



W.P.Nos.39568 of 2016 & 9739 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	25.01.2023
Pronounced on	16.02.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.Nos.39568 of 2016 & 9739 of 2017
and
W.M.P.No.10714 of 2017

In W.P.No.39568 of 2016:-

M.Mohamed Azizullah

... Petitioner

Vs.

1.The Secretary to Government,
Housing & Urban Development
(Vee.Va.1(1)) Department,
Fort St. George, Chennai-600 009.

2.The Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai-600 035.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the records relating to G.O. (1D) No.5 Housing and Urban Development (Vee. Va 1(1)) Department, dated 07.01.2016 issued by the Secretary to Government Housing and Urban Development Department, Chennai-600 009, the first respondent herein in confirming the order of the Managing



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Director, Tamil Nadu Housing Board, Chennai, the second respondent made in proceedings No.DC2/14823/2011-1 (Board Secretariat) dated 22.04.2015, quash the same and direct the respondents herein to disburse all the consequential attendant service and monetary benefits including the withheld part amount, retiral and pensionary benefits of the petitioner and disburse all the arrears within a short date as fixed by this Court.

For Petitioner	: Mr.K.Surendranath
For Respondent-1	: Mr.K.H.Ravikumar, GA
For Respondent-2	: Mr.D.Veerasekaran

In W.P.No.9739 of 2017:-

K.Mohanasundaram

... Petitioner

Vs.

1.The Government of Tamil Nadu
rep. by its Secretary to Government,
Housing & Urban Development
Department,
Fort St. George, Chennai-600 009.

2.The Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai-600 035.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the records



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relating to the impugned order passed by the first respondent vide proceedings G.O. (D) No.130, Housing & Urban Development [HB 1(2)] Department dated 18.07.2016, confirming the impugned order passed by the second respondent vide proceeding No.DC2/14823/2011-2 (Board Secretariat) dated 22.04.2015 and to quash the same and to direct the respondents herein to refund the amounts deducted from the petitioner's pension amount together with 18% interest per annum within a short date as may be fixed by this Court.

For Petitioner : Mr. K. Rajkumar
For Respondent-1 : Mr. K.H.Ravikumar, GA
For Respondent-2 : Mr.D.Veerasekaran

COMMON ORDER

Heard the learned counsel for the parties.

2.1. With the allegations of not having followed the procedures of reservations of allotment of the housing plots, both the petitioners herein were levelled with charges under Regulation 37 (b) of the Tamil Nadu State Housing Board Service Regulations, 1969 [hereinafter referred to as "TNHB Regulations"] dated 31.01.2012 and 08.06.2012 respectively.



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2.2. The delinquency relates to the period between 02.06.2010 to 21.12.2010, when the petitioner / M. Mohamed Azizullah in W.P.39568 of 2016 was serving as an Executive Engineer and Administrative Officer, Nandanam Division of TNHB and the petitioner / K.Mohanasundaram in W.P.9739 of 2017 was serving as an Assistant Revenue Officer, Villupuram Housing Unit of TNHB. When both the petitioners were due to retire, the respondent Board had passed orders, by not permitting them to retire on the date of superannuation.

2.3. Not being satisfied with the replies furnished by the petitioners to the levelled charges, separate enquiries were conducted against each of the petitioners herein on 06.02.2013. The inquiry officer submitted separate inquiry reports for both the petitioners herein. The petitioners had rendered their further explanations to the show cause notice issued by the Disciplinary Authority. Ultimately on 15.04.2015, the second respondent herein had issued the impugned orders of punishment, imposing the punishment of withholding a sum of Rs.5445/- per month for the petitioner / M.Mohamed Azizullah in W.P.39568 of 2016 and a sum of Rs.352/- per month for the petitioner / K.Mohanasundaram in W.P.9739 of 2017 for a period of three years.



