



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.09.2021

CORAM

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THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD)No.12445 of 2014
and
M.P. (MD)No.2 of 2014

M.Samuel Durairaj ... Petitioner
vs.

1.The Director of Town Panchayats,
Kuralagam, Chennai - 108.

2.The District Collector,
Tirunelveli District, Tirunelveli.

3.The Assistant Director of Town Panchayats,
Tirunelveli Region, Tirunelveli. ... Respondents

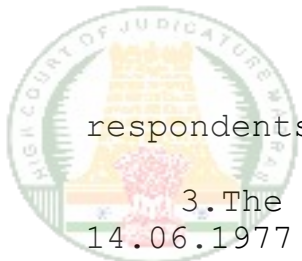
PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned order passed by the first respondent in his proceedings in Na.Ka.No.2330/2010/A4, dated 04.06.2014 and the consequential order of the third respondent in Na.Ka.No.4163/2010/Pa.2, dated 04.06.2014 and quash the same as illegal.

For Petitioner :Mr.V.Karthikeyan
for Mr.V.Perumal
For Respondents :Mr.M.Linga Durai
Government Advocate

O R D E R

This Writ Petition is filed for issuance of a Writ of Certiorari, to quash the impugned order passed by the first respondent, dated 04.06.2014, and the consequential order of third respondent, dated 04.06.2014. By order, dated 04.06.2014, the first respondent imposed a punishment on the petitioner of demotion of post from Selection Grade Executive Officer to Executive Officer Grade-I for a period of six months.

2.Heard Mr.V.Karthikeyan, learned Counsel for the petitioner and Mr.M.Linga Durai, learned Government Advocate appearing for the
<https://hcservices.ecourts.gov.in/hcservices/>



respondents.

3.The petitioner entered into the service of Town Panchayat on 14.06.1977 as Turn Clerk. After holding various posts, the petitioner was holding the post of Executive Officer (Selection Grade) from 09.04.2007. While the petitioner was holding the post of Executive Officer, Alangulam Town Panchayat, charges were framed against the petitioner, by a charge memo, dated 03.10.2008. The charges, as understood from the affidavit filed in support of the Writ Petition, are as follows:

"Charge No.1.

That while he is working as Executive Officer, Alangulam Town Panchayat, he has purchased spare parts/accessories/materials for street light, water supply and Public Health then & there without assessing the quarterly requirement & without bulk purchase per quarter and also made excess expenditure exceeding the budget provision for the year 2008-09.

Charge No.2

To avoid sanction of expenditure exceeding Rs.10,000/- each by the higher authority, he has obtained bills below Rs.10,000/- and incurred expenditure to the tune of Rs.2,31,151/- with regard to materials relating to street lights.

Charge No.3

He has failed to purchase street light materials according to the limit prescribed in G.O.No.233, Rural Development Department dated 19.12.1994 and purchased materials excess to the limit during the year 2007-08.

Charge No.4.

He has failed to rate for the compost/manure and then to sell the same, but he has distributed them on free of cost and thus incurred loss to Town Panchayat.

Charge No.5

He has incurred expenditure in two times in a month for the purpose of levelling the compost yard shed under solid waste management scheme.

Charge No.6

That he has failed to maintain absolute integrity and devotion to duty and thus violated Rule 20 of the Tamil Nadu Government Servants Conduct Rules 1973."

4.The petitioner submitted his representation and specifically denied all the charges. The Assistant Director of Town Panchayat, Sivagangai, who was appointed as Enquiry Officer, conducted an enquiry and found that the charge Nos.1, 2, 4 and 5 were not proved and the charge Nos.3 and 6, which relate to purchase of street light beyond the sanction limit, were proved. When the Enquiry Officer submitted his report, the Disciplinary Authority, namely, the first



respondent, did not agree with the findings of the Enquiry Officer and found that all the charges were proved.

