



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2022

CORAM :

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.29560 of 2013

and

M.P.No.2 of 2013

S.Kamaraj

...Petitioner

Vs.

The Managing Director,
THADCO,
Teynampet, Chennai - 18.

...Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for records relating to impugned order made in Se.Mu.No.A3/5451/2009 dated 25.09.2013 of the respondent, to quash the same and consequently direct the respondent to forthwith settle all the retiral benefits with accrued interest thereon.

For Petitioner : Mr.L.Chandrakumar

For Respondent : Mr.E.Veda Bagath Singh
Special Government Pleader

O R D E R

Heard Mr.L.Chandrakumar, learned counsel for the petitioner and Mr.E.Veda Bagath Singh, learned Special Government Pleader appearing on behalf of the respondent.

2. When the petitioner was employed as Junior Engineer under the respondent Corporation, he was levelled with a charge memo, dated 30.05.2011, along with one V.Devarajulu, Executive Engineer, to the effect that, they had put up a pile foundation instead of frame construction without soil testing, owing to which, there was a damage to the foundation and thereby, loss has occurred to the Government. During the course of enquiry, both the charges against the petitioner were held as "not proved" by the Inquiry Officer. It was further found by the Inquiry Officer that the responsibility cast under the statement of allegations supporting the charges was only on the higher



officials of the petitioner and that he had only carried out such orders of the superiors.

3. The Disciplinary Authority, however, through the impugned order dated 25.09.2013, had imposed a fine of 10% out of the total loss that had occurred to the Government, though the charges against the petitioner was held as "not proved". Incidentally, the co-delinquent, namely, V.Devarajulu, Executive Engineer, was awarded a fine at the rate of 20% of the loss.

4. In service jurisprudence, it is a settled legal proposition that, when in the domestic enquiry, it is found that the charges against the delinquent is not proved and the Disciplinary Authority proposes to deviate from the findings of the Inquiry Officer, he is mandated to issue a notice with reasons and proposal for such deviation and calling for the delinquent to give his explanation in this regard. In the absence of such notice, the consequential action cannot be sustained.

5. In Punjab National Bank and Others V. Kunj Behari Misra & Chief Personnel (Disciplinary Authority), Punjab National Bank and Others V. Shanti Prasad Goel reported in 1998 (7) SCC 84, the aforesaid proposition was upheld as follows:-

'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 favorable 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.''

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6. In the instant case, the charge against the petitioner came to be levelled on 30.05.2011, when he was due to retire in the month of June 2011. Though the Inquiry Officer had held both the charges as "not proved", the present impugned order imposing a fine of 10% of total loss amount, has been passed, without any deviation notice calling upon the petitioner to give his explanation. As such, the impugned order itself, cannot be sustained.

7. In normal circumstances, this Court would have remitted the matter back to the Disciplinary Authority for the purpose of issuing the notice of proposal to deviate. However, in the instant case, the findings of the Inquiry Officer, as extracted in the impugned order, reveals that there was absolutely no overt act or role of the petitioner in the charges. As a matter of fact, the Inquiry Officer had clearly rendered a finding that the petitioner, as a junior-most employee, is bound by the orders of the superiors, who were responsible for the charges. Above all, the charge itself came to be levelled against the petitioner at the verge of his retirement for an incident that occurred in the year 2003, which is about 8 years back. In this background, remitting the matter back to the Disciplinary Authority for issuing a show cause notice afresh, is not warranted.

8. In the light of the above findings, the impugned order passed by the respondent herein dated 25.09.2013, is quashed. Consequently, there shall be a direction to the respondent herein to pass appropriate orders to retire the petitioner from the services and for disbursement of his retirement benefits. The respondent shall pass such orders, atleast within a period of four weeks from the date of receipt of a copy of this order. The Writ Petition stands allowed accordingly. Consequently, the connected Miscellaneous Petition is closed. There shall be no orders as to costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar



To

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The Managing Director,
THADCO,
Teynampet, Chennai - 18.

+1 CC to The Special Government Pleader sr 25757
+1 CC to Mr.L.Chandrakumar, Advocate sr 24868.

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and
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SKM(CO)
SP(29/04/2022)