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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.04.2022
PRONOUNCED ON : 12.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.NO.12003 OF 2016 AND
W.M.P.NO.10380 OF 2016

R.Rukmani

... Petitioner

Vs.

1. The Commissioner,
Civil Supplies, Consumer Protection Department,
Chepauk,
Chennai- 5.
2. The Deputy Commissioner - I (South),
Food and Consumer Protection Department,
Chepauk,
Chennai-5.
3. The Joint Commissioner,
Food Supply and Consumer Protection Department,
Chepauk,
Chennai-5.

... Respondents

PRAYER :

Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records in the order passed in Na.No.A3/49744/2005 dated 03.09.2012 passed by the third respondent and Na.Ka.No.A3/24652/2014 dated 05.12.2014 passed by the first respondent, quash the same and consequently, direct the second respondent to include the petitioner name in the panel list for promotion for the post of Superintendent for the year 2013-14 in the appropriate place therein.

For petitioner : Ms.D.Geetha

For Respondents : Mr.L.S.M.Hasan Fizal,
Additional Government Pleader



ORDER

This writ petition has been filed to issue a Writ of Certiorarified Mandamus, to call for the records in the order passed in Na.No.A3/49744/2005 dated 03.09.2012 passed by the third respondent and Na.Ka.No.A3/24652/2014 dated 05.12.2014 passed by the first respondent, quash the same and consequently, direct the second respondent to include the petitioner's name in the panel list for promotion to the post of Superintendent for the year 2013-14 in the appropriate place therein.

2. The case of the petitioner is as follows:

(i) The petitioner was appointed as Typist on 20.01.1997 in the first respondent Department. Subsequently, on 16.06.2006, she was promoted as Assistant and posted at the office of the Assistant Commissioner of Civil Supplies (Field) at St.Thomas Mount. While working in St.Thomas Mount, the petitioner was placed under suspension from service on 27.12.2005, on the basis of certain allegations made against her. Along with the petitioner, one Mrs.Thilagam, Superintendent and Mr.Sukumar, Checking Inspector were also placed under suspension for the same set of allegations. Thereafter, a charge memo was issued on 26.03.2006, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, containing five articles of charges. Along with the petitioner, the above two officials have also been issued with charge memoranda.

(ii) In response to the charges, the petitioner submitted her explanation and thereafter, she was informed that an Enquiry Officer was appointed to conduct the departmental enquiry. But, subsequently, by order dated 07.12.2006, the appointment of the Enquiry Officer came to be cancelled for all the three charge sheeted officials. Following the same, by order dated 22.01.2007, the disciplinary action came to be dropped by cancelling the charge memo in respect of all the three officials. The petitioner was therefore under the bonafide impression that the action to drop the disciplinary action was taken on being satisfied with the explanation offered by the petitioner.

(iii) While matter stood thus, a fresh charge memo for the same set of allegations was issued on 06.04.2010. As far as the second charge memo for the same set of allegations was concerned, it was only issued to the petitioner and not to the other officials viz., Mrs.Thilagam, and Mr.Sukumar. The petitioner once again had given her explanation on 12.07.2011, clarifying that she was not responsible for the alleged acts of misconduct. An Enquiry Officer was again appointed on



(iv) The third respondent disciplinary authority, on consideration of the enquiry report, without giving any opportunity to the petitioner, appeared to have disagreed with the findings of the Enquiry Officer and passed final order on 03.09.2012, imposing the punishment of stoppage of increment for a period of three months. According to the petitioner, because of the pendency of the disciplinary action and imposition of penalty, though she had come within the zone of consideration for promotion to the post of Superintendent, for the panel year 2011-12, 2012-13 and even for the subsequent panel year 2013-14, her name was not considered for promotion. The panel for the year 2013-14, was published on 24.07.2014. But, her name came to be omitted for the reason of currency of penalty.

3. Ms.D.Geetha, learned counsel for the petitioner submitted that the punishment imposed on the petitioner and the consequential denial of promotion to the petitioner cannot be countenanced both in law and on facts for more than one reason. First, the earlier charge memo dated 26.03.2006, containing the same set of charges, came to be dropped after explanation by the petitioner, presumably being satisfied with the same. Therefore, there cannot be any valid reason for issuing the second charge memo dated 06.04.2010, containing the same set of allegations, after a period of four years. Second, when the Enquiry Officer after adverting to the absence of evidence, has exonerated the petitioner from all the charges, the disciplinary authority merely referred to the findings of the Enquiry Officer and perfunctorily concluded that the report was not acceptable and imposed the impugned penalty.

