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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.07.2021

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THE HON'BLE MR.JUSTICE M.S.RAMESH

W.P.No.14909 of 2017

and

W.M.P.No.16150 of 2017

- 1.K.Kannuswamy (Deceased)
- 2.K.Patchaiammal
- 3.Manimozhi
- 4.Ilayaraja
- 5.Sabarathinam
- 6.Megala

...Petitioners

(P2 to P6 substituted as LRs of deceased
sole petitioner vide order dated 22.06.2021
made in W.M.P.No.2055 of 2021
in W.P.No.14909 of 2017 by MSRJ)

-vs-

1. The Tribunal for Disciplinary Proceedings,
Trichy.
2. The Secretary to Government,
Rural Development &
Panchayat Raj (E2) Department,
Fort St.George,
Chennai - 9.

...Respondents

Prayer: Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in connection with the impugned order passed in GO (D) No.502, Rural Development and Panchayat Raj (E2) Department dated 09.12.2016 and quash the same and direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefit.

For Petitioners : Mr.K.Venkataramani, Sr. Counsel
for Mr.M.Muthappan

For Respondent-2 : Mr.K.Tippu Sulthan
Government Advocate



O R D E R

By consent of both the parties, this writ petition is taken up for final disposal.

2. Heard Mr.K.Venkataramani, learned Senior Counsel appearing for the petitioners and Mr.K.Tippu Sulthan, learned Government Advocate appearing for the second respondent.

3. The first respondent herein, had framed charges against the first petitioner (deceased) herein, along with two others on 18.06.2008, which include charges of corruption also. The Tribunal for disciplinary proceedings, had conducted an enquiry and had submitted a report on 28.02.2011, holding the charges as proved. In pursuance to the report, the first petitioner submitted his representation on 29.09.2011, raising objections. The Government, through an order passed in G.O.No.502, dated 09.12.2016, had imposed the punishment of removal from service, which order is under challenge, in the present writ petition.

4. One of the predominant grounds raised by the learned counsel for the petitioners is that the Government, while passing orders under the Provisions of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules - 1955, had failed to follow the procedures contemplated therein and had passed a non-speaking order, without consideration of the evidences in hand. According to the learned Senior Counsel, the punishment was imposed only on the basis of the evidences, rendered by PW-1, PW-2, PW-12, PW-13 and PW-14, since the other witnesses had turned hostile.

5. According to the learned Senior Counsel for the petitioners, even these witnesses had not let in evidence to substantiate the charges, levelled against the first petitioner and therefore, the punishment itself requires to be set aside. However, the learned Senior Counsel submitted that since those aspects have not been appreciated by the Government, who is the Disciplinary Authority, in the impugned proceedings dated 09.12.2016, he made a request to have the issue remitted to the second respondent herein, for reconsideration of the further representation given by the first petitioner, together with the written statement of defence for passing a speaking order.

6. Per contra, the learned Government Advocate submitted that the charges leveled against the first petitioner are very serious in nature. By referring to the impugned order passed by the second respondent, the learned Government Advocate submitted that the Government had taken into consideration the evidences let in by the witnesses and the explanation rendered by the



Delinquent Officer and had thereby come to the conclusion that the punishment imposed is in conformity with the seriousness of the charges.

7. Rule 8(a) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, enables the Tribunal for disciplinary proceedings (DPT) by conducting inquiries in cases of Corruption, as well as, in the cases of corruption combined with other charges. The procedure for conduct of such inquiries is not specifically provided under the Disciplinary Proceedings Tribunal Rules. Whenever there is no specific provisions provided for any matter under the Disciplinary Proceedings Tribunal Rules, Rule 8(d) provides that the provisions of the Tamil Nadu Civil Services (Discipline & Appeal) Rules would apply. For better appreciation Rule 8(d) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules is extracted hereunder:

"(d) The provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules shall apply:

- (i) in regard to the procedure to be followed in cases other than those of corruption; and
- (ii) in regard to any other matter for which no specific provision has been made in these rules."

In this background, useful reference could be made to Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, which prescribes the procedure to be adopted.

