



W.P.(MD)No.3285 of 2020

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.01.2023

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.3285 of 2020

K.Murugiah

... Petitioner

Vs.

1. The Principal Secretary to Government,
Environment and Forest Department,
Fort St.George,
Chennai - 600 009.
2. The Principal Chief Conservator of Forests,
Panagal Maligai,
Saidapet,
Chennai - 600 015.
3. The Chief Conservator of Forests,
Kalakad Mundathurai Tiger Reserve (Tiger Project),
Tirunelveli - 07.02.2019
4. The Deputy Director and Wild Life Warden,
Kalakad Sanctuary, Kalakad,
Tirunelveli District.

... Respondents



W.P.(MD)No.3285 of 2020

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order passed by the first respondent vide proceedings in Government Order (2Pa)No:38, dated 17.12.2019, quash the same as illegal and further directing the respondents to return back a sum of Rs.70,087/- to the petitioner which was recovered from him.

For Petitioner : Mr.A.Jayaramachandran
For Respondents : Mr.A.Baskar
Additional Government Pleader

O R D E R

This Writ Petition has been filed to call for the records of the impugned Government Order (2Pa)No:38, dated 17.12.2019 passed by the first respondent, quash the same as illegal and direct, the respondents to return back a sum of Rs.70,087/- to the petitioner, which was recovered from him.

2. The case of the petitioner is that the petitioner joined as a Forester at Tirunelveli Social Forest Circle on 19.08.1983 and thereafter, he was promoted as Forest Range Officer on 09.01.2010 at Upper Kothaiyar



W.P.(MD)No.3285 of 2020

Range of Kalakad Wild Life Sanctuary and he was transferred to Papanasam Range by the third respondent. It is his further case that, while he was discharging his duties, a show cause notice dated 16.08.2013 was issued under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 (herein after referred to as 'the Rules') by the fourth respondent and the same was served on the petitioner on 29.09.2013 on the ground that there was misappropriation of Rs.70,087/- and for the same, the petitioner gave his explanation on 05.10.2013 requesting the fourth respondent to furnish the copies of the relevant documents. But the fourth respondent has failed to furnish the same and the third respondent has passed an order of recovery directing the petitioner to pay a sum of Rs.70,087/-. Aggrieved over the same, the petitioner has filed an appeal before the second respondent on 10.04.2014. However, the second respondent without perusing the relevant documents, rejected the appeal vide order dated 28.04.2015 and the said order was served on him only on 04.06.2015. Aggrieved over the said rejection order, the petitioner has preferred a Mercy Petition before the first respondent on 04.02.2016 and the same was kept pending for past 2 years. Hence, the petitioner has filed Writ Petitions in



W.P.(MD)No.3285 of 2020

WEB COPY

W.P.(MD)Nos.16070, 16071 and 16143 of 2018 before this Court. This Court, by order dated 24.07.2018, directed the first respondent to decide the Review Petitions filed by the petitioner on 16.01.2016 and 04.02.2016 and also directed the second respondent to consider the appeal filed by the petitioner on 08.04.2014 within a period of six weeks and the same was not considered. Hence, the petitioner has made a representation to the first respondent. Without considering his request, the first respondent has passed an impugned Government Order dated 17.12.2019. Challenging the same, the present Writ Petition has been filed.

3. The learned counsel appearing for the petitioner would submit that though all three projects were completed by the petitioner by executing the work of laying the fire line bar by deploying labourers and the same was entered into measurement book and the said measurement book was forwarded to the officials, namely, respondents 3 and 4. The respondents 3 and 4 after conducting field inspection, sanctioned the amount in favour of the petitioner. Later, the fourth respondent has issued a charge memo, as if, the petitioner has not completed any work. Without completion of work,



W.P.(MD)No.3285 of 2020

they sanctioned a sum of Rs.70,087/-, to the petitioner is not sustainable one. Hence, the Original Authority as Well as Appellate Authority including the Revisional Authority have concurrently failed to consider the petitioner's genuine explanation, but mechanically, passed an impugned Government Order. Accordingly, he prayed for allowing the present Writ Petition.

4. The learned Additional Government Pleader appearing for the respondents would submit that the third respondent examined the gravity of charges framed against the petitioner along with the connected records and passed an order of recovery directing the petitioner to pay a sum of Rs. 70,087/- in one instalment vide proceedings dated 31.01.2014. After receipt of the above recovery order, the petitioner preferred an appeal before the second respondent on 10.04.2014. The second respondent had confirmed the order of the third respondent and rejected the appeal vide proceedings dated 28.04.2015 and the same was served to the petitioner on 04.06.2015. Further, the petitioner preferred a Mercy Petition before the first respondent on 04.02.2016 as against the order of the respondents 2 and 3. In this regard, this Court in W.P.(MD)Nos.16070, 16071 and 16143 of 2018 directed the



W.P.(MD)No.3285 of 2020

first respondent to decide the Review Petitions filed by the petitioner on 16.01.2016 and 04.02.2016 and also directed the second respondent to consider the appeal filed by the petitioner on 08.04.2014. The first respondent verified all the connected records in connection with the Mercy Petition of the petitioner and ordered that no such punishment was imposed against the petitioner but only Government loss assessed above was recovered from the petitioner. Hence, the Mercy Petition submitted by the petitioner before the first respondent has been treated as normal petition. Accordingly, he prayed for dismissal of the Writ Petition.

