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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.32276 of 2016
and
W.M.P.Nos.27997 & 27998 of 2016

R.Ansar

...Petitioner

-Vs-

1. The Secretary to Government,
Rural Development and Panchayat
Raj Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Director,
Rural Development and Panchayat
Raj Department,
Panakal Buildings,
Saidapet, Chennai - 600 015.
3. The Assistant Director,
Village Panchayat Union,
Krishnagiri District.
4. The District Collector,
Krishnagiri District,
Krishnagiri.

...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 of the second respondent herein in Na.Ka.No.5964/2014/TPC2-2 dated 31.03.2016, quash the same and consequently direct the 4th respondent to promote the petitioner with all attendant benefits to the post of Block Development Offficer.

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

For Respondents : Mr.C.Selvaraj,
Additional Government Pleader



ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.

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2. The petitioner herein, while serving as a Deputy Block Development Officer (Panchayats), was levelled with charges through a charge memo dated 22.04.2013 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, to the effect that he along with co-delinquents had failed to carry out the duties and responsibilities entrusted to them, resulting in a wasteful expenditure to the tune of Rs.70 lakhs supplying multiple works and bringing them below Rs.1 lakh to avoid technical sanction, excess expenditure in maintenance and water supply, double payments for road works and the irregularity in payment of the executive road works. Based on the levelled charges, the petitioner was subjected to a domestic enquiry and the Enquiry Officer had submitted a report dated 27.11.2013, holding all the charges as proved. The petitioner had given his further explanation on 11.12.2013 on the report of the Enquiry Officer. However, the explanation was kept pending for more than 3 years and ultimately, on 31.03.2016, the petitioner was imposed with a punishment of stoppage of increments for a period of 2 years with cumulative effect. Challenging the punishment, the present writ petition has been filed.

3. Along with the petitioner, 3 other officials from the Panchayat Administration, namely, Block Development Officer (Village Panchayat), Assistant Engineer (Rural Development) and Union Overseer, were also charged under Rule 17(b) for identical lapses. While the petitioner, the Assistant Engineer and the Union Overseer were imposed with a punishment of stoppage of increments for a period of 2 years "with" cumulative effect, the Block Development Officer was imposed with a punishment of stoppage of increments for a period of 2 years "without" cumulative effect. It is not in dispute that the charges against the Block Development Officer and the petitioner and other co-delinquents were one and the same.

4. The learned counsel for the petitioner predominantly raised two grounds. Firstly, she would submit that though the charges against the Block Development Officer and the petitioner herein, who was a Deputy Block Development Officer, were one and the same, the disciplinary authority had chosen to impose a lesser punishment for the Block Development Officer, which is an act of discrimination. In support of such a claim, the learned counsel placed reliance on a decision of the Hon'ble Division Bench of this Court in the case of The Secretary to Government, Public Works Department and others Vs. S.Bright Solomon and



another passed in W.A.(MD) Nos.1218 and 1219 of 2015, dated 17.12.2019, as well as a decision of the Hon'ble Supreme Court in the case of Man Singh Vs. State of Haryana and others reported in 2008 (4) L.L.N. 113. The second ground raised by the learned counsel for the petitioner is that, though the enquiry report was made on 27.11.2013 and the petitioner had submitted his further explanation on 11.12.2013 itself, the impugned order was passed on 31.03.2016, after an inordinate delay. In the mean time, the panel for promotion to the post of Block Development Officer was drawn on 01.03.2016 and quoting the pendency of the domestic enquiry, the petitioner's name was not considered for promotion, which has caused serious prejudice to him. On this ground also, the learned counsel sought for quashing of the impugned order.

5. Per contra, the learned Additional Government Pleader appearing for the respondents placed reliance on the averments in the counter affidavit and submitted that though the charges against the petitioner and the Block Development Officer are one and the same, the responsibility and duty of the Deputy Block Development Officer is higher and in view of this, he was imposed with a higher punishment. On the ground of delay, the learned Additional Government Pleader submitted that after the enquiry report was passed and the petitioner had given his explanation, further proceedings were immediately acted upon and owing to some administrative delay, the punishment order came to be passed only on 31.03.2016. In view of this administrative delay, he would submit that no interference is required to the order of punishment.

6. The lapses pointed out in the charge memo against the petitioner herein, as well as the Block Development Officer and others, are that an expenditure of Rs.70 lakhs had been incurred in 10 months in one Village Panchayat for 68 works from village panchayat fund, including 18 new bore wells, 17 cement road formation and 28 drinking water pipeline works. The lapse pointed out was that the expenditure incurred was high and that all the delinquents, in order to avoid technical sanction for works costing more than Rs.1 lakh, had split up the works into multiple works. The further lapse pointed out was that the expenditure for maintenance of street lights have been incurred in excess.

7. This Court is not in agreement with the submission of the learned Additional Government Pleader that it was the irresponsibility of the Deputy Block Development Officer, which had caused the lapses. G.O. (Ms) No.92, Rural Development (C.III) Department, dated 26.03.1997, prescribes the responsibilities of a Deputy Block Development Officer. As per Clause 3.10 of the said Government Order, the main duty of the



Deputy Block Development Officer is to bring to the notice of the Inspector any irregular resolution of the Village Panchayat or cases of defalcation of panchayat funds for taking appropriate action under the Act, The Deputy Block Development Officer should also inspect all the panchayats in his jurisdiction atleast once in a quarter and complete the annual audit of all the Village Panchayats.