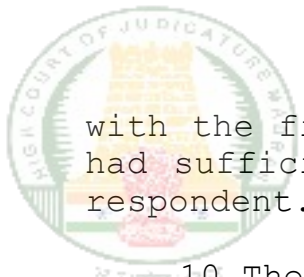
5.By his proceedings, dated 27.12.2013, the first respondent also sought for further explanation from the petitioner within a period of fifteen days. The petitioner submitted his additional explanation. Since the first respondent found that the findings of Enquiry Officer are not acceptable, based on the conclusion reached by him, he passed an order imposing the punishment of demotion of post from Selection Grade Executive Officer from Executive Officer Grade-1 for a period of six months. Though an alternative appeal remedy is available to the petitioner as against the order of punishment, the petitioner has preferred the above Writ Petition alleging that the impugned order and the consequential order are against the principles of natural justice

6.The main point that was urged by the learned Counsel for the petitioner is that the first respondent did not state proper reasons while disagreeing with the findings rendered by the Enquiry Officer. Even though the first respondent can differ from the views of the Enquiry Officer, it is contended that the first respondent should give reasons, why the findings of the Enquiry Officer is not acceptable and that an opportunity should be given to the petitioner to give further explanation to the views of the first respondent, namely, the Disciplinary Authority.

7.It is also contended by the learned Counsel appearing for the petitioner that the charges are flimsy and that the Enquiry Officer has rightly found that four out of six charges are not proved. With regard to charge Nos.3 and 6, the Enquiry Officer found that they are proved. The learned Counsel for the petitioner submitted that the charges are trivial in nature and relate to buying of electrical consumable beyond the amount sanctioned for the period. The learned Counsel then submitted that charge No.2 is in relation to the allegation that the petitioner failed to get approval from the concerned authority, whenever expenditure exceeds Rs.10,000/- on any day. It is held by the Enquiry Officer during the enquiry that there was no expenditure exceeding Rs.10,000/- on any day. Therefore, it is contended that the impugned order of punishment, which is based on perverse findings, is bad in law. Since charge No.6 has been framed based on charges 5, it is contended that the conclusion arrived by the Enquiry Officer as well as the first respondent are wrong.

8.In the counter affidavit, the respondents have stated that the punishment is appropriate and the irregularities have been proved against the petitioner warranting a punishment of demotion.

9.The question arise before this Court is whether the Disciplinary Authority has given valid reasons before disagreeing



with the findings of the Enquiry Officer and whether the petitioner had sufficient opportunity to meet the conclusion reached by first respondent.

10. The Honourable Supreme Court in the case of **S.V. Malhotra vs Punjab National Bank and others** reported (2013) 7 SCC 251, held as follows:

"13. In the case of ECIL (supra), only the first issue was involved and in the facts of this case, only second issue was involved. The second issue was examined and decided by a three-Judge Bench of this Court in Kunj Behari Misra (supra), wherein the judgment of ECIL (supra) has not only been referred to, but extensively quoted, and it has clearly been stipulated that wherein the second issue is involved, the order of punishment would stand vitiated in case the reasons so recorded by the Disciplinary Authority for disagreement with the Enquiry Officer had not been supplied to the delinquent and his explanation had not been sought. While deciding the said case, the court relied upon the earlier judgment of this court in Institute of Chartered Accountants of India v. L.K. Ratna, AIR 1987 SC 71.

14. Kunj Behari Misra (supra) itself was the case where the Disciplinary Authority disagreed with the findings recorded by the Enquiry Officer on 12.12.1983 and passed the order on 15.12.1983 imposing the punishment, and immediately thereafter, the delinquent officers therein stood superannuated on 31.12.1983. In Kunj Behari Misra (supra), this court held as under:

"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." (Emphasis added)



15.The Court further held as under: (Kun Behari Misra Case, SCC P.97, para 21):

"21. Both the respondents superannuated on 31-12-1983. During the pendency of these appeals, Misra died on 6-1-1995 and his legal representatives were brought on record. More than 14 years have elapsed since the delinquent officers had superannuated. It will, therefore, not be in the interest of justice that at this stage the cases should be remanded to the disciplinary authority for the start of another innings."

16.The view taken by this Court in the aforesaid case has consistently been approved and followed as is evident from the judgments in Yoginath D. Bagde v. State of Maharashtra & Anr., AIR 1999 SC 3734; State Bank of India & Ors. v. K.P. Narayanan Kutty, AIR 2003 SC 1100; J.A. Naiksatam v. Prothonotary and Senior Master, High Court of Bombay & Ors., AIR 2005 SC 1218; P.D. Agrawal v. State Bank of India & Ors., AIR 2006 SC 2064; and Ranjit Singh v. Union of India & Ors., AIR 2006 SC 3685.

17.In Canara Bank & Ors. v. Shri Debasis Das & Ors., AIR 2003 SC 2041, this Court explained the ratio of the judgment in Kunj Behari Misra (supra), observing that it was a case where the disciplinary authority differed from the view of the Inquiry Officer. "In that context, it was held that denial of opportunity of hearing was per se violative of the principles of natural justice."

