



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.34779 of 2018
and W.M.P.No.40334 of 2018

(Through Video Conferencing)

S.Nageswaran

..Petitioner

.vs.

1. The Principal Secretary to Government,
Public Works (E2) Department,
Fort St.George, Chennai 9.

2. The Engineer-in-Chief (Building),
Chief Engineer (Building),
Chief Engineer (General),
Chennai Region,
Public Works Department,
Chepauk, Chennai - 5.

4. A.Karunamoorthy

5. The Secretary,
Tamil Nadu Public Service Commission,
Fraser Bridge Road,
Chennai 600 003.

.. Respondents

Prayer. :- Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in connection with the impugned order passed by him in GO (D)No.355 Public Works (E2) Dept. dated 19.11.2018 and quash the same and direct the respondents to superannuate the petitioner from service and grant him all consequential service and monetary benefits within a reasonable time.

For Petitioners	: Mr.K.Venkataramani, SC for M/s.M.Muthappan
For R1 & R2	: Mr.V.P.R.Elamparithi Government Advocate.
For R4	: Mr.Karthick Rajan



ORDER

The petitioner has challenged the impugned order dated 19.11.2018 passed by the 1st respondent with the advice of Tamil Nadu Public Service Commission. By the impugned order, the 1st respondent passed the dismissal order of the petitioner from service.

2. The petitioner is aged about 81 years on the date of this order. One of his legs also has been amputated due to diabetes. The petitioner was suspended from service on 19.11.1997. Thereafter, the petitioner was reinstated on 31.1.1998. The petitioner attained the age of superannuation on 31.1.1999. The petitioner was however not allowed to retire from service as the petitioner had been issued with a Charge Memo dated 25.5.1998 in respect of alleged non-accounting 209 metric ton of cement stock received from 22.4.1997 to 23.6.1997, while serving as an Assistant Executive Engineer with the 2nd respondent department.

3. The allegation against the petitioner was that the petitioner had indulged in fraudulent activities and misappropriated of funds and thus failed to maintain absolute integrity and devotion of duty in violation of Rule 20 (2) of the Tamil Nadu Government Servants Conduct Rules, 1973. The petitioner was also subjected to criminal proceedings in Crime No.10/1998.

4. The investigation in the aforesaid criminal proceeding lead to filing of the chargesheet against the petitioner and thereafter the case was taken on the file of Judicial Magistrate Court No.1 at Kancheepuram in C.C.No. 227 of 2000. The said proceeding has culminated in an order dated 3.4.2018. The petitioner has been exonerated of the crimed and acquitted by the Judicial Magistrate Court No.1 at Kancheepuram.

5. The disciplinary proceeding which had earlier commenced with the issue of charge memo dated 25.5.1998 has now culminated in the impugned order dated 19.11.2018. The disciplinary proceeding has taken about 20 years to complete. The first 10 years delay in the disciplinary proceeding was attributable to the department due to the pendency of the criminal proceedings and a part of the delay in the second 10 years is attributable partly both the petitioner and the respondent. Both were responsible for the delay.

6. Earlier an enquiry officer was appointed to conduct enquiry vide order dated 14.9.2004. Before the enquiry officer about two witnesses were examined whose statements were recorded. Under these circumstances, the petitioner requested for perusal of the documents based on which the statements of the witnesses were recorded and wanted to cross-examine these two witnesses of the department. Since there was a delay in the completion of the proceedings, the petitioner filed W.P.No.2066



of 2005 to quash the disciplinary proceeding. The said writ petition was disposed by an order dated 27.1.2005 by directing the disciplinary authority to expedite the disciplinary action and to conclude the same within a period of three months from the date of receipt of the said order.

7. A Memo was thereafter issued to the petitioner by the Disciplinary Authority on 1.10.2009, followed by a noter Memo of the enquiry Officer on 9.11.2009 fixing the date of hearing and for continuation of the enquiry proceeding. Thereafter, the petitioner sent a representation on 20.4.2005 to the Assistant Executive Engineer, P.W.D. Chepauk, Chennai reiterating his request for relied upon documents and for cross examination of two of the four witnesses examined before the enquiry officer. However, there was no further development.

8. Under such circumstances, the writ petition filed W.P.No.25560 of 2009 before this Court and challenged the disciplinary proceeding initiated against the petitioner. The petitioner had initially obtained an interim order for a period of four weeks, which was extended for another four weeks. Though the interim order was not extended, perhaps on account of the pendency of the aforesaid writ proceeding, the disciplinary proceeding was not proceeded further. This led to further delay.

9. Ultimately, an order dated 6.10.2017 was passed by this court in W.P.No. 25560 of 2009 and the said writ petition was ultimately dismissed. The petitioner preferred an appeal against the aforesaid order in W.A.No.490 of 2018. The said appeal was dismissed vide order dated 26.2.2018. It is thereafter, the impugned order has been passed by the 1st respondent.