8. Rule 17(b) of the Act, provides:

17(b) (i) Without prejudice to the provisions of the Public Servants' Inquiries Act, 1850, (Central Act XXXVII of 1850), in every case where it is proposed to impose on a member of a service or on a person holding a Civil Post under the State any of the penalties specified in items (iv), (vi), (vii) and (viii) in rule 8, the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged, together with a statement of the allegation, on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time to put in a written statement of his defence and to state whether he desires an oral inquiry or to be heard in person or both. An oral inquiry shall be held if such an inquiry is desired by the person charged or is directed by the authority concerned. Even if a person charged has



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waived an oral inquiry, such inquiry shall be held by the authority concerned in respect of charges which are not admitted by the person charged and which can be proved only through the evidence of witnesses. At that inquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witnesses to give evidence in person and to have such witnesses called, as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reason to be recorded in writing, refuse to call a witness. Whether or not the person charged desired or had an oral inquiry, he shall be heard in person at any stage if he so desires before passing of final orders. A report of the inquiry or personal hearing (as the case may be) shall be prepared by the authority holding the inquiry or personal hearing whether or not such authority is competent to impose the penalty. Such report shall contain a sufficient record of the evidence, if any, and a statement of the findings and the grounds thereof. Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has, and which exercises such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor or partly recorded by its predecessor and partly recorded by itself;

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided:

Provided further that where there is a complaint of sexual harassment within the meaning of rule 20-B of the Tamil Nadu Government Servants' Conduct Rules, 1973, the complaints Committee established in each Government department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the Disciplinary Authority for the purpose of these rules and the Complaints Committee shall hold the inquiry as far as practicable in accordance with the procedure laid down in these Rules. Provided also that the Government Servant may take the assistance of any retired Government servant to present the case on his behalf but may not engage a legal practitioner for the purpose unless the inquiring authority is a legal practitioner or the inquiring



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authority, having regard to the circumstances of the case, so permits.

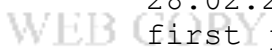
Explanation .- The Government servant shall not take the assistance of any retired Government servant who has two pending disciplinary cases on hand, in which he has to give assistance.

(ii) After the inquiry or personal hearing referred to in clause (i) has been completed, the authority competent to impose the penalty specified in that clause, is of the opinion, on the basis of the evidence adduced during the inquiry, that any of the penalties specified in rule 8 should be imposed on the person charged, it shall, before making an order imposing such penalty, furnish to him a copy of the report of the inquiry or personal hearing or both, as the case may be, and call upon him to submit his further representation, if any, within a reasonable time, not exceeding fifteen days. Any representation received in this behalf within the period shall be taken into consideration before making any order imposing the penalty, provided that such representation shall be based on the evidence adduced during the inquiry only. It shall not be necessary to give the person charged any opportunity of making representation on the penalty proposed to be imposed ;

Provided that in every case where it is necessary to consult the Tamil Nadu Public Service Commission, the disciplinary authority shall consult the Tamil Nadu Public Service Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty:

Provided further that in the case of a person appointed to a post in a temporary department by transfer from any other class or by recruitment by transfer from any other service, the State Government may, at any time before the appointment of such person as a full member to the said post, revert him to such other class or service, either for want of vacancy or in the event of his becoming surplus to requirements or if the State Government are satisfied that he has not got the necessary aptitude for work in the said post, without observing the formalities prescribed in this sub-rule."

9. As per the above Clause (i) of the Rule, the Report of the Enquiry Officer, which is the Tribunal for Disciplinary Proceedings in the present case, shall contain sufficient record of the evidence, statement of the findings and the grounds thereof. In other words, the Tribunal is required to substantiate the findings, on the basis of the evidences adduced



10. In the present case, the Tribunal, in its report dated 28.02.2011, had reproduced the charges levelled against the first petitioner and by simply referring to the deposition of the witnesses and the documentary evidences marked before the Tribunal and without substantiating as to how these evidences are relevant, had come to the conclusion that all the four charges are proved. Such a decision is in violation of the procedure contemplated under Clause (i) of Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, which is applicable to the present case, in view of Rule 8 (d) of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955.

12. Perusal of the order passed by the second respondent herein on 09.12.2016 reveals that, after extracting the charges and the explanation rendered by the first petitioner, the evidences of the Departmental Witnesses PW-1, PW-2, PW-12, PW-13 and PW-14 have been extracted. Again the further explanation rendered by the first petitioner is extracted and thereafter, the second respondent had straightaway imposed the punishment of removal from service, without substantiating the decision arrived by the Tribunal.

13. Though this Court has rendered a finding that the Tribunal had not followed the procedure under Clause (i) of Rule 17(b) while holding the charges as proved, there was a duty cast on the disciplinary authority to appreciate the evidences adduced before the Tribunal at the time of enquiry, for the purpose of imposing the punishment. As already stated, this exercise was not adopted by the disciplinary authority. This duty of abiding by the procedure, by a disciplinary authority, is not an empty formality. In the state of Rajasthan V. MC.Saxena reported in 1998 (3) SCC 385, the Hon'ble Supreme Court in para 5 of the judgment, had held that it is a well settled principle that the disciplinary authority can disagree



with the findings arrived at by the Inquiry Officer and act upon its own conclusion. Likewise, a Constitutional Bench of Five Judges in the case of Union of India Vs. H.C. Goel reported in AIR 1964 SC 364, had held that if the disciplinary authority is not competent to appreciate the evidence of the inquiry officer and come to its own conclusions, the same would be in violation of Article 311 of the Constitution of India. While holding so, the Constitutional Bench had held that the disciplinary authority should consider the report of the inquiry officer and the evidence let therein and thereby come to an independent conclusion. In this context, the Hon'ble Supreme Court had elaborately dealt with the procedure to be adopted by the disciplinary authority, in the following manner:-

