IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.32466 of 2014
and
M.P.No.1 of 2014

R.Arasu ...Petitioner

Vs.

1. The District Collector,
   Kancheepuram District.

2. The Joint Commissioner,
   O/o. The Commissioner
   of Revenue Administration,
   Chepauk, Chennai - 5.

3. The Secretary to Government,
   Revenue Department,
   Fort St.George,
   Chennai - 9. ...Respondents

Prayer:Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records of the respondents in connection with the impugned orders passed in Na.Ka.No.A1/68346/2002 dated 02.10.2006 by the first respondent, Na.Ka.No.Pani 5(2)/85146/2005 dated 14.12.2006 by the second respondent and G.O. (1D) No.478 Revenue Pani 7(1) Department, dated 01.10.2014 by the third respondent and quash the same.

For Petitioner : Mr. K.Venkataramani, Sr. Counsel
for Mr. M.Muthappan

For Respondents: Mr.T.Chezhiyan, AGP

O R D E R

The petitioner herein, while serving as a Village Administrative Officer at Kanchipuram District, was levelled with charges under Rule 17 (b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 [hereinafter referred to as "TNCS (D&A) Rules"], alleging that he had issued bogus patta, tampered the village records, changed patta number without Tahsildar's permission, removed the pages of 10 (1) chitta, issued pattas by creating bogus files and effected sub divisions in village accounts by entering false file numbers. Along with the charge-memo, three documents were relied upon by the first respondent herein, but no witnesses were shown in the charge-memo. Based on the Inquiry Officer's Report, the Disciplinary Authority had imposed the punishment of dismissal from service, through the impugned order dated 02.10.2006. The appeal against the dismissal order was rejected on 14.12.2006. The petitioner herein had preferred a Revision Petition before the Government on 29.10.2007, which was rejected after 7 years, i.e. on 01.10.2014. Challenging these orders, the present Writ Petition has been filed.

2.Heard Mr.K.Venkataramani,learned Senior Counsel appearing for the petitioner and Mr.T.Chezhiyan, learned Additional Government Pleader appearing on behalf of the respondents.

3.Mr.K.Venkataramani, learned Senior Counsel appearing for the petitioner predominantly questioned the procedure adopted by the respondents in conducting the departmental enquiry. According to him, the Inquiry Officer had not issued the mandatory questionnaire, prior to commencing of the enquiry. Further, he questioned the charge memo itself, stating that it was not accompanied by the list of witnesses and that the three documentary evidences referred to therein, were not furnished to the petitioner.

4.It is also his submission that during the course of enquiry, the Inquiry Officer, had not followed the procedures contemplated under Rule 17(b) of the TNCS (D&A) Rules and that the documents relied upon in the charge-memo were only available for perusal before the Collector's Office and the copies were not issued to the petitioner. In view of all these infirmities, the consequential punishment pursuant to the Inquiry Report, cannot be sustained.

5.Per contra, Mr.T.Chezhiyan, learned Additional Government Pleader appearing for the respondents placed reliance on the averments on record and submitted that the charges by themselves are very serious in nature. He would submit that the petitioner herein, being a Village Administrative Officer, is a custodian of the village records and therefore, tampering of records is a misconduct which cannot be dealt with leniently. It is in this background, the Inquiry Officer had held the charges to be proved and consequently, the disciplinary authority had imposed the punishment of dismissal from service.

6.I had given careful consideration to the submissions made by the learned counsel on either side.

7.Rule 17 (b) of the TNCS (D&A) Rules prescribes the procedure for conduct of departmental proceedings. As specified in Rule 8, when it is proposed to impose any of the penalties on a Government servant, the grounds on which it is proposed to take action, shall be reduced to the form of a definite charges and communicated to the person charged, together with a statement of the allegation, on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case.

8.The Rule further contemplates that an oral enquiry shall be held and during the enquiry, oral evidence shall be heard as to such of the allegations as are not admitted and the person charged shall be entitled to cross-examine the witnesses to give evidence in person.

9.The general procedures in conduct of departmental enquiry were laid down by the Hon'ble Supreme Court, in the case of the State of Uttaranchal and others vs. Kharak Singh reported in (2008) 8 SCC 236, in the following manner:

> “11) From the above decisions, the following principles would emerge:
>
> i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.
>
> ii) If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the Enquiry Officer. If the said position becomes known after the appointment of the Enquiry Officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.
>
> iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/ delinquent charged, give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/ delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.
>
> iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing

authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any."