5. Heard the learned counsel appearing for the parties and perused the materials placed before this Court.

6. The facts in the present case are not in dispute. Admittedly, the petitioner was working as Forest Range Officer at Thirukurungudi Range and he has been given the task to carry out various works to be executed from 2012 to 2013. One of the tasks handed over to the petitioner was to lay fire line in the prescribed area, for which, the respondents sanctioned a sum



W.P.(MD)No.3285 of 2020

of Rs.70,087/- to the petitioner under Western Ghats Development Project.

It is alleged that the above sanctioned amount was disbursed without doing any work, he misappropriated the Government money. Hence, the petitioner was issued a charge memo under Rule 17(a) of the Rules, for which, he made an explanation on 05.10.2013 seeking for certain particulars from the fourth respondent. But the third respondent has passed an order of recovery.

7. A show cause notice has been issued against the petitioner dated 16.08.2013 with the following charges:

(a) The first charge was a sum of Rs.10,012/- was sanctioned under the Western Ghats Development Project to lay 3 Meter Breadth Fire Line from Moremadam to Mallukampatty as per sanction order No.153/2012-13. However, even after receiving the sanctioned amount, the petitioner failed to lay the fire line in the prescribed area and wrongly submitted work completion report by showing the work done in sanction order No.74/2012-13.

(b) The second charge was a sum of Rs.44,055/- was sanctioned to lay 6 Meter Breadth Fire Line for 22 Km extend under



W.P.(MD)No.3285 of 2020

Western Ghats Development Project. However, without completing the work, the petitioner has received the amount and submitted the work completion report.

(c) Thirdly, it was alleged that a sum of Rs.16,020/- was sanctioned under the Western Ghats Development Project in Sanction Order No.153/2012-13 to lay Fire Line for 8 Km extent. But, the petitioner has failed to lay the fire line and submitted false report as if the work was completed.

In total, a sum of Rs.70,087/- was found to have been misappropriated by the petitioner.

8. It transpires from the impugned order that though the opportunity was given to the petitioner to peruse the documents which was available in his office, but the petitioner has not taken any steps to secure the documents and considering the requirement as contemplated under Rule 17(a) of the Rules regarding charges and summary proceedings, the third respondent passed the impugned recovery order and no punishment was imposed against the petitioner inspite of the gravity of the lapses committed



W.P.(MD)No.3285 of 2020

by the petitioner. The Original Authority elaborately considered the issue and passed the recovery order as against the petitioner and the same was confirmed by the Appellate Authority and the Revisional Authority. For overcoming the order passed by the respondents, no record was produced and the petitioner was not able to even produce the measurement book maintained by him.

9. Before proceeding to analyse the facts of the present case to find out whether the punishment awarded to the petitioner is just and reasonable, the ratio laid down with regard to matters in which punishment has been imposed, which is impugned in this Writ Petition.

10. It has been the consistent view of the Courts that it is always within the domain of the appointing authority to decide on the punishment to be imposed on the delinquent, which should be proportionate to the act of the delinquent. Only when the punishment is disproportionate and shocking to the conscience, should the courts interfere in the same in exercise of powers under Art. 226 of the Constitution. In ***Prem Nath Bali – Vs - High***



W.P.(MD)No.3285 of 2020

Court of Delhi (2015 (16) SCC 415), the Hon'ble Supreme Court held as under :-

“20. It is a settled principle of law that once the charges levelled against the delinquent employee are proved then it is for the appointing authority to decide as to what punishment should be imposed on the delinquent employee as per the Rules. The appointing authority, keeping in view the nature and gravity of the charges, findings of the inquiry officer, entire service record of the delinquent employee and all relevant factors relating to the delinquent, exercised its discretion and then imposed the punishment as provided in the Rules.

21. Once such discretion is exercised by the appointing authority in inflicting the punishment (whether minor or major) then the courts are slow to interfere in the quantum of punishment and only in rare and appropriate case substitutes the punishment. Such power is exercised when the court finds that the delinquent employee is able to prove that the punishment inflicted on him is wholly unreasonable, arbitrary and disproportionate to the gravity of the proved charges thereby shocking the conscience of the



W.P.(MD)No.3285 of 2020

court or when it is found to be in contravention of the Rules. The Court may, in such cases, remit the case to the appointing authority for imposing any other punishment as against what was originally awarded to the delinquent employee by the appointing authority as per the Rules or may substitute the punishment by itself instead of remitting to the appointing authority.”

(Emphasis Supplied)

11. The petitioner has not produced any documents before this Court with regard to the work carried by him and the penalty alone imposed without any punishment, the said penalty is not disproportionate to the charges and the imposition of penalty also does not shock the conscience of this Court. Therefore, the concurrent findings made by the fact finding authorities cannot be interfered with unless the materials are produced before this Court. In the absence of such materials, this Court cannot interfere with the order passed by the Original Authority which was confirmed by the Appellate Authority. Hence, the prayer sought for in the present Writ Petition cannot be granted.



W.P.(MD)No.3285 of 2020

WEB COPY

12. Accordingly, this Writ Petition is dismissed with the above

terms. No costs.

05.01.2023

NCC: Yes / No

Index : Yes / No

Speaking Order : Yes / No

vji

To

1. The Principal Secretary to Government,
Environment and Forest Department,
Fort St.George,
Chennai - 600 009.
2. The Principal Chief Conservator of Forests,
Panagal Maligai,
Saidapet,
Chennai - 600 015.
3. The Chief Conservator of Forests,
Kalakad Mundathurai Tiger Reserve (Tiger Project),