"7. The appellant considered the matter afresh in the light of the report received from the UPSC, but since it adhered to the conclusion which it had provisionally reached before issuing the second notice against the respondent, it requested the Commission to reconsider the matter and remitted the said matter to it on December 8, 1956, The Commission, on re-examining the matter, adhered to its earlier views and conveyed the same to the appellant on January 15, 1957. The appellant considered the whole case again and came to the conclusion that a case had been established against the respondent for his dismissal, and so, by its order passed on March 13, 1957, dismissed him from service.

8. The respondent then moved the Punjab High Court by his Writ Petition No. 201-D of 1957 for quashing the said order of dismissal, under Articles 22G and 311 of the Constitution. A learned Single Judge of the said High Court heard the matter and came to the conclusion that the respondent had not made out a case for quashing the order of dismissal passed against him. The respondent then preferred an appeal under the Letters Patent and a Division Bench of the said High Court which heard the Letters Patent Appeal has allowed the respondent's appeal. It has held that in view of the fact that the Enquiry Officer had made a report in favour of the respondent, it was not open to the appellant to differ from his findings and inasmuch as the impugned order of dismissal was passed by the appellant as a result of its conclusion that the findings of the enquiry officer were erroneous, the said order contravened the provisions of Article 311 of the Constitution. That is how the writ petition filed by the respondent was allowed and his dismissal



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set aside. The appellant then applied for a certificate to the High Court but the said application was rejected. The appellant then moved this Court for special leave and it is with the special leave granted by this Court that it has brought the present appeal before us.

9. The first question which calls for our decision is whether it was competent to the appellant to take a different view on the evidence adduced against the respondent and proceed on the basis that the conclusions of fact recorded by the enquiry officer were unsound and erroneous. If it is held that the appellant was precluded from differing from the conclusions of the enquiry officer, then, of course, the subsequent steps taken by the appellant would be inconsistent with Article 311 of the Constitution. On the other hand, if the competence of the appellant to differ from the conclusions of the enquiry officer cannot be seriously questioned, then the argument that the appellant contravened Article 311 when it issued the second notice against the respondent cannot succeed.

10. Article 311 consists of two sub-articles and their effect is no longer in doubt. The question about the safeguards provided to the public servants in the matter of their dismissal, removal or reduction in rank by the Constitutional provision contained in Article 311, has been examined by this court on several occasions. It is now well settled that a public servant who is entitled to the protection of Article 311 must get two opportunity to defend himself. He must have a clear notice of the charge which he is called upon to meet before the departmental enquiry commences, and after he gets such notice and is given the opportunity to offer his explanation, the enquiry must be conducted according to the rules and consistently with the requirements of natural justice. At the end of the enquiry, the enquiry officer appreciates the evidence, records his conclusions and submits his report to the Government concerned. That is the first stage of the enquiry, and this stage can validly begin only after charge has been served on the delinquent public servant.

11. After the report is received by the Government, the Government is entitled to consider the report and the evidence led against



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the delinquent public servant. The Government may agree with the report or may differ, either wholly or partially, from the conclusions recorded in the report. If the report makes findings in favour of the public servant, and the Government agrees with the said findings, nothing more remains to be done, and the public servant who may have been suspended is entitled to reinstatement and consequential reliefs. If the report makes findings in favour of the public servant and the Government disagree with the said findings and holds that the charges framed against the public servant are prima facie proved, the Government should decide provisionally what punishment should be imposed on the public servant and proceed to issue a second notice against him in that behalf. If the enquiry officer makes findings, some of which are in favour of the public servant and some against him the Government is entitled to consider the whole matter and if it holds that some or all the charges framed against the public servant are, in its opinion, prima facie established against him, then also the Government has to decide provisionally what punishment should be imposed on the public servant and give him notice accordingly. It would thus be seen that the object of the second notice is to enable the public servant to satisfy the Government on both the counts, one that he is innocent of the charges framed against him and the other that even if the charges are held proved against him, the punishment proposed to be inflicted upon him is unduly severe. This position under Article 311 of the Constitution is substantially similar to the position which governed the public servants under Section 240 of the Government of India Act, 1935. The scope and effect of the provisions of Section 240 of the Government of India Act 1935, as well as the scope and effect of Article 311 of the Constitution have been considered by judicial decisions on several occasions and it is unnecessary to deal with this point in detail, vide *The Secretary of State for India v. I.M. Lal*, *High Commissioner for India and High Commissioner for Pakistan And. I.M. Lal and Khem Chand v. Union of India*.

