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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.4.2022

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.9591 of 2020

- 1 V.Bhuvaneshwaran ..Petitioner
Vs.
- 1 The Government of Tamilnadu
Rep by its Additional Chief Secretary to Govt.,
Municipal Administration and Water Supply Dept.,
Fort. St. George, Chennai-9.
- 2 The Commissioner,
Greater Chennai Corporation,
Rippon Building,
Chennai-3. ...Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus, calling for the concerned records from the 1st and 2nd respondent and quash the order of the 1st Respondent bearing GO (RT) No 47 Municipal Administration and Water Supply (MC-3) Dept. dated 12.5.2020 and the order of the 2nd Respondent bearing G.D.C.NO E13/43030/2012 dated 14.9.2013 as illegal arbitrary and contrary to law and consequently direct the respondents to restore the two increments of the petitioner and the arrears of salary with all consequential benefits.

For Petitioner : Mr.Balan Haridas

For Respondent No.1 : Mr.A.M.Iyyadurai, G.A.

For Respondent No.2 : Mr.R.Gopinath,
Standing Counsel

O R D E R

According to the petitioner, the petitioner while working as Assistant Executive Engineer in the second respondent Corporation, the petitioner was served with charge Memo dated 8.11.2012 on the following charges levelled against the petitioner



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Charge No.1 :

That lock and seal notice were issued to five owners of the building and those buildings are progressing with construction and that the petitioner did not take further action to stop the construction and seal the building.

Charge No.2 :

That I had issued Stop Work Notice to 11 building owner and that the petitioner failed to stop unauthorized and deviated construction.

Charge No.3 :

That the petitioner failed to take action to issue demolition notice or Lock and Seal Notice to the Buildings mentioned in Charge No.2.

Charge No.4 :

That the petitioner failed to stop unauthorized construction and thereby failed to perform statutory duties such as monitoring, deduction, issue of notices and launching prosecution.

Charge No.5 :

That the petitioner violated Rule 20 of the Madras Corporation Servant's Conduct Rules.

On the aforesaid charges, an enquiry was conducted and the enquiry officer submitted report holding that except Charge No.5, other charges are proved. Charge No.1 and 3 are partly proved and charge No.2 and 4 are proved. Based on the report of the enquiry officer, the second respondent imposed a punishment of stoppage of increment for a period of two years with cumulative effect. Assailing the aforesaid punishment order, the petitioner has preferred an appeal before the Appellate authority viz., the first respondent herein. According to the petitioner, the Appellate authority passed the order without considering the grounds raised by the petitioner. Hence, the petitioner has preferred the present writ petition before this Court.

2. According to the learned counsel appearing for the petitioner, the petitioner has preferred an appeal before the Appellate authority raising various grounds in the appeal. The first respondent while recording the grounds raised by the petitioner, without assigning any reason or discussion, simply rejected the appeal by passing non speaking order. The



Appellate authority has not considered the Rules and passed cryptic order and therefore, the impugned order is liable to be set aside.

3. In the counter affidavit filed by the first respondent it is stated that the petitioner has preferred an appeal against the punishment imposed by the second respondent after the lapse of six years. On perusal of the impugned order passed by the first respondent, there is no discussion about the delay in filing the appeal petition. Therefore, the first respondent passed the order without giving any reason, rejected the claim of the petitioner.

4. Heard the rival submissions of the parties and perused the materials available on record.

5. This Court in an identical issue in A.Rajendran vs. The Deputy Commissioner of Police (Armed Reserve) Chennai City Polie, Egmore, Chennai-8. [W.P.No.8782 of 2013, dated 3.2.2020] elaborately discussed about the role of the Appellate Authority who is expected to 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 and held as under:

'16. 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, 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



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appeal by a non-speaking order and hence, the Appellate Authority's order is liable to be set aside."

17. 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."

18. 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."



6. In the light of the decision cited supra, this Court is of the view that the Appellate Authority viz., the first respondent herein has confirmed the order of the disciplinary authority without taking note of the grounds raised by the petitioner in the appeal and hence, the order passed by the Appellate Authority is Non speaking and cryptic order and the same is liable to be quashed. Accordingly, this Court is inclined to pass the following order:

(i) The impugned order passed by the first respondent in GO (Rt) No. 47 Municipal Administration and Water Supply (MC-3) Dept. dated 12.5.2020 is quashed and remitted back to the first respondent to consider afresh and pass appropriate orders.

(ii) The first respondent shall afford opportunity to the writ petitioner and pass appropriate orders as expeditiously as possible preferably within a period of twelve weeks from the date of receipt of copy of the order.

7. The writ petition is allowed to the aforesaid extent. No costs.

Sd/-
Assistant Registrar(CS IV)

True Copy//

Sub Assistant Registrar

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To

1 The Additional Chief Secretary to Govt.,
Government of Tamilnadu,
Municipal Administration and Water Supply Dept.,
Fort. St. George, Chennai-9.

2 The Commissioner,
Greater Chennai Corporation,
Rippon Building, Chennai-3.

+1cc to Mr.R.Gopinath, Advocate, S.R.No.26235
+1cc to the Government Pleader, S.R.No.26160

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NSK 02/05/2022