



W.P.Nos.38213 and 37168 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.09.2023

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.Nos.38213 and 37168 of 2015

W.P.No.38213 of 2015

S.Parthasarathy

... Petitioner

Vs

1. The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
31, Kamarajar Street, Chepauk,
Chennai – 600005.
2. The Chief Engineer (TWAD),
30, Bharathi Park Road, Siruvani Nagar,
Coimbatore – 641043.
3. Superintending Engineer,
Tamil Nadu Water Supply and Drainage Board,
Coimbatore-Nilgiri Circle,
No.26, Corporation Shopping Complex,
Avinashi Road,
Coimbatore – 641018.



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4. The Executive Engineer,
Tamil Nadu Water Supply and Drainage Board,
Maintenance Division, (Pillur),
No.4, Vilankurichi Road,
Vinobaji Peelamedu,
Coimbatore – 641004.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records in connection with the penalty order passed by the fourth respondent in his Proceedings No.Ko.Parthasarathy/EA2/2012/ dated 15.05.2012 and the appellate order passed by the third respondent in his proceedings No.Ko.Parthasarathy/E1/2013 dated 31.07.2013 and quash the same.

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S.Parthasarathy

... Petitioner

Vs

1. The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
31, Kamarajar Street, Chepauk,
Chennai – 600005.
2. The Secretary cum General Manager,
Tamil Nadu Water Supply and Drainage Board,
31, Kamarajar Street, Chepauk,
Chennai – 600005.



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3. Superintending Engineer,
Tamil Nadu Water Supply and Drainage Board,
Coimbatore-Nilgiri Circle,
No.26, Corporation Shopping Complex,
Avinashi Road,
Coimbatore – 641018.

4. The Executive Engineer,
Tamil Nadu Water Supply and Drainage Board,
Maintenance Division, (Pillur),
No.4, Vilankurichi Road,
Vinobaji Peelamedu,
Coimbatore – 641004.

... Respondents

Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records in connection with the order passed by the second respondent in his Letter No.12791/RS/A2/2013 dated 21.08.2014 and quash the same and direct the respondents to consider afresh the request of the petitioner for promotion by transfer to the post of Assistant Engineer in the fourth respondent office, forthwith.

For Petitioner
in both W.Ps : Mr.V.Vijayashankar

For Respondents
in both W.Ps : Mr.S.Ravindran,
Senior Counsel for
Mrs.S.Mekhala,
Standing Counsel



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COMMON ORDER

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This Writ Petition has been filed challenging the penalty order passed by the fourth respondent dated 15.05.2012 in Proceedings No.Ko.Parthasarathy/EA2/2012 and the appellate order passed by the third respondent, thereby confirming the order passed by the fourth respondent dated 31.07.2013 in Proceedings No.Ko.Parthasarathy/E1/2013.

2. The petitioner was originally appointed as Electrician on a consolidated pay of Rs.2,000/- in the year 1997. Thereafter, he was regularized in the same post from 01.08.2006. Further, he was transferred from Madukkarai Pumping Station to Velliangadu Sub Division on 14.02.2011. Thereafter, he fell sick with Ulcer and abdominal pain and he was compelled to proceed on leave on medical grounds. The petitioner applied for leave on medical grounds in three spells, firstly for 30 days from 12.03.2011 to 10.04.2011, secondly for 15 days from 11.04.2011 to



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25.04.2011 and lastly for 29 days from 25.04.2011 to 24.05.2011, supported by medical certificates issued by the Doctors. Even then, he was referred before the Medical Board on 16.05.2011 for medical examination. The Medical Board issued certificate stating that the petitioner had not recovered from his illness to resume duty from 17.05.2011. Further, it is stated that the medical certificates issued for the period from 12.03.2011 to 16.05.2011 is not on medical grounds and may not be regularized as leave on medical grounds. Thereafter, he rejoined duty on 17.05.2011. However, the petitioner had not fully recovered from his ailment. As such, he had again applied for earned leave on personal grounds from 20.05.2011 to 03.06.2011. Therefore, he was placed under suspension by an order dated 01.07.2011. In pursuant to the suspension order, he was served with charge memo dated 14.07.2011 under Rule 9 (b) of TWAD Employees (D & A) Regulations, 1972, which reads as follows:-

“a) Charge 1:- That the official committed misconduct by availing of leave on medical grounds by producing false and bogus medical certificates;

b) Charge 2:- That the official committed



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misconduct by unauthorized absence without obtaining prior sanction or by submitting leave application, in terms of Rule VII of XXXV of Board's (D & A) Regulations, 1972;

c) Charge 3:- That the Official;s conduct was tantamount to lack of devotion to duty.

d) Charge 4:- That by his acts, the Official has violated Rule 3 of the TWAD Board Staff Regulations, 1972.”

