



WEB COPY



W.P.No.34026 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	07.03.2023
Pronounced on	23.03.2023

CORAM :

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

and

THE HONOURABLE MR. JUSTICE V.LAKSHMINARAYANAN

W.P.No.34026 of 2022

and

W.M.P.No.33485 of 2022

E.Harikrishnan

... Petitioner

Vs.

1. The Central Administrative Tribunal,
Chennai Bench, Rep. by its Registrar,
City Civil Court Buildings,
Madras High Court Campus, Chennai - 600 104.
2. The Union of India,
Owning Southern Railway,
Rep. by its Chief Administrative Officer (Construction),
Egmore, Chennai - 600 008.
3. The Assistant Executive Engineer/Works/CN/MS,
Southern Railways,
Disciplinary Authority,
Office of Chief Administrative Officer (Construction),
Egmore, Chennai - 600 008.
4. The Enquiry Officer-cum-



W.P.No.34026 of 2022

WEB COPY

Chief Office Superintendent,
Office of Chief Administrative Officer (Construction),
Egmore, Chennai - 600 008. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the order of the first respondent Tribunal dated 10.11.2022 passed in O.A.No.310/879 of 2021 and to quash the same and to allow the OA as prayed for and consequently to direct the second and third respondents to drop the memorandum bearing Ref.No.P/227/I/CN/EHK/217, dated 22.06.2021 issued by the third respondent Disciplinary Authority and order bearing Ref.No.P/217/IX/CN/EHK, dated 05.10.2021 in appointing the fourth respondent as the Enquiry Officer to go into the charges levelled against the petitioner as being illegal, arbitrary, malafide, without jurisdiction, abuse process of law and the orders passed in W.P.No.15413 of 2011 as confirmed in W.A.No.1217 of 2019 and S.L.P. (Civil) Diary No.15947 of 2020 and for consequential to drop all further proceedings pursuant to the charge memo dated 22.06.2021 and to calculate and settle the arrears of salary and all other service benefits from 17.11.2003 (date of termination) till 11.03.2021 (date of reinstatement) in terms of the Award dated 22.10.2010 passed by the Labour Court in I.D.No.70 of 2009 within a time frame that may be fixed by the Tribunal.



W.P.No.34026 of 2022

For Petitioner : Mr.N.G.R.Prasad
for M/s.Row and Reddy

For Respondents : Mr.T.L.Thirumalaisamy
Central Government Standing Counsel
for R2 to R4

ORDER

(Order of the Court was delivered by V. LAKSHMINARAYANAN, J.)

This Writ Petition challenges the Order passed by the Central Administrative Tribunal in O.A.No.310/879/2021, dated 10.11.2022 and to set aside the same. The consequent prayer is to direct the second and third respondents to drop the memorandum bearing Ref.No.P/227/I/CN/EHK/217, dated 22.06.2021 issued by the third respondent Disciplinary Authority and order bearing Ref.No.P/217/IX/CN/EHK, dated 05.10.2021 in appointing the fourth respondent as the Enquiry Officer to go into the charges levelled against the petitioner as being illegal, arbitrary and without jurisdiction. Reliance is placed on the orders passed in W.P.No.15413 of 2011 as confirmed in W.A.No.1217 of 2019 and S.L.P. (Civil)



W.P.No.34026 of 2022

Diary No.15947 of 2020 and therefore, to drop all further proceedings pursuant to the charge memo dated 22.06.2021 and to calculate and settle the arrears of salary and all other service benefits from 17.11.2003 (date of termination) till 11.03.2021 (date of reinstatement) in terms of the Award dated 22.10.2010 passed by the Labour Court in I.D.No.70 of 2009 within a time frame that may be fixed by the Tribunal.

2.The facts leading to the Writ petition are as follows:

The writ petitioner is working as a Junior driver in the office of the Chief Administrative Officer (Construction), Egmore, Chennai. He joined as a Driver with the Metropolitan Transport Project (Railways), Ministry of Transport, Government of India, Chennai, as a casual employee. The Chief Project Manager, by his Office Order No.619/1986, dated 09.10.1986 granted temporary status to about 164 employees including the petitioner. The causal labourers with the said Department who had completed 360 days for continuous service after 01.01.1981 were granted this status. The writ petitioner



