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W.P.No.9707 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.07.2022

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.9707 of 2014

and

M.P.No.1 of 2014

J.Elango

... Petitioner

Vs.

1.The State of Tamil Nadu
rep. by the Secretary
Environment & Forest Department
Fort St.George, Chennai-9.

2.The Principal Chief Conservator of Forests
Panagal Buildings, Saidapet,
Chennai-15.

... Respondents

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 the first respondent's order made in G.O (D).No.469 dated 27.12.2013, to quash the same and consequently direct the respondents to settle the entire DCRG benefits forthwith without any deduction.

For Petitioner : Mr.L.Chandrakumar

For Respondents
[R1 and R2] : Mr.M.Bindran
Additional Government Pleader



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ORDER

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The order of punishment of cut in pension and the recovery of financial loss occurred to the State Exchequer is under challenge in the present writ petition.

2. The petitioner was appointed as Forester on 19.01.1978. He was promoted to the post of Ranger during the year 1989-1990 and retired from service without prejudice to the departmental disciplinary proceedings initiated against him on 30.11.2011.

3. A charge memo dated 07.02.2005 was issued against the writ petitioner with an allegation that, while handing over the charge on 24.04.1998 to the then Ranger Thiru R.Kulasekaran, there was a short fall of 321 pieces plus 1 gunny bag of chips of sandal wood and other allied charges were also framed that the petitioner had failed to hand over the materials regarding O.R.No.4 of 1988 and because of the said lapses, the successor has made an information to the authorities.

4. The petitioner submitted his explanation, denying the charges.

Not satisfied with the explanation, the Disciplinary Authority appointed an



Enquiry Officer, who in turn, conducted an enquiry, affording opportunity to the delinquent authority. The charge contains details regarding the financial loss occurred to the State and the lapses committed by the writ petitioner by not handing over the sandal wood pieces. The allegation was that the petitioner has not handed over the charge to the successor official, which resulted in financial loss to the State Exchequer. The writ petitioner denied the charges and thus, the Enquiry Officer conducted an enquiry. The successor officer Mr.R.Kulasekaran, deposed before the Enquiry Officer. He has clearly stated that he has taken charge from the writ petitioner on 24.04.1998 and the materials in connection with the cases were not handed over to him. As per the inventory, the writ petitioner Mr.J.Elango had not even handed over the Vehicles. The petitioner has not furnished the clear details regarding the sandal wood pieces with reference to the particular case and in respect of the cases registered by the Department of Vigilance and Anti-Corruption.

5. At the outset, it was deposed by the successor Forest Ranger that the petitioner had not handed over the charges with all such details relating to the case and about the sandal wood pieces and other items. Even on behalf of the delinquent, some staff members were examined by the Enquiry Officer. The Enquiry Officer considered the materials available on



record and also deposition of the witnesses. The Enquiry Officer arrived a conclusion that the petitioner has committed certain lapses by handing over the charge properly to the successor official, which resulted in financial loss in State Exchequer. Accordingly, held that all the charges against the writ petitioner are held proved.

6. The writ petitioner submitted his further objections on the enquiry report. Thereafter, the Government issued G.O(D)No.469 Environment and Forest Department dated 27.12.2013, imposing the penalty of cut in pension and further, imposed the recovery of a sum of Rs.4,32,766/- towards the financial loss caused to the State Exchequer. The said amount has been recovered from the gratuity of the writ petitioner and the balance amount is sought to be recovered by way of instalments from the pension.

7. The learned counsel for the petitioner mainly contended that there was a delay in initiation of disciplinary proceedings against the writ petitioner. The allegations set out against the writ petitioner was that he had not handed over the charge on 24.04.1998 to his successor Forest Ranger. However, the charge memo was issued in the year 2005 and by that time, there was a possibility of change of circumstances, which were not taken note by the competent authorities.



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8. The learned counsel for the petitioner is of an opinion that on account of delay, there is a possibility of shifting the responsibility on the writ petitioner by other officials and if at all the charges was not handed over properly during the relevant point of time, the receiving officer ought to have informed the same immediately to the higher authorities. Thus, the said contributory lapses on the part of the successor officer is also to be taken into consideration, while imposing the recovery and penalty.

