



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 26.02.2020

DELIVERED ON : 07.01.2021

WEB COPY

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.4459 of 2012

K.Ramesh

... Petitioner

Vs.

1.The Chief Executive Officer,
Tamil Nadu Khadi Village Industries Board,
Kuralagam,
Chennai - 600 108.

2.The Joint Director,
Tamil Nadu Khadi Village Industries Board,
Kuralagam,
Chennai - 600 108.

3.The Assistant Director,
Khadi Silk Production,
Kumbakonam.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, calling for the records of the 2nd respondent in his proceedings in Na.Ka.No.19, dated 27.05.2010 confirming the order passed by the first respondent in his proceedings in Na.Ka.No.38937/E4(2)/2002, dated 30.07.2007, quash the same and to direct the respondents to give the petitioner all the consequential and attendant benefits.

For petitioner : Mr.D.Sivaraman

For respondents : Mr.Raguvaran Gopalan

ORDER

This writ petition has been filed by the petitioner challenging the orders imposing punishment of stoppage of increment for one year without cumulative effect passed by the disciplinary authority and confirming the same by the appellate authority.



2. The learned counsel appearing for the petitioner submitted that the petitioner was appointed as Khadi Assistant Grade III on 07.12.1984 and while he was working as Khadi Assistant Grade I at Kabisthalam under Kumbakonam Unit, on 30.07.2002 he was issued with a charge memo alleging three charges. They are

(a) misappropriation of 1.200 kg of white silk worth about Rs.2,772/- by not bringing into account, after the stock verification on 28.09.2000;

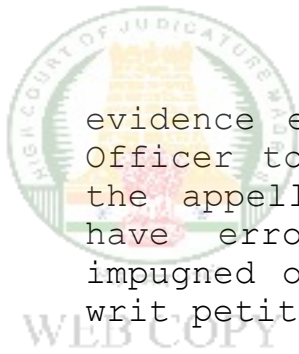
(b) After the verification of records by the Assistant Director, he made corrections in the records through the Khadi Inspector with an intention to misappropriate 1.200 kgs of white silk without the knowledge of the Assistant Director;

(c) Irregularities in distribution of raw materials of Paavu, Silk and Jarigai to the weavers.

The petitioner submitted his explanation denying the charges. After enquiry, the Enquiry Officer held that the all the charges are proved. The disciplinary authority has held that the first charge is not proved and the charges 2 and 3 are proved and therefore, imposed the punishment of stoppage of increment for one year without cumulative effect. The petitioner went to appeal. The appellate authority has dismissed the appeal confirming the order passed by the disciplinary authority. Aggrieved by the said orders, the petitioner has filed the present writ petition.

3. The learned counsel for the petitioner would further submit that on 28.09.2000, when the Khadi Inspector conducted an inspection, he noted in the register that the closing balance of the total raw materials as 40.100 kgms, out of which the stock of white Kindam Pavu was mentioned as 8.7 kgms, instead 7.5 kgms and therefore, it was corrected through Khadi Inspector in the register. But, the charge memo was issued against the writ petitioner leveling the above charges as he was in possession of the ledger. As it was only the Khadi Inspector who made an inadvertent mistake and corrected, the petitioner is not responsible for the same and there is no misappropriation by any one. He would next submit that though the disciplinary authority has held that the charge No.1 was not proved, it has failed to note that the charge No.2 is nothing but the charge but worded differently. When the petitioner was discharged from the first charge, the second charge cannot be sustained and it should also go out.

4. The learned counsel for the petitioner would further submit that the third charge is liable to be set aside as the same is vague and bereft of any details and as no specific charge or misconduct was leveled, the same cannot be sustained. Further, the charge No.3 does not specify the law or the rule or the procedure which was violated by the petitioner. There is no



evidence either oral or documentary produced before the Enquiry Officer to prove the charge No.3. The disciplinary authority and the appellate authority, without considering the above aspects, have erroneously imposed the punishment and therefore, the impugned orders may be set aside. Thus, he prayed to allow this writ petition.

