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WP.No.10504/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 07.08.2023

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

WP.No.10504/2017 & WMP.Nos.11393 & 11394/2017

C.Tamilselvam

... Petitioner

Versus

1.The Managing Director,
Tamil Nadu Minerals Limited
No.31, Kamarajar Salai
Chepauk, Chennai-5.

2.The Enquiry Officer/Manager [Productions]
Tamil Nadu Minerals Limited
No.31, kamaraja Salai,
Chepauk, Chennai-5.

... Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records in pursuant to the impugned enquiry report submitted by the 2nd respondent in proceedings dated 24.03.2017 and the consequential impugned proceedings issued by the 1st respondent in proceedings Na.Ka.No.22956/E4/1998 daetd 05.04.2017 and quash the same.



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For Petitioner : Mr.R.Prem Narayan
For R1 & R2 : Mrs.A.Srijayanthi, Spl.GP

ORDER

- (1) The writ petition has been filed in the nature of a certiorari seeking records relating to an Enquiry Report submitted by the 2nd respondent, the Enquiry Officer/Manager [Productions], Tamil Nadu Minerals Limited at Chennai, in proceedings dated 24.03.2017 and the consequential impugned proceedings issued by the 1st respondent, Managing Director, Tamil Nadu Minerals Limited at Chennai, in proceedings in Na.Ka.No.22956/E4/1998 dated 05.04.2017 and to quash both the said proceedings.
- (2) This is an issue which, as facts exhibit, *prima facie* prejudice on the part of the 1st respondent against the petitioner herein. Though it has the trappings of a domestic enquiry, it is an example of how not to conduct a domestic enquiry and how not to be vindictive against an employee. The facts reveal that the petitioner herein had been originally appointed as Jeep Driver in the office of the Divisional



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Manager of Tamil Nadu Minerals Limited at Ariyalur. He was then transferred to Krishnagiri and was placed under suspension on 27.11.1995. During his posting as Driver in Krishnagiri, he was also directed to serve as Watchman on shift basis. A charge memo was originally issued on 23.03.1996 complaining that the petitioner and nine others were involved in theft of rods which were used in quarries for Tamil Nadu Minerals Limited.

- (3) A perusal of the counter affidavit shows that the 1st respondent was of the very firm opinion that such theft could not have happened in a single day, but that it could have occurred from 01.04.1995 onwards on a piecemeal basis. The petitioner was placed under suspension under Rule 4[4] of TAMIN Conduct, Discipline and Appeal Rules in proceedings in No.21726/EB3/95 dated 27.11.1995. Thereafter, an enquiry was conducted. It must also to be mentioned that parallely, a criminal case was also registered consequent to a FIR being lodged. But, no further details are available as to the proceedings of the said criminal case. It is not known whether the Final Report had been filed and it is not known whether a logical conclusion had been



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reached in the criminal Court. At any rate, this Court is concerned only with the departmental proceedings initiated against the petitioner herein.

- (4) It is seen that an Enquiry Officer was appointed and after examining the entire records, he had held that the charges were not proved. This was not to the liking of the Managing Director. It is for that reason that this order started with the observation that the entire proceedings exhibited prejudice and bias by the Managing Director against the petitioner herein. The Managing Director who could have either accepted the Enquiry Report or could have dissented from it and given reasons, had however called upon the Enquiry Officer to furnish a second Report. The second Report was promptly given and it was held that the charges have been proved. Holding so, the petitioner herein was terminated from service on 10.07.1997. The petitioner then filed an appeal on 26.08.1997. That appeal was rejected on 01.10.1997. Quite concerned with this second finding, which is unknown to service jurisprudence, the petitioner filed WP.No.16341/1998.



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(5) That writ petition came to be allowed on 28.07.2008 and the entire procedure was struck down and liberty was given to the respondents to conduct a fresh enquiry on the same set of charges. But, however it was stipulated that such enquiry should commence within a period of three months. The petitioner was reinstated in service on 22.09.2008.

