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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 9.12.2021

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.26310 of 2009

R.KANNAN

9, SATHIYAM VIGNESH FLATS,
198/81 AMMA MANDAPAM ROAD,
SRIRANGAM, TRICHY-6.

...PETITIONER

Vs.

1. THE CHAIRMAN

TRANSPORT CORPORATION BOARD,
SECRETARIAT, CHENNAI-9.

2. THE MANAGEMENT OF METROPOLITAN

TRANSPORT CORPORATION LTD.,
PALLAVAN ILLAM, ANNA SALAI, CHENNAI-2.

...RESPONDENTS

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the entire records connected with the proceedings Memo No.22787/LS(DP)(5)HQ/MTC /03 dt.21.11.06 of the 1st respondent confirming the order No.22787/DP(5) HQ/MTC/03 dt.13.5.2004 of the 2nd respondent and quash the same consequently direct the respondent to restore three increment to petitioner salary and to pay consequential terminal benefits.

For Petitioner : Mr.S.T.Varadarajulu

For Respondents : Mr.K.Moorthy

O R D E R

According to the petitioner, petitioner was working as Deputy Manager (Works) in the respondent Corporation. The petitioner was served with charge memo for the allegation that during internal audit on 15.11.2003, it was detected that old condemned spring leaves which comes to 21,515 Kg. and its value worked out to Rs.2,15,150/-, apart from this, 765 Kg. of condemned copper wire and its value worked out to Rs.76,500/-



were not properly accounted and due to the aforesaid lapse on the part of the petitioner, the transport Corporation sustained loss of Rs.2,91,650/-. Further, the petitioner has submitted an explanation to the enquiry officer who was appointed to conduct enquiry into the charges levelled against the petitioner. Before the enquiry officer, the petitioner requested to furnish copies of certain documents relating to the shortage of old materials to submit his explanation. But the respondent furnished xerox copy of the document which was not legible and some of the documents sought for by the petitioner was not furnished to him. Despite that, the petitioner submitted explanation to the respondent by informing about non supply of documents requested by the petitioner. Even according to the respondent Corporation, there was no shortage of any materials to investigate shortage of such materials and no complaint was preferred. According to the petitioner, being a Deputy Manager (Works) he cannot be held responsible for all the old condemned spring leaves and copper wire since more staffs are appointed to supervise the old materials. But his explanation was not considered by the second respondent and passed order of punishment and order of recovery for Rs.48,600/-. Challenging the said order, the petitioner has preferred an appeal before the first respondent. However, the first respondent has not properly considered the ground raised by the petitioner and simply rejected. Therefore, the petitioner also filed appeal before the Board and the same was also rejected. Challenging the said order, the petitioner has preferred the present writ petition before this Court.

2. The learned counsel appearing for the petitioner would submit that insofar as the recovery proceedings is concerned, the petitioner is not insisting upon the prayer made in W.P.No.26309 of 2009 without prejudice to his rights in the present writ petition challenging the order of punishment inflicted on the petitioner.

3. The grounds raised by the learned counsel appearing for the petitioner is that during the enquiry proceedings, the petitioner made a request to furnish certain documents relating to shortage of materials, however, the xerox copy of the document furnished to the petitioner is not legible and certain documents were not furnished to him. Further, the explanation submitted by the petitioner was not considered by the respondent in proper perspective and by simply accepting the report of the enquiry officer, inflicted punishment against the petitioner. Therefore, there is violation of principles of natural justice. By non application of mind, the disciplinary authority passed the impugned order and the impugned order is non speaking order. The Appellate Authority also without assigning any reason to reject the explanation submitted by the petitioner,



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Proceedings, must have recorded reasons for come to such conclusion to inflict the punishment on the delinquent and if such reasons are not recorded by the said authority, certainly, the Order passed by the authority shall be vitiated. If we applied the aforesaid parameters and principles to the facts and circumstances of the present case especially in the context of Para 6 of the impugned Order, as the said Para alone gives reasons in three lines by the First Respondent to come to the conclusion to inflict the maximum punishment of removal of service against the petitioner, certainly it would disclose that the impugned order does not meet the aforesaid parameters or principle laid down in the said Judgments and also it does not meet the mandatory requirement as contemplated under Rule 18(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules.

