



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P. (MD).No.22867 of 2017

and

W.M.P. (MD)No.19171 of 2017

S.Rathika

...Petitioner

Vs.

1.The State of Tamil Nadu,
Rep by its Additional Chief Secretary to Government,
Home (Transport-II) Department,
Secretariat,
Chennai-600 005.

2.The Principal Secretary Transport Commissioner,
Chepauk,
Chennai-600 005.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned Government order passed by the 1st respondent in G.O.(2D)No.313 Home (Transport-II) Department dated 25.10.2017 and quash the same as illegal and consequently, direct the respondents to promote the petitioner to the post of Superintendent from the date on which petitioner's immediate junior was promoted.

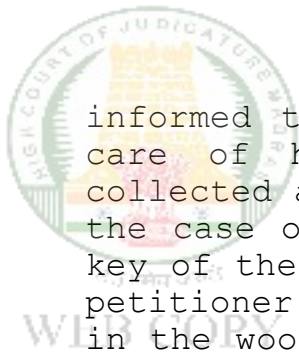
For Petitioner	:Mr.M.Ajmalkhan, Senior Counsel for M/s.Ajmal Associates
For Respondents	:Mr.M.Lingadurai Government Advocate

ORDER

This Writ Petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the impugned order passed by the first respondent in G.O.(2D)No.313 Home (Transport-II) Department dated 25.10.2017 and to direct the respondents to promote the petitioner to the post of Superintendent from the date on which her immediate junior was promoted.

2.The brief facts that are necessary for disposal of the Writ Petition are as follows.

While the petitioner was working as an Assistant at Regional Transport Office, Madurai (North), the Accountant in her office

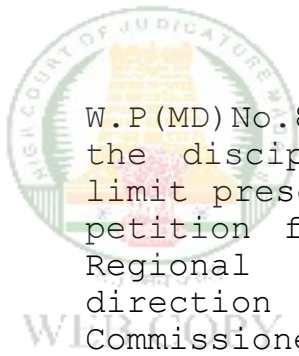


informed the petitioner that she had to leave the office to take care of her child and requested the petitioner to place the collected amount in the wooden almirah available in her cabin. It is the case of the petitioner that the Accountant had handed over the key of the wooden bureau for the purpose of keeping the money. The petitioner placed the collected amount to the tune of Rs.7,69,413/- in the wooden almirah and she also left the office on 04.07.2008 at about 7.30 p.m. Unfortunately, the amount that was kept in the wooden almirah was found missing and the wooden almirah had been broken, when the Accountant came to the office on the next day ie., on 05.07.2008. A complaint was lodged before the concerned police station and the said complaint was registered in Crime No.663 of 2008, on the file of K.Pudur Police Station, Madurai.

3.Simultaneously, a charge memo dated 23.10.2008 was issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, on the ground that the petitioner was guilty of negligence during the course of employment, which has resulted in the loss of Government money to the tune of Rs.7,69,413/-. Similarly charge memos were also issued to the Regional Transport Officer, Superintendent, Assistant, Accountant and Night Watchman, in relation to the same incident. The petitioner submitted a detailed explanation dated 23.12.2008 denying the charges. Insofar as the petitioner is concerned, an enquiry officer was appointed and he submitted a report holding that the charges against her were proved. Second show cause notice was issued to the petitioner along with the enquiry report and the petitioner also submitted further explanation on 29.07.2011. The first respondent, by impugned order dated 27.11.2017, imposed the punishment of stoppage of increment for a period of three years with cumulative effect, besides recovery of the amount to the tune of Rs.59,706.50/- in thirty equal monthly installments. It is now admitted before this Court that the money that was stolen on 04.07.2008 was recovered, except a sum of Rs.59,706.50/-. The person, who had committed theft was also caught and hence, personal involvement of any one in the office is ruled out.

4.The disciplinary proceedings were kept pending for a long time and due to the pendency of the disciplinary proceedings, it is contended by the petitioner that her promotion was passed over on three occasions. Therefore, while questioning the impugned order of punishment, she also wanted her promotion to be considered on par with her immediate junior.

5.The Regional Transport Officer filed a Writ Petition in W.P (MD)No.14595 of 2011 before this Court, to quash the charge memo issued against him on the ground of delay. Though this Court by order dated 21.12.2011 disposed of the said writ petition directing the first respondent to pass final order on merits within a period of three weeks, no action was taken to comply with the order of this Court. Thereafter, the same officer filed another writ petition in



W.P(MD)No.8386 of 2014 to quash the charge memo on the ground that the disciplinary proceedings were not finalized within the time limit prescribed by this Court, while disposing of the earlier writ petition filed by the same officer. The charge memo against the Regional Transport Officer was quashed with a consequential direction to promote the said officer as Deputy Transport Commissioner from the date on which his immediate junior was promoted. It is now admitted before this Court that the charge memo issued against the Superintendent, viz., Saraswathy was also quashed. With regard to the charge framed against the Night Watchman, viz., Mr.Thamaraki, who was not permitted to retire from service on attaining the age of superannuation on 30.06.2010, was imposed with the punishment by treating the period of suspension between 10.07.2008 and 24.10.2008 as substantive punishment. The petitioner filed a writ petition in W.P(MD)No.8760 of 2015 challenging the charge memo dated 23.10.2008 and the same is pending before the Principal Bench of this Court.