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the disciplinary authority. The learned counsel submitted that because of the pendency of disciplinary action against the petitioner for several years, which was entirely attributable to the respondents, she had been denied promotion to the next higher post of Superintendent for the year 2013-14, when her juniors were promoted. The learned counsel would therefore submit that the impugned order is ex-facie illegal and liable to be interfered with.

5. In support of her submissions, the learned counsel referred to a decision of the Hon'ble Supreme Court of India, reported in (1998) 7 SCC 84, in the case of Punjab National Bank and Others Vs. Kunj Behari Misra. She would particularly rely on paragraph Nos.17 to 20, which are extracted hereunder:

"17. These observations are clearly in tune with the observations in Bimal Kumar Pandit's case (supra) quoted earlier and would be applicable at the first stage itself. the aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the inquiry officer had given an adverse finding, as per Karunakar's case (supra) the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the inquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be over-turned by the disciplinary authority then no opportunity should be granted. The first stage of the inquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the inquiring officer holds the charges to be proved then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the inquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings what is of ultimate importance is the findings of



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the disciplinary authority.

18. Under Regulation - 6 the enquiry proceedings can be conducted either by an inquiry officer or by the disciplinary authority itself. When the inquiry is conducted by the inquiry officer his report is not final or conclusive and the disciplinary proceedings do not stand concluded. The disciplinary proceedings stand concluded with decision of the disciplinary authority. It is the disciplinary authority which can impose the penalty and not the inquiry officer. Where the disciplinary authority itself holds an inquiry an opportunity of hearing has to be granted by him. When the disciplinary authority differs with the view of the inquiry 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 inquiry officer they are deprived of representing to the disciplinary authority before that authority differs with the inquiry officer's report and, while recording 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 inquiry as explained in Karunakar's case(supra).

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 inquiry 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 inquiry 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 favorable conclusion of the inquiry 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



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

20. The aforesaid conclusion, which we have arrived at, is also in consonance with the underlying principle enunciated by this Court in the case of Institute of Chartered Accountants (supra). While agreeing with the decision in Ram Kishan's case (supra), we are of the opinion that the contrary view expressed in S.S. Koshal and M.C. Saxena's cases (supra) do not lay down the correct law.''

6. The learned counsel would also refer to a decision of this Court rendered in W.P.No.30230 of 2013, vide order dated 17.08.2017. She would particularly rely on paragraph No.9, which is extracted hereunder:

"9.The contention of the learned counsel for the respondents will have some force only if the disciplinary authority had followed the procedure. In case, the disciplinary authority decides to disagree with the findings of the enquiry officer, he is required to record his disagreement and issue a show cause notice to the petitioner along with the disagreement note to the petitioner calling for his explanation. In the instant case, the said procedure has not been followed and therefore, even assuming that the disciplinary authority has any material whatsoever to disagree with the findings of the enquiry officer, cannot be said to be valid in the eye of law. Even otherwise, it has to be seen that the enquiry report is completely silent on the guilt of the petitioner is concerned and the report does not anywhere even remotely deal with the charges being established in the enquiry. In such scenario, the eventual punishment meted out to the petitioner cannot have no legal backing."

The learned counsel would therefore implore this Court to allow the writ petition.

7. Mr.L.S.M.Hasan Fizal, learned Additional Government Pleader appearing for the respondents would submit that despite serious allegations against the petitioner, she was left off with minor penalty of stoppage of increment only for a period of three months. As far as the denial of promotion to the post of Superintendent for the year 2013-14, the learned Additional Government Pleader would submit that the crucial date for inclusion in the panel was 15.03.2013. The punishment period of



the petitioner, as a matter of fact, ended only on 30.06.2013. At that crucial time, there was currency of penalty and hence the petitioner was not rightly considered for promotion for the panel year 2013-14. He would therefore submit that there is no merit in the writ petition and the same is liable to be dismissed.

