



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 22.04.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.32566 of 2013

Dr.M.Dorairajan, B.V.Sc.,
Assistant Director,
Animal Husbandry (Retd.),
No.3/2, Pragadeeswarar Nagar, Ist Street,
Co-operative Colony Road,
Thanjavur - 613007.

... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by the Secretary to Government,
Animal Husbandry, Dairying and Fisheries Department,
Fort St.George, Chennai - 600009.

2.The Commissioner and Director of Animal Husbandry
and Veterinary Services, Chennai - 600006.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records from the first respondent relating to G.O.(D).No.255, Animal Husbandry, Dairying and Fisheries (AH.1) Department dated 29.12.2011, rejecting the review petition filed by the petitioner and to quash the same consequently direct the first respondent to give the monetary benefits to the petitioner to the Posts of Deputy Director and Joint Director.

For Petitioner : Mr.C.D.Johnson
for Mr.S.Baskaran

For Respondents: Mr.T.Chezhiyan,
Additional Government Pleader

ORDER

The petitioner herein, while being a part of the Committee for purchase of Ayurvedic, Siddha and veterinary drugs and medicines for the year 2001-2002 along with four other members, was levelled with two charges through the Charge Memo dated 11.01.2005, in the following manner:-

"1) Colluded with Dr.V.Subramanian, Joint Director of Animal Husbandry, he has sent letters to 13 Companies without verifying the market of drugs for the past 3 years, market price and potency of



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drugs.

2) Purchased 7 items of drugs without the label "Government supply Not for Sale".

Thus, he has violated rule 20 of Tamil Nadu Government Servants Conduct Rule 1973."

2. In the inquiry, the Inquiry Officer had found both the charges to have been 'not proved'. However, the Disciplinary Authority had deviated from the findings of the Inquiry Officer, through his proceedings dated 24.11.2008 and imposed the penalty of cut in pension of Rs.50/- per month, for a period of six months. As against the punishment, the petitioner has given a representation for re-consideration and subsequently, had filed a Writ Petition in W.P.No.29115 of 2010 whereby, this Court by an order dated 22.12.2010, had directed the first respondent to consider the said representation on merits and in accordance with law, within a stipulated time. Consequently, the respondents had passed the order in G.O.(D).No.255 Animal Husbandry, Dairying & Fisheries (AH1) Department dated 29.12.2011, rejecting the petitioner's representation. This order is under challenge in the present Writ Petition.

3. The learned counsel for the petitioner submitted that all the five members of the Committee were subjected to identical charges and in the case of co-delinquent namely Dr.P.Nedunchezian, this Court had quashed the charge memo mainly on the ground that when the Government had deviated from the Inquiry Officer's findings, no reasons were assigned.

4. The learned Additional Government Pleader appearing for the respondents submitted that since the petitioner is estopped from challenging the order of punishment, since he has accepted the punishment.

5. It is not in dispute that the charges relating to the co-delinquent (viz.,) Dr.P.Nedunchezian and the petitioner are one and the same. When the co-delinquent Dr.P.Nedunchezian had challenged the punishment before this Court in W.P.No.23868 of 2009 ['Dr.P.Nedunchezian Vs. The State of Tamil Nadu'], the learned single Judge of this Court had quashed the punishment through an order dated 22.11.2021, by holding as follows:-

..... "12. A careful reading of the aforesaid decisions cited supra clearly indicates that if the Disciplinary Authority disagrees with the findings of the enquiry officer, should mention the reason for such disagreement. The disciplinary authority, at the same time, has to communicate to the delinquent officer the reasons for disagreeing with the findings of the enquiry officer and thereafter, the authority concerned shall proceed and pass the final orders.



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13. On the facts of the present case on hand, the disciplinary authority has not recorded reasons for disagreement and the show cause notice was also served on the petitioner without giving any reasons for such disagreement, therefore by relying upon the decisions of Hon'ble Supreme Court cited supra, the said show cause notice served on the petitioner is liable to be quashed.

14. At this juncture it is also relevant to rely upon the decision of this Court, wherein this Court has passed an order while deciding the case of an identical issue. The relevant portion of the order is extracted below;

In the case of C.Devendhiran Vs. The Deputy Inspector General of Police, Villupuram Range (W.P.No. 150 of 2013) reported in 2020 (2) WLR 332.

"13. The Learned Senior Counsel for the Writ Petitioner has relied upon the decision reported in 1989 writ law reporter 274 considered rule 6(1) of TNPSS (D&A) Rules and it has been held as follows at para 3 and 4 of the said judgment.

"The rule enjoins the concerned authority to consider the three aspects set out therein specifically. Unless the appellate authority considers them it cannot be said that it has carried out its duties properly. The Supreme Court had occasion to discuss a similar question under R.27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. Dealing with the word 'consider' used in the said rule, the Supreme Court observed that the word 'consider' implies due application of mind- vide R.P.Bhatt v. Union of India. The following paragraph in the above judgment of the Supreme court can be usefully referred to with advantage-

"The word 'consider' in R.27(2) implies 'due application of mind'. It is clear upon the terms of R.27(2) that the appellate authority is required to consider (1) whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) Whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) Whether the penalty imposed is adequate and thereafter pass orders



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confirming, enhancing etc, the penalty, or may remit back the case to the authority which imposed the same. R27(2) casts a duty on the appellate authority to consider the relevant factors set forth in clauses (a), (b) and (c) thereof.

There is no indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with and if not, whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the Director General has also not given any finding on the crucial question as to whether the findings of the disciplinary authority were unwarranted by the evidence on record. It seems that he only applied his mind to the requirement of clause (2) of R.27(2) viz., whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of R.27(2) of the Rules the impugned order passed by the Director General is liable to be set aside."