W.P.No.34026 of 2022

was granted the temporary status with effect from 31.08.1985. He

was granted *ad hoc* promotion with effect from 03.09.1990. The

Chennai Division of the Southern Railways came up with the decasualisation of post of driver in its Engineering Branch pursuant to the orders of the Central Administrative Tribunal in O.A.No.517 of 1992. On that basis, the writ petitioner was absorbed as a driver on 24.12.1996. When the matter stood thus, the SC/ST Union of the respondent lodged a complaint that the writ petitioner had submitted a false Certificate claiming to be a Member of Hindu Adi Dravidar Community. The respondents referred the matter to the Collector who by a letter dated 06.01.2001 cancelled the Scheduled Caste Community Certificate produced by the writ petitioner. Relying upon the Railway Board's letter No.98-E(SCT)I/31/1, dated 24-28.09.1999, the services of the writ petitioner was terminated forthwith.

3.In response to the letter dated 17.11.2003, the writ petitioner brought to the notice of the respondents that he had been employed by the respondents pursuant to the decasualisation. He further stated



W.P.No.34026 of 2022

that his appointment in the Organisation was never on the basis of SC quota and he had never claimed or obtained benefits like promotion on the basis of the Caste Certificate. He further narrated that at the time of enquiry conducted by the District Collector, he had stated that he belonged to Reddiyar Community and that he was not a Member of the Schedule Caste. The circumstances that he pleaded for issuance of the Certificate was that belonging to very indigent family, his parents had entrusted his care and custody to one Gowrisan, who was the member of the Scheduled Caste Community. It was the said Gowrisan who has admitted him into the School and at the time of the admission, the said Gowrisan had stated that the petitioner belonged to Scheduled Caste Community. He pleaded that as this was the circumstance under which the Certificate came to be issued and he had never claimed SC status at any point of time, nor enjoying the benefits given to a Scheduled Caste. He requested to recall the order of termination. As it was not done he moved the Central Administrative Tribunal in O.A.No.38 of 2004. The said application was disposed of at the admission stage itself on the ground since



W.P.No.34026 of 2022

there was an alternative appellate remedy he should exhaust the same.

Hence, the petitioner filed an appeal.

4.Subsequent thereto, the Chief Engineer of the Metropolitan Transport Project (Railways), Chennai, rejected the appeal. Further appeal to the Railway Board was also rejected. The writ petitioner initiated proceedings before the Central Government Industrial Tribunal -cum- Labour Court in I.D.No.70 of 2009 wherein the principal plea was he joined duty as a casual labour, absorbed pursuant to decasualisation and never made a claim as a Scheduled Caste candidate nor derived any benefit on the basis of the Certificate.

5.A counter was filed by the Management. After a detailed trial, the Tribunal passed an Order on 22.10.2010. The Tribunal came to a conclusion that the act of the respondents in terminating the writ petitioner without enquiry is illegal. It further held that, as pleaded by the writ petitioner, he was not appointed in the post reserved for



W.P.No.34026 of 2022

Scheduled Caste nor derived any benefit on the basis of the Schedule Caste Certificate. Consequently, it set aside the order of termination and directed the respondent to reinstate the petitioner into service forthwith with back wages, continuity of Service and all attendant benefits. The Management challenged the said order by way of a Writ Petition in W.P.No.15413 of 2011. The said Writ Petition came to be dismissed on 04.01.2019. It was carried on appeal in W.A.No.1217 of 2019 and the same was dismissed on 05.04.2019. The Special Leave Petition before the Supreme Court in S.L.P.(Civil) Diary No.15947/2020 also came to be dismissed, on the concession of the learned Additional Solicitor General on 18.11.2020. Thereafter, the Writ Petitioner was reinstated into service on 11.03.2021. The reinstatement was with a caveat that it is without prejudice to the departmental action that may be initiated against him as per the Disciplinary and Appeal Rules of 1968 for the false community certificate produced by him.



W.P.No.34026 of 2022

WEB COPY 6. Pursuant thereto, charge sheet was issued on 22.06.2021, calling upon the petitioner to submit his explanation for the charges framed. The petitioner by his letter dated 01.07.2021 sought for time to give his explanation. He submitted a further representation on 12.07.2021 seeking for certain reliefs like pay parity etc., The respondents considering the request granted time to the petitioner to submit a reply to the charge memo. By a letter dated 29.07.2021, further time was sought for and it was granted on 30.07.2021. He repeated his request for fixation of parity of pay as done by a letter dated 12.07.2021 on 02.08.2021 and 17.08.2021. He also submitted the explanation to the charge memo on 17.08.2021 and requested the Authority to accept his explanation and drop all further proceedings. Pursuant to the reply, an Enquiry Officer was appointed, who is the 4th respondent, to this Writ Petition. Preliminary enquiry was fixed on 29th of October 2021. On 25th of October 2021, the writ petitioner moved O.A.No.310/879/2021. On 28th October 2021, the Tribunal after recording the submissions of the learned counsel appearing for



