



W.P.No.19781 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.10.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.19781 of 2022

R. Rudra Koteeswaran

... Petitioner

Vs.

1.The Commissioner,
Greater Chennai Corporation,
Ripon Buildings, Chennai – 3.

2.The Special Officer,
Greater Chennai Corporation,
Ripon Buildings, Chennai – 3.

3.The Additional Chief Secretary to Government
Municipal Administration &
Water Supply (MC3) Department,
Fort St. George, Chennai – 9.

... 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 1st respondent in connection with the impugned order passed by him in Ref. Genl Na.Ka.No.E13/16786/2019 dated 10.11.2020, confirmed by the 1st respondent in his Ref.Genl Na.Ka.No.E13/16786/2019 dated 26.08.2021 and further confirmed by the 3rd respondent in GO (Rt.) No.140, MA&WS (MC-3) Dept. dated 27.05.2022 and quash the same.



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W.P.No.19781 of 2022

For Petitioner : Mr.K. Venkataramani,
Senior Counsel
for Mr.M. Muthappan

For Respondents : Mr.S. Gopinath,
Standing Counsel [R1 & R2]

Mrs.V. Yamuna Devi,
Special Government Pleader [R3]

ORDER

Heard the learned Senior Counsel for the petitioner, learned Standing Counsel for the first and second respondents and the learned Special Government Pleader appearing for the third respondent.

2. On a set of certain levelled charges through a Charge Memo dated 05.07.2019 framed under Clause 9(2) of the Chennai Corporation Class III and IV Service (Discipline and Appeal) by-laws, the petitioner, who was working as an Assistant Engineer, was subjected to an inquiry. The charges levelled against the petitioner were held to be proved through a report dated 14.10.2019. The further explanation of the petitioner dated 30.10.2019 was considered by the Disciplinary Authority/first respondent herein and was rejected through the order dated 10.11.2020, by imposing



W.P.No.19781 of 2022

WEB COPY

a punishment of stoppage of increment for a period of two years with cumulative effect. The appeal and the further review against the punishment, were rejected. The order of punishment and the subsequent confirmation orders are under challenge in the present Writ Petition.

3. The learned Senior Counsel appearing for the petitioner submits that the order of the Disciplinary Authority, as well as the Appellate and Review Authorities, are non-speaking orders and therefore, they are unsustainable.

4. Per contra, the learned Standing Counsel appearing for the respondents 1 & 2/Corporation, would submit that the Disciplinary Authority has considered all further explanations given by the petitioner on the Inquiry Report and in view of the same, it cannot be termed to be a non-speaking order.

5. A perusal of the original order of punishment dated 10.11.2020, would reveal that though the order runs to about 11 pages, the findings are in penultimate paragraph of the order, which only states that the



W.P.No.19781 of 2022

petitioner's further explanation and the report of the Inquiry Officer were 'duly considered and rejected'. Clause 9(2) and (3) of the Chennai Corporation Class III and IV Service (Discipline and Appeal) by-laws, read as follows:-

“ 9. Procedure for imposing penalties:

(1)

(2) In every case, where it is proposed to impose on a member of a service, any of the penalties specified in clauses (iv), (viii),(ix), (x) and (xi) of by-law 5, the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and of any other circumstances on which it is proposed to take into consideration in passing orders in the case. The person so charged shall be required, within a reasonable time, to put in a written statement of his defence and to state whether he desires an oral enquiry or only to be heard in person or both. An oral inquiry shall be held if such inquiry is desired by the



W.P.No.19781 of 2022

person charged or is directed by the authority concerned. At the inquiry, oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witnesses called, as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reason to be recorded in writing, refuse to call a witness. After the inquiry has been completed, the person charged shall be entitled to put in, if he so desires, any further written statement of his defence. If no inquiry is held and if he has desires to be heard in person, a personal hearing shall be given to him. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the ground thereof.

(3) After the expiry of personal hearing referred to in clause (2) has been completed, the authority competent to impose the penalty specified in that clause is of the opinion, on the basis of the evidence adduced during the enquiry, that any of the penalties specified in



WEB COPY



W.P.No.19781 of 2022

by-law 5 should be imposed on the person charged, it shall, before making an order imposing such penalty, furnish to him a copy of the report of the enquiry or personal hearing or both, as the case may be., and call upon him to submit his further representation, if any, within a reasonable time, not exceeding 15 days. Any representation received in this behalf within the period shall be taken into consideration before making any order imposing the penalty, provided that such representation shall be based on the evidence adduced during the enquiry only. It shall not be necessary to give the person charged any opportunity of making representation on the penalty proposed to be imposed.”

6. The procedure for conducting the disciplinary proceedings is stipulated in Clause 9 of the Chennai Corporation Class III and Class IV Service (Discipline and Appeal) by-laws. Clause 9 is in *pari materia* with Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. As per Clause 9(3) of the Corporation by-laws, after the expiry of personal hearing, the authority competent to impose the penalty on the



W.P.No.19781 of 2022

WEB COPY

basis of the evidence adduced in the inquiry, is of the view that any of the penalties should be imposed on the delinquent, he shall take into consideration the representation given by the delinquent and thereafter, impose the penalty.

7. However, in the instant case, the Disciplinary Authority, apart from observing that the further representation of the petitioner has been 'well considered', has not applied his mind with regard to the grounds raised by the petitioner in his further representation. In other words, as per the requirement under Clause 9(3) of the Corporation by-laws, all the grounds raised by the petitioner in his further representation, require to be independently addressed and dealt with by assigning reasons for rejecting these grounds. Such a procedure is conspicuously absent in the Disciplinary Authority's order of punishment.

8. As such, the order itself is deemed to be a non-speaking order, which cannot be sustained in the eyes of law. This apart, the further orders passed in the Appeal and Review Petitions, are also non-speaking orders, which cannot be sustained. In this background, this Court is of the



W.P.No.19781 of 2022

WEB COPY

view that the Disciplinary Authority may be called upon to pass fresh orders, within a stipulated time.

9. At this juncture, the learned Senior Counsel appearing for the petitioner, submitted that the Disciplinary Authority's order was passed on 10.11.2020 and the punishment of stoppage of increment for a period of two years with cumulative effect, has already been implemented.

10. Now that this Court has found the punishment order of the Disciplinary Authority itself to be bad in law, it would be appropriate that the punishment, which has already been implemented, be kept in abeyance. In case, the Disciplinary Authority, on remand, is of the view that a penalty requires to be imposed on the petitioner, he shall give consideration to the punishment which has already been imposed pursuant to the orders dated 10.11.2020.

11. In the light of the above findings, the impugned orders passed in Ref.Genl Na.Ka.No.E13/16786/2019 dated 10.11.2020 and Ref.Genl Na.Ka.No.E13/16786/2019 dated 26.08.2021 passed by the first



W.P.No.19781 of 2022

WEB COPY

respondent, are hereby quashed and the matter is remitted back to the first respondent for fresh consideration. Consequently, the first respondent shall pass final orders in accordance with the procedure contemplated under Clause 9 of the Chennai Corporation Class III and Class IV Service (Discipline and Appeal) by-laws, within a period of four (4) weeks from the date of receipt of a copy of this order and in case, any penalty is imposed, the first respondent shall take into consideration the earlier punishment imposed on the petitioner pursuant to the present impugned disciplinary proceedings.

12. With the above direction, the Writ Petition stands allowed. No costs.

31.10.2023

Index: Yes
Speaking order
Internet: Yes
Neutral Citation: Yes

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W.P.No.19781 of 2022

M.S.RAMESH,J.

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To

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W.P.No.19781 of 2022

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