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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.04.2022

PRONOUNCED ON : 01.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.16190 & 17077 of 2014
and
M.P.No.1 of 2014

In W.P.No.16190 of 2014

S.T.Krishnan

... Petitioner

Vs.

1. The Secretary to Government,
Highways & Small Ports (HL) Department,
Fort St. George,
Chennai-600 009.

2. The Director General,
Highways 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, calling for the records of the respondents in connection with the impugned order passed by the first respondent in G.O.(D) No.154, Highways & Small Ports (HL2) Department dated 31.08.2009, G.O.(D) No.215, Highways & Small Ports (HK) Department dated 14.10.2010 and Letter No.15710/HL2/2013/1 Highways & Small Ports Department dated 22.01.2014 and to quash the same.

In W.P.No.17077 of 2014

S.T.Krishnan

... Petitioner

Vs.

1. The Secretary to Government,
Highways & Small Ports (HL) Department,
Fort St. George,
Chennai-600 009.



2. The Principal Director,
Highways Department,
Chepauk, Chennai-600 005.

3. The Chief Engineer,
Highways Department,
Chennai-600 016.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Manadamus, calling for the records of the second respondent in Letter No.1083/Confidential1/2013 dated 10.06.2013 and in Memo No.307/2013/A1 issued by the third respondent dated 21.06.2013 and to quash the same and further direct the respondents to consider the claim of the petitioner for promotion as Divisional Engineer by including his name in the panel of the year 2007-08 without reference to the punishment of censure imposed on the petitioner in G.O.(D) No.154, Highways & Small Ports (HL2) Department dated 31.08.2009 and promote the petitioner as Divisional Engineer, Highways notionally and grant him all consequential service and monetary benefits.

For Petitioner : Mr.Venkataramani, Sr. Counsel
in both W.Ps for Mr.M.Muthappan

For Respondents : Mr.T.Chezhiyan, AGP
in both W.Ps

C O M M O N O R D E R

Based on certain levelled charges, the petitioner herein while serving as an Assistant Divisional Engineer in the respondents/Highways Department, was subjected to disciplinary proceedings. The Enquiry Officer in his report dated 21.07.2008 had held the charges against the petitioner as "not proved". However, the first respondent herein, through a letter dated 07.11.2008, had deviated from the views of the Enquiry Officer and called for explanation of the petitioner. On consideration of the petitioner's further representation dated 30.12.2008, the first respondent had censured the petitioner through the impugned order dated 31.08.2009. On review, the order was confirmed on 22.01.2013. These orders are under challenge in W.P.No.16190 of 2014.

2. In the meantime, in view of the pendency of the disciplinary proceedings, as well as the currency of punishment, the petitioner was deferred for promotions to higher posts and



when he had sought for such promotions, the first respondent herein had quoted the pendency of the disciplinary proceedings, as well as currency of punishment and rejected the petitioner's claim for promotion through an order dated 10.06.2013, which was issued to the petitioner by the third respondent through order dated 21.06.2013. These orders are under challenge in W.P.No.17077 of 2014.

3. Since the issue involved in both the Writ Petitions being one and the same, both the Writ Petitions are disposed of, through a common order.

4. Pending the Writ Petitions, the petitioner had reached the age of superannuation on 30.06.2016.

5. When the Disciplinary Authority had chosen to defer from the findings of the Enquiry Officer, apart from issuing a notice calling for explanation on the views expressed by him for deferment, no personal hearing was given to the petitioner, before the punishment was awarded. This procedure adopted, is opposed to the decision of the Hon'ble Supreme Court in the case of Punjab National Bank Vs. Kunj Behari Misra reported in 1998 (7) SCC 84, as well as in Yoginath D. Bagde Vs. State of Maharashtra reported in 1999 (7) SCC 739. The aforesaid two decisions were referred to, in a subsequent decision in Lav Nigam Vs. Chairman and Managing Director, ITI Ltd., and Another reported in 2006 (9) SCC 440, whereby in all the aforesaid decisions, the principles laid down were that, when a Disciplinary Authority deviates from the report of the Enquiry Officer, the Principles of Natural Justice requires to be followed and the delinquent is to be given an opportunity of personal hearing, before a final decision is taken. The relevant portion of the order reads as follows:-