12. These reported decisions would show that it has never been suggested that the findings recorded by the enquiry officer conclude the



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matter and that the Government which appoints the enquiry officers and directs the enquiry is bound by the said findings and must act on the basis that the said findings are final and cannot be reopened. The High Court has, however, held that there are certain observations made by the Federal Court in the case of I.M. Lal , and by this Court in the case of Khem Chand which support the respondents contention that the appellant was bound by the findings recorded by the enquiry officer in his favour in the present enquiry proceedings. Before referring to these observations, it is relevant to examine this contention on principle. It is obvious that the enquiry officer held the enquiry against the respondent as a delegate of the appellant. That indeed is the character which the enquiry officer inevitably occupies when he holds a departmental enquiry at the instance of the Government. The object of the enquiry is plain. It is to enable the Government to hold an investigation into the charges framed against a delinquent public servant, so that the Government can, in due course, consider the evidence adduced and decide whether the said charges are proved or not. The interposition of the enquiry which is held by a duly appointed enquiry officer does not alter the true legal position that the charges are framed by the Government and it is the Government which is empowered to impose punishment on the delinquent public servant. Therefore, on principle, it is difficult to see how the respondent is justified in contending that the findings recorded by the enquiry officer bind the appellant in the present case.

13. If the contention raised by the respondent were to be upheld, it would lead to illogical and almost fantastic results. If the enquiry officer makes findings against the public servant, on the respondent's contention the Government can never re-examine the matter, so that even if the Government were satisfied that the findings against the public servant were erroneous, it must proceed on the basis that the public servant is guilty and impose some punishment on him. It is obvious that this proposition is entirely inconsistent with the Constitutional rights of the appellant which is the appointing authority and which has the power to impose the punishment on the respondent.



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14. Similarly, if the enquiry officer makes findings in favour of the public servant, on the respondent's case that is final and however illogical, erroneous or unsound the said findings may be, the appellant is powerless and must act on the basis that the public servant is innocent. That again is a very anomalous position and it ignores the true Constitutional rights of the appellant and the character of the enquiry officer and the scope of his enquiry.

15. Sometimes, several charges are framed and findings are recorded by the enquiry officer in respect of them. In such cases, Government may accept some findings and may reject others, and it has naturally to proceed to take the next step in the light of its own conclusions. Such a case arose before this Court in *State of Assam v. Bimil Kumar Pandit*. Dealing with the requirements which the second notice must satisfy in such a case, this Court has held that the said notice must indicate to the public servant clearly the grounds on which the Government provisionally intends to act in imposing the proposed punishment specified in the notice.

16. Besides, it would be apparent that if the respondent's argument is valid, then the second notice would serve very little purpose. If, at that stage, the Government is bound to accept the findings of the enquiry officer, the opportunity which is intended to be given to the public servant to show cause not only against the proposed punishment but also against the findings recorded against him, would be defeated, because on the respondent's case Government cannot alter the said findings. In our opinion, the contention raised by the respondent is patently unsound and must be rejected."

14. In the light of the aforesaid extract and the observations made by this Court, it would be appropriate to remit the matter back to the authority/second respondent herein for reconsidering the original punishment, rather than remitting it to the Tribunal for reconsidering its final opinion on the charges.

15. In the light of the above observations, the impugned order passed by the second respondent herein in G.O.No.502, dated 09.12.2016 is set aside and the matter is remitted back to the second respondent for reconsideration. The petitioners are



also granted liberty to give another explanation to the Enquiry Officer's Report, atleast within a period of 15 days from the date of receipt of a copy of this order. On receipt of such an explanation or in the absence of any explanation, the second respondent herein, shall reconsider the TDP report, dated 28.02.2011, in its proper perspective and in accordance with the procedure contemplated under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and render a detailed speaking order, after consideration of the oral and material evidences, together with the written plea of the petitioners and further explanations rendered by them, within a period of three months.

16. The Writ Petition is ordered accordingly. Consequently, the connected Miscellaneous Petition is closed. There shall be no orders as to costs.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

Pns/DP

To

1. The Tribunal for Disciplinary Proceedings,
Trichy.
2. The Secretary to Government,
Rural Development &
Panchayat Raj (E2) Department,
Fort St.George, Chennai - 9.

+1 CC to The Government Pleader, Sr 36262.

+1 CC to Mr.M.Muthappan, Advocate, Sr 36153.

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