



WEB COPY

W.P.No.30774 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.30774 of 2023
and
W.M.P.Nos.30435 & 30436 of 2023

Dr.K.Asokan

...Petitioner

Vs

1.The Chief Conservator of Forests
& Field Director,
Sathyamangalam Tiger Reserve,
Erode Circle, Erode District.

2.The Deputy Director,
Sathyamangalam Tiger Reserve,
Sathyamangalam Forest division,
Sathyamangalam,
Erode District.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the second respondent in relation to the impugned charge memo in Na.Ka.No.P2/263/2022 dated 21.01.2022 and quash the same as being without jurisdiction.



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For Petitioner : Ms.A.Pramila

For Respondents : Mr.M.Bindran,
Additional Government Pleader

ORDER

Heard Ms.A.Pramila, learned counsel for the petitioner and Mr.M.Bindran, learned Additional Government Pleader appearing for the respondents.

2. Through the charge memo dated 21.01.2022, the petitioner was levelled with two charges touching upon the delinquency with regard to the death of a leopard on 12.01.2022. Together with the charge memo, the second respondent herein had placed reliance on five documents in Annexure-III of the charge memo. However, the list of witnesses have been shown as 'Nil'.

3. The learned counsel for the petitioner placed reliance on a decision of the Hon'ble Supreme Court in the case of ***Roop Singh Negi Vs. Punjab National Bank and others*** reported in ***2009 (2) SCC 570*** and



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submitted that since the list of documents have been shown to be Nil, the petitioner was deprived of giving an effective explanation and the documents that are sought to be produced during the course of enquiry, cannot be proved in the absence of any witness and therefore, the charge memo itself is liable to be quashed. She also questioned the authority of the second respondent in having issued the charge memo. According to her, the petitioner was originally appointed in the Animal Husbandry Department as a Veterinary Assistant Surgeon and thereafter, he was deputed to various departments. Thus, the Animal Husbandry Department alone would be the authority to initiate disciplinary action against him.

4. Per contra, the learned Additional Government Pleader submitted that pursuant to the impugned charge memo dated 21.01.2022, an Enquiry Officer was already appointed and four witnesses have also been examined. According to him, the petitioner did not cross examine any of the four witnesses, though he was given an opportunity for such cross examination. Insofar as the authority of the second respondent to issue the charge memo is concerned, he placed reliance on Rule 16 of Tamil Nadu Civil Service (Discipline and Appeal) Rules, 1955 and



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submitted that it is only the second respondent herein who will be the authority to conduct an enquiry and only when a major punishment is involved, the Animal Husbandry Department would be the punishing authority.

5. Insofar as the impugned charge memo showing the list the witnesses as 'Nil' is concerned, the Hon'ble Supreme Court, in ***Roop Singh Negi's case (supra)***, has held that the contents of the documents produced before an Enquiry Officer requires to be substantiated through oral witnesses and in the absence of the same, the enquiry proceedings itself will stand vitiated. The relevant portion of the judgement reads as follows:-

"14. Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer against all the accused by



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itself could not be treated to be evidence in the disciplinary proceeding. No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence."

6. In the instant case, it is not in dispute that the Enquiry Officer had not examined any oral witnesses. In the absence of the same, the entire enquiry proceeding itself is vitiated and the consequential punishment cannot be sustained.

7. Insofar as the powers of the second respondent to act as a disciplinary authority is concerned, the Animal Husbandry Department, who had originally appointed the petitioner, is deemed to be the lending authority and the Forest Department is the borrowing authority in terms of Rule 16 of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, 1955. As per the said Rule, whenever the authorities competent to impose penalty on persons whose service is lend to another department



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of the Government is concerned, the power to impose major penalties of compulsory retirement or removal or dismissal from service shall only lie with the lending authority. However, the borrowing authority, in case whether it considers that such major punishments are required to be imposed, shall complete the enquiry and thereafter revert the concerned employee to the lending authority for such imposition of punishment. Thus, proceeding with the enquiry by the second respondent, namely the Forest Department, cannot be stated that it is without authority of law. On this ground, the submission of the learned counsel for the petitioner stands rejected.

8. As stated earlier, the entire charge memo, in the absence of any list of witnesses, would have deprived the petitioner to make an effective representation to the charges levelled against him. If that be so, all further proceedings, pursuant to the framing of charges, including the examination of witnesses, would stand vitiated.

9. In the light of the above observations, the impugned charge memo dated 21.01.2022 issued by the second respondent is quashed.



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However, if the second respondent is of the view that the disciplinary proceeding is required to be initiated against the petitioner, liberty is hereby granted to them to level fresh charges in accordance with the procedure contemplated under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules.

10. Accordingly, the Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

16.11.2023

Index:Yes

Neutral Citation:Yes

Speaking order

hvk

To

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& Field Director,
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2.The Deputy Director,
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M.S.RAMESH,J.

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