"10. The conclusion of the High Court was contrary to the consistent view taken by this Court that in case the disciplinary authority differs with the view taken by the inquiry officer, he is bound to give a notice setting out his tentative conclusions to the appellant. It is only after hearing the appellant that the disciplinary authority would at all arrive at a final finding of guilt. Thereafter, the employee would again have to be served with a notice relating to the punishment proposed.

11. In Punjab National Bank v. Kunj Behari



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Misra [(1998) 7 SCC 84 : 1998 SCC (L&S) 1783] a Bench of this Court considered Regulation 7(2) of the Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977. The Regulation itself did not provide for the giving of any notice before the disciplinary authority differed with the view of the enquiry officer. This Court held: (SCC p. 97, para 19)

"The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7 (2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer."

12. This view has been reiterated in Yoginath D. Bagde v. State of Maharashtra [(1999) 7 SCC 739 : 1999 SCC (L&S) 1385] . In this case also Rule 9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 did not specifically provide for a disciplinary authority to give an opportunity of hearing to the delinquent officer before differing with the view of the enquiry officer. The Court said: (SCC p. 758, para 29)

"But the requirement of 'hearing' in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before the disciplinary authority finally



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disagrees with the findings of the enquiring authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority do not suffer from any error and that there was no occasion to take a different view. The disciplinary authority, at the same time, has to communicate to the delinquent officer the 'TENTATIVE' reasons for disagreeing with the findings of the enquiring authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the finding of 'not guilty' already recorded by the enquiring authority was not liable to be interfered with.""

6. The aforesaid extract is self explanatory. Thus, when the Disciplinary Authority intends to deviate from the Enquiry Officer's decision, the delinquent officer is entitled for a personal hearing, in the absence of which, the subsequent decision taken pursuant to the deviation report, would stand vitiated. Admittedly, in the present case, no such personal hearing was extended to the petitioner.

7. Quoting the pendency of the disciplinary proceedings, as well as the currency of punishment, the petitioner was denied with the promotions for which he would have been otherwise entitled to. Now that, this Court is of the view that the subsequent punishment of censure cannot be sustained, the petitioner would be entitled for all the service benefits, including the notional promotions.

8. In normal circumstances, this Court would be inclined to remit the matter back to the Disciplinary Authority for the purpose of extending a personal hearing to the petitioner. However, since the charges were framed in the year 2007 and the petitioner had also reached the age of superannuation in the year 2016 itself, it would not be appropriate to remit back the matter.

9. In the light of the above findings, the impugned orders dated 31.08.2009, 14.10.2010, 22.01.2014, 10.06.2013 & 21.06.2013 respectively, are quashed. Consequently, there shall be a direction to the respondents herein to pass appropriate orders, granting notional promotion to the petitioner to such



higher posts which he may be entitled to from the date on which his immediate junior was promoted, together with arrears of monetary benefits, within a period of four weeks from the date of receipt of a copy of this order. The Writ Petitions stands allowed. Consequently, the connected Miscellaneous Petition is closed. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

DP

To

1. The Secretary to Government,
Highways & Small Ports (HL) Department,
Fort St. George,
Chennai-600 009.
2. The Director General,
Highways Department,
Chepauk, Chennai-600 005.
3. The Principal Director,
Highways Department,
Chepauk, Chennai-600 005.
4. The Chief Engineer,
Highways Department,
Chennai-600 016.

W.P.Nos.16190 & 17077 of 2014
and
M.P.No.1 of 2014

AK-II(CO)
SU(09/06/2022)