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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.04.2022

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THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.17135 of 2010

R.G.Rajarathinam

... Petitioner

Vs.

1. The Secretary to Government,
Environment and Forest Department,
Fort.St.George,
Chennai 600 009.
2. The Principal Chief Conservator of Forests,
Panagal building,
Chennai 600 015.

... Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the first respondent made in G.O.(D) No.51, Environment and Forest Department dated 17.02.2010 and quash the same consequently direct the first respondent to allow the petitioner's appeal by setting aside the order of punishment imposed by the second respondent made in T.No.1/22036/2002 dated 19.11.2008.

For Petitioner : M/s.Selvi George

For Respondents : M/s.E.Renganayaki
Additional Government Pleader

O R D E R

This writ petition is filed to issue a Writ of Certiorarified Mandamus, challenging the G.O.(D)No.51, Environment and Forest Department dated 17.02.2010, whereby the appeal filed by the petitioner is dismissed thereby, confirming the punishment imposed by the second respondent vide order dated 19.11.2008.



Authority have duly applied their mind on the explanation and contentions raised by the petitioner and have answered the same in the impugned order and therefore this does not call for any interference by this Court in the present writ petition.

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6. Heard Ms.Selvi George, learned counsel appearing for the petitioner and Ms.E.Renganayaki, learned Additional Government Pleader appearing for the respondents and perused the material records of this case.

7. Ms.Selvi George, learned counsel appearing for the petitioner taking this Court through the charge memorandum, the impugned punishment order, Appellate Authority order and enquiry report would submit that the findings of the enquiry officer as well as the disciplinary and Appellate Authority in respect of the charge number 2 is perverse which warrants interference by this Court. According to her, the petitioner by way of cross examination and otherwise, succeeded to establish that first it is only the District Forest Officer who is competent to issue the particular permit and the application has to be submitted in the first place to the District Forest Officer and it will come to him only after the reference by the District Forest Officer and therefore there was no occasion for the P.W.1 viz., V.Kaliyaperumal to have approached the petitioner directly. It is her contention that the statement of the P.W.1 was that the application along with the VAO certificate was handed over to the petitioner. But, however, the original certificate of the VAO was produced by the respondents themselves during the enquiry and therefore that creates an obvious suspicion in the testimony of the P.W.1 and P.W.2. This apart, even as per P.W.1, he did not handover the money directly to the petitioner through P.W.2. It is her further submission that P.W.1 is an accused in various cases and therefore has motive and she has narrated the motive in detail in the affidavit filed in support of this writ petition. P.W.2 again is a person employed by P.W.1 in cutting the teak trees and therefore P.W.2 is an employee of P.W.1 and therefore he is also not an independent witness. Therefore, in this case neither the circumstances warrants payment of bribe to the petitioner nor it is proved by the independent witnesses. It is not a case of trap. Therefore, in all these circumstances, the finding of guilt by the enquiry officer merely by placing reliance on the evidence of P.W.1 and P.W.2 is erroneous in law. That apart, both the enquiry officer as well as the Appellate Authority concluded that the petitioner did not disprove the same by producing the evidence and no evidence can be produced for the negative as it is the case that the petitioner never received any bribe. It is preposterous on the part of the Authority requiring the petitioner to disprove the charges and therefore the impugned orders are illegal and it has to be interfered with in this writ petition.



8. Per contra, the learned Additional Government Pleader would submit that the punishment is imposed by following the due procedure. This Court while dealing with the writ petition as against the disciplinary enquiry has only the power of judicial review and shall not re-appreciate the evidence and determine the adequacy of the evidence. There is no positive evidence to disprove the testimony of P.W.1 and P.W.2 and the petitioner has not done anything to discredit the evidence of P.W.1 and P.W.2 to the satisfaction of the enquiry Authority or disciplinary authority or the Appellate Authority. In respect of the petitioner pointing out the previous enmity and other intention, the same has been rejected by considering the facts of the case cumulatively by the enquiry officer as well as the other authorities and therefore, contrary findings cannot be arrived at on the facts in exercise of the power of judicial review in the writ petition. She would submit that only the punishment of fixing in the lowest stage is imposed and therefore does not warrant interference by this Court.

9. I have considered the rival submissions made on behalf of both sides and perused the material records of the case.

10. In this matter I am in agreement with the submission of the learned Additional Government Pleader that the ground raised by the learned counsel for the petitioner is attacking the punishment order, that is, the findings of the enquiry officer is perverse, cannot be sustained. This is not a case of no evidence. P.W.1 and P.W.2 have deposed and due opportunity to cross examine has been given to the petitioner. After chief examination and cross examination by due appraisal of evidence, the enquiry officer has given the finding based on the evidence of P.W.1 and P.W.2 by rejecting the contention of the petitioner. Therefore, this Court cannot re-appreciate the evidence and come to a contrary finding of fact in the judicial review. Therefore, the ground of attack that the enquiry officer's finding is perverse cannot stand.

11. The second submission of the learned counsel for the petitioner is that the petitioner cannot be expected to disprove the charge. Even though the learned counsel for the petitioner is right in contending such evidence cannot be expected from the petitioner that too to prove the negative, the order of the Appellate authority has to be read as a whole and after having extensively relied upon the evidence of P.W.1 and P.W.2, the Appellate authority comes to the conclusion that the charge is proved and it is further mentioned that no evidence to the contrary has been let in by the petitioner. Therefore, the impugned order cannot be attacked by picking up a sentence alone out of the context and therefore I reject the contention.



12. Further submission of the learned counsel for the petitioner is that as per the procedure it is only the District Forest Officer who is the person to be approached and not the petitioner. I am not inclined to accept the same because then that would be on the presumption that only for works done in accordance with procedure bribes would be taken. That is not the case. The allegation of payment or taking of bribe can be in the matters where the petitioner has jurisdiction and where the petitioner has to do his duty in accordance with procedure and also for the works where the petitioner has no jurisdiction and where he cannot do anything also. To infer otherwise would be a presumption to agree with the contention of the petitioner that merely because the procedure contemplates first to approach the District Forest Officer, the petitioner could not have accepted the bribe.

13. Therefore, in this case even though strenuous attempt has been made by the counsel for the petitioner to demonstrate that the findings are perverse, I am unable to agree with the same as it is based on evidence on record.

14. Therefore, all the grounds raised by the counsel for the petitioner fails and does not make out a case for interference with the order of punishment. Accordingly, this writ petition stands dismissed. No costs.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Environment and Forest Department,
Fort.St.George, Chennai 600 009.
2. The Principal Chief Conservator of Forests,
Panagal building, Chennai 600 015.

+1cc to M/s.Selvi George, Advocate, S.R.No.26002
+1cc to the Government Pleader, S.R.No.25917

W.P.No.17135 of 2010

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NSK 04/05/2022