5. The learned counsel appearing for the respondents submitted that only based on the inspection conducted by the Khadi Inspector on 27.12.2000, the charges were framed against the petitioner. While furnishing explanations to the charges, the petitioner enclosed a questionnaire form, in which he stated that he did not want any oral enquiry in this regard and that he wanted no persons to be cross examined. However, in order to give suitable opportunities, he was called for enquiry before the Enquiry Officer. Having denied even for oral enquiry for the charges framed on him, now the petitioner says that no witness was examined by the Enquiry Officer. Before the Enquiry Officer, the petitioner agreed that he tampered the records and made corrections, without the knowledge of the Assistant Director. The reason stated by the petitioner for such corrections was not agreed by the Enquiry Officer and the Enquiry Officer, after verifying all the records, held that all the charges are proved. The disciplinary authority after going through all the records has held that the first charge is not proved, however the charges 2 and 3 are proved and considering the same, the disciplinary authority has imposed only lesser punishment of stoppage of increment for one year that too without cumulative effect. The appellate authority also affirmed the same in the appeal. Therefore, there is no interference needed to the impugned orders at the hands of this Court. He would further submit that in the grounds of appeal, the petitioner has questioned the power of the appellate authority to deal with the appeal filed by him. Till 2004, the Secretary to Government was the appellate authority for the appeals preferred by all the employees of the Board. Subsequently, an amendment was issued to Regulation 38 of the Tamil Nadu Khadi and Village Industries Board Service Regulations on 20.05.2003 substituting the "Board" in the place of the "Secretary to Government". As per the above amendment, the appeal preferred by "C" and "D" group employees of the Board will be decided by the "Board" and not by the "Secretary to Government". Therefore, the order of the appellate authority is valid. Thus, he prayed to dismiss this writ petition.

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

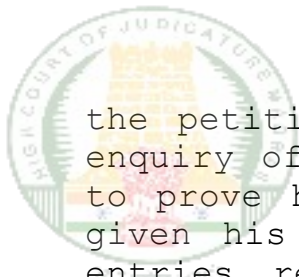
7. Admittedly, in this case, out of three charges, the disciplinary authority himself had held that the first charge



relating misappropriation has not been proved and the same was also accepted by the appellate authority. So far as the second charge is concerned, it is stated that after stock verification by the Assistant Director, the petitioner was alleged to have corrected the stock register with an intention to misappropriate 1.200 kgs of white silk worth about Rs.2,772/-. As rightly stated by the petitioner, the first and second charges are interrelated to each other. When the disciplinary authority itself found that the first charge has not been proved, the second charge also should go out. More over, it is not in dispute that the petitioner had not corrected the stock register and it is only Khadi Inspector who made correction in the stock register. If the petitioner had an intention to misappropriate, he would have corrected the stock register himself and not through Khadi Inspector. When it is not in dispute that the Khadi Inspector corrected the stock register after stock verification without the knowledge of the Assistant Director, the said Inspector also should have been issued with the charge memo. But, it is stated that the said Khadi Inspector had not been issued with any memo for the correction made in the stock register and he was freed and the petitioner has been made as scapegoat and thus, the petitioner alone has been discriminated. Hence, this Court has no hesitation to hold that the second charge has not been proved against the petitioner.

8. So far as the third charge is concerned, it is stated that the petitioner is stated to be committed irregularities in distribution of raw materials of Paavu, Silk and Jarigai to the weavers. In this charge, there is no misconduct or misappropriation has been alleged. This charge does not specify the law or the rule or the procedure which was violated by the petitioner. Neither in the charge memo nor the Enquiry Officer's report or in the orders of the respondent Nos.1 and 2, it is specifically stated as to which rule/procedure was violated by the petitioner so as to make out a misconduct. Even in the reply given under RTI Act, the 2nd respondent admitted that there are no rules or standing instructions with regard to the distribution of Paavu, Silk and Jarigai to the weavers. When there is no specific rule or procedure to point out the irregularities, the respondents cannot put blame on the petitioner and impose punishment. More over, dishonesty is the main ingredient so as to make out misconduct. In the absence of dishonest intention, a misconduct cannot be made out.

9. It is seen that the Enquiry Officer has relied upon few records relating to some of the weavers so as to say that there was irregularities. Admittedly, in this case, no one was examined by the enquiry officer so as to prove that such irregularities made the weavers to suffer or they were misused. It is stated by



the petitioner that as none of the weavers were examined by the enquiry officer, he had no opportunity to cross examine them and to prove his innocence. It is also seen that the petitioner has given his detailed explanation to the each and every record of entries relied on by the respondents. It is stated by the petitioner that due to shortage of one stock or the other, and the delay on the part of the some of the weavers, he had to make some arrangement which lead to mismatch entry in the records. The said submission of the petitioner has not been refuted by the respondents. As stated earlier, when the intention of misappropriation has not been proved and when there is no violation of any rule or procedure, it can be firmly held that the third charge also has not been proved in accordance with law. The disciplinary authority as well as the appellate authority without considering the above aspects, have erroneously imposed punishment on the petitioner. Therefore, the impugned orders of the first and second respondents warrant interference of this Court.

10. In the result, this Writ Petition is allowed and the impugned orders are set aside. The respondents are directed to give all the consequential service and monetary benefits to the petitioner on par with his immediate junior within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CRL.SIDE)

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/ /2021

Sub Assistant Registrar(CS)

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To

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Tamil Nadu Khadi Village Industries Board,
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3.The Assistant Director,
Khadi Silk Production,
Kumbakonam.

+1 CC to Mr.D.SIVARAMAN, Advocate (SR-499[F] dated 07/01/2021)

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order made in
W.P(MD)No.4459 of 2012
07.01.2021

KM (29.01.2021) 6P 5C