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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 04.07.2023

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THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No. 26827 of 2019

K.P.Elumalai

... Petitioner

..Vs..

1. The Managing Director
Tamil Nadu State Marketing Corporation Ltd.,
4th Floor, CMDA Towers-2
Egmore, Chennai – 600 008.
2. The Senior Regional Manager
Tamil Nadu State Marketing Corporation Ltd.,
Salem.
3. The District Manager
Tamil Nadu State Marketing Corporation Ltd.,
Thiruvannamalai District.

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus calling for the records relating to the dismissal order made in Na.Ka.Ar.V.2/1078/2015 dated 07.10.2015 on the file of the third respondent and consequential order in Se.Mu.No.219/2018/A dated 28.08.2018 on the file of the second respondent and subsequent order passed by the first respondent in his



proceedings made in Se.Mu.Na.Ka.No. R1/8437/2018 dated 26.10.2018 and quash the same and direct the third respondent to reinstate the petitioner in service with full back wages, continuity of service, consequential and other attendant benefits.

For Petitioner :: Mr. J.James

For Respondents :: Mr.K.Balakrishnan
Standing Counsel for TASMACH

ORDER

The Writ Petition has been filed in the nature of Certiorarified Mandamus seeking interference with an order of dismissal dated 07.10.2015 passed by the third respondent and the consequential order of the conferment passed by the second respondent on 28.08.2018 and the final order passed by the first respondent confirming both the aforementioned orders and dated 26.10.2018 in Se.Mu.Na.Ka.No. R1/8437/2018 and seeking reinstatement of the petitioner in service with full back wages, continuity of service, consequential and all other attendant benefits.

2. The petitioner was working as Supervisor in TASMACH shop in retail vending IMFL Shop No. 9254. He joined duty on 01.01.2004. On



10.04.2015, the second respondent, the Senior Regional Manager, Tamil Nadu State Marketing Corporation Ltd., Salem, had made a surprise inspection of the aforementioned vending shop of the petitioner where the petitioner was Supervisor. At that particular point of time, the petitioner was away and he claims that he was in the Bank. The sales man S.Krishnamoorthy was available. The inspection had been completed even before the petitioner could come back and the petitioner was asked to sign in the notes prepared during the course of the inspection. Thereafter, on the next day, ie., on 11.04.2015, the petitioner was asked to come over to the office of the third respondent, District Manager, Tamil Nadu State Marketing Corporation Ltd., Thiruvannamalai District. He was issued with a relieving order stating that he stood relieved from service with effect from 10.04.2015 by proceedings dated 10.04.2015 issued by the third respondent. There were various allegations against the petitioner.

3. This Court need not examine those facts because under Article 226 of the Constitution of India while examining an order of dismissal, it is the procedure adopted which can be reviewed by this Court and not the order passed. If the procedure is not proper, then naturally there will be a consequential interference with the order passed by the respondents.



4. The learned counsel for the petitioner placed on record the charges which have been framed against the petitioner and also filed copy of the charge memo. The petitioner was placed under suspension on 10.04.2015 and on the same day, ie., on 10.04.2015, the charge memo was also issued.

5. The reasons for suspension were nine in number in the suspension order. The same 9 reasons were incorporated in the charge memo. The 7th charge was that the petitioner had violated the directions of the higher officials. It was not given, who the higher officials were and it was not mentioned as to how the petitioner violated the directions of the higher officials. The 8th charge was that the TASMACH shop was managed in violation of rules. The specific violation was not mentioned in that particular charge. The 9th charge was that the petitioner was very casual during the period of service. Again the details had not been given. The first, second and third charges required examination and an enquiry to be conducted. They stated that brandy bottles were found open and it was suspected that it was either to dilute it with water or to sell it in smaller quantities. The fourth charge was that the petitioner had not discharged his work as



Supervisor. The fifth charge related to a complaint given in FIR in Cr.No. 176 of 2015 dated 14.04.2015. The sixth charge was that there was a short fall at Rs.2348/- in cash.

6. But very unfortunately, the list of witnesses to substantiate the charges and the list of documents on the basis of which the charges were to be substantiated had not been enclosed or annexed along with the charge memo. Imputations necessitating the framing of the charges had also not been stated. These are required to be stated with a major punishment under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules are to be framed. The petitioner had given an explanation on 14.04.2015. An Enquiry Officer was then appointed and the enquiry report had also been enclosed as a document before this Court.

7. It is seen that the enquiry officer had adopted a strange procedure. Any departmental enquiry in the nature of disciplinary proceedings against a delinquent must have as its fulcrum, the principles of natural justice. Opportunity must be granted to the diligent at each and every stage. There must be prior disclosure of the list of witnesses. There



must be prior disclosure of the list of documents. There must be a questionnaire enclosed calling upon the delinquent to inform whether he is interested in adducing oral and documentary evidence. These aspects should form part of the enquiry report. Unfortunately none of them are present in the Enquiry Report, now impugned.

8. In the enquiry report, it is stated that the entire file had been produced by Assistant Manager, who was present. She was not examined. The specific documents relating to the charges were not marked. Since the documents were not marked, they cannot pass the bench mark of admissibility, proof and relevancy. Their genuinity could not be questioned by the petitioner. Thereafter the statement of the petitioner alone was recorded. It was then stated he did not give any explanation in writing. The charges were then repeated in the report and it was held that they were all proved.

9. I really wonder how the disciplinary authority / Enquiry Officer could come to that conclusion without any document being marked and without oral evidence being adduced on the part of the respondents herein.



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10. I hold the entire enquiry report has to be set aside having been prepared with mala fide intention and pre-decided conviction to some how impose a punishment on the petitioner herein.

11. But I must place my appreciation to Mr.K.Balakrishnan, learned Standing Counsel for the respondents, who, as always, was extremely fair and pointed out that the other sales person against whom also similar charges were framed, had filed W.P.No. 1222 of 2018 and a learned Single Judge of this Court by a Judgment dated 08.12.2022, after, again expressing opinion that there were procedural irregularities in conducting the domestic enquiry, had quashed the charge memo. Since the said sales person had been dismissed, a direction was given to reinstate that petitioner back into service. An opportunity was however granted to the respondents to follow due procedure and give adequate opportunity to let in oral and documentary evidence and then to proceed against the petitioner therein. The same reasoning accrues to the petitioner also.



12. As stated, the Enquiry Report suffers from want of grant of adequate opportunity to the petitioner herein. Effective opportunity must be granted. It must be realistic. The principles of natural justice must be followed not only in letter but also in spirit.

13. In view of all these reasons, the enquiry report is set aside and once that is set aside, every order consequential passed, necessarily has to be interfered with by this Court and are set aside. A direction is issued to respondent to reinstate the petitioner with all attendant backwages and benefits.

14. As opined by the learned Single Judge in W.P.No. 1222 of 2018, a similar direction will also enure to the respondents. It is open to the respondents to proceed against the petitioner if they chose to do so by following due procedures and by conducting enquiry and giving adequate opportunity to the petitioner to let in oral and documentary evidence.

15. I only add that issue of opportunity must start with issuance of a show cause notice inviting a reply from the petitioner, framing an opinion



that the reply is not satisfactory and a charge memo has to be framed and thereafter framing the charge memo accordance with rules by disclosing the list of witness and list of documents and also the imputations of charges.

16. The Writ Petition stands allowed. The respondents must reinstate the petitioner within a period of 12 weeks, with all attendant back wages and emoluments. No costs.

04.07.2023

vsg

Index: Yes/No

Internet: Yes/No

Speaking / Non Speaking Order

To

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C.V.KARTHIKEYAN, J.,

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