14. In another judgment of this Court in the case of K.Kandasamy Vs. Deputy I.G. of police, reported in 2006 (4) MLJ 1382 in para 7, this Court has held as follows :-

"It is seen from the aforesaid portion of the impugned order that the Appellate Authority did not deal with any of the grounds of appeal raised by the petitioner. A departmental appeal is a continuation of the original proceedings. It is needless to point out that the last opportunity available for a delinquent, to canvass his case on merits, is at the appellate stage. After the appeal, a delinquent loses his right to challenge any disciplinary proceedings on merits, since the scope of interference on a revision or on a writ petition is very limited. Therefore, the rules themselves contemplate Appellate Authorities to go into the factual details and consider all the grounds of appeal before deciding an appeal. Unfortunately, the first respondent has chosen to dismiss the appeal by a nonspeaking order and hence, the Appellate Authority's order is liable to be set aside."



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15. It is also pertinent to refer the Judgment of the Hon'ble Supreme Court in Narinder Mohan Arya Vs. United India Insurance Company Ltd, reported in 2006(4) SCC 713, wherein the Hon'ble Supreme Court has held that even when an Appellate Authority agrees with the findings of the Disciplinary Authority in a departmental enquiry, it should give reasons so as to enable the Writ Court to ascertain there was an application of the mind as required by the relevant rules. The relevant portion is extracted hereunder;

"33. An appellate order if it is in agreement with that of the disciplinary authority may not be a speaking order but the authority passing the same must show that there had been proper application of mind on his part as regard the compliance of the requirements of law while exercising his jurisdiction under Rule 37 of the Rules."

16. In view of the decisions cited supra and Rule 6(1) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules, it is clear that the appellate authority is the final fact finding authority and he is expected to assess the evidences available on record by due application of mind and also record the reasons even though not elaborately, but indicating as to how the appellate authority has satisfied himself with the reasons given by the disciplinary authority. When Rule 6(1) of Tamil Nadu Police Subordinate Service (Discipline & Appeal) Rules mandates that the appellate authority should consider all those materials, in the instant case, no such finding has been given by the appellate authority except simply saying that he has perused some documents and came to the conclusion that the punishment awarded by the 1st respondent is not an excessive and rejected the same.

17. Considering the facts and circumstances of the case and also the decisions rendered by the Hon'ble Supreme Court and this Court cited supra, this Court with no hesitation, has come to the



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conclusion that the second respondent/appellate authority has passed a cryptic order/non-speaking order without considering the issues that were raised by the petitioner in his Appeal. As rightly pointed out by the learned senior counsel for the petitioner, the order of the appellate authority/ 2nd respondent is not in conformity with the rule 6(1) of TNPSS (D&A) Rules.

18. In fine, the impugned order in RC. No.047950/AP1(2)/2000, dated 03.07.2010 passed by the second respondent in respect of P.R. No. 67/ 2009 is quashed and the matter is remitted to second respondent to consider afresh and to pass orders thereon, on merits and in accordance with law, within a period of twelve (12) weeks from the date of receipt of the copy of this order.

19. With the above observations and directions, this writ petition is disposed of. No costs."

15. Considering the facts and circumstances of the case and the decisions cited supra, this court is of the view that the show cause notice and the rejection order issued by the 1st respondent are without any reason and the same are illegal and contrary to the decisions of the Hon'ble Supreme Court and also to the Government letter in Lr.No. 105983/Per.N/90, dated 08.02.1994 and can be construed as cryptic/non speaking order. Hence, on this ground, the impugned order is liable to be quashed. Further, by considering the fact that the punishment was imposed on the petitioner as early in the year 2008, this Court is of the opinion that at this distance point of time, it would not be appropriate for this Court to remit the matter to the authorities concerned to consider afresh."

6. When this Court had quashed the punishment pertaining to the co-delinquent who holds similar charges, the petitioner also would be entitled for the same order.

7. Insofar as the objection raised by the learned counsel for the petitioner that in view of the acceptance of the punishment, he cannot challenge the order of punishment is concerned, this Court is not in agreement to such a submission. When the procedure for inquiry is deviated and consequently, a punishment is imposed in an illegal manner, the mere subsequent acceptance of the punishment by the



delinquent, will not justify the improper or illegal inquiry conducted and therefore, would not be an estoppel for the delinquent to challenge the punishment. Now that this Court had earlier found the punishment based on similar set of charges for a co-delinquent, to be illegal and has quashed the same, the petitioner herein, is also entitled to succeed in a similar manner.

8. Accordingly, the impugned orders passed by the first respondent in G.O.(D).Nos.334 and 255 Animal Husbandry, Dairying & Fisheries (AH1) Department dated 24.11.2008 and 29.12.2011 respectively, are hereby quashed. The petitioner shall submit a representation to the respondents seeking notional promotion, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such a representation, the respondents shall consider the same and grant notional promotions to the posts of Deputy Director and Joint Director of Fisheries, from the date when his immediate junior was promoted, together with all monetart benefits. Such orders shall be passed, within four weeks from the date of the petitioner's representation.

9. With the above directions, this Writ Petition stands allowed. No costs.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

1.The Secretary to Government of Tamil Nadu,
Animal Husbandry, Dairying and Fisheries Department,
Fort St.George, Chennai - 600009.

2.The Commissioner and Director of Animal Husbandry
and Veterinary Services, Chennai - 600006.

+2 ccs to Mr.S.Baskaran, Advocate Sr.NO. 28555

+1 cc to Government Pleader Sr.NO. 28637

W.P.No.32566 of 2013

BR(CO)

A.SK(31/05/2022)