submitted that there was no direct evidence against him, except the interested testimony of P.W.1. It is the contention of the writ petitioner that the impugned order of recovery and withholding one increment with cumulative effect suffers from legal infirmity and it is also in violation of the principle of natural justice. Perusal of the impugned order of the disciplinary authority does not indicate that the disciplinary authority has considered the explanation submitted by the petitioner. Therefore, he has submitted that the orders have to be set aside, in the light of the decision of this Court in Tamil Nadu Civil Supplies Corporation Limited rep. by Sub Regional Manager, Mayiladuthurai and another v. S.Sampath reported in 2005-1-L.W.795. Per contra, it is the contention of the respondents that no detailed reasons need be assigned by the appellate authority, if the disciplinary authority has already recorded the findings, after analysing the evidence."

7. From the above discussions, it is very clear that there is no evidence of misappropriation and out of five charges, three charges were not proved. In fact, we have accepted the contention of the Appellant that if the employee was not given opportunity to conduct denovo enquiry, the charges would have been proved based on his alleged admission before the Enquiry Officer, which could be seen from the Enquiry Officer's report dated 25.04.1994. But however, there was no reason as to why it has been decided to conduct fresh enquiry. In the preliminary enquiry, infact more than once, the employee was asked to think about the admission of the charges but having allowed him to get away from the admission, the Department cannot go back and contend that there was an admission. Of course, neither the Disciplinary Authority nor the Appellate Authority proceeded on the basis of admission of guilt. In catena of cases, this Court has held that when there is an admission in the enquiry, that itself is suffice to establish the charges and there is no further evidence required to establish the case. But in this case having given a go-by to the admission and decided to establish charges in the enquiry, the charge of Criminal Breach of Trust and misappropriation has not been established.

8. The learned Single Judge in detail has analysed the evidence let in by the parties and came to the conclusion that the charges are not at all established. Though it is the contention of the Appellant that in the light of the Judgment of the Apex Court in the case of B.C. Chaturvedi Vs. Union of India and Ors reported in 1995 6 SCC 749, the matter has to go back to the Disciplinary Authority to conduct enquiry afresh, whether there is any mistake or not need not be looked into at this stage more particularly, when the issue is two decades back. Secondly the employee has been allowed to go on VRS. That being the case, there is no Employee-Employer relationship as on date and that there is cessation of employment on account

of VRS and therefore sending the matter back to the Disciplinary Authority at this stage is not possible. Even assuming for the sake of argument, the contention of the appellant is accepted, we are unhappy that the Appellate Authority has passed a non speaking order, in which detailed reasons ought to have been given for each and every point raised by the delinquent. The Appellate Authority needs to give detailed reasons and it is not necessary that he has to verbatim reproduce the findings of the Enquiry Officer, while imposing the punishment, as the Enquiry Officer has been appointed by the Disciplinary Authority. Moreover, the Appellate Authority has not taken note of the fact that there is no Employee-Employer relationship and that the evidence of the Management does not establish the fact that there is a misappropriation committed by the Writ Petitioner.

9. In such view of the matter, there is no reason to interfere with the order of the learned Single Judge and hence, this Writ Appeal is liable to be dismissed.

10. In the result, this Writ Appeal is dismissed. The order passed by the learned Single Judge in W.P.No.3284 of 2001 is confirmed. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Chairman,
   Coffee Board,
   Bangalore.

2. The Secretary to Government of India,
   Ministry of Commerce,
   New Delhi.

+1CC to Mr.V.Sundareswaran, Advocate, Sr.No.49607

W.A.No. 2499 of 2013

VG-II (CO)
K.RK. (22.11.2021)