3. In pursuant to the charge memo, the petitioner submitted his representation dated 03.07.2011. However, on being not satisfied with the explanation submitted by the petitioner, the Enquiry Officer was appointed and domestic enquiry was conducted. The petitioner submitted his representation asking for list of witnesses and list of documents to prove the charges, which are mandatory under the Certified Standing Orders of the TWAD Board. However, he was not provided with the list of witnesses and documents. Further, before the Enquiry Officer, no one was examined as a witness by the Disciplinary Authority. The petitioner was not served with any enquiry report and he was not given any opportunity to submit his



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explanation on the enquiry report. The petitioner was served with punishment imposed by the fourth respondent dated 15.05.2012, thereby he was imposed with the punishment of stoppage of increment for three years without cumulative effect. Aggrieved by the same, the petitioner preferred an appeal before the third respondent and the third respondent modified the punishment of stoppage of increment from three years to one year without cumulative effect.

4. The learned counsel for the petitioner raised three grounds, namely that no list of witnesses or documents was furnished to the petitioner along with charge memo. No witnesses were examined and the enquiry was an empty formality, in which the Enquiry Officer questioned the petitioner and the enquiry was concluded on the same day. Further, the petitioner was not served with the enquiry report and he has not been granted an opportunity to explain on the enquiry report before passing the order of punishment. He also submitted that the penalty order was passed without any prior application and it is a non speaking order without assigning any reasons. In support of his contentions, the learned counsel for the petitioner



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relied upon the following judgements:-

- (i) (2008) 8 SCC 236 (*State of Uttaranchal -vs- Kharak Singh*);
- (ii) (2009) 2 SCC 570 (*Roop Singh Negi -vs- Punjab National Bank*);
- (iii) (1991) 1 SCC 588 (*Union of India -vs- Mohd.Ramzan Khan*); and
- (iv) 2022 SCC OnLine Mad 688 (*Prof.M.K.Surappa -vs- Joint Secretary*).
- (v) (2010) 2 SCC 497 (*G.Vallikumari -vs- Andhra Education Society*).

5. The fourth respondent filed counter affidavit and the learned Senior counsel appearing for the respondents submitted that the charge itself was that whenever the petitioner was transferred to other place, he used to submit leave letter on medical grounds. He produced false and bogus medical certificate in order to avail leave on the medical grounds. Therefore, the petitioner committed misconduct of unauthorized absence without



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obtaining prior sanction or by submitting leave application. Except the documents annexed with the leave application, no other documents were relied upon by the Disciplinary Authority during the enquiry. Therefore, in the enquiry, the Disciplinary Authority need not examine any witness in order to prove the charges and the entire charges are pertaining to the certificate produced by the petitioner. Further, during the enquiry, the petitioner categorically admitted that he had only produced those certificates, in order to avail the leave on medical grounds. However, the petitioner was not served with enquiry report.

6. While pending, this Writ Petition, the petitioner was served with the enquiry report and if at all there is any grievance over the enquiry report, he would very much submit his explanation showing that he was prejudiced due to non-furnishing of the enquiry report. The petitioner failed to show any prejudice caused to him for non-serving of the enquiry report. The fourth respondent imposed the punishment of stoppage of increment for three years without cumulative effect. Aggrieved by the same, the petitioner preferred appeal before the third respondent and the third respondent, applying his



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mind, found that the punishment imposed on the petitioner is high and as such, the Appellate Authority, viz, the third respondent modified the punishment from three years stoppage of increment to one year stoppage of increment. Therefore, it cannot be said that the Disciplinary Authority as well as the Appellate Authority without applying their mind, imposed the punishment on the petitioner.

7. Heard both sides and perused the materials available on record.

8. The petitioner was transferred from Maintenance Sub-Division II (Pillur), Coimbatore and posted to Maintenance Sub Division (Pillur), Velliangadu, by an order dated 19.11.2010. However, he had joined duty only on 14.02.2011. The petitioner applied earned leave for 15 days from 25.02.2011 to 11.03.2011 without getting any prior permission from the authority concerned. It was also extended from 12.03.2011 to 10.04.2011 for 30 days on medical grounds. The medical leave was also extended for 15 days from 11.04.2011 to 25.04.2011 and once again, it was extended for 29 days from 26.04.2011 to 24.05.2011. Therefore, the petitioner was referred



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before the Medical Board, Coimbatore. Accordingly, the Medical Board ordered the petitioner to appear before it on 17.05.2011 and the Medical Board was consisting of three Doctors and after careful examination report was given on 26.05.2011.

