



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.07.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.D.AUDIKESSAVALU

W. P. (MD) No. 20296 of 2013

and

M.P. (MD) No. 2 of 2013

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A.Arjunan

... Petitioner

-vs-

1.The Additional Chief Secretary,
Cum Commissioner of Revenue Administration
Revenue Department,
Chepauk,
Chennai-600 005.

2.The District Collector,
Madurai District,
Madurai.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, calling for the records relating to the impugned order passed by the 1st respondent in Na.Ka.No.Pani.3(2)/8008/2013 dated 25.09.2013, modifying the order of the 2nd respondent in Na.Ka.A5/40797/12, dated 29.12.2012 and quash the same.

For Petitioner : Mr. AN.Ramanathan
For Respondents : Mr. D.Gandhiraj,
Counsel appearing for the Government

O R D E R
(through video conference)

Heard Mr. AN.Ramanathan, Learned Counsel for the Petitioner and Mr. D.Gandhiraj, Learned Counsel representing the Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, while working as a Tahsildar, Madurai North, was issued a Charge Memo in Na.Ka.No. A5/40797/2012 dated 28.06.2012 relating to certain irregularities committed in patta transfer in respect of the following charges:-

Charge (i): That the Petitioner has passed the patta transfer order when the subject matter of the case was pending in a Civil Court, and caused a bad name to the District Administration.



Charge (ii): That the Petitioner has allowed the Village Administrative Officer to write office note and passed two orders contradictory to each other.

Charge (iii): On 22.08.2011, the Petitioner has passed patta transfer order. Subsequently, the same order was cancelled on 02.09.2011. Instead of sending proposals to the Revenue Divisional Officer, in violation of the instructions issued in R.S.O. No.31, the Petitioner has cancelled the patta transfer issued by him on 02.09.2011.

Charge (iv): By passing contradictory order, the Petitioner has violated the rule 20(1) of Government Servants Conduct Rules.

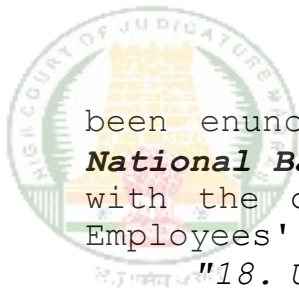
The Enquiry Officer in his report dated 12.10.2012 had exonerated the Petitioner from the first, second and fourth charges and held that the third charge against the Petitioner had been proved. The Second Respondent, who is the Disciplinary Authority, did not agree with the exoneration of the Petitioner in respect of the said three charges and in his Order in Na. Ka. No. A5/ 40797/12 dated 29.12.2012 held that all the four charges have been proved and the Petitioner was inflicted with the punishment of stoppage of increment for three years with cumulative effect.

3. The appeal preferred by the Petitioner against the said order before the First Respondent, who is the Appellate Authority and had by an Order in Na. Ka. No. Pani.3(2)/8008/2013 dated 25.09.2013 dismissed that appeal and confirmed the punishment imposed on the Petitioner, which is assailed in this Writ Petition.

4. It has been brought to notice that after filing of the Writ Petition, the Petitioner has retired from service on attaining the age of superannuation, but the impugned penalty has an effect on the amount of pension and other terminal benefits that he is entitled to receive for his services in the Government.

5. The pivotal attack by the Learned Counsel for the Petitioner on the impugned orders is that when the Enquiry Officer had exonerated the Petitioner from three charges, the Disciplinary Authority could not have held the same to have been proved without informing the Petitioner of the intention to do so, and affording an opportunity to him to make a representation in that regard. It is further submitted that the First Respondent, while affirming the order of the Second Respondent, had not adverted to this crucial aspect of the matter, which vitiates the entire disciplinary proceedings as an infraction of the principles of natural justice.

