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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.32575 OF 2012

K.Devasena

...Petitioner

-Vs-

1. The Secretary to Government,
Public Works Department,
Fort St. George,
Chennai - 600 009.
2. The Engineer-in-Chief (Buildings) and
Chief Engineer, (Buildings), Chennai
Region and Chief Engineer (General),
Public Works Department,
Chepauk, Chennai - 600 005.

...Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for all the records relating to the impugned order G.O.(D) No.433, Public Works (E2) Department, dated 04.10.2012 issued by the Secretary to the Government, Public Works Department, the first respondent herein and quash the same.

For Petitioner : Mr.J.Thilagaraj

For Respondents: Mr.Veda Bagath Singh,
Special Government Pleader

ORDER

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



2. Under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules (hereinafter referred to as 'the Rules'), when the Disciplinary Authority is of the opinion that, based on the evidences adduced during the enquiry that a major penalty is required to be imposed on the delinquent, shall call for the explanation of the delinquent on the proposed punishment and such an explanation should be taken into consideration before passing of any penalty.

3. In the instant case, the petitioner was imputed with a charge memo dated 27.11.2008, alleging misappropriation of causing loss to the Government. In the charge memo, the respondents had relied upon certain documents, including document No.1, which is an audit objection dated 16.08.2004, based on which, the charges came to be framed. The petitioner herein, in his reply dated 07.05.2009, had specifically requested for perusal of the xerox copies of the coupons, on which the petitioner is claimed to have misappropriated and also for furnishing of the document No.1, which is the audit objection. This apart, the petitioner had also expressed his views that he intended to examine 3 witnesses, as stated in the questionnaire. However, without reference to the request made by the petitioner, an Enquiry Officer was appointed on the very next day i.e. 08.05.2009 and the enquiry was proceeded with. In the enquiry report, the request made by the petitioner for examining the 3 witnesses and also his request for perusing the coupons was acknowledged. However, there was no reference to the supply of copies of the documents or permission to the petitioner to peruse such documents and the cross examination of 3 witnesses requested by the petitioner. It is in this background, the first respondent had passed the impugned order in G.O.(D) No.433, Public Works (E2) Department, dated 04.10.2012, imposing the punishment of compulsory retirement.

4. It is the specific case of the learned counsel for the petitioner that the delinquent was not permitted to peruse the coupons, which was the basis of the charge against him and that he was not permitted to cross examine the witnesses produced by the department. However, the Enquiry Officer had held the charges against the petitioner to have been proved. This apart, the Enquiry Officer had also stated that the petitioner herein had admitted that he had drawn additional rice on 03.05.2004, which statement is not based on any document or is indicated in the enquiry report that it was based on the evidence of the witnesses. When the enquiry report itself is based on 'no evidence', this Court would be well within its powers to invoke Article 226 of the Constitution of India for interfering with the consequential punishment.



5. Though the impugned order of punishment runs to about 6 pages, the operative portion of the order is in paragraph 6 alone. Even in paragraph 6, there is no independent application of mind on the part of the first respondent as to how the finding of the Enquiry Officer is acceptable and whether the punishment, which was said to be imposed, was in conformity with the charges. The first respondent had merely placed reliance on the views of the Tamil Nadu Public Service Commission and straightaway imposed the punishment, which is not permissible under Rule 17(b).

6. Rule 17(b)(ii) of the Rules specifically states that, whenever the Disciplinary Authority intends to impose a major penalty, a liberty should be given to the delinquent to give his further representation and such representation shall be taken into consideration before making any order imposing the penalty. In the instant case, the petitioner herein had given his further explanation on 04.03.2010, specifically stating that the Enquiry Officer had not summoned the witnesses requested by him and had also denied his request for production of xerox copies of the coupons. It is also stated in the explanation that the petitioner was not permitted to cross examine the witnesses and peruse the documents in the enquiry. The Disciplinary Authority, in the impugned order of punishment, though had referred to the representation made by the petitioner on 04.03.2010, had not discussed anything about the further representation, which is opposed to Rule 17(b)(ii). As stated earlier, the punishment itself is a non-speaking order and since is opposed to Rule 17(b)(ii), the order cannot be sustained.

7. Since this Court has found the order to be violative of the decision making process, the petitioner would be entitled for reinstatement back into service. However, if the respondents are of the view that they intend to conduct a fresh enquiry against the petitioner, it would be appropriate to grant them liberty and thereby secure the ends of justice.

8. In the light of the above observations, the impugned order dated 04.10.2012 is quashed. Consequently, the respondents are directed to forthwith reinstate the petitioner back into service, together with all service and monetary benefits. However, if the respondents intend to proceed against the petitioner for the same charges, which are impugned in the present writ petition, they are at liberty to do so, after extending due opportunity to the petitioner to put forth his objections and such an enquiry shall be in accordance with the provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.



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9. Accordingly, the Writ Petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
Public Works Department,
Fort St. George,
Chennai - 600 009.
2. The Engineer-in-Chief (Buildings) and
Chief Engineer, (Buildings), Chennai
Region and Chief Engineer (General),
Public Works Department,
Chepauk, Chennai - 600 005.

+4ccs to Mr.J.Thilagaraj, Advocate, S.R.No.12432

W.P.No.32575 of 2012

GPL(CO)
PM/09/03/2022