9. From the certificate issued by the Medical Board, it reveals that the period from 12.03.2011 to 16.05.2011 is not justified one and it may not be regularized as leave on medical grounds. Based on the certificate issued by the Medical Board, the petitioner was suspended from service by an order dated 01.07.2011, as he has availed medical leave with false report. Thereafter, the suspension order was revoked on 02.08.2011. Even after revocation of the suspension order, the petitioner had applied for leave on loss of pay from 26.08.2011 to 25.11.2011 for 92 days and he had extended it for another 92 days till 25.02.2012 and once again, he had extended from 26.02.2012 to 26.04.2012 for 60 days. Therefore, the petitioner was only in the habit of applying leave continuously without getting any prior permission from the Competent Authority. Therefore, the petitioner was served with charge memo dated 14.07.2011. The explanation submitted by



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the petitioner was not satisfactory and as such, the Enquiry Officer was appointed to conduct domestic enquiry and the petitioner attended the enquiry. During the enquiry, the petitioner was shown the certificates produced by him and the Enquiry Officer found that the charges have been proved and he submitted his report on the same day. In pursuant to the report, the petitioner was punished with the stoppage of increment for a period of three years without cumulative effect.

10. The learned counsel for the petitioner would submit that the enquiry report was not served on the petitioner and he was not given an opportunity to explain the enquiry report. In support of his contentions, he relied upon the judgement of the Hon'ble Supreme Court of India reported in (2008) 8 SCC 236 (*State of Uttaranchal -vs- Kharak Singh*), in which it has been held that in an enquiry, the employer/department should take first steps to lead evidence against the workman/delinquent charged and give an opportunity to him to cross-examine the witnesses of the employer. Thereafter, the enquiry report be served on the workman/delinquent and all connected materials relied upon by the Disciplinary Authority to enable him



to offer his views, if any.

11. In the case on hand, the Disciplinary Authority did not enquire any witnesses and only based on the documents furnished by the petitioner, the enquiry was conducted and all the documents, which are produced by the petitioner, were shown to him and the authorities answered. Therefore, no witness was examined by the Disciplinary Authority in order to give an opportunity to the petitioner to cross-examine the witnesses. Further, on the very same day, the enquiry was completed and based on the answer given by the petitioner, the Enquiry Officer submitted his enquiry report and concluded that all the charges were proved against the petitioner. The medical certificates produced by the petitioner were false and the reasons stated for the medical grounds are also not justified for the petitioner before the Medical Board. Therefore, the certificate issued by the Medical Board cannot be disputed. The charge itself is that the petitioner committed misconduct again by availing leave on production of false and bogus medical certificate.



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12. The learned counsel for the petitioner also relied upon the judgement of this Court reported in 2022 SCC OnLine Mad 688 (**Prof.M.K.Surappa -vs- Joint Secretary**, in which it has been held as follows:-

“27. The above case is also one of the instances wherein the Hon'ble Supreme Court followed its landmark ruling in Managing Director, ECIL, Hyderabad v. B. Karunakar and held that the opinion formed to punish a person without forwarding a copy of the inquiry report and obtaining his comments on the report amounted to violation of principles of natural justice. From the conjoined reading of the case laws, the Courts have consistently ruled that there cannot be any slightest departure from complying with the principles of natural justice, namely furnishing of copy of the inquiry Report before the disciplinary authority forms an opinion on the inquiry Report. Such mandate in the opinion of this Court is the sublimest hallmark of fair play and good



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conscience in action consistent with the constitutional imperatives.

31. In any event, the requirement to comply with the fundamental principles of natural justice, namely that no one should be condemned unheard is not optional and even in the absence of specific provision, the principle must be read into every statute and regulations as held by the Courts. It is very strange that the Government for no valid reason has come up with a rigid stand against furnishing of report to the petitioner, unmindful of its legal implication that any decision taken at the end of the day would certainly become too vulnerable to judicial interference. The view of the Government is antithetical to the concept of reasonableness and fairness in action as embedded in Article 14 of the Constitution of India.”

13. The learned Senior Counsel appearing for the respondents



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submitted that before this Court, the copy of the enquiry report was furnished to the petitioner, even then, the petitioner has failed to submit any explanation and he has also failed to show as to what prejudice was caused for non-supplying the enquiry report before this Court. In this regard, the learned Senior Counsel appearing for the respondents relied upon the judgement of the Hon'ble Supreme Court of India in (1998) 4 SCC 310 (***Union Bank of India -vs- Vishwa Mohan***), in which, the Hon'ble Supreme Court of India held that the respondent was unable to demonstrate before us as to how prejudice was caused to him due to non-supply of the enquiry authority's report/findings in the present case. Therefore, the fourth respondent justified the reasons for non-serving of the enquiry report to the petitioner.