6.The learned Senior Counsel appearing for the petitioner based on the facts narrated in the affidavit filed in support of this Writ Petition, submitted that the petitioner in her explanation has specifically referred to certain facts with regard to the nature of responsibility. She had undertaken on that day, to keep cash as instructed by the Accountant. During the enquiry, no witness was examined and no document was filed to controvert any of the statements of the petitioner in her explanation. The learned Senior Counsel pointed out that the responsibility to keep the amount is only with the Accountant and that the locker in iron is available only in the new building, which was not made available to the petitioner and that therefore, the petitioner had kept the money in the wooden almirah. Since the petitioner cannot be held responsible or blamed for keeping the money on that date in the wooden almirah, it is stated that the whole charge against the petitioner making responsible for the theft of money is misconceived. The learned Senior Counsel further submitted that the petitioner cannot be held responsible for the loss of money. The learned Senior Counsel also submitted that the conclusion arrived at by the enquiry officer is not supported by any material or evidence and that mere perusal of the enquiry report reveals that the findings reached by the enquiry officer is either perverse or based on no evidence. It is also contended by the learned Senior Counsel that the respondents did not consider the explanation offered by the petitioner nor assigned any reason to reject the petitioner's explanation. Since the order of punishment is without any material to prove the charge levelled against the petitioner, the learned Senior Counsel submitted that the conclusion of the disciplinary authority is whimsical.

7. The learned Senior Counsel appearing for the petitioner, in support of his submission, relied upon the judgment of the Hon'ble Supreme Court in the case of **ROOP SINGH NEGI -VS- PUNJAB**



NATIONAL BANK AND OTHERS, reported in **(2009)2 SCC 570**, wherein, it is held as follows:

"14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence. We have noticed hereinbefore that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left.

23. Furthermore, the order of the disciplinary authority as also the appellate authority are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of self-same evidence should not have been taken into consideration. The materials brought on record pointing out the guilt are required to be proved. A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a departmental proceeding but the principles of natural justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also surmises and conjectures, the same could not have been sustained. The



inferences drawn by the Enquiry Officer apparently were not supported by any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.

8.The learned Senior Counsel then relied upon another judgment of the Hon'ble Supreme Court in the case of **STATE OF UTTARANCHAL AND OTHERS -VS- KHARAK SINGH**, reported in **(2008)8 SCC 236**, wherein, the Hon'ble Supreme Court has held as follows:

"17.On the other hand, one Mr. P.C. Lohani, Dy. Divisional Forest Officer, Nadhor acting as an enquiry officer after putting certain questions and securing answers submitted a report on 16.11.1985. No witnesses were examined. Apparently there was not even a presenting officer. A perusal of the report shows that the enquiry officer himself inspected the areas in the forest and after taking note of certain alleged deficiencies secured some answers from the delinquent by putting some questions. It is clear that the Enquiry Officer himself has acted on the Investigator, Prosecutor and Judge. Such a procedure is opposed to principles of natural justice and has been frowned upon by this Court.

18.Another infirmity in the report of the enquiry officer is that he concluded the enquiry holding that all the charges have been proved and he recommended for dismissal of the delinquent from service. The last paragraph of his report dated 16.11.1985 reads as under:-

"During the course of above inquiry, such facts have come into light from which it is proved that the employee who has doubtful character and does not obey the order, does not have the right to continue in the government service and it is recommended to dismiss him from the service with immediate effect."

(emphasis supplied) Though there is no specific bar in offering views by the enquiry officer, in the case on hand, the enquiry officer exceeded his limit by saying that the officer has no right to continue in the government service and he has to be dismissed from service with immediate effect.

19.As pointed out above, awarding appropriate punishment is the exclusive jurisdiction of the punishing / disciplinary authority and it depends upon the nature and gravity of the proved charge/charges and other attended circumstances. It is clear from the materials, the officer, who inspected and noted the shortfall of trees, himself

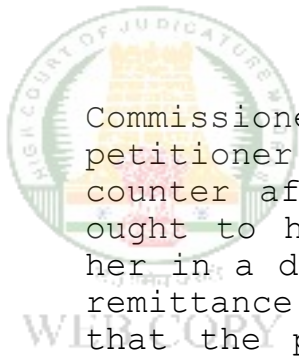


conducted the enquiry, arrived at a conclusion holding the charges proved and also strongly recommended severe punishment of dismissal from service. The entire action and the course adopted by the enquiry officer cannot be accepted and is contrary to the well-known principles enunciated by this Court.

