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W.P.No.8553 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.8553 of 2022
and
W.M.P.Nos.8453 & 8454 of 2022

P.Madhu

...Petitioner

Vs.

1.The Principal Secretary to Government,
Rural Development and Panchayat
Raj Department,
Fort St. George, Chennai - 09.

2.The Director,
Rural Development Department and
Panchayat Raj,
Panagal Building,
Saidapet,
Chennai - 15.

3.The District Collector,
Krishnagiri District,
Krishnagiri.

4.The Enquiry Officer/Executive
Engineer (RD),
District Rural Development Agency,
Krishnagiri.

...Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus, to call for the records in connection with the impugned charge memo issued by the third respondent in Na.Ka.No.21312/2017/K3 dated 28.03.2018 and the subsequent order passed by the third respondent for re-enquiry in Roc.No.21312/2017/K3 dated 23.03.2022 and to quash the same and further direct the respondents to promote the petitioner on par with his junior based on the revised seniority list with all consequential service and monetary benefits.

For Petitioner : Mr.K.Venkataramani, Sr. Counsel
for Mr. S.Sivakumar

For Respondents : Mr.P.Baladhandayutham,
Special Government Pleader

ORDER

With the consent of both the parties, this Writ Petition is taken up for final disposal.

2. The petitioner herein had earlier served as an Assistant Executive Engineer in the respondent Department during the year 2013-14. Through a charge memo dated 28.03.2018 issued under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules [hereinafter referred to as 'the Rules'], certain irregularities were alleged to have been committed by him which amounted to



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misconduct. The petitioner had rendered his explanation to the charges. Not being satisfied with the explanation, the third respondent had appointed an Enquiry Officer on 11.10.2018. Pursuant to the enquiry, the Enquiry Officer had also submitted his report to the third respondent on 28.02.2019, holding the charges against the petitioner as 'not proved'. However, the third respondent had appointed another Enquiry Officer to conduct a second enquiry. Subsequently, on 12.03.2020, the appointment of the Enquiry Officer was cancelled. Thereafter, a fresh Enquiry Officer was appointed through the impugned order dated 23.02.2022, which is under challenge in the present Writ Petition.

3. The learned Senior Counsel appearing for the petitioner submitted that once the Enquiry Officer has submitted his report, the third respondent has no authority to order for a second enquiry. In support of such a submission, he had placed reliance on certain decisions of this Court.

4. Per contra, the learned Special Government Pleader appearing for the respondents placed reliance on the averments in the counter affidavit and submitted that the Proviso to Rule 17(b)(1)



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of the Rules authorizes the respondents to order for a fresh enquiry and therefore, there is no illegality in the said proceedings. He further submitted that the appointment of the second Enquiry Officer was based on the instructions given by the Government and the second respondent herein and therefore, in view of the Proviso to Rule 17(b) of the Rules, there is no infirmity in such appointment.

5. I have given careful consideration to the submissions made by the respective counsels.

6. Rule 17 (b) of the Rules provides for the procedure to be adopted by the Disciplinary Authority in conducting an enquiry. As per the said Rule, after the charges are framed against the delinquent officer, an oral enquiry shall be held in respect of the charges which are admitted by the delinquent. During the course of enquiry, oral evidence shall be heard as to such of the allegations that are not admitted and the delinquent officer shall also be entitled to cross examine the witnesses therein. On conclusion of the enquiry, a report of the enquiry shall be prepared by the Enquiry Officer, which shall contain a sufficient record of the evidences and statement of findings and grounds thereof.



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7. Rule 17(b)(ii) of the Rules empowers the Disciplinary Authority to impose any of the penalties specified under Rule 8 of the Rules based on the Enquiry Officer's report and on consideration of the further representation given by the delinquent officer to the findings of the Enquiry Officer.