10.Thus, it is seen that the charges in a departmental enquiry, requires to be proved on the basis of the statements of the witnesses, as well as the documentary evidences. More particularly, when a charge involves tampering of Government records, the contents of such records require to be established through oral evidences. This aspect has been highlighted by the Hon'ble Supreme Court in the case of Roop Singh Negi vs. Punjab National Bank and others reported in (2009) 2 SCC 570, in the following manner:

"10.Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence. We have noticed herein before that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the offence was committed in such a manner that no evidence was left."

11.The aforesaid extract is self-explanatory. As held by the Hon'ble Supreme Court, when some documents are subject matter of the departmental enquiry, the contents of such documents require to be established in oral evidence.

12.In the instant case, the petitioner had specifically raised a ground that no oral or documentary evidence was let in during the course of a domestic enquiry. This aspect has not been denied by the respondents in the counter affidavit. On the other hand, the respondent claims that when serious charges are levelled against the petitioner, it is the primary responsibility of the petitioner to defend himself to get out of the charges and the onus of proving that the petitioner is not guilty, lies with the petitioner.The respondent further submitted that the examination of the witnesses would be done only on the option of the delinquent and since the petitioner had not opted for examination of witnesses, there is no infirmity in the conduct of the enquiry.

13.I am not in agreement with these objections raised by the respondents.

14.In departmental proceedings, when definite charges are laid, the Inquiry Officer, who is a Quasi-Judicial Authority is required to substantiate these charges on the basis of materials on record or should establish that there was probability that the charges are made out and thereafter the onus would shift on the delinquent to establish his case through cross examination of the witnesses or otherwise. Thus, the initial burden would lie on the Inquiry Officer and he cannot shift such a burden on the delinquent. The Hon'ble Supreme Court in the case of M.V. Bijlani V. Union of India and Others reported in 2006 (5) SCC 88, had upheld this ratio in the following manner:-

> "25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidences to prove the charge. Although the charges in a departmental proceedings are not required to be proved like a criminal trial, i.e., beyond all reasonable doubts, we cannot lose sight of the fact that the Enquiry Officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on

> record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.”

15. As stated earlier and as held by the Hon'ble Supreme Court in the above decisions, when the charges are to the effect that the petitioner had tampered with such records or issued such false revenue documents, the department is required to establish those charges by letting in oral evidence with an opportunity to the delinquent to cross-examine those witnesses. While that being so, the respondents have neither let in oral evidences nor marked any documents before the Inquiry Officer. Furthermore, when the petitioner herein had specifically requested for supply of the copies of the documents, the respondents seem to have directed him to go to Collector's office and peruse the documents. Such a conduct would not amount to furnishing of the documents and is against the procedure contemplated for conduct of a domestic enquiry under the TNCS (D&A) Rules.

16.The learned Additional Government Pleader had submitted that the charges levelled against the petitioner are very serious in nature and therefore, a lenient view should not be extended to the petitioner.

17.It is no doubt true that the charges against the petitioner, who was holding the post of Village Administrative Officer, is very severe in nature. When such severe charges are imputed against a revenue official, the respondents ought to have diligently followed the procedures and ensured that the domestic enquiry is conducted, in accordance with the Rules and the Principles of Natural Justice. But a lethargic approach has been extended by the respondents during the course of a domestic enquiry by flouting the procedure for conduct of the enquiry at every stage commencing from the inception i.e., since the charges were leveled till passing of the final order by the Revisional Authority, which concluded with an inordinate delay of about 7 years.

18.This Court expresses its dissatisfaction to the manner in which such serious charges have been dealt with by the Department. However, merely because the charges are serious in nature, it cannot be automatically construed that the charges are true, unless and until, it is properly proved during the course of enquiry. Such proof is obviously missing in the present case and therefore, the consequential punishment imposed on the petitioner cannot be sustained.

19. It is now brought to the notice of this Court that the petitioner herein had reached the age of superannuation.

20. In the light of the above findings and observations, the impugned order passed by the first respondent dated 02.10.2006, is quashed. Consequently, there shall be a direction to the respondents herein to pass appropriate orders, for disbursal of the petitioner's retirement benefits, as well as the pensionary benefits, together with service benefits and attendant benefits. Such orders shall be passed, atleast within a period of six weeks from the date of receipt of a copy of this order. The Writ Petition stands allowed accordingly. Consequently, the connected Miscellaneous Petition is closed. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

DP/Pns

To

1. The District Collector,
   Kancheepuram District.

2. The Joint Commissioner,
   O/o. The Commissioner of Revenue Administration,
   Chepauk, Chennai - 5.

3. The Secretary to Government,
   Revenue Department,
   Fort St.George, Chennai - 9.

+1cc to Mr.M.Muthappan, Advocate, S.R.No.24205

+1cc to the Government Pleader, S.R.No.24905

W.P.No.32466 of 2014
and
M.P.No.1 of 2014

GPL(CO)
RGA(27/04/2022)