6. There is substantial force in the aforesaid submissions made by the Learned Counsel for the Petitioner. The law in this regard has



been enunciated by the Hon'ble Supreme Court of India in **Punjab National Bank -vs- Kunj Behari Misra** [(1998) 7 SCC 84] while dealing with the corresponding provisions in Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977, as follows:-

"18. Under Regulation 6, the enquiry proceedings can be conducted either by an enquiry officer or by the disciplinary authority itself. When the enquiry is conducted by the enquiry officer, his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with the decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the enquiry officer. Where the disciplinary authority itself holds an enquiry, an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the enquiry officer and proposes to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and iniquitous that where the charged officers succeed before the enquiry officer, they are deprived of representing to the disciplinary authority before that authority differs with the enquiry officer's report and, while recording a finding of guilt, imposes punishment on the officer. In our opinion, in any such situation, the charged officer must have an opportunity to represent before the disciplinary authority before final findings on the charges are recorded and punishment imposed. This is required to be done as a part of the first stage of enquiry as explained in **Managing Director, ECIL, Hyderabad -vs- Karunakar** [(1993) 4 SCC 727].

19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a



representation before the disciplinary authority records its findings on the charges framed against the officer."

While reiterating that position of law, the Hon'ble Supreme Court of India in **Punjab National Bank -vs- K.K.Verma** [(2010) 13 SCC 494], has also highlighted the imminent prejudice that would be caused when the Disciplinary Authority differs from findings of the Enquiry Officer without providing any opportunity to the delinquent employee to explain his position, in the following words:-

"34. It was then submitted that non-supply of enquiry report is inconsequential if the employee does not show as to how he is prejudiced thereby. **Managing Director, ECIL, Hyderabad -vs- Karunakar** [(1993) 4 SCC 727], **S.K. Singh -vs- Central Bank of India** [(1996) 6 SCC 415] and **Haryana Financial Corpn. -vs- Kailash Chandra Ahuja** [(2008) 9 SCC 31] were relied upon in support. There cannot be any grievance with respect to the proposition. In the present case, however, we are concerned with a situation where the finding of the enquiry officer on a charge has been reversed by the disciplinary authority, which was not the case in any of the three cases. Besides, by not giving the enquiry report and the adverse order of the disciplinary authority, the respondent was denied the opportunity to represent before the finding of guilt was arrived at and thereby he was certainly prejudiced."

The Second Respondent in the Counter-Affidavit filed in this Writ Petition does not dispute the fact that before imposing the punishment for all the four charges, the Disciplinary Authority had not informed the Petitioner of the intention to differ from the report of the Enquiry Officer in respect of the said three charges in which he had been exonerated. As such, it is not possible to sustain the impugned Order in Na. Ka. No. Pani.3(2)/8008/2013 dated 25.09.2013 passed by the First Respondent confirming the Order in Na.Ka.A5/40797/12 dated 29.12.2012 passed by the Second Respondent, which are set aside. The matter is remitted to the Second Respondent from the stage of requiring to inform the Petitioner of the tentative reasons for disagreement with the conclusion of the Enquiry Officer for his exoneration on the first, second and fourth charges and afford opportunity to him to make representation in respect of all the charges with personal hearing and follow the prescribed procedure for completing the disciplinary proceedings and pass reasoned orders dealing with each of the contentions raised on merits and in accordance with law and communicate the decision taken to the Petitioner under written acknowledgment. Though obvious, it is made clear that no view has been expressed by this Court on the correctness or otherwise of the factual controversies involved in the case. Since the Petitioner has retired from service, it shall be ensured that the aforesaid exercise shall be expeditiously completed and report of compliance in that regard shall be filed by 31.12.2021



before the Registrar (Judicial) of this Court.

In the result, the Writ Petition is ordered on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

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Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Additional Chief Secretary,
Cum Commissioner of Revenue Administration
Revenue Department,
Chepauk,
Chennai-600 005.

2.The District Collector,
Madurai District,
Madurai.

Copy to

The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.A.N.RAMANATHAN, Advocate (SR-
20831[F] dated 01/07/2021)

W.P. (MD) No. 20296 of 2013
01.07.2021

NSN(CO)
KB(21.09.2021) 5P 5C