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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20.04.2022
Pronounced on	01.06.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.32205 of 2015
and
M.P.No.1 of 2015

K.P.Devakrishnan,
Assistant Engineer (RD),
Block Development Office (Village Panchayat),
Morappur, Dharmapuri District.

... Petitioner

Vs.

1.The Director of Rural Development
and Panchayat Raj,
Panagal Building,
Saidapet, Chennai - 600 015.

2.The District Collector,
Dharmapuri District,
Dharmapuri.

... Respondents

Prayer :

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the entire records relating to the impugned Punishment Order issued by the first respondent vide Na.Ka.No.8382/15/DPC 2.2 dated 05.08.2015 imposing punishment of stoppage of increment for three years with cumulative effect to the petitioner and to quash the same.

For Petitioner : Ms.A.Pramila
for Mr.P.Nethaji

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



serious in nature, the punishment as such, cannot be said to be disproportionate. By placing reliance on the counter affidavit, the learned Special Government Pleader submitted that since the charge related to collusion was held to be not proved, there is no necessity to initiate Disciplinary Proceedings against the Chairman or the Block Development Officer and therefore, there were no mala-fides.

5. I have given careful consideration on the submissions made by the respective counsels.

6. The entire charge against the petitioner was that, he had colluded with the Chairman and Block Development Officer by quoting low estimates for demolition work and subsequently, auctioned it for the higher price, thereby causing financial loss to the Government. In this charge, the aspect of collusion was held as 'not proved' by the Inquiry Officer. While the overt act implicates three persons including the petitioner herein, the second respondent had chosen to subject the petitioner alone with a disciplinary action.

7. As rightly pointed out by the learned counsel for the petitioner, such an action, would amount to an act of discrimination and opposed to the Doctrine of Equality. To substantiate her stand, the learned counsel placed reliance on the decision of this Court in the case of R.Kuppusamy Vs. The Government of Tamil Nadu, Revenue Department & others passed in W.P.No.19042 of 2010 dated 22.01.2020, wherein, the learned Judge had placed reliance on the decisions of the Hon'ble Supreme Court in support of this aspect. The relevant portion of the order reads as follows:-

"12. As seen above in G.O.(2D) No.340 Revenue Department dated 30.06.2003, he was permitted to retire without initiating any disciplinary proceedings. Whereas, a charge memo was issued to the petitioner for the misconduct in respect of the same incident. It is well settled law that disciplinary proceedings shall be initiated against all the delinquents and punishment shall be imposed to all equally corresponding to the graveness of the misconduct. It cannot be initiated against one officer leaving out the other involved in the same proceedings. In the instant case both the petitioner and the Head Quarters Deputy Tahsildar were cited as witnesses in the criminal case. In that event both should have been treated on the same pedestal. When it is considered that affixing signature in death certificate was due to lack of supervision, it shall



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be considered that the gravity of misconduct is lesser on the part of the sub-ordinate officer. In such circumstance, initiating disciplinary proceedings only against the petitioner amounts to selective discrimination and amounts to mala-fide exercise of power due to bias.

13. The Honourable Supreme Court in M.Raghavelu vs. Government of Andhra Pradesh and Another [1997 (10) SCC 779] has held that, when one person is acquitted co-delinquents are also entitled to acquittal. Acquitting one and punishing the other amount to discrimination.

14. In Man Singh vs. State of Haryana and Others [(2008) 8 MLJ 518 (SC)], it is held as follows:

"18. In view of the factual backdrop and the above-stated statement of HC Vijay Pal, we are of the opinion that the respondents cannot be permitted to resort to selective treatment to the appellant and HC Vijay Pal, who was involved in criminal case besides departmental proceedings. HC Vijay Pal has been exonerated by the appellate authority mainly on the ground of his acquittal in the criminal case, whereas in departmental proceedings he has been found guilty by the disciplinary authority and was awarded punishment for serious misconduct committed by him as police personnel.

19. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally



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even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of 'fair play' and reasonableness. We have, therefore, examined the case of the appellant in the light of the established doctrine of equality and fair play. The principle is the same, namely, that there should be no discrimination between the appellant and HC Vijay Pal as regards the criteria of punishment of similar nature in departmental proceedings. The appellant and HC Vijay Pal were both similarly situated, in fact, HC Vijay Pal was the real culprit who, besides departmental proceedings, was an accused in the excise case filed against him by the Excise Staff of Andhra Pradesh for violating the Excise Prohibition Orders operating in the State. The appellate authority exonerated HC Vijay Pal mainly on the ground of his acquittal by the criminal court in the Excise case and after exoneration, he has been promoted to the higher post, whereas the appeal and the revision filed by the appellant against the order of punishment have been rejected on technical ground that he has not exercised proper and effective control over HC Vijay Pal at the time of commission of the Excise offence by him in the State of Andhra Pradesh. The order of the disciplinary authority would reveal that for the last about three decades the appellant has served the Police Department of Haryana in different capacity with unblemished record of service."

8. Thus, the conduct of disciplinary action against the petitioner alone, while excluding the two other delinquents in the charge, is opposed to the Doctrine of Equality and also a clear act of discrimination and on this ground, the inquiry itself stands vitiated.

9. The learned counsel for the petitioner drew attention of



this Court to the order of punishment passed by the Disciplinary Authority dated 05.08.2015 and submitted that the order was a non-speaking order and also passed without application of mind.

10. As stated earlier, among the charges levelled against the petitioner, the charge that he had colluded with the Chairman and Block Development Officer, was held to be 'not proved' in the inquiry. However, the Disciplinary Authority in the penultimate order of punishment, had recorded that the petitioner had colluded with the councillors with a mala-fide intention to swindle Government money and thereby, there was a possibility for loss of revenue to the Government.

11. This finding clearly establishes that the Disciplinary Authority had not applied its mind to the report of the Inquiry Officer. Firstly, he had relied on the collusion aspect, which portion of the charge was not proved in the inquiry. Secondly, the charge against the petitioner was that he had colluded with the Chairman and the Block Development Officer, whereas, the Disciplinary Authority had baselessly found that the petitioner herein, had colluded with the "councillors". In view of such a finding, the stand taken by the learned counsel for the petitioner, stands substantiated for non-application of mind.

12. Likewise, the final order of the first respondent herein, though runs to about 8 pages, the ultimate findings is only in about two sentences of one paragraph. Even those findings, as pointed out above, was not on any established charges before the Inquiry Officer. In other words, there is absolutely no discussion as to how the Disciplinary Authority had accepted the findings of the Inquiry Officer and thereby imposed the punishment. Thus, as pointed out by the learned counsel for the petitioner, the impugned order of punishment is also deemed to be a non-speaking order.

13. This apart, the learned counsel for the petitioner raised the ground of delay in concluding the disciplinary action.

14. The learned Special Government Pleader appearing for the respondents pointed out that for the incident that occurred in the year 2010, the charges came to be framed in the same year and therefore, there was no delay in initiating the disciplinary action.

15. There cannot be any quarrel in such a contention. However, after the inquiry report was made on 20.08.2011, the second respondent herein had issued a show cause notice on 01.03.2012, calling upon the petitioner for further explanation. In reply, the petitioner had given his representation on 14.03.2012 itself. However, the first respondent had passed the



impugned order of punishment on 05.08.2015, which is after a period of three years and five months. Though the petitioner herein, had raised this delay as a substantive ground in the affidavit filed in support of his Writ Petition, the counter affidavit filed by the respondents does not give any explanations for the delay. Thus, this unexplained delay of more than three years is deemed to be 'inordinate' in nature and could have caused serious prejudice to the petitioner.

16. In connection with the prejudice, the learned counsel for the petitioner submitted that during the course of delay in considering the petitioner's further representation, a Promotion Panel for the post of Assistant Executive Engineer was dropped and owing to the pendency of the Disciplinary Proceedings, the petitioner's name was omitted from the panel. Though the mistake of not concluding the departmental proceedings was on the second respondent, the petitioner was made to suffer prejudice owing to the non-inclusion of his name in the panel while his juniors' names were included.

17. The learned counsel for the petitioner further relied upon a decision of the learned Single Judge of this Court in the case of K. Kannan Vs. The Additional Chief Secretary to Government of Tamil Nadu, Home (Police-2) Department passed in W.P.No.23644 of 2018 dated 28.08.2019, wherein in an identical circumstance, this Court had held that in view of the delay in considering the further representation which had resulted in dropping the Government employee's name from the Promotional Panel and thereby, interfered with the punishment. The relevant portion of the order reads as follows:-