18.In fact, not furnishing the copy of the recorded reasons for disagreement from the enquiry report itself causes the prejudice to the delinquent and therefore, it has to be understood in an entirely different context than that of the issue involved in ECIL (supra).

19.The learned Single Judge has concluded the case observing as under:

"The whole process that resulted in dismissal of the petitioner is flawed from his inception and the order of dismissal cannot be sustained. I am examining this case after nearly 23 years after its institution and the petitioner has also attained the age of superannuation. The issue of reinstatement or giving him the benefit of his wages for during the time when he did not serve will not be appropriate. The impugned orders of dismissal are set aside and the petitioner shall be taken to have retired on the date when he would have superannuated and all the terminal benefits shall be worked out and paid to him on such basis. There shall be, however, no



direction for payment of any salary for the period when he did not work."

20. As the case is squarely covered by the judgment of this court in *Kunj Behari Misra (supra)*, we do not see any reason to approve the impugned judgment rendered by the Division Bench. Thus, in view of the above, the appeal is allowed. The judgment and order of the Division Bench is set aside and that of the learned Single Judge is restored."

11. It has been held by the Honourable Supreme Court that the Disciplinary Authority whenever disagrees with the Enquiry Officer on any charge, then, before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to delinquent officer an opportunity to represent before recording finding. In the present case, it is seen that the Enquiry Officer has given the categorical finding that charge Nos.1, 2, 4 and 5 are not proved for specific reasons. For example, in relation to the first charge, the allegation is that the petitioner spent beyond the ceiling limit as per the budget allocations, the Enquiry Officer found that the Council had passed a resolution enhancing the budget with reference to each item and that the amount spent by the petitioner was well within the ceiling fixed by the Council. However, without assigning any reasons, the Disciplinary Authority simply stated that the Enquiry Officer's findings cannot be accepted, as the charges are proved by other documents. The nature of documents ignored by the Enquiry Officer are not indicated.

12. In such circumstances, the order of Disciplinary Authority disagreeing with the findings cannot be accepted for the simple reason that the first respondent did not consider the issue in a proper perspective and took a decision in an autocratic manner. Hence, on over all analysis, this Court justified the findings of the Enquiry Officer with regard to charge Nos.1, 2, 4 and 5. As regards, charge Nos.3 and 6, though the Enquiry Officer found that the charges are proved, this Court is unable to find that the charges are grave in nature, so as to impose a punishment of demotion.

13. This Court is unable to sustain the impugned order, in view of the irregularities found in the order passed by the first respondent, who has mechanically passed the order without an application of mind and following the procedure recommended by the Honourable Supreme Court in the judgment referred to above. Since the findings of the first respondent are against the report of the Enquiry Officer, this Court is unable to find any reasons for justifying the first respondent to differ from the Enquiry Officer and the impugned order cannot stand as it is not only perverse, but



14. In the above circumstances, this Court is of the view that the impugned order and the consequential order passed by the third respondent are unsustainable. Accordingly, this Writ Petition is allowed and the impugned order passed by the first respondent, dated 04.06.2014 and the consequential order passed by the third respondent, dated 04.06.2014, are quashed. It is admitted that the petitioner was retired from service on 31.05.2017. However, the terminal benefits of the petitioner was not settled due to the pendency of proceedings. Since the Disciplinary Authority has not assigned any reasons for disagreeing with the Enquiry report, the petitioner is put to serious prejudices and is unable to get his retirement benefits for a long time. Hence, this Court finds inappropriate to remit the matter back for reconsideration by the first respondent. Instead of ordering reinstatement, the petitioner shall be treated as retired from the original post on the date of his superannuation and all the terminal benefits shall be worked out and paid to the petitioner on the basis of records within a period of twelve weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2021

Sub Assistant Registrar(CS)

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To

1. The Director of Town Panchayats,
Kuralagam, Chennai - 108.
2. The District Collector,
Tirunelveli District, Tirunelveli.
3. The Assistant Director of Town Panchayats,
Tirunelveli Region, Tirunelveli.

+1 CC to M/s.V.KARTHIKEYAN, Advocate (SR-30629[F] dated 29/09/2021)

+1 CC to M/s.SPL.GP (SR-30600[F] dated 29/09/2021)

W.P. (MD) No.12445 of 2014
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