IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **03.01.2023**

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Writ Appeal No.1674 of 2017

K. Jayaprakash
S/o. Kolappan,
Assistant (Retired),
Sub-Registrar's Office,
Gandhipuram, Coimbatore 641 027. .. Petitioner / Appellant

Vs.

1. Government of Tamil Nadu,
   Rep. by the Principal Secretary to Government,
   Commercial Taxes and Registration Department,
   Secretariat, Chennai 600 009.

2. The Inspector General of Registration,
   Chennai 600 028. .... Respondents/Respondents

Prayer: Writ Appeals filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P. No.21570 of 2014 dated 30.03.2016.

For Appellant : Mr. M.Ravi,

For Respondents : Mr.G.Ameedius
Government Advocate

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The Appellant is aggrieved by the dismissal of his Writ Petition, the challenge in which was to the order of the first respondent made in an Appeal filed by the appellant against the order of the second respondent imposing a punishment of stoppage of increment for a period of two years with cumulative effect.

2. The appellant an Assistant in the office of the Sub Registrar at Annur, was functioning as an in-charge Sub Registrar on 05.11.2008. There was a surprise inspection by the Vigilance Party on the said date and based on the statements given by some of the persons, who were found in the office of the Sub Registrar, the appellant was charged with a delinquency of demanding bribe to the tune of Rs.44,350/-. It was further found that there was a short fall of about Rs.554/- in the cash balance and as a consequence, a charge memo was issued to the appellant charging him with two charges one for dereliction of duty and the other for demanding bribe.

3. An officer at the cadre of the District Registrar was appointed as an Enquiry Officer, at the enquiry all the persons, who had given statements before the Vigilance Party during the surprise inspection had turned turtle and disowned their statements. They claimed that they had the money for their own purposes and not for being given as a gift to the employees of the Sub Registrar's Office. As far as the short fall is concerned, it was the contention of the appellant that since the raid party came in between, money payable for some of the receipts that were generated was not received, which resulted in a short fall and later the said money was received and the account was settled.

4. Left without any other alternative, the Enquiry Officer returned a finding that the charges have not been proved. The Disciplinary Authority decided to differ from the findings of the Enquiry Officer. While doing so, unfortunately the Disciplinary Authority recorded its conclusion that the charges were proved. It is settled law in service jurisprudence that the Disciplinary Authority, who proposes to disagree or differ with the findings of the Enquiry Officer should record its tentative reasons for such difference and call upon the delinquent employee to show cause, as to why, the charges should not be held to have been proved.

5. In the case on hand, the Disciplinary Authority rightly issued a show cause notice, disagreeing with the findings of the Enquiry Officer, but it committed a mistake while recording the tentative reasons,.The annexure to the notice dated 07.05.2012 which conveys the decision of the Disciplinary Authority to differ from the conclusions of the Enquiry Officer reads as follows:

> "விசாரணை அலுவலர் சாட்சிகள் திரு.T.ஞானசேகர், காவல் ஆய்வாளர் மற்றும் திரு.R.உறரிகிருஉ்ணன், மாவட்ட ஆய்வுக்குழு அதிகாரி ஆகியோர்களின் வாக்குமூலத்தை கவனத்தில் கொண்டு பரிசீலிக்காமல் விசாரணை அறிக்கை அளித்துள்ளார். **இந்நிலையில் விசாரணை அறிக்கையிலிருந்து மாறுபட்டு குற்றச்சாட்டு நிருபணமாவதாக கருதப்படுகிறது.**"

This according to the learned counsel for the appellant would amount to the Disciplinary Authority prejudging the issue without giving an opportunity to the delinquent employee.

6. Mr.Ravi learned counsel appearing for the appellant would invite our attention to the judgment of the Hon'ble Supreme Court in ***Punjab National Bank and Others v. Kunj Behari Misra,*** reported in ***1998 (7) SCC 84***, wherein the Hon'ble Supreme Court has pointed out the procedure that is to be followed by a Disciplinary Authority when it proposes to disagree with the findings of the Enquiry Officer. After referring to the judgment of the Constitution Bench in ***Managing Director, ECIL v. B.Karunakar,*** reported in ***1993 (4) SCC 727***, the Hon'ble Supreme Court had held as follows:

> "*17. These observations are clearly in tune with the observations in Bimal Kumar Pandit's case quoted earlier and would be applicable at the first stage itself. The aforesaid passages clearly bring out the necessity of the authority which is to finally record an adverse finding to give a hearing to the delinquent officer. If the enquiry officer had given an adverse finding, as per Karunakar's case the first stage required an opportunity to be given to the employee to represent to the disciplinary authority, even when an earlier opportunity had been granted to them by the enquiry officer. It will not stand to reason that when the finding in favour of the delinquent officers is proposed to be overturned by*

the disciplinary authority then no opportunity should be granted. The first stage of the enquiry is not completed till the disciplinary authority has recorded its findings. The principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiring officer holds the charges to be proved then that report has to be given to the delinquent officer who can make a representation before the disciplinary authority takes further action which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent officer but the disciplinary authority proposes to differ with such conclusions then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise he would be condemned unheard. In departmental proceedings what is of ultimate importance is the findings of the disciplinary authority."