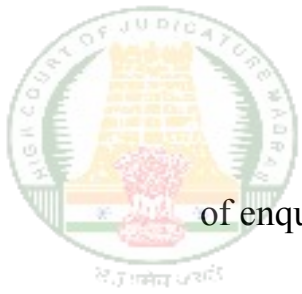
9. The learned Additional Government Pleader appearing on behalf of the respondents objected the said contentions by stating that the charges against the writ petitioner were serious. Five charges were framed against the writ petitioner with details. The petitioner denied the charges and an Enquiry Officer was appointed on 08.11.2005 and the petitioner and the petitioner had submitted his preliminary explanations on 12.04.2005. The Enquiry Officer Thiru K.Loganathan, Assistant Conservator of Forests, Dharmapuri Division, conducted the enquiry, verified all the connected documents, completed the enquiry and submitted the enquiry report on 22.02.2007. The petitioner had submitted his final explanation on 01.06.2012. Among the 4 charges levelled against the petitioner, the charge 1 and 4 are held as proved and charge 5 as partly proved. Charge 2



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and 3 are not proved. The Enquiry Officer observed the store items 4 to 7 listed in charge 5 were in charge of the concerned Forester and the petitioner is held responsible for items 1 to 3. Therefore, the charge 5 is partly proved. The Harur Forest Division was having lot of sandal wood trees, which were cut and smuggled by antisocial elements. The Range officer had detected many such cases and the seized sandal wood was kept safely in Natchinampatti Government godown. Similarly, the sandal wood seized in Morappur range was also kept in that godown. At the time of effecting Transfer Charge Report, the petitioner did not hand over the sandal wood kept in Natchinampatti godown. He did not even properly handover the charge of Morappur Range to his successor at the time of his transfer. This is mainly due to the shortage of sandal wood mentioned in the charge sheet. To cover up the lost sandal wood, the petitioner did not hand over the charge, knowing fully well that the shortage of sandal wood and other items will be brought to the notice of the District Forest Officer.

10. The learned Additional Government Pleader contended that complete opportunity was provided to the writ petitioner and the Enquiry Officer also conducted the enquiry in a detailed manner, setting out all facts and circumstances. The details of the materials, which caused financial loss to the State were also quantified item wise during the process



of enquiry.

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11. The counter filed by the respondents reveals that “the petitioner had given an undertaking at the time of his retirement on 30.11.2007, that if any lapse or Government loss is found at later stage, he had agreed to pay the Government from his pensionary benefits. Based on the Enquiry Officer's report, the Principal Chief Conservator of Forests had written to Government vide Reference No.B1/69073/2007, dated 29.11.2007 and the Government after carefully verifying all the records connected to this case, issued recovery orders in Government order (D) 469, Environment and Forest (FR12) Department dated 27.12.2013. Recovery orders were issued after giving reasonable opportunity to the petitioner to defend his case. The impugned order of recovery for the sandal wood, which was not handed over by the petitioner, is just and lawful. It is a fact that the petitioner made a Government loss of Rs.4,32,766/- in total violation of Tamil Nadu Forest Department Code and other service conditions.”

12. This Court is of the considered opinion that the procedures as contemplated under the Discipline and Appeal Rules were scrupulously followed. The Enquiry Officer conducted a detailed enquiry, affording opportunity to the writ petitioner, who in turn, availed off all the said



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opportunities. The details regarding the charges and the documents and depositions of the witnesses, were also elaborately considered by the Enquiry Officer. Thus, there is no infirmity in respect of the findings arrived by the Enquiry officer, which all are based on the documents and evidence available on record.

13. As far as the quantum of punishment is concerned, this Court do not find any disproportionality or otherwise. Regarding recovery of financial loss, it is a consequential one and whenever a public servant caused financial loss to the State, the said financial loss is to be assessed and recovered.

14. In the present case, the allegations against the writ petitioner are proved and based on the proved charges, the financial loss caused to the State was also calculated and accordingly, the said financial loss is recovered from the writ petitioner. This being the factum, this Court do not find any infirmity or perversity in respect of order impugned passed by the respondent.

15. Accordingly, the Writ Petition stands dismissed. No costs.

Consequently, connected Miscellaneous Petition is closed.



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Jeni/Kak

Index : Yes

Speaking order : Yes

To

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- 2.The Principal Chief Conservator of Forests,
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S.M. SUBRAMANIAM, J.

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