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W.P.No.17682 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

<i>Reserved on</i>	<i>01.02.2023</i>
<i>Pronounced on</i>	<i>20.02.2023</i>

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.17682 of 2017
and W.M.P.No.19184 of 2017

S. Baskar

... Petitioner

Vs.

1.The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Finance (T&A 1) Department,
Secretariat, Chennai – 600 009.

2.The Secretary,
Tamil Nadu Public Service Commission,
Chennai – 600 003.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the first respondent herein in G.O.(D) No.268 Finance (T&A 1) Department dated 07.10.2016 and quash the same and consequently direct the first respondent herein to confer the promotion post of Chief Accounts Officer to the petitioner with due regards to petitioner's seniority and confer all the attendant and retirement benefits with due regards to petitioner's



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seniority along with interest.

For Petitioner : Mr.R.S. Anandan

For Respondents : Mr.D. Gopal,
Government Advocate

ORDER

The petitioner herein while serving as a Deputy Director (Administration), was levelled with certain charges through a Charge Memo dated 06.06.2012, alleging that he has accepted the resignation letter of one employee without following the rules and procedures and thereby, committed negligence and further, since salary was paid to the same employee when he was out of employment, the petitioner had caused loss to the Government. His representation to the levelled charges was rejected and an inquiry was conducted. In the inquiry report dated 15.03.2013, the charge against the petitioner was held as 'proved'. When the petitioner reached the age of superannuation on 30.09.2014, an order in G.O.(D).No.276, Finance (Treasuries and Accounts – I) Department dated 30.09.2014 came to be passed, permitting him to retire from service, without prejudice to the continuance of the disciplinary proceedings under



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Rule 9 of the Tamil Nadu Pension Rules, 1978. In this background and in disregard to the further explanation submitted by the petitioner, the impugned order in G.O.(D) No.268, Finance (T&A 1) Department, dated 07.10.2016 was passed, imposing the punishment of cut in pension of a sum of Rs.200/- per month for a period of one year. Challenging the same, the present Writ Petition has been filed.

2. The charges against the petitioner were levelled under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules (hereinafter called as 'the Rules'). As per the said Rule, the procedure to initiate disciplinary proceedings, till its conclusion, has been clearly laid down. In contravention to such a procedure, the following irregularities have been found in the present case.

3. Firstly, though the Annexure to the Charge Memo dated 06.06.2012 refers to a file, as a document to be produced during the inquiry, the list of witnesses in Annexure-4 is shown as 'Nil', which is impermissible. Secondly, before the impugned order of punishment was passed, the views of the Tamil Nadu Public Service Commission (TNPSC)



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dated 22.08.2016 was obtained, based on which, the order of punishment was passed. These views of the TNPSC, were not supplied to the petitioner.

Thirdly, after the Inquiry Officer had filed his report dated 15.03.2013, the petitioner had given his further representation dated 10.05.2013. None of these explanations were considered in the punishment order. All the aforesaid three irregularities in the procedure contemplated under Rule 17(b) have already been dealt with by this Court in various decisions and have interfered into the ultimate punishment.

4. The Hon'ble Supreme Court, in the case of '**Roop Singh Negi Vs. Punjab National Bank and others**' reported in '**2009 (2) SCC 570**', has held that the contents of the documents produced before an Inquiry Officer requires to be substantiated through oral witnesses and in the absence of the same, the inquiry proceedings itself will stand vitiated. The relevant portion of the judgment 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



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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 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.”

5. In the instant case, it is not in dispute that no documents were produced and that the Inquiry Officer had not examined any oral witnesses. In the absence of the same, the entire inquiry proceedings itself is vitiated, since being opposed to the ratio laid down in **Roop Singh Negi** (*supra*) and hence, the consequential punishment cannot be sustained.

6. Insofar as the next infirmity is concerned, the impugned order places reliance on TNPSC views dated 22.08.2016, which copies were not



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served on the petitioner. This procedure has been held to be impermissible in various decisions of this Court, including the order of an Hon'ble Division Bench of this Court in ***'Union of India, Ministry of Defence and another vs. the Registrar, Central Administrative Tribunal, Chennai and another'*** reported in ***'(2005) 2 MLJ 154'***, wherein it was held that the delinquent employee would be entitled to a copy of the report of the Public Service Commission, before passing of an order of punishment. Further, non-furnishing of the report would also disable the delinquent officer to give an effective objection, since he would be deprived of knowing the contents of the report. Thus, the manner in which the disciplinary proceedings had culminated into the impugned punishment, are contrary to the regulations and settled propositions of law.

7. Insofar as the impugned order failing to give reasons or consideration to the petitioner's further explanation is concerned, it would amount to a non-speaking order. A perusal of the impugned order reveals that the respondents herein had extracted the findings of the Inquiry Officer, as well as the advice of the Tamil Nadu Public Service Commission (TNPSC) and without any discussion, had imposed the major punishment.



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Though the impugned order of punishment runs to about 8 pages, the findings of the Disciplinary Authority is found only in the penultimate paragraph of the order. Even therein, there is absolutely no findings, except for a solitary sentence that the Government have carefully considered the inquiry report and the TNPSC's views and had decided to impose the punishment of removal from service.

8. Rule 17(b)(ii) of the Rules prescribes the procedure to be adopted by the Disciplinary Authority before imposing a penalty. As per the said procedure, any further representation received by the Disciplinary Authority, within the period prescribed in the show cause notice, shall be taken into consideration before making any order imposing the penalty, provided that such representation shall be based on the evidences adduced during the enquiry only. Thus, the order of punishment requires intervention on this ground also.

9. For all the foregoing reasons, the impugned order dated 07.10.2016, stands quashed. Consequently, there shall be a direction to the first respondent herein, to forthwith refund the pension that might have



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been deducted owing to the impugned order of punishment dated 07.10.2016, if any. In case, the petitioner was eligible to be promoted to the post of Chief Accounts Officer during his service and the same has been denied owing to the pendency of the disciplinary proceedings, notional promotion shall be granted to the petitioner to the post of Chief Accounts Officer, in the relevant panel and his monthly pension benefits shall accordingly be revised. Such orders shall be passed atleast within a period of four (4) weeks from the date of receipt of a copy of this order.

10. Accordingly, the Writ Petition stands allowed. No costs. Connected miscellaneous petition is closed.

20.02.2023

Speaking Order
Neutral Citation: Yes
Index : Yes
Internet: Yes

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To

- 1.The Principal Secretary,
Government of Tamil Nadu,
Finance (T&A 1) Department,
Secretariat, Chennai – 600 009.
- 2.The Secretary,
Tamil Nadu Public Service Commission,
Chennai – 600 003.



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M.S.RAMESH,J.

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Order in
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