W.P.No.34026 of 2022

the petitioner, as an interim measure, directed the respondents not to proceed with the departmental enquiry. He received a reply statement from the respondent and took up the matter for argument. By an order dated 10th of November 2022, the Original Application was dismissed on the following grounds:

(1)that the charge memo had not been issued by an officer incompetent to do so,

(2)The matter of disciplinary proceedings are not unfairly delayed.

(3)Non-availability of any other legal grounds for quashing the charge.

7.In order to arrive at a conclusion, the Tribunal referred to the following Judgments:

*(1) State of U.P. v. Brahm Dutt Sharma
[(1987) 2 SCC 179]*

*(2) Union of India vs Upendra Singh
[1994 (3) SCC 357]*

*(3) Secretary to Government, Prohibition & Excise
Department v. L. Srinivasan [1996 (3) SCC 157]*



W.P.No.34026 of 2022

- (4) *Government of A.P. and others v. V. Appala Swamy*
[(2007) 14 SCC 49]
- (5) *State of Andhra Pradesh v. N. Radhakishan*
[AIR 1998 SC 1833]
- (6) *Union of India and others v. Swathi Patel in Civil Appeal No.3881 of 2007 and that of the Principal Bench of the Central Administrative Tribunal in O.A.No.201 of 2019, Arunath Mookerju v. Union of India and others in O.A.No.201 of 2019*
16.10.2019.

8.The Tribunal considering the facts that the petitioner is retiring on 31.07.2023 directed the respondents to complete the enquiry in the manner known to law expeditiously. Further, the Tribunal directed if the enquiry is not concluded within a period of four months from the date of communication of the order, extension would be granted and if the enquiry is not concluded within the period so granted, the proceedings would be considered as lapsed. Consequent to this order, the respondents issued a notice for enquiry on 23.11.2022. On 07.12.2022, the petitioner sought for time in order to decide on his legal strategy. Thereafter, he filed Writ petition on 16.12.2022 and this Court by an order dated 20.12.2022 granted



W.P.No.34026 of 2022

an order of interim stay relating to the enquiry proceedings. The respondents filed their counter as directed by this Court and the matter was taken up for hearing today.

9.We have heard Mr.N.G.R.Prasad, learned Counsel for the petitioner and Mr.T.L.Thirumalaisamy, learned Central Government Standing Counsel for the respondent. We have carefully perused the records and gone through the Authorities that have been cited by either parties.

10.We are not in a position to quash the proceedings as sought for by the petitioner for more issues than one. It is true that the summary dismissal of the petitioner by the respondent without holding an enquiry is illegal. This is moreso because the petitioner was not absorbed in employment on account of the fact that he was a Scheduled Caste, but had been given employment of the decasualisation of the post. It is this persuaded by the Industrial Tribunal by its order dated 22.10.2010 to grant him the reliefs supra.



W.P.No.34026 of 2022

A careful perusal of the Order shows that while the termination order was set aside, the Tribunal had reserved the right to the Management to proceed against the petitioner. The relevant portion is extracted as hereunder:

"13.In the result, the petitioner is directed to be reinstate into service forthwith with backwages, continuity of service and all attendant benefits. Thereafter, the Management may impose upon him a lesser punishment short of actual termination from service."

11.To arrive at this conclusion, the Tribunal found blameworthy conduct on the part of the petitioner and also held that the employer allow the petitioner to be in service after imposing appropriate punishment thereof other than termination from the service after a proper enquiry.



W.P.No.34026 of 2022

WEB COPY 12.The Writ petitioner did not challenge the order of the Tribunal granting this liberty. This Court also confirmed the Order but found that the petitioner had committed a mistake of not taking a remedial measure once his community Certificate is found to be incorrect. This view had been confirmed by the Division Bench and finally by the Supreme Court of India. The argument of the learned Senior counsel for the petitioner that the very basis for the enquiry vanishes on account of the termination is set aside, is not acceptable to us.