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2.4. The appeals filed by the petitioners were also rejected by the first respondent herein, through orders dated 29.05.2015 and 03.05.2015 respectively. The orders of punishment, as well as the rejection of the appeals, are put under challenge in the present Writ Petitions.

3. The learned counsels appearing for the petitioners herein pointed out the various procedural irregularities adopted by the respondent Board while conducting the inquiry, as well as the grounds of violation of principles of natural justice and the delay in concluding the departmental proceedings.

4. The learned Standing counsel for the respondent Board submitted that the procedures were duly followed by the Disciplinary Authority while conducting the inquiry and the punishments imposed by them on the petitioners, are also proportionate to the levelled charges.

5. I have given careful consideration to the submissions made by the respective counsels and the grounds raised by them are answered hereunder.



Violation of Principles of Natural Justice:

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6. When the charge memo was issued to the petitioners herein, it was accompanied with Annexure – I, which relates to the statement of the charges, Annexure-II relating to the statement of allegations and Annexure-III, pertains to the list of documents by which the charges framed against the petitioners was referred to. However, Annexure-IV pertains to the list of witnesses by whom charge framed against the petitioners were sought to be established was shown as 'nil'. Consequently, no witnesses were examined during the course of inquiry also. Such a procedure is alien to an enquiry in a departmental action.

7. The Hon'ble Supreme Court in the case of **Roop Singh Negi Vs. Punjab National Bank and others** reported in **2009 (2) SCC 570**, has held that the contents of the documents produced before an Enquiry Officer requires to be substantiated through oral witnesses and in the absence of the same, the enquiry proceedings itself will stand vitiated. The relevant portion of the judgement reads as follows:-

"14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry



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officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence."

8. In the instant case, it is not in dispute that no documents were produced and that the Enquiry Officer had not examined any oral witnesses. In the absence of the same, the entire enquiry proceeding itself is vitiated in view of the ratio held in *Roop Singh Negi (supra)*. Thus the inquiry report, which is the very basis of the Disciplinary Authority for imposing the punishment itself is illegal. In view of the same, the consequential punishment, cannot be sustained.

9. This apart, the impugned orders of punishment is based on the views and recommendations of the Disciplinary Committee. In the impugned order, it is stated that the matter was placed before the



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Disciplinary Committee for its views and recommendations, which was obtained and based on such recommendations of the Disciplinary Committee, the punishment has been imposed. Admittedly, the recommendations of the Disciplinary Committee was not served on the petitioners herein.

10. Regulation 37(b) of the Tamil Nadu Housing Board Service Regulation, 1969 is a *pari materia* to Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, which provides that, it is necessary for the Disciplinary Authority to consult the Tamil Nadu Public Service Commission (TNPSC) for its advice and such advice shall be taken into consideration before making any penalty. Admittedly, in the impugned orders, the views and recommendations of the Disciplinary Committee have not been served on the petitioners.

11. In the case of ***G.Pakirisamy (deceased) & 3 others Vs. The Secretary to Government, Tourism, Culture & Religious Endowment (A.Ne.2-2) Department, Chennai passed in W.P.No.9733 of 2014, dated 17.10.2022***, this Court had an occasion to rely upon an order of the Hon'ble Division Bench of this Court and has held that non furnishing of the report is illegal in the following manner:



" ... This procedure has been held to be impermissible in various decisions of this Court, including the order of an Hon'ble Division Bench of this Court in Union of India, Ministry of Defence and another vs. the Registrar, Central Administrative Tribunal, Chennai and another reported in (2005) 2 MLJ 154, wherein it was held that the delinquent employee would be entitled to a copy of the report of the Public Service Commission, before passing of an order of punishment. Further, non-furnishing of the report would also disable the delinquent officer to give an effective objection, since he would be deprived of knowing the contents of the report. Thus, the manner in which the disciplinary proceedings had culminated into the impugned punishment, regulations and scaled proportion is contrary to the regulations and settled propositions of law."