20.A reading of the enquiry report also shows that the respondent herein was not furnished with the required documents. The department's witnesses were not examined in his presence. Though the respondent who was the writ petitioner specifically stated so in the affidavit before the High Court in the writ proceedings, those averments were specifically controverted in the reply affidavit filed by the department. Mere denial for the sake of denial is not an answer to the specific allegations made in the affidavit. Likewise, there is no evidence to show that after submission of the report by the enquiry officer to the disciplinary authority, the respondent herein was furnished with the copy of the said report along with all the relied upon documents. When all these infirmities were specifically pleaded and brought to the notice of the appellate authority (i.e. Forest Conservator), he rejected the same but has not pointed the relevant materials from the records of the enquiry officer and disciplinary authority to support his decision. Hence, the appellate authority has also committed an error in dismissing the appeal of the respondent.

9.The learned Senior Counsel then submitted that the punishment is vitiated on the ground of disparity in imposing the punishment. The disciplinary proceedings were initiated against the other co-delinquents and this Court has quashed the charge memo against the petitioner's superior only on the ground of delay. The learned Senior Counsel submitted that the petitioner cannot be held responsible for the loss without examining any one in the office or producing direct evidence against the petitioner to prove her negligence. It is submitted further that the night watchman, who was more responsible and the money was stolen from the office during the night time, was imposed with lesser punishment to treat the period of suspension as substantive punishment. The learned counsel therefore submitted that punishment is not commensurate with the charges and there is discrimination.

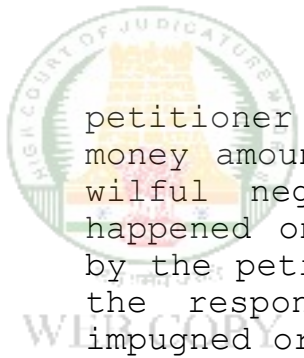
10.On the other hand, the learned Government Advocate relying upon the counter affidavit filed by the respondents submitted that the petitioner was responsible for keeping the money on the date of occurrence and that she failed to follow the minimum safety procedure that was expected from her. It is stated in the counter affidavit that the instructions issued by the Transport



Commissioner, dated 29.04.2002 had not been followed by the petitioner. The guidelines referred to is also explained in the counter affidavit itself wherein it is stated that the petitioner ought to have taken steps to hand over all the money collected by her in a day to the Accountant on the same day, so as to enable the remittance into the bank on the same day itself. It is suggested that the petitioner could avoid theft of huge money, if she had handed over the money as per the instructions. Further, it is stated in the counter affidavit that the petitioner has not taken any care to keep the money, in a safe manner, but, kept the money in a bag inside the almirah in an unsafe manner. It is further stated that as per the guidelines, the cash should be kept in the cash chest which should be embedded in the wall and shall not be kept in the almirah. The statement in the counter affidavit may be applicable to the Accountant, who was responsible to keep the money on all working days. When the Accountant had to leave the office early and the petitioner as an Assistant, who was asked to handle cash for a single date cannot be expected to follow the guidelines, unless the key of the locker was also handed over to the petitioner on the date of theft, so as to make the petitioner responsible for the cash kept in a wooden almirah.

11.To the specific case pleaded by the petitioner in the explanation offered in response to the charge memo, no other person was examined by the department to prove that the same facility which was provided to the accountant was also available to the petitioner. Except relying upon the enquiry report, the respondents have not given the factual back ground so as to make the petitioner solely responsible. Though the circular/instructions issued by the Transport Commissioner, dated 29.04.2002 is also relied upon by the respondents, the circular is neither produced before this Court nor made available before the enquiry officer. When it is not established that the circular/guidelines is also applicable to the petitioner in the factual circumstances, this Court is unable to find the petitioner guilty on the basis of any circular. The petitioner was asked to handle cash without giving facility to the petitioner to keep the money as it was instructed by the circular. The charges framed against the petitioner are not sustainable. The first charge against the petitioner is that she has not handed over the Government money collected by her in the office on 04.07.2008 towards Motor Vehicles taxes and fees to the Accountant. When the Accountant left the office and she was asked to keep the money by herself in the almirah by the Accountant, this Court is unable to blame the petitioner in connection with the first charge. When the Accountant was not available, the whole charge is misconceived.