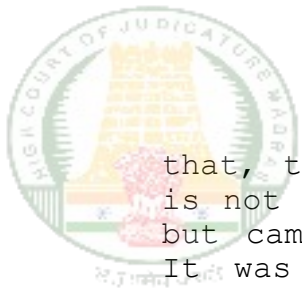
8. This Court considered the submissions of the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondents, perused the pleadings, materials placed on record and the two decisions cited on behalf of the petitioner.

9. As the facts would disclose that the disciplinary authority initially issued the charge memorandum dated 26.03.2006, against the petitioner, containing five articles of charges alleging dereliction of duty. The petitioner herein duly submitted her explanation. Thereafter, the disciplinary action came to be dropped vide proceedings dated 22.01.2007, of the disciplinary authority, the second respondent herein. As it could be seen in the proceedings, no right was reserved by the authority for reopening of the case against the petitioner at a future date. The cancellation of the disciplinary proceedings amounted to dropping of the above action against the petitioner for good.

10. In the above circumstances, without any reference to the entire dropping of the disciplinary action, for the same set of allegations, the second charge memo was issued on 06.04.2010. This Court is unable to countenance the validity of the issuance of the second charge memo containing same set of allegations against the petitioner. Nothing has been whispered in the second charge memo as to what provoked the authority to revive the disciplinary action against the petitioner after lapse of three years.

11. Be that as it may, when the enquiry was conducted into the second charge memo, the enquiry officer in his report dated 18.04.2012 report completely exonerated the petitioner from all the charges. The disciplinary authority very strangely and questionably appeared to have disagreed with the findings of the Enquiry Officer, without giving any supportive reasons for such disagreement. The disagreement is bereft of any substance and under no circumstances, it can be countenanced in law.

12. As rightly contended by the learned counsel for the petitioner that the action of the disciplinary authority suffers from two grave legal infirmities. One that, the mandatory notice was not given to the petitioner seeking her representation against the disagreement by the disciplinary authority. Two



that, the disagreement as could be seen from the order itself, is not based on any evidence overlooked by the enquiry officer, but came in for re-appreciation by the disciplinary authority. It was merely a disagreement simplicitor unsupported by any reason at all. In the said circumstances, the imposition of penalty on the basis of such disagreement is ex-facie illegal and cannot be countenanced in law, under any circumstances.

13. As could be seen from the impugned order of the disciplinary authority dated 03.09.2012, the findings of the Enquiry Officer were merely referred to, but finally, by one line disagreement, the disciplinary authority imposed the impugned penalty on the petitioner. Such cavalier disagreement by the disciplinary authority is nothing but travesty and amounted to colourable exercise of power vested in him.

14. The reliance placed by the learned counsel for the petitioner on the Hon'ble Supreme Court decision and also the decision of this Court, would squarely apply to the facts of the present case. Since the disciplinary action itself is vitiated for more than one reason and also considering the entirety of the facts and circumstances of the case, no purpose would be served to remit the matter to the disciplinary authority for fresh consideration. It is more so, the punishment of stoppage of increment itself for only a period of three months and the petitioner on that account also suffered denial of her due promotion, when her juniors were promoted for the panel year 2013-14.

15. In the above circumstances, this Court is of the considered view that the petitioner has made out a strong case for grant of relief as prayed for in the writ petition.

16. The impugned orders passed in Na.No.A3/49744/2005 dated 03.09.2012, by the third respondent and Na.Ka.No.A3/24652/2014 dated 05.12.2014, by the first respondent, are therefore set aside as illegal and void.

17. Consequently, the respondents are directed to include the petitioner's name in the panel year 2013-14 for promotion to the post of Superintendent and grant her promotion on notional basis with all attendant benefits, if she was otherwise fit to be promoted in the said panel year.

18. The authorities are directed to pass appropriate orders in this regard, within a period of four weeks from the date of receipt of a copy of this order.



19. The writ petition is accordingly allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

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To

1. The Commissioner,
Civil Supplies, Consumer Protection Department,
Chepauk,
Chennai- 5.
2. The Deputy Commissioner - I (South),
Food and Consumer Protection Department,
Chepauk, Chennai-5.
3. The Joint Commissioner,
Food Supply and Consumer Protection Department,
Chepauk, Chennai-5.

+1cc to Ms.D.Geetha, Advocate, S.R.No.25320
+1cc to the Government Pleader, S.R.No.25510

W.P.No.12003 of 2016 and
W.M.P.No.10380 of 2016

MT (CO)
PM/26/04/2022