The Hon'ble Supreme Court further observed as follows:

"19. *The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever* *the disciplinary authority disagrees with the enquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer".*

7. It will not be out of place to refer to the judgment of this Court in ***M.Muthu Anand v. The Principal Secretary and Secretary to Government & another*** made in WP No.2456 and 12108 of 2010 dated 07.02.2011, wherein the Hon'ble Mr.Justice S.Manikumar, (as he then was) had after referring to the various pronouncements on the question concluded as follows:

> "*16. At this juncture, it is pertinent to point out that when the Disciplinary Authority takes the assistance of an enquiry officer to conduct the enquiry into the charges and if any findings adverse to the interests of the charged official are recorded, then he has to be furnished with a copy of the enquiry officer's report, so as to enable him to make his further representation, on the findings of the enquiry officer, to the disciplinary authority and at that stage, when the Disciplinary Authority acknowledges the further representation, then he has to apply his mind and consider as to whether, the facts on the basis of which, disciplinary action has been taken, have been established, whether the charged official has been provided with sufficient opportunity to defend the disciplinary proceedings, whether the procedure contemplated under the rules have been followed, whether there is sufficient ground to proceed further with the disciplinary proceedings, and then, he can record his final findings on the charges to remit the matter to the enquiry officer to rectify any procedural defect noticed with regard to the above aspects. But if the enquiry officer records the findings in favour of the delinquent officer, holding that the charges as not*

proved, with or without any recommendation for exoneration and if the Disciplinary Authority disagrees with those findings, then, it is mandatory on the part of the Disciplinary Authority to form a tentative opinion for disagreeing with the findings of the enquiry officer. But if the Disciplinary Authority, instead of recording a tentative opinion with reasons, for disagreement, proceeds to hold him guilty of the charges and thereafter, issue notice to the charged official, then it is nothing but a post-decisional hearing. It should also be borne in mind that principles of natural justice require that before the disciplinary authority records his final finding on the charges, he has to examine various aspects stated supra. But, without examining the same, if the Disciplinary Authority arrives at a final finding on the charges as proved, and thereafter, call upon the charged official to offer his further representation on the finding and also on the procedural aspects, then it is only an empty formality, for the reason, there is not only a post decisional hearing on the findings, but it is also on the procedural aspect. In the case on hand, the Disciplinary Authority has not only recorded his reasons for disagreeing with the findings of the enquiry officer, but has also arrived at the conclusion, holding the charges as proved. At *the risk of repetition, the final conclusion of the Disciplinary Authority on the charges is extracted hereunder:*

"You have thus allowed the arrangements (i.e., allowing the private individual to work) to continue which certainly should not have been done. The findings of the Inquiry Officer is not accepted. Hence, the charge is held as proved."

8. It is therefore clear that the Disciplinary Authority when it decides to differ from the conclusions of the Enquiry Officer has to record the fact that it proposes to differ, the tentative reasons for such difference and call upon the Delinquent Officer to explain as to why it should not differ. Then it will be open to the Delinquent Officer to persuade the Disciplinary Authority to agree with the conclusions of the Enquiry Officer. If the Disciplinary Authority records its conclusion, as has been done in the present case the further opportunity contemplated becomes an empty formality.

9. The Appellate Authority had also not considered this question and it had merely dismissed the Appeal by a non speaking order. The question as to whether the opportunity that is to be given after the Disciplinary Authority records its decision to differ from the Enquiry Officer's findings has not been addressed by the Writ Court also. Though, the Writ Court had pointed out that the Disciplinary Authority has differed, the Writ Court had found that such difference is justified on the basis of the evidence. The actual import of the judgment of the Hon'ble Supreme Court in ***Punjab National Bank and Others v. Kunj Behari Misra,*** is to the effect that while it is open to the Disciplinary Authority to differ from the findings of the Enquiry Officer, it shall not conclude and render a finding on the charges without giving an opportunity to the delinquent employee. This aspect, we find, has not been highlighted before the Writ Court resulting in the Writ Court dismissing the Writ Petition.

10. Even though this question has not been dealt with by the Writ Court, we find that once the law laid down by the Hon'ble Supreme Court is very clear and emphatic, the requirements set out therein cannot be waived or given up by the parties. We are therefore left without any other alternative but to interfere and to set aside the order of the Writ Court as well as the order of the Authorities imposing the punishment only on the sole ground that the Disciplinary Authority had chosen to conclude that the charges are proved without giving an opportunity to the delinquent employee. The opportunity that has been given after 07.05.2012 had in fact become an empty formality since the decision to conclude that the charges have been proved has been reached on 07.05.2012.

11. In the upshot, the Writ Petition will stand allowed and the punishment will stand set aside. We find that the appellant had already reached the age of superannuation and has also been allowed to retire. Mr.M.Ravi, learned counsel appearing for the appellant would submit that because of the currency of the punishment, the appellant has been denied certain promotions. We make it clear that the Appellant would be entitled to only notional promotions and retirement benefits on the basis of notional promotion. He will not be entitled to any other monetary benefits, viz. back wages. The Department/ the second respondent will do well to calculate the benefits that are due to the appellant as expeditiously as possible at any rate within a period of six months from the date of receipt of a copy of this order. There shall be no order as to costs.

(R.S.M., J.) (S.S.K., J.)

jv 03.01.2023

Index: No
Internet: Yes
Speaking order

To

1. The Principal Secretary to Government,
   Government of Tamil Nadu,
   Commercial Taxes and Registration Department,
   Secretariat, Chennai 600 009.

2. The Inspector General of Registration,
   Chennai 600 028.

R.SUBRAMANIAN, J.
and

SATHI KUMAR SUKUMARA KURUP, J.

(jv)

Writ Appeal No.1674 of 2017

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