13.As stated supra, the Tribunal had granted liberty to the Management to proceed with an enquiry, but not to impose any major penalty. The issue before the Tribunal, the Writ Appellate Court and before the Supreme Court where the termination is done the termination order was set aside. However, none of these Courts had held that the petitioner is not guilty of having produced a false Certificate before the employer. The fact remains that the false



W.P.No.34026 of 2022

WEB COM

Certificate had been produced and the right of the employer proceed against the employee for such an act stood reserved.

14. Apart from this fact, the show Cause Notice has been issued by the competent Authority. The relevant fact to be seen is that the liberty granted by the Tribunal was not waived by the employer. On the Contrary, in the Order of the reinstatement, the right to conduct the departmental enquiry for production of false Community Certificate was specifically reserved. The Writ Petitioner did not challenge this portion of the order dated 11.03.2021. The facts set forth would go to show that the writ petitioner had not only sought for extension of time but had also submitted his explanation to the Show Cause Notice. Having submitted to the jurisdiction of the respondents, we do not want to nip the proceedings in the bud. It is always open to the petitioner to appear before the Enquiry Officer and demonstrate that he is innocent. The respondents have to



W.P.No.34026 of 2022

consider any explanation granted in a proper light and perspective.

The Judgment of the Supreme Court, Appellate Court and the Tribunal settled the issue regards challenge to a charge memo. The position is unless the charge memo has been issued by an incompetent authority or it is unfairly delayed or the contents taken as true do not constitute the fact of mistake, the Court should not normally interfere with the same. The position of law being settled there is no reason why we should take a different view.

15. Furthermore, the Tribunal has given sufficient protection to the writ petitioner by the direction in Para 21 of the impugned order.

16. One more issue has to be addressed by us. On a pointed question to the learned counsel for the respondents as to why a notice under Rule 9 of the Railway Servants (Disciplinary and Appeal) Rules, 1968, has been issued to the writ petitioner when the Courts



W.P.No.34026 of 2022

WEB COURT

have been found in the previous round of litigation that the writ petitioner had not taken the benefit of a Scheduled Caste person nor entered employment on the basis of his Scheduled Caste Certificate, M.Thirumalaisamy, learned counsel would submit that the notice given under Rule 9 is erroneous and it may be read as one under Rule 11 of the Railway Servants (Disciplinary and Appeal) Rules, 1968. In other words, it is clear that the respondents do not want to impose a major penalty on the writ petitioner but want to conduct an enquiry with respect to minor penalty alone. Quoting of wrong provision of law in the Show Cause Notice and charge memo would not vitiate the same. Therefore, as submitted by the learned counsel for the respondent, we direct the respondents to treat the charge memo as one with respect to minor penalty. It is of course open to the employer to either exonerate the writ petitioner of all charges and drop the proceedings or pass appropriate orders as it may deem fit. We make it clear that the respondents are not entitled to invoke the Rule 9 and impose the major penalty on the writ petitioner.



W.P.No.34026 of 2022

WEB COPY 17. In fine, with the above modification with respect to Rule 9 of the Show Cause Notice, this Writ Petition is disposed of on the following directions:

(1) The direction given by the Central Administrative Tribunal in Para 21 of its Order are confirmed.

(2) The Writ Petition stands disposed of directing the petitioner to co-operate with the enquiry.

(3) There shall be no order as to costs.

With the above modifications, the Order in O.A.No.310/879 of 2021 stands confirmed and the consequential relief sought for by the writ petitioner stands rejected. Consequently, connected Miscellaneous Petition is closed.

(V.M.V., J) (V.L.N., J)
23.03.2023

Index : Yes / No
Internet : Yes / No
Neutral Citation : Yes / No
mps



W.P.No.34026 of 2022

WEB COPY To

1. The Registrar,
Central Administrative Tribunal, Chennai Bench,
City Civil Court Buildings,
Madras High Court Campus,
Chennai - 600 104.
2. The Chief Administrative Officer (Construction),
Union of India,
Owning Southern Railway,
Egmore,
Chennai - 600 008.
3. The Assistant Executive Engineer/Works/CN/MS,
Southern Railways,
Disciplinary Authority,
Office of Chief Administrative Officer (Construction),
Egmore,
Chennai - 600 008.
4. The Enquiry Officer-cum-
Chief Office Superintendent,
Office of Chief Administrative Officer (Construction),
Egmore,
Chennai - 600 008.



WEB COPY



W.P.No.34026 of 2022

V.M.VELUMANI, J.

and

V.LAKSHMINARAYANAN, J.

mps

Pre-delivery Orders in

W.P.No.34026 of 2022

and

W.M.P.No.33485 of 2022

23.03.2023