(6) It is stated by the learned counsel for the petitioner that the order copy had been received by the respondents consequent to which the petitioner had been reinstated. It is stated that the three months period would have reasonably ended in November 2008. But, however, fresh enquiry proceedings which is the subject matter of the present writ petition, commenced on 12.01.2009. A fresh enquiry was conducted. The same documents were relied on. But, it is informed that the statements were recorded again and the Enquiry Officer, who had been appointed afresh, had returned a finding that charges were not proved. This was on 30.01.2009. Once again, the Managing Director, called for a second Report. Again, this



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establishes the extreme prejudice and bias exhibited by the 1st respondent. He had already suffered an order in WP.No.16341/1998 wherein the earlier act of calling for a second Report had been viewed with askance by this Court and the entire proceedings had been set aside. But, however, he still persisted in getting a further Report from the Enquiry Officer. The Enquiry Officer had again returned a finding that the charges were not proved. Not satisfied with that, the 1st respondent had again directed a fresh Report to be submitted and furnished a list of seven fresh documents. On the basis of those additional documents, which according to the learned counsel for the petitioner, were revealed to the petitioner only when the Enquiry Report was furnished to him, it was held that charges were proved.

- (7) If, further documents are to be relied on, principles of natural justice imply that opportunity must be given. Opportunity should not be a hollow opportunity, but it should be effective and at every stage. Introducing fresh documents necessitates opportunity of questioning not only the veracity of those documents, but also questioning as to why those documents were not produced at the earlier instance. The



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reason why they were not introduced in the first instance and their evidenciary value and when they were introduced at such a belated stage should also be taken into consideration. Explanation will also have to be given as to why copies were not given and why those documents were not tested on the grounds of proof and relevancy.

- (8) It is no doubt true that proof in departmental proceedings is only by preponderance of evidence. But, however, the evidence has to be admissible. It has to be relevant and it has to be proved in manner known to law. Appreciation of that particular evidence alone varies as between the departmental proceedings and a criminal trial.
- (9) Learned counsel for the petitioner, in this regard, placed reliance on a judgment of a Division Bench reported in **2010 [3] MLJ 625 [State of Tamil Nadu Vs. T.Ranganathan]**. The only point on which the present judgment was relied on was on the fact that the enquiry proceedings commenced on 12.01.2009, after the period of three months had long passed from the date of order made in WP.No.16341/1998, which was allowed on 28.07.2008. It is very specifically contended by the learned counsel for the petitioner that



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the order copy had been received earlier and proceedings commenced after the period of three months.

- (10) Learned counsel for the petitioner also placed reliance on a yet another judgment of a Division Bench in WA [MD].No.1210/2015 dated 16.12.2015 ***[State of Tamil Nadu rep.by the Secretary, Department of School Education and Another Vs. Dr.A.S.Radhakrishnan]***, wherein the Division Bench has held as follows:-

"17.Once, the enquiry report is submitted holding the charges not proved, there are two courses of action open to the disciplinary authority. First is to accept the report and pass a final order dropping further action. The second course of action is to come to an independent conclusion different from the findings recorded by the Enquiry Officer and issue notice to the delinquent to show cause as to why a different view should not be taken. Both these courses of action were not followed by the Government.

18.If both the above courses of action are not acceptable to the disciplinary authority, the disciplinary authority should set aside the findings and



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order for a de nova enquiry. Even this third course of action was not resorted to by the Government..."

- (11) In the instant case, among the documents which had been introduced was a confession apparently given by the petitioner herein and a statement of another employee before the Investigating Agency. Reliance placed on the same, without putting them to the petitioner herein, would not withstand the scrutiny of this Court. A confession, even in a disciplinary proceedings, if it is to be taken on record, should be first put to the petitioner herein and the petitioner must be given an opportunity to explain the circumstances under which he had given the confession. The statement of the witness who could be termed as an accomplice also has very thin evidenciary value and even if it is to be accepted as accomplice, the veracity of that particular statement should also be examined.
- (12) In view of the procedures adopted and documents being taken at their face value, the Enquiry Officer who had originally returned a finding that the charges were not established twice, had turned around and held that they are established. The entire proceedings, has to be struck



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down on the ground of extreme bias on the part of the 1st respondent herein who appears to have an impression that the petitioner alone is responsible for the theft which had, even according to the counter affidavit, occurred from 01.04.1995 onwards.

- (13) Even when the writ petition came up for admission, a learned Single Judge was of *prima facie* view that the enquiry had not been completed within three months and that the respondents could not have proceeded beyond the time limit. It is in this connection, the judgment reported in **2010 [3] MLJ 625 [cited supra]**, was relied on by the learned counsel for the petitioner.
- (14) In view of all these facts, I hold that the entire proceedings stands vitiated and both the proceedings of the first and second respondents dated 24.03.2017 and 05.04.2017 respectively, are struck down. The writ petition stands **allowed**. No costs. Consequently, connected miscellaneous petitions are closed.

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AP
Internet : Yes



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