10. The impugned disciplinary proceeding and the order of the Disciplinary Authority dated 17.11.2018, is challenged primarily on the ground that the finding of the enquiry officer in his enquiry report dated 31.1.2007 was not furnished to the petitioner. The petitioner was not allowed to cross examine the witness who deposed on behalf of the department in the Disciplinary Proceeding before the Enquiry Officer.

11. Defending the impugned proceeding, the learned counsel for the respondents submits that the petitioner was responsible for delay. Merely because the petitioner is aged about 81 years as on date, no mercy can be shown on the petitioner. inasmuch as, the petitioner filed W.P.No.25560 of 2009.

12. It is further submitted that the petitioner has an alternate remedy by way of appeal and all the issues can be addressed before the Appellate Authority. The learned counsel for the respondents therefore submits that this writ petition may be dismissed by giving liberty to the petitioner to file an appeal in accordance with applicable Rules/Regulation.



13. I have heard the learned counsel for the petitioner and the respondents and perused the records which confirmed the basis on the impugned order and the earlier order in the two writ petitions passed by this court.

14. What is evident from the aforesaid narration of the facts is that the enquiry officer attained the age of superannuation on 31.1.2007. The enquiry officer's report was furnished to the petitioner only on 10.10.2009 though the petitioner wanted the enquiry officer to furnish records for perusal and to cross examine the witnesses. The enquiry officer however also failed to furnish the documents relied upon document during the enquiry to the petitioner and failed to extend the benefit of cross examination of two of the four witnesses who were examined during the enquiry despite a request from the petitioner to cross-examine them. The enquiry officer has thus not proceeded with the enquiry proceeding in a fair manner. The report was prepared in a hurried without giving adequate opportunity to the petitioner to defend himself. It was prepared and filed with the Disciplinary Authority on the last date of his superannuation.

15. Therefore, under normal circumstances, the impugned order would have been quashed and the case would have been remitted back for a fresh enquiry by relegating the parties to the Disciplinary Authority to nominate another enquiry officer to give a fresh enquiry report within a specified period of time after affording an opportunity to the petitioner to cross examine the witnesses who were examined on behalf of the department and with a direction to furnish the copies of relied upon documents filed before the enquiry officer to the petitioner.

16. However, there is the long gap of 20 years since the disciplinary proceeding had commenced on 25.5.1998 with the issue of a charge memo. The petitioner would have otherwise retired on 31.1.1999 on attained the age of superannuation. The petitioner is aged about 81 years now. The facts also indicate that he has suffered bodily during the pendency of these proceedings and one of his legs has been amputated. It is noticed that in the criminal proceeding initiated against the petitioner the petitioner has been acquitted of the alleged crime in respect of which disciplinary proceeding came to be initiated.

17. Considering the overall facts and circumstances case and considering the fact that the petitioner is handicapped and suffers from several geriatric probe and may not be in a position to effectively participate in the de novo proceeding at this distant point of time, to meet the ends of justice and to complete justice in the case, this court is inclined to interfere by modifying the punishment imposed on the petitioner



vide the impugned order to that of a compulsory retirement. There is no point in relegating the parties for a denovo proceeding.

18. The mitigating factors in the present case are the acquittal of the petitioner in the criminal proceeding, the irregularity in the enquiry proceedings before the enquiry officer in the disciplinary proceeding and the age and the physical condition of the petitioner and the long gap in the completion of the disciplinary proceeding on account of several factors which was contributed both by the petitioner and the respondents. The punishment of dismissal from service is therefore modified and substituted with a punishment of compulsory retirement.

19. Accordingly, the writ petition is disposed by directing the respondents to work out appropriate terminal benefits to the petitioner by quashing the impugned order and modifying the punishment as that of compulsory retirement by extending the benefit to the petitioner in terms of Rule 39 of the Tamil Nadu Pension Rules, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

kkd

To

1.The Principal Secretary to Government,
Public Works (E2) Department,
Fort St.George, Chennai 9.

2.The Engineer-in-Chief (Building),
Chief Engineer (Building),
Chief Engineer (General),
Chennai Region,
Public Works Department,
Chepauk, Chennai - 5.



3. The Secretary,
Tamil Nadu Public Service Commission,
Fraser Bridge Road, Chennai 600 003.

+1CC to Mr.Karthik Rajan, Advocate, Sr.No.39917

+1CC to Mr.M.Muthappan, Advocate, Sr.No.39958

+1CC to Government Pleader, Sr.No.40063

W.P.No.34779 of 2018

PL (CO)

K.RK. (15.09.2021)