"11..... When the explanation to the enquiry report was submitted on 31.11.2014, the Government sat over the file for 4 ½ years and issued impugned G.O., ordering punishment on 26.4.2018 and in the meanwhile, the petitioner came within the zone of consideration for promotion to the post of Addl. Superintendent of Police for the panel year 2017-18. Therefore, the petitioner's right to be considered for promotion to the next higher post was lost and in that view of the matter, the delay on the part of the respondent assumes larger significance. In fact, the Courts have consistently held that inordinate and unexplained delay by itself would cause great prejudice to the rights of the employees and the delay can be the sole basis for interfering with the disciplinary action initiated against the government servants. In this case, it is demonstrated that the petitioner suffered grave prejudice for not being considered for next higher promotion to the post of



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Addl. Superintendent of Police for the panel year 2017-18, in view of the pendency of the disciplinary action against him. Therefore, the petitioner suffered double jeopardy being punished, namely, stoppage of increment for a period of two years with cumulative effect and also loss of promotion to the next higher cadre, to the post of Addl. Superintendent of Police. This Court is informed that the petitioner is due for retirement in 2020, in which case, non-consideration of his promotion would have far reaching civil consequences through out his life time. Therefore, looking at from this angle, the case law relied upon by the petitioner has to be squarely applied to the factual matrix of the present case and on this ground alone, this Court is of the view that the disciplinary action culminated in the order of the penalty, has to be interfered with."

18. The aforesaid extract is self-explanatory. The order passed by the learned single Judge in the case of K. Kannan (supra) came to be affirmed by the Hon'ble Division Bench in W.A. No.23 of 2021 dated 20.01.2021.

19. This apart, in the following decisions also, the same ratio has been upheld.

20. In the case of Union of India Vs. CAT reported in 2005 (2) CTC 169 (DB), this Court held that, "the delay remains totally unexplained. Therefore, we have no hesitation at all in concluding that the ground of inordinate delay in proceeding with the departmental enquiry as referred to above by us, would come in the way of the Govt., to continue with the enquiry any further....."

21. In the case of P.V.Mahadevan Vs. M.D. Tamil Nadu Housing Board reported in 2005 (4) CTC 403, this Court after referring to various decisions, held that, the protracted disciplinary enquiry against a government employee should, therefore be avoided not only in the interest of the government employee but in public interests and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.



22. In the case of M.Elangovan Vs. The Trichy District Central Co-operative Bank Ltd., reported in 2006 (2) CTC 635, this Court, while quashing the second show cause notice on the ground of inordinate and unexplained delay in initiating and completing the disciplinary proceedings, allowed the Writ Petitions holding that the petitioners therein were entitled to all the benefits in accordance with law. The same view has been expressed by this Court in yet another decision in Parameswaran V. State of Tamil Nadu reported in 2006 (1) CTC 476.

23. It is now stated that the petitioner herein, had reached the age of superannuation. Now that, this Court has found that the punishment requires interference, the petitioner would be entitled for all the service and monetary benefits, which would include the promotional benefits also. Since the punishment imposed on the petitioner was one of stoppage of increment for three years 'with cumulative effect', the pensionary benefits of the petitioner would have been seriously affected and therefore, the same requires to be suitably revised.

24. In the light of the aforesaid findings, this Court is of the affirmed view that the entire disciplinary action and the consequential punishment is vitiated on the grounds of discrimination, non-application of mind, non-speaking order and delay in concluding with the proceedings.

25. Accordingly, the impugned order dated 05.08.2015 passed in Na.Ka.No.8382/15/DPC 2.2, is quashed. Consequently, there shall be a direction to the respondents herein, to pass appropriate orders, granting all service and monetary benefits to the petitioner, including notional orders of promotion to the post of Assistant Executive Engineer, on par with the petitioner's immediate Junior. Such an order shall also facilitate disbursement of all the arrears of the monetary benefits, including refixation of the pensionary benefits. The respondents shall pass such orders, within a period of eight weeks from the date of receipt of a copy of this order.

26. With the above directions, this Writ Petition stands allowed. Consequently, the connected Miscellaneous petition is closed. There shall be no orders as to costs.

Sd/-
Assistant Registrar (CS)

//True copy//

Sub Assistant Registrar



DP/Sni

To

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1.The Director of Rural Development
and Panchayat Raj,
Panagal Building,
Saidapet, Chennai - 600 015.

2.The District Collector,
Dharmapuri District,
Dharmapuri.

+1cc to Mr.P.Nethaji, Advocate SR.No.31976

Order made in
W.P.No.32205 of 2015
and
M.P.No.1 of 2015

GSM(CO)
AJ(08/06/2022)