



W.P.No.22850 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2023

CORAM

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.22850 of 2019

P.Arunachalam

.. Petitioner

Vs.

1. The Director
Fire & Rescue Service
17, Rukmani Lakshmipathy Road
Egmore, Chennai 600 008.
2. The Deputy Director (Full Incharge)
Central Region
Tiruchirapalli.
3. The District Officer
Fire & Rescue Service Department
Villupuram District.

.. Respondents

PRAYER: Petition under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus calling for the records relating the third respondent herein in R.C.No.2295/B1/2017 P.R.No.09/2017 dated 19.09.2017 and the order passed in appeal by the second respondent herein in Mu.Mu.No.5139/B1/2017 dated 08.02.2018 and the consequential order passed in mercy petition by the first respondent herein in Rc.No.9337/A3/3018 dated 14.09.2018 and quash the same and consequently, direct the respondents to confer the promotion with all the attendant benefits with due regards to the petitioner's seniority.



W.P.No.22850 of 2019

WEB COPY

For the Petitioner : Mr.R.S.Anandan

For the Respondents : Mr.M.Shahjahan
Special Government Pleader

ORDER

The petitioner has approached this Court seeking a writ of Certiorarified Mandamus to call for the records on the file of the third respondent dated 19.09.2017 and the order passed by the second respondent in the appeal dated 08.02.2018 and the dismissal of the mercy petition by the first respondent dated 14.09.2018 and to consequently, direct the respondents to confer promotion with all attendant benefits as regards the petitioner's seniority.

2. The petitioner joined the services of the respondent as Fireman Driver on 09.09.1996. According to the petitioner, except the impugned charges and punishment, he maintained clean record throughout his entire career and his services were also appreciated by superior officers. He was served with a charge memo by the third respondent on 22.05.2017. On receipt of the said charge memo, he submitted his explanation, denying the charges, on 31.05.2017. In the



W.P.No.22850 of 2019

WEB COPY

very same communication, he has put the third respondent on notice that he has not been furnished the documents that have been referred to in the charge memo and also the statement of witnesses and that the disciplinary authority could not proceed with the enquiry without complying with the same.

3. The Enquiry Officer, subsequently, came to be appointed by the third respondent and without even furnishing the statement of witnesses examined, even after the completion of the enquiry, he submitted his report to the disciplinary authority. It is also the case of the petitioner that the Enquiry Officer has not given a finding based on any evidence and therefore, the report of the Enquiry Officer itself is perverse.

4. It is the further grievance of the petitioner that even the disciplinary authority did not furnish the copy of the enquiry report before proceeding to hold him guilty of the charges and instead came to a provisional conclusion to award punishment of stoppage of two increments with cumulative effect by issuing notice dated 06.09.2017.



W.P.No.22850 of 2019

WEB COPY

5. The petitioner gave his explanation to the show cause notice on 12.09.2017. The third respondent, without considering his explanation, proceeded to pass the impugned order. According to the petitioner, both his appeal as well as mercy petition were also rejected without giving any reasons. Challenging all these proceedings, the petitioner has approached this Court mainly on the grounds that he has been denied a fair opportunity to defend his case and come clean in the enquiry. In short, the petitioner complains of the violation of principles of natural justice.

6. The third respondent has filed a counter, wherein, the charges slapped against the petitioner are set out and except justifying the charges levelled against the petitioner and the report of the enquiry officer.

7. Heard learned counsel for the petitioner and learned Special Government Pleader for the respondents.

8. Learned counsel for the petitioner, apart from canvassing the grievances of the petitioner as set out in the affidavit and the grounds



W.P.No.22850 of 2019

raised therein in support of the writ petition, would rely on the judgment of the Supreme Court in **State of U.P. v. Saroj Kumar Sinha [Civil Appeal No.254 of 2008 dated 02.02.2010]**. In the said judgment, the Supreme Court has held as follows:

"28. When a department enquiry is conducted against the Government servant it cannot be treated as a casual exercise. The enquiry proceeding also cannot be conducted with a closed mind. The enquiry officer has to be wholly unbiased. The rules of natural justice are required to be observed to ensure not only that justice is done but is manifestly seen to be done. The object of rules of natural justice is to ensure that a government servant is treated fairly in proceedings which may culminate in imposition of punishment including dismissal/removal from service. In the case of Shaughnessy v. United States, 345 US 206 (1953) (Jackson J), a judge of the United States Supreme Court has said "procedural fairness and regularity are of the indispensable essence of liberty. Severe substantive laws can be endured if they are fairly and impartially applied".

29. The affect of non disclosure of relevant documents has been stated in Judicial Review of Administrative Action by De Smith, Woolf and Jowell, Fifth Edition, Pg. 442 as follows:

"If relevant evidential material is not disclosed at all to a party who is potentially prejudiced by it,



WEB COPY



W.P.No.22850 of 2019

there is prima facie unfairness, irrespective of whether the material in question arose before, during or after the hearing. This proposition can be illustrated by a large number of modern cases involving the use of undisclosed reports by administrative tribunals and other adjudicating bodies. If the deciding body is or has the trappings of a judicial tribunal and receives or appears to receive evidence ex parte which is not fully disclosed, or hold ex parte inspections during the course or after the conclusion of the hearing, the case for setting the decision aside is obviously very strong; the maxim that justice must be seen to be done can readily be invoked."

9. Ultimately, the Supreme Court found that when the departmental enquiry was conducted against a Government servant and he was denied access to the documents, especially when such documents were relied upon by the authorities, it was a case of being condemned unheard and the Supreme Court set aside the judgment of the Division Bench on this limited ground alone, as, such an exercise or failure on the part of the disciplinary authority to follow the principles of natural justice had resulted in miscarriage of justice to the Government servants.



W.P.No.22850 of 2019

WEB COPY

10. The facts of the said case would equally apply to the present case. The petitioner's grievance that he was not given the copies of documents that were relied on and referred to in the charge memo was raised at the earliest instance when he gave explanation to the charge memo on 31.05.2017 itself. Despite the same, the disciplinary authority has proceeded with the enquiry, that too, behind the back of the petitioner, without even furnishing the statement of witnesses who were examined by the Department in respect of the charge memo and against the petitioner. The third respondent has not even denied the main contention of the writ petitioner in the affidavit in support of the writ petition that he has not been given a copy of the documents that were relied on and referred to in the charge memo or even the statement of witnesses. The further grievance of the petitioner that he was not given a copy of the enquiry report is also not specifically denied.

11. Thus, there is a clear violation of the principles of equity and fair play and the petitioner's fundamental right has been violated, warranting relief from this Court by way of issuance of a writ under Article 226 of the Constitution of India.



W.P.No.22850 of 2019

WEB COPY

12. The writ petition is, accordingly, allowed. There will be no order as to costs.

30.06.2023

Index : Yes/No
Neutral Citation : Yes/No

kpl

To

1. The Director
Fire & Rescue Service
17, Rukmani Lakshmipathy Road
Egmore, Chennai 600 008.
2. The Deputy Director (Full Incharge)
Central Region
Tiruchirapalli.
3. The District Officer
Fire & Rescue Service Department
Villupuram District.



WEB COPY



W.P.No.22850 of 2019

P.B.BALAJI,J.

(kpl)

W.P.No.22850 of 2019

30.06.2023