14. The learned counsel for the petitioner submitted that the Disciplinary Authority passed the order without application of mind and it is a non-speaking order. In support of his contention, he relied upon the judgement of the Hon'ble Supreme Court of India in (2009) 2 SCC 570 (***Roop Singh Negi -vs- Punjab National Bank***), in which the Hon'ble



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Supreme Court of India held that the order of the Disciplinary Authority, as also the Appellate Authority, are not supported by any reason. As the orders passed by them have severe civil consequences, appropriate reasons should have been assigned. If the enquiry officer had relied upon the confession made by the appellant, there was no reason as to why the order of discharge passed by the Criminal Court on the basis of selfsame evidence, should not have been taken into consideration.

15. In the case on hand, as stated supra, during the enquiry, the petitioner was asked about the documents produced by him and on the basis on the answers, the enquiry officer submitted his report concluding that the order was passed. Therefore, based on the certificate produced by the petitioner, the Enquiry Officer concluded that the charges were proved. That apart, as against the order of the fourth respondent, the petitioner preferred appeal before the third respondent, who modified the punishment from three years of stoppage of increment to one year. Therefore, it shows that the Appellate Authority applied his mind and modified the punishment. Hence, the above judgement referred by the petitioner is not helpful to the case on



16. The learned counsel for the petitioner further contended that the charge memo is not consisting of the list of witnesses and the list of documents. In this regard, the learned Senior Counsel appearing for the respondents relied upon the judgement of the Hon'ble Supreme Court of India in (2013) 2 SCC 740 (*State Bank of India -vs- Narendra Kumar Pandey*), in which, the Hon'ble Supreme Court of India held that the charge sheet need not contain the details of the documents or the names of the witnesses proposed to be examined to prove the charges or a list to that effect, unless there is a specific provision to that effect. Charge-sheet, in other words, is not expected to be a record of evidence. Fair procedure does not mean giving of copies of the documents or list of witnesses along with the charge-sheet.

17. That apart, in the case on hand, no witnesses were examined by the Disciplinary Authority. Whatever the documents produced along with the leave application, were produced before the Enquiry Officer and it was



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shown to the petitioner. Therefore, the contentions raised by the learned counsel for the petitioner cannot be countenanced. Further, the Appellate Authority has also applied its mind and modified the punishment from three years of stoppage of increment to one year of stoppage of increment. Therefore, in view of the above, this Court finds no infirmity or illegality in the orders passed by the third and fourth respondents and the Writ Petition is devoid of merits.

18. In the result, this Writ Petition is dismissed. No costs.

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This Writ Petition has been filed to quash the order passed by the second respondent in his Letter No.12791/RS/A2/2013 dated 21.08.2014 and direct the respondents to consider afresh the request of the petitioner for promotion by transfer to the post of Assistant Engineer in the fourth respondent office, forthwith.



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2. In view of the dismissal of the above Writ Petition challenging the order of punishment, there is no infirmity or illegality in the order of rejecting the request made by the petitioner seeking promotion for the reason that the order of punishment is under currency.

3. The learned counsel for the petitioner would submit that the order of punishment imposed by the Disciplinary Authority was modified by the Appellate Authority into the stoppage of one year increment without cumulative effect. Therefore, the penalty was in effect on 30.07.2014. Further, the petitioner is entitled for promotion to the post of Assistant Engineer, even from the date of rejection.

4. It is seen that the punishment of stoppage of increment without cumulative effect was reduced from three years to one year by the Appellate Authority. After sanction of all kinds of leave, the increment there has been sanctioned to the petitioner on 07.11.2014. Therefore, the question of punishment of stoppage of one year increment without cumulative effect is under currency with effect from 01.11.2015, viz., his next increment is in



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order. Since the fourth respondent has passed the final order dated 15.05.2012, thereby imposing the punishment of stoppage of increment for three years without cumulative effect and based on the undertaking affidavit obtained from the petitioner, he applied for any long leave. Aggrieved by the same, the petitioner preferred the appeal and the stoppage of increment without cumulative effect was reduced from three years to one year. Therefore, this Court finds no infirmity or illegality in the order passed by the second respondent and the Writ Petition is devoid of merits. However, the petitioner is entitled for all promotion for the subsequent period, viz., on 01.01.2016, on production of all required documents.

5. In the result, this Writ Petition is dismissed. No costs.

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Index:Yes/No
Neutral Citation/Yes/No
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To

1. The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
31, Kamarajar Street, Chepauk,
Chennai – 600005.
2. The Chief Engineer (TWAD),
30, Bharathi Park Road, Siruvani Nagar,
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