8. Rule 17(b)(i) of the Rules also provides that whenever any Inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry, ceases to exercise jurisdiction therein and is succeeded by another Enquiring Authority which has, and which exercises such jurisdiction, the Inquiring Authority so succeeding may act on the evidence so recorded by its predecessor or partly recorded by its predecessor and partly recorded by itself. The Proviso to such Rule states that if the succeeding Inquiring Authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses.



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9. A joint reading of Rule 17(b)(i) and the Proviso to it would reveal that the only power vested with the Disciplinary Authority is to permit further examination of any of the witnesses in cases, where the original Inquiring Authority had ceased to hold jurisdiction or has otherwise disabled him to continue as an Enquiry Officer. Sub-rule 17(b)(ii) of the Rules, thereafter, empowers the Disciplinary Authority to impose penalty based on the findings of the Enquiry Officer and on consideration of the further explanation rendered by the delinquent officer.

10. Rule 17(b) of the Rules does not provide for conduct of a secondary enquiry when the final report of the Enquiry Officer has already been made. This Court, while dealing with Rule 17(b), has recognized the powers of a Disciplinary Authority to deviate from the findings of the Enquiry Officer and has stipulated that such deviation could be followed by a second show cause notice calling for explanation of the delinquent officer with regard to such deviations.



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11. The Hon'ble Supreme Court in the case of **Kanailal Bera Vs. Union of India** reported in **2007 (11) SCC 517**, had held that, once a disciplinary proceeding has been initiated, the same must be brought to its logical end meaning thereby a finding is required to be arrived at as to whether the delinquent officer is guilty of charges levelled against him or not. It was further held that in a given situation, further evidences may be directed to be adduced but the same would not mean that despite holding a delinquent officer to be partially guilty of the charges levelled against him, another inquiry would be directed to be initiated on the self same charges which could not be proved in the first inquiry.

12. Thus, when the Enquiry Officer submits his report after a full fledged enquiry and holds that the charges against the delinquent officer as not proved, the option available to the Disciplinary Authority would be either to accept the Enquiry Officer's report and drop the charges or to issue a show cause notice renderings its reasoning for deviating from the findings of the Enquiry Officer and calling for further explanation from the delinquent officer. Thus, when the earlier Enquiry Officer has



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concluded the enquiry and filed his final report, holding the charges as 'not proved', the Disciplinary Authority will not have the authority or powers to disregard such an enquiry report and proceed to conduct a fresh enquiry by appointment of a second Enquiry Officer. Such an action is not provided for under Rule 17(b) of the Rules. In view of the decision of the Hon'ble Supreme Court in the case of *Kanailal Bera (supra)*, the impugned order dated 23.03.2022, appointing a fresh Enquiry Officer to conduct a second enquiry, is illegal and hence cannot be sustained.

13. By taking into account that the original Enquiry Officer had conducted the enquiry and held the charges framed under the charge memo dated 28.03.2018 as "not proved" and the Disciplinary Authority having failed to act upon the report, no further proceedings requires to be continued pursuant to the charge memo dated 28.03.2018 and therefore, the charge memo is liable to be quashed.

14. In the light of the above findings and observations, the impugned orders dated 28.03.2018 and 23.03.2022, are quashed. In view of quashing of the entire disciplinary proceedings against



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the petitioner, he would be entitled for all the service and monetary benefits that he may have been deprived of, owing to the pendency of these charges. In this connection, there shall be a direction to the respondents 1 and 2 to pass orders extending such service and monetary benefits to the petitioner, within a period of four weeks from the date of receipt of a copy of this order. Accordingly, the Writ Petition stands allowed. Consequently, connected Miscellaneous Petitions are closed. There shall be no order as to costs.

12.06.2023

Index :Yes
Neutral Citation :Yes
Order : Speaking

DP/hvk

To

- 1.The Principal Secretary to Government,
Rural Development and Panchayat
Raj Department,
Fort St. George, Chennai - 09.
- 2.The Director,
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M.S.RAMESH,J.

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