8. The lapses pointed out, which lead to framing of charges, are not the sole responsibility of the Deputy Block Development Officer. As a matter of fact, the counter affidavit states that when the District Collector had conducted an inspection, he had found these lapses and had recommended for initiation of the disciplinary proceedings against the Panchayat Administration, Block Development Officer, Deputy Block Development Officer, together with the technical officers. Thus, the charges are cumulatively assigned to each of the delinquents for dereliction of their duties and for having committed the misconducts. If that be so, when the Enquiry Officer has found all the charges to have been proved, there is absolutely no justification on the part of the disciplinary authority to impose a lesser punishment of stoppage of increment without cumulative effect to the Block Development Officer.

9. The Hon'ble Division Bench of this Court, in S.Bright Solomon's case (supra), had applied the Doctrine of Equality to a domestic enquiry proceeding and by placing reliance on a decision of the Hon'ble Supreme Court, in the case of Rajendra Yadav Vs. State of Madhya Pradesh reported in (2013) 3 SCC 73, had held that, when the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charge of misconduct was identical or the co-delinquent was foisted with serious charges, Doctrine of Equality would require that the concerned employee and the co-delinquent should be equally placed.

10. The Hon'ble Supreme Court, in Man Singhs' case (supra), had also held that when the charges relating to two delinquents are one and the same, the Doctrine of Equality requires to be applied in a fair manner and imposing of a lesser punishment for one co-delinquent, would amount to discrimination. The relevant portion of the judgment reads as follows:-

"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



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could ever have made it. The concept of equality as enshrined in Art. 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 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 government 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."

11. In normal circumstances, this Court would have applied the Doctrine of Equality and the discrimination rendered to the petitioner and would have directed the disciplinary authority to pass orders for a lesser punishment that was imposed in the case of the co-delinquent, namely the BDO. However, the present punishment also suffers from another illegality of an inordinate delay in concluding the disciplinary proceedings.

12. Though the enquiry report was passed on 27.11.2013 and the petitioner had rendered his explanation on 11.12.2013, the explanation was not considered for more than 3 years and ultimately, the punishment was caused on 31.03.2016. In the mean time, the department had released the seniority panel on 01.03.2016 for the post of Block Development Officer. Since the disciplinary proceeding was pending on the crucial date of the promotion panel, the petitioner's name was omitted from the panel. The only reason assigned by the respondents is that there was an administrative delay in considering the petitioner's further explanation.

13. On the ground of delay in concluding the disciplinary proceedings, this Court would not normally set aside the order of punishment. It has been held in various decisions that all the surrendering circumstances require to be weighed for the purpose of interfering with the punishment order, on the ground



of delay. In the instant case, though the delay had caused serious prejudice to the petitioner herein, since he was deprived of his promotion during the relevant point of time, owing to non-consideration of his further representation in time by the respondents and his juniors have been promoted and the petitioner was kept awaiting for more than 3 years. This apart, there was an act of discrimination on the part of the respondents in imposing a lesser punishment to the co-delinquent.

14. Above all, the impugned order is also a non-speaking order. Though the order of punishment runs to about 8 pages, the findings are found in the penultimate portion of the order. As per the findings, the disciplinary authority had accepted the report of the Enquiry Officer in a single sentence that the estimates were split up into many packages to avoid the administrative sanction of the District Collector, which is against the instructions given, which shows that there was a malafide intention and violation of procedures. Apart from this sentence, there is absolutely no discussion as to how the disciplinary authority had come to a subjective satisfaction that the charges were held to be proved. In the absence of the same, the order itself is deemed to be one of non-application of mind and consequently is regarded as a non-speaking order.

15. Under Rule 17(b)(ii) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, the disciplinary authority is mandated to take into consideration the further representation of the delinquent before imposing any penalty. In the instant case, there is absolutely no reference to the further representation of the petitioner dated 11.12.2013 and on this ground also, the order of punishment is deemed to be one of non-application of mind.

16. For all the foregoing reasons, this Court is of the considered view that the petitioner can be imposed with a lesser punishment, as that of the co-delinquent, viz., stoppage of increment for a period for two years, "without" cumulative effect, with effect from 31.03.2016. Since the punishment period would stand completed on 30.03.2018, the petitioner would be entitled for all the service and monetary benefits, including promotion and the consequential promotional benefits.

17. In the result, the impugned order dated 31.03.2016 is quashed. Consequently, there shall be a direction to the second and fourth respondents herein to pass appropriate orders, imposing the punishment of "stoppage of increment for a period of two years 'without' cumulative effect", granting all the service and monetary benefits to the petitioner, which may have been deprived to him, in view of the impugned punishment. The second and fourth respondents shall also pass appropriate orders



granting notional promotion to the petitioner to the post of Block Development Officer, from the date on which his immediate junior was promoted, together with all the consequential service and monetary benefits. Such orders shall be passed by the respondents within a period of six (6) weeks from the date of receipt of a copy of this order.

18. The Writ Petition stands, accordingly, allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Vacation Officer)

//True Copy//

Sub Assistant Registrar

hvk

To

1. The Secretary to Government,
Rural Development and Panchayat
Raj Department,
Secretariat, Fort St. George,
Chennai - 600 009.
2. The Director,
Rural Development and Panchayat
Raj Department,
Panakal Buildings,
Saidapet, Chennai - 600 015.
3. The Assistant Director,
Village Panchayat Union,
Krishnagiri District.
4. The District Collector,
Krishnagiri District,
Krishnagiri.

+1cc to Mr.P.Nethaji, Advocate, S.R.No.29957

W.P.No.32276 of 2016
and W.M.P.Nos.27997 & 27998 of 2016

AK-II (CO)
SU(01/06/2022)