



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.07.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P(MD)No.10079 of 2021

and

W.M.P(MD)Nos.7795 & 7796 of 2021

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S.Thirumurugan

... Petitioner

vs.

The Managing Director,
TWAD Board,
No.31, Kamarajar Salai,
Chepauk,
Chennai.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned G.O. passed by the respondent in his proceedings in வா.நிலை.எண் .95, (நிறுவனம்) (ஒ.ந)பி(வ.), dated 17.11.2020, confirming the impugned order passed by the respondent in his proceedings in நடவடிக்கை எண் .29750/நி(ஒ.ந)/அ12016-9 dated 29.06.2018 and quash the same as illegal and consequently to direct the respondent to consider the petitioner for the promotion to the post of Assistant Executive Engineer on par with his immediate Junior.

For Petitioner : Mr.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates

For Respondent : Ms.Porkodi Karnan

ORDER

The petitioner has filed the present Writ Petition, to quash the impugned G.O. passed by the respondent, dated 17.11.2020, confirming the impugned order passed by the respondent in his proceedings, dated 29.06.2018 and consequently to direct the respondent to consider him for promotion to the post of Assistant Executive Engineer on par with his immediate Junior.

2.According to the petitioner, he is now working as Assistant Executive Engineer from 15.07.2013 at the Head Office/TWAD Board, Chepauk, Chennai. While he was working in Melur Joint Water Scheme for laying pipelines, hard rocks were broken, after obtaining permission from the District Collector. The District Collector granted permission to blast the rocks on condition that the hard rock removed during blast operation should not be used for any



commercial purpose, vide letter, dated 23.10.2012. The petitioner classified the broken rocks as 'quarry rubbish' and recovered the amount from the contractor. The petitioner was issued with a charge-memo, dated 27.02.2018, alleging that he classified rocks as 'quarry rubbish' and recovered the amount as per the schedule of rate of 2012-13, instead of the rate prevailing when 'quarry rubbish' were removed. The petitioner submitted his explanation. The respondent, without considering the explanation submitted by the petitioner, imposed punishment of stoppage of increment for a period of six months without cumulative effect. The petitioner preferred an appeal before the Board. The said appeal was rejected, based on the recommendation of the Appeal Sub Committee. Challenging the said orders, the petitioner has come out with the present Writ Petition.

3.The learned Senior Counsel appearing for the petitioner submitted that the disciplinary authority, without assigning any reasons, did not accept the explanation submitted by the petitioner. Further, though the operative portion of the findings of the committee was extracted in the impugned order, the Appellate Authority did not furnish the resolution of the committee. The Appellate Authority has not considered the grounds raised in the Appeal filed by the petitioner. Non-considering the explanation and the grounds raised in the appeal, renders the impugned orders as wholly unjustifiable. The learned Senior Counsel further submitted that in respect of the very same allegations made out one A.Stephen, Assistant Engineer, his explanation was accepted and he was exonerated from the charges. Thus, dismissing the Appeal filed by the petitioner and confirming the punishment imposed on the petitioner are discriminative and are in violation of Article 14 of the Constitution of India and prayed for setting aside the orders of the respondent.

4.The learned counsel appearing for the respondent submitted that while disposing 'quarry rubbish', the petitioner did not recover the amount as per the schedule rate for approval, inspite of that, he applied the schedule rate of 2012-13 and thereby, caused loss to the Board. In the explanation given by the petitioner, he has not given reason for following 2012-13 schedule rate and for not obtaining the schedule rate of 2013-14 and 2014-15. The case of A.Stephen is not similar to the case of the petitioner. The said A.Stephen was transferred on 15.07.2013 and the petitioner was posted in that place. The Board considering the explanation of A.Stephen that he followed the schedule rate for 2012-13, approved by Superintending Engineer and recovered the amount before his transfer in July, 2013. In view of the same, the petitioner cannot compare his case with that of the said A.Stephen and prayed for dismissal of the Writ Petition.

5.Heard the learned Senior Counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the



materials available on record.

6.From the materials available on record, it is seen that while the petitioner was working as Assistant Engineer at Melur, a charge-memo, dated 27.02.2018 was issued, alleging that he recovered the amount for 'quarry rubbish' as per the schedule rate for 2012-13, instead of the particular period of removal of quarry rubbish. The petitioner admitted in his explanation that he recovered the amount for 'quarry rubbish' from the amount payable to the contractor as per the schedule rate for 2012-13. However, in the explanation submitted, the petitioner has not explained as to why he has not recovered the amount as per the schedule rate for 2013-14 and 2014-15, when he removed the 'quarry rubbish'. The charge, thus, the petitioner has not recovered as per the schedule rate for the current year.

7.Further, from the materials available on record, it is seen that the petitioner has not approached the Superintending Engineer of the Tamil Nadu Water Supply and Drainage Board, Madurai, Dindigul, Theni Circle, for fixation of schedule rate for 'quarry rubbish' for the year 2013-14 and 2014-15. In view of the above, the disciplinary authority, after considering the explanation of the petitioner, did not accept the same. The petitioner filed the Appeal. The contention of the learned Senior Counsel appearing for the petitioner is that the Appellate Authority has not given any reason for dismissing the appeal filed by the petitioner and not considered the grounds of appeal. Further, the petitioner has contended that the Appellate Authority has discriminated the petitioner while dismissing his appeal, as for the very same set of allegations, the Appellate Authority exonerated one A.Stephen, Assistant Engineer. The said contention of the petitioner is contrary to the facts. As far as the case of A.Stephen is concerned, he was working as Assistant Engineer, Melur, till 15.07.2013 and subsequently, he was transferred from that place. The petitioner was posted at the place of A.Stephen. A.Stephen recovered the amount for the year 2012-13 as per schedule rate for 2012-13. Hence, the Appellate Authority accepted his explanation and set aside the punishment imposed by the disciplinary authority on the said A.Stephen. On the other hand, the petitioner recovered the amounts for the year 2013-14 and 2014-15 as per the schedule rate for 2012-13. The petitioner cannot compare himself with that of the case of A.Stephen. As far as the order of the Appellate Authority is concerned, when Appellate Authority confirms the order of the disciplinary authority, no elaborate reason need be given. It is sufficient, if some reason is given for confirming the order of the disciplinary authority and dismissing the appeal. From the order of the Appellate Authority, it is seen that the Appeal Sub Committee considered the issue and resolved to reject the appeal. Based on the



decision taken by the Appeal Sub Committee, the Appellate Authority confirmed the punishment imposed by the disciplinary authority. The Appellate Authority has given reason for confirming the punishment imposed by the disciplinary authority and there is no error in the orders of the disciplinary authority and the Appellate Authority.

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8. For the above reasons, this Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)

Ps

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

The Managing Director,
TWAD Board,
No.31, Kamarajar Salai,
Chepauk,
Chennai.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-21299[F] dated 06/07/2021)

+1 CC to M/s.POLAX LEGAL SOLUTIONS, Advocate (SR-21258[F] dated 05/07/2021)

W.P(MD)No.10079 of 2021
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MGJ(19.07.2021) 4P 4C