12. The aforesaid extract is self explanatory. As such, non furnishing of the Disciplinary Committee's views to the petitioners, would be fatal to the respondent Board. Thus, when the impugned orders of punishment has placed reliance on the recommendations of the Disciplinary Committee's report, which report was not furnished to the petitioners herein, the order itself is in violation to the principles of



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natural justice and hence, would stand vitiated.

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Violation of Rule 9(1) of the Tamil Nadu Pension Rules, 1978:-

13. After the charge memo was issued to the petitioners herein, both the petitioners had reached the age of superannuation and they were not permitted to retire. Ultimately based on the charges, the punishment of withholding an quantified amount per month for a period of three years were awarded to the petitioners under the Tamil Nadu Pension Rules. The order further stated that the individual, who is under suspension under Rule 56(1)(c) of the Fundamental Rules of the Tamil Nadu Government, is deemed to have been reinstated into service and allowed to retire on attaining the age of superannuation and thereby relieved under Rule 9(1)(a) of the Tamil Nadu Pension Rules, 1978. As per the proviso to Rule 9(1)(a), when a portion of the pension is sought to be withheld from a pensioner, the TNPSC shall be consulted before such an order is passed. In the instant case, there is no reference at all in the impugned orders of punishment that the TNPSC was consulted, prior to passing of the order to withhold the portion of the pension for a period of three years. As such, the order is deemed to be in violation of Rule 9(1)(a) of the Tamil Nadu Pension Rules. Under this ground also, the impugned order, cannot be sustained.



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The delay in concluding the disciplinary proceedings:-

14. The charges were framed against the petitioners herein on 31.01.2012 and 08.06.2012 respectively. Though the inquiry report was submitted by the Enquiry Officer on 06.02.2013 itself, the Disciplinary Authority had passed the impugned orders of punishment after about two years on 22.04.2015. There is absolutely no explanation from the respondent Board as to this delay of two years.

15. In **P.V. Mahadevan v. M.D. Tamil Nadu Housing Board reported in 2005 (4) CTC 403**, the Hon'ble Supreme Court after referring to various decisions, held that,

"The protracted disciplinary enquiry against a government employee should, therefore be avoided not only in the interest of the government employee but in public interests and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings



would be much more than the punishment. For the mistakes committed by department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

15. We therefore, have no hesitation to quash the charge issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retiral benefits in accordance with law. The retiral benefits shall be disbursed within three months from this date. No cost."

16. Thus, in the absence of any reason for the delay of two years from the Enquiry Officer's report till the impugned order of punishment was passed, the punishment deserves to be interfered on the ground of delay in protracting the departmental inquiry. In view of this infirmity in the procedure adopted by the Disciplinary Authorities also, the impugned orders of punishment, cannot be sustained. Accordingly, the consequent orders passed in the appeal also deserves to be set side.

Common inquiry:-

17. In service jurisprudence, when some of the delinquencies in the charge memo are common between two co-delinquents, a common inquiry requires to be conducted. In the case of the petitioner K.



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Mohanasundaram, the irregularities in allotment of plots with regard to three plots namely, LIG 103, LIG 370 & MIG 279 are also the same delinquency in the charge memo of the petitioner M.Mohamed Azizullah. Admittedly, common inquiry was not conducted in the instant case. When the charges against both these petitioners are interrelated and inter-connected around the same incidents and an Enquiry Officer was also appointed for the purpose of conducting an enquiry into the incidents against the delinquents, such an enquiry ought to have been conducted jointly, since the charges are interrelated to each other.

18. In the case of ***R.Rajkumar Vs. The Commissioner of Police, Trichy City, Trichy*** reported in ***2014 (2) CTC 769***, a Hon'ble Division Bench of this Court had held that, the respondents cannot conduct a departmental enquiry in a piece-meal manner according to their whims and fancies.