19. Therefore, this Court is of the view that the impugned order, on the ground of non-recording of reasons by the Disciplinary Authority independently by applying the mind of the Disciplinary Authority in the impugned Order of Punishment, is liable to be interfered with. Accordingly, the impugned Order, since it is vitiated for the said reasons alone is liable to be quashed.

20. In the result, the impugned Order is quashed and the matter is remitted back to the First Respondent for reconsideration. While making reconsideration, the First Respondent shall apply his mind independently and record his own reasoning in each of the charges framed against the Petitioner as well as the defence given by the petitioner and also the findings given by the Enquiry Officer, in that regard and pass Orders thereon. It is made clear that this Court, while quashing the impugned Order, does not express any opinion about the merits of the findings given by the Enquiry Officer. The impugned Order is quashed only on the ground of non-disclosure of reasoning in the impugned Order itself as has been discussed above."

8. In the instant case, on perusal of the order passed by the second respondent, based on the report of the enquiry



officer, the disciplinary authority passed two separate orders viz., order imposing punishment of stoppage of increment for a period of three years with cumulative effect and order imposing recovery of Rs.48,600/- being the 50% of the recovery proposed in the memo, dated 13.5.2004 from the petitioner. However, in the punishment order passed by the respondent, there was no discussion nor any reason assigned for inflicting punishment against the petitioner. In the absence of any reason to pass such punishment order against the petitioner, the respondent mechanically passed the cryptic order by accepting the report of the enquiry officer which is nothing but a non speaking order. The Appellate Authority also simply confirmed the order passed by the disciplinary authority. Thus, the Appellate Authority also failed to consider the appeal independently and without applying his mind rejected the appeal. Further, during enquiry proceedings, the petitioner requested to provide copies of certain documents to submit his explanation. However, copy of document furnished was not legible and some documents were not furnished to the petitioner. The aforesaid fact was not denied by the respondents. Therefore, prima facie there is violation of principles of natural justice.

9. Therefore, this Court come to the conclusion that both the orders are contrary to the law laid down by the Hon'ble Supreme Court in various decisions. Consequently, the impugned orders are liable to be quashed and requires for reconsideration afresh.

10. At this juncture, the learned counsel for the petitioner would submit that the aforesaid incident was occurred during the year 2003 and learned counsel for the petitioner seeks modification by imposing lesser punishment to the petitioner. Accepting the contention and considering the nature of charges and recovered the loss amount by the Corporation, it would not be appropriate for this Court to remit the matter back to the respondent to conduct enquiry afresh.

11. By ends of justice, in the light of the decision cited supra and taking note of the facts of the case, this Court is inclined to pass the following order:

(i) The impugned punishment order passed by the respondent is modified as punishment of stoppage of increment for a period of three years without cumulative effect.

(ii) The petitioner shall make application to the respondent Corporation within two weeks to revise the terminal benefits and settle the same to the petitioner.

(iii) On receipt of such application, the respondent Corporation shall pass appropriate orders to revise the terminal benefits and disburse it to the petitioner as expeditiously as possible preferably within a period of 12 weeks thereafter.



(iv) Insofar as the recovery directed by the respondent, the petitioner has filed another writ petition in W.P.No.26309 of 2009 challenging the said recovery was dismissed since the recovery already effected, the prayer made in the said writ petition was not insisted by the petitioner.

12. With the above directions, the writ petition is partly allowed to the aforesaid extent. No Costs.

Sd/-
Assistant Registrar(CS-IX)

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Sub Assistant Registrar

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To

1. THE CHAIRMAN
TRANSPORT CORPORATION BOARD,
SECRETARIAT, CHENNAI-9.
2. THE MANAGEMENT OF METROPOLITAN
TRANSPORT CORPORATION LTD.,
PALLAVAN ILLAM, ANNA SALAI, CHENNAI-2.

+1cc to Mr.S.T.Varadarajulu, Advocate, S.R.No.65530

+1cc to Mr.K.Moorthy, Advocate, S.R.No.65774

W.P.No.26310 of 2009

NRL(CO)
RGA(22/12/2021)