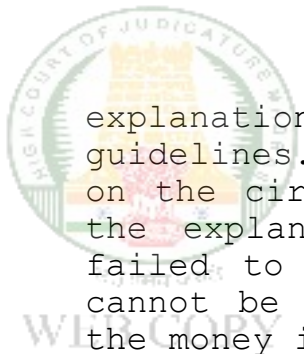
12.The second charge is that the petitioner had not followed the procedure while handling the money and not properly performed the duty entrusted to her on 04.07.2008. The accusation in the second charge itself indicates that the petitioner was asked to



petitioner had committed negligence of her duty resulting in loss of money amounting to Rs.7,69,413/-, the charge does not indicate any wilful negligence directly in relation to the theft that had happened on 04.07.2008. Since an acceptable explanation is offered by the petitioner, this Court is unable to consider the attitude of the respondents in ignoring the explanation while passing the impugned order.

13.The third charge is also about the negligence of the petitioner in keeping the money in a bag inside the almirah in an unsafe manner contrary to the instructions, the explanation, that the key of cash chest was not handed over to her by the Accountant was not considered either by the enquiry officer or by the disciplinary authority or by the first respondent. In the absence of key of the cash chest, it is not stated how the petitioner could take other precautionary steps while keeping the money in the wooden almirah. Therefore, in the factual scenario, this Court is unable to sustain the findings of the enquiry officer, who has failed to consider any of the explanation offered by the petitioner. The respondents miserably failed to let in any evidence or examine any witness to disagree with the statement of the petitioner. In the absence of any material evidence or statement, this Court is of the view that the explanation offered by the petitioner ought to have been accepted.

14.The impugned order reveals as if the petitioner had not acted as per the guidelines in handling the money collected on 04.07.2008, by referring to the circular/instruction issued by the Transport Commissioner, dated 29.04.2002. The findings of the enquiry officer as well as the first respondent as found in the impugned order, are perverse because there was no application of mind as to the facts admitted on the explanation offered by the petitioner. The failure to consider the explanation offered by the petitioner in the present case, is a serious irregularity, as it was held by the Hon'ble Supreme Court in the case of **KHARAK SINGH**(cited supra). The legal infirmity pointed out by the petitioner in this case vitiates the whole proceedings, which has resulted in passing of the impugned order. Though some reasons were stated by the enquiry officer and the disciplinary authority for the purpose of holding the petitioner guilty of charges, the reasons are not adequate. In the absence of any consideration of the specific case pleaded by the petitioner by way of her explanation to the charge memo and thereafter to the second show cause notice issued along with the report of the enquiry officer the findings of disciplinary authority are not sustainable. As held by the Hon'ble Supreme Court in the case of **ROOP SINGH NEGI**(cited supra), the enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. In the absence of any evidence, considering the statement of the petitioner in her explanation, the enquiry officer ought to have accepted the



explanation offered by the petitioner for not following the guidelines. The report of the enquiry officer, in this case, based on the circular without taking into account the admitted facts or the explanation is improper. In the absence of Accountant, who failed to hand over the key for the cash chest, the petitioner cannot be held responsible for the alleged negligence for keeping the money in the wooden almirah. The negligence drawn by the enquiry officer are not supported by any other evidence, as submitted by the learned Senior Counsel appearing for the petitioner. Therefore, this Court find there is absence of any legal evidence or proof to sustain the charges against the petitioner. It is also relevant to point out that the charge against the other officials like the Regional Transport Officer, Superintendent and Watchman were not seriously proceeded further.

15. Having regard to the nature of explanation offered by the petitioner and the other delinquents, who were also involved in relation to the incident, ought to have been examined atleast to proceed against the petitioner for the act of negligence. When the petitioner was awarded with major punishment, the watchman, who has failed in duty to prevent the said occurrence, was given a lesser punishment by treating the suspension as substantive punishment. Therefore, the punishment is also disproportionate and it is not commensurate to the charges. Having regard to the reasons stated above, this Court has no other option but to allow the writ petition. Accordingly, this Writ Petition is allowed and the impugned order passed by the first respondent in G.O.(2D)No.313 Home (Transport-II) Department dated 25.10.2017, is quashed. Since the petitioner has not been considered for promotion due to the pendency of the charge memo and this Court has now relieved the petitioner from charges, the consequential prayer sought for in the writ petition is granted and the respondents are directed to promote the petitioner to the post of Superintendent from the date on which her immediate junior was promoted. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CRL SIDE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ns

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 to Government,
Home (Transport-II) Department,
Secretariat,
Chennai-600 005.

2.The Principal Secretary Transport Commissioner,
Chepauk,
Chennai-600 005.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-29242[F] dated
16/09/2021)

+1 CC to M/s.SPL. GP (SR-29449[F] dated 17/09/2021)

W.P.(MD).No.22867 of 2017

and

W.M.P.(MD)No.19171 of 2017

15.09.2021

SRR(CO)

KB(06.10.2021) 10P 5C