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W.P.No.4155 of 2021
& W.M.P.Nos.4744 & 17136 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.4155 of 2021
& W.M.P.Nos.4744 & 17136 of 2021

B.Vimal

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Petitioner

versus

1.Ministry of Shipping,
Rep. by its Secretary,
Government of India,
Parivahan Bhavan 1,
Parliament Street,
New Delhi - 110 001.

2.The Chairman,
Chennai Port Trust,
Rajaji Salai,
Chennai - 600 001.

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Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the concerned records from the 1st and 2nd respondent, quash the order of the 2nd respondent dated 17.10.2020 bearing No.V4/374/2017/Vig and the order of the 1st respondent bearing No.C-16018/30/2020-Vig dated 06.06.2021 as illegal, arbitrary and contrary to law and consequently direct the respondents to restore the pay of the petitioner and pay arrears of pay.



[prayer amended as per order dated 29.09.2023 made in W.M.P.No.17132 of 2021 in W.P.No.4155 of 2021]

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For Petitioner : Mr.Balan Haridas
For Respondent No.1 : Mr.B.Sudhir Kumar
SCGSC
For Respondent No.2 : Mr.R.Karthikeyan
Standing Counsel
for Mr.R.Bharanidharan

ORDER

The petitioner has filed this petition seeking a writ of Certiorarified Mandamus, calling for the records from the respondents 1 and 2 and quash the orders of the respondents 1 and 2 dated 17.10.2020 and 06.06.2021 respectively and consequently direct the respondents to restore the pay of the petitioner and also the arrears of pay.

2. Heard Mr.Balan Haridas, learned counsel for the petitioner, Mr.B.Sudhir Kumar, learned Senior Central Government Standing Counsel for the first respondent and Mr.R.Karthikeyan, learned Standing Counsel for the second respondent and perused the materials available on record.



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3. The petitioner, who was given with the charge memo is said to be the Senior Deputy Traffic Manager in the Traffic Department of the second respondent. After the enquiry was concluded, an enquiry report was filed by stating that the charges against the petitioner were not proved. However, the Appointing Authority relied on certain Vigilance Report and had chosen to find the petitioner guilty and he was given with the punishment of reduction of pay by 3 stages in the present scale of pay for the period of one month without cumulative effect. The appeal filed by the petitioner challenging the above order was also dismissed on 06.06.2021. Hence, the petitioner has filed this petition challenging the orders of the respondents 1 and 2.

4. Mr.Balan Haridas, learned counsel for the petitioner submitted that the second respondent while finding the petitioner guilty and awarding punishment had chosen to rely on the materials on which the petitioner had no idea. The petitioner was not given with any copies of the materials on which the second respondent placed reliance. Though the charges were not proved, the first respondent usurped the authority of the Appellate Authority and by relying materials which were not revealed to the petitioner during the course of the enquiry and had proceeded to record guilty.



5. Mr.R.Karthikeyan, learned Standing Counsel for the second respondent submitted that after the enquiry report was submitted to the second respondent, he found that it is not acceptable and passed an order as to the guilt of the petitioner to the charges levelled against him. While doing so, he has also given an opportunity to the petitioner to make his submission within 15 days. The petitioner has also given his representation, only after giving such an opportunity, the punishment was imposed, hence there is no violation of principles of natural justice. The second respondent being the Appointing Authority has considered the seriousness of the allegations and the materials in a proper manner after giving an opportunity to the petitioner and thereafter, an order of punishment has been passed and hence there is no illegality or irregularity.

6. The fact that the petitioner was given with certain charges and for which an enquiry officer was appointed is not denied. The enquiry officer has finished his enquiry and submitted the enquiry report to the second respondent after furnishing a copy of the same to the petitioner. The normal course that would follow the submission of the enquiry report would be giving an opportunity to the delinquent to make his submission on the



punishment, if the employer proposed to ignore him a major punishment.

But the second respondent has taken a different course of action by relying on certain materials which were placed by the enquiry officer for consideration and he had straight away arrived at a conclusion that the charges against the petitioner were proved.

7. The second respondent had arrogated the power of the Appellate Authority on himself and it is fundamentally wrong. In case the Department is not satisfied with the enquiry report of the enquiry officer, the rightful course open to the Appointing Authority is to file an appeal before the Appellate Authority and it is the Appellate Authority, who has to reconsider the materials on record and has to pass orders either by accepting or rejecting the enquiry report.

8. When the enquiry was conducted, it is always open to the second respondent Department to furnish all the materials available with him in order to prove the charges against the petitioner. Once the materials are furnished that would serve as evidence in the enquiry proceedings. Hence the Appointing Authority cannot sit as an Appellate Authority by



rewriting the enquiry report. Even though the petitioner has not raised the grounds of competence and lack of jurisdiction, the act of the second respondent is apparent that he has exceeded the jurisdiction and had reversed the report of the enquiry officer by abusing the powers of the Appellate Authority.

9. Though the base material for taking a decision about the punishment is the enquiry report of the enquiry officer, the copy of the said report was not furnished to the petitioner. This fundamental aspect was not considered by the second respondent before passing the impugned order. The order of the first respondent / Appellate Authority had confirmed the order of the second respondent, which is an upshot from what was done imperfectly by the second respondent. Hence, the orders of the first respondent and the second respondent are liable to be set aside.

In the result, this Writ Petition is **allowed** and the orders passed by respondents 1 and 2 dated 17.10.2020 and 06.06.2021 respectively are set aside and the respondents 1 and 2 are directed to restore the pay of the petitioner and also the arrears of pay, within a period of eight (8) weeks



from the date of receipt of a copy of this order. No costs. Consequently,
connected Miscellaneous Petitions are closed.

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15.11.2023

Speaking order / Non-speaking order

Index : Yes / No

Neutral Citation : Yes / No

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To

1.The Secretary,
Ministry of Shipping,
Government of India,
Parivahan Bhavan 1,
Parliament Street,
New Delhi - 110 001.

2.The Chairman,
Chennai Port Trust,
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R.N.MANJULA, J.

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15.11.2023
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