19. Likewise, in the case of ***Balbir Chand Vs. Food Corporation of India Ltd. and others*** reported in ***(1997) 3 SCC 371***, the Hon'ble Supreme Court had held that, when there are more than one delinquent officers involved in the disciplinary proceedings, a common enquiry requires to be conducted and splitting up of the cases between the co-



delinquents, should not be encouraged. The relevant portion of the order reads as follows:

"5. It is contended that when one delinquent officer seeks to summon other delinquent who is charged on the common cause of action or for the misconduct committed during the course of the same transaction or to summon more than one officer jointly, the petitioner should be given an opportunity of splitting up the matter and to contend that common enquiry has thereby caused grave prejudice to the petitioner denying him the opportunity to summon the officer to substantiate his defence. We find no force in the contention. It is seen that these are only instructions in conducting the proceedings as guidelines. When more than one delinquent officer are involved, then with a view to avoid multiplicity of the proceedings, needless delay resulting from conducting the same and overlapping adducting of evidence or omission thereof and conflict of decision in that behalf, it is always necessary and salutary that common enquiry should be conducted against all the delinquent officers. The competent authority would objectively consider their cases according to Rules and decide the matter expeditiously after considering the evidence to record findings on proof of misconduct



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and proper penalty on proved charge and impose appropriate punishment on the delinquents. If one charged officer cites another charged officer as a witness, in proof of his defence, the enquiry need not per se be split up even when the charged officers would like to claim an independent enquiry in that behalf. If the procedure is adopted, normally all the delinquents would be prone to seek split up of proceedings in their / his bid to delay the proceedings, and to see that there is conflict of decisions taken at different levels. Obviously, disciplinary enquiry should not be equated as a prosecution for an offence in a criminal Court where the delinquents are arrayed as co-accused. In disciplinary proceedings, the concept of co-accused does not arise. Therefore, each of the delinquents would be entitled to summon the other person and examine on his behalf as a defence witness in the enquiry or summon to cross-examine any other delinquent officer if he finds him to be hostile and have his version placed on record for consideration by the disciplinary authority. Under these circumstances, the need to split on the cases is obviously redundant, time consuming and dilatory. It should not be encouraged. Accordingly, we do not find any illegality in the action taken.”



20. On an overall consideration of the aforesaid two decisions, the procedure adopted by the Inquiry Officer in splitting the inquiry and deciding them separately between the co-delinquents, is impermissible.

21. For all the foregoing reasons, the impugned order passed by the first respondent herein / Secretary to Government Housing and Urban Development Department, Chennai in G.O. (1D) No.5, Housing and Urban Development (Vee. Va 1(1)) Department, **dated 07.01.2016**, confirming the order of the second respondent / Managing Director, Tamil Nadu Housing Board, Chennai in his proceedings No.DC2/14823/2011-1 (Board Secretariat) **dated 22.04.2015**; and the impugned order passed by the first respondent vide proceedings G.O. (D) No.130, Housing & Urban Development [HB 1(2)] Department, **dated 18.07.2016**, confirming the impugned order passed by the second respondent vide proceeding No.DC2/14823/2011-2 (Board Secretariat) **dated 22.04.2015**, are quashed.

22. In view of the quashing of the impugned orders of punishment, the respondents herein shall pass appropriate orders, refunding the amounts that may have been deducted from the petitioners' pensions, within a period of six weeks from the date of



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receipt of a copy of this order.

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23. With the above direction, both the Writ Petitions stand allowed. Consequently, connected Miscellaneous Petition is closed. There shall be no order as to costs.

16.02.2023

Internet : Yes
Order : Speaking
Neutral Citation : Yes

DP

To

- 1.The Secretary to Government,
Government of Tamil Nadu
Housing & Urban Development
Department,
Fort St. George, Chennai-600 009.
- 2.The Managing Director,
Tamil Nadu Housing Board,
Nandanam,
Chennai-600 035.



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M.S.RAMESH,J.

DP

PRE-DELIVERY ORDER MADE IN
W.P.Nos.39568 of 2016 & 9739 of 2017
and
W.M.P.No.10714 of 2017

16.02.2023