



W.P.No.25027 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	24.02.2023
Pronounced on	15.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.25027 of 2019
and
W.M.P.No.24596 of 2019

A.Usman

... Petitioner

Vs.

1.The State of Tamil Nadu
Rep. by its Principal Secretary to Government,
Department of Energy (D2) Department,
Secretariat, Fort St. George,
Chennai-600 009.

2.The Chief Electrical Inspector to Government,
Guindy, Chennai-600 032.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the records from the second respondent in his proceedings No.Se.Mu.A.No.26747/e2/2017 dated 21.08.2018 and the said order also confirmed by the first respondent in his proceedings in G.O.Ms (1D) No.31 dated 23.07.2019 (received on 08.08.2019) quash the same and to issue consequential direction directing the respondents to disburse the retirement benefits to the petitioner.



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For Petitioner : Ms.Shabnam Banu
for Mr.A.M.Esakkiappan
For Respondents : Mr.K.H.Ravikumar, GA

O R D E R

Based on the inquiry report holding the charges as proved against the petitioner under the charge memo dated 27.11.2012 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules [hereinafter referred to as "Rules"], the second respondent herein had imposed the punishment of "removal from service" through an order dated 21.08.2018. The appeal preferred by the petitioner in his appeal petition dated 27.08.2018, was also rejected by the first respondent through his order dated 23.07.2019. Challenging these orders, the present Writ Petition has been filed.

2. Heard Ms.Shabnam Banu, learned counsel for the petitioner and Mr.K.H.Ravikumar, learned Government Advocate appearing on behalf of the respondents.

3. Though the petitioner herein had raised several grounds challenging the disciplinary proceedings, as well as the consequential punishments herein, Ms.Shabna Bhanu, learned counsel appearing for



the petitioner predominantly stressed upon the point of procedural irregularity in the conduct of the disciplinary proceedings. According to the learned counsel, neither was any inquiry conducted nor was any summons issued, calling upon the petitioner to appear for the domestic inquiry.

4. On the directions of this Courts, the learned Government Advocate produced the entire original files relating to the disciplinary proceedings. I had perused the files wherein it was found that the inquiry summons, which was claimed to have been sent to the petitioner by the Inquiry Officer, does not carry an acknowledgement of the receipt of such summons by the petitioner. The official, who had brought the file had also counter checked the entire original files and fairly admitted that the petitioner's acknowledgement of having received the inquiry summons, is not available in the file. If that be so, the claim made by the learned counsel for the petitioner that the petitioner was not aware of the conduct of an inquiry, gains significance and thereby, an inference needs to be drawn in support of the petitioner's claim.



5. This apart, the petitioner had preferred an appeal under Rule 19 of the Rules on 27.08.2018, against the award of punishment of removal from service. The Appellate Authority / first respondent herein, in his order dated 23.07.2019, had merely extracted the views of the Tamil Nadu Public Service Commission (TNPSC) and by stating that the grounds raised in the appeal were independently and carefully examined together, together with the TNPSC views, rejected the appeal, without assigning any further reasons. Such an order, is opposed to the procedure contemplated under the Rules.

6. Rule 23 of the Rules, deals with the procedure adopted by the Appellate Authority while dealing with an appeal. As per the said Rule, the Appellate Authority is required to consider as to whether the facts on which the order imposing the penalty was passed, have been established; whether the facts established afford sufficient grounds for taking action; whether the penalty is excessive, adequate or inadequate; and only after following these procedures, the Appellate Authority is empowered to confirm or enhance or reduce or set aside the penalty or remit the case to the Disciplinary Authority for reconsideration.



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7. None of the ingredients of Rule 23 have been followed by the Appellate Authority while passing the impugned order in the appeal. As stated above, the appeal has been rejected with a 'single line', stating that the grounds raised in the appeal were independently and carefully examined and rejected. Thus, the order in appeal also suffers from non-application of mind and hence, is deemed to be a non-speaking order, which is illegal.

8. Thus, the proceedings of the Disciplinary Authority is in violation of the procedural contemplated under Rule 17(b) and the order of the Appellate Authority, also suffers from procedural irregularity contemplated under Rule 23, this Court is of the view that the matter may be remitted back to the Disciplinary Authority, with liberty to conduct a fresh inquiry. Consequently, both the orders are liable to be set aside. Since, this Court has not ventured into the merits of the case, the other grounds raised by the petitioner in this regard, are left open for the petitioner to raise them during the course of the further proceedings.



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9. In the light of the above findings and observations, the impugned orders of the respondents 1 and 2 dated 23.07.2019 and 21.08.2018 respectively, are set aside. However, the second respondent is at liberty to conduct a fresh enquiry, if they choose to do so, based on the original charge memo framed under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, dated 27.11.2012. The Writ Petition thus stands partly allowed. Consequently, the connected Miscellaneous Petition is closed. There shall be no order as to costs.

15.03.2023

Index : Yes
Order : Speaking
Neutral Citation : Yes

DP

Note: Issue order copy on 17.03.2023



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To

- 1.The Principal Secretary to Government,
State of Tamil Nadu
Department of Energy (D2) Department,
Secretariat, Fort St. George,
Chennai-600 009.
- 2.The Chief Electrical Inspector to Government,
Guindy, Chennai-600 032.



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M.S.RAMESH,J.

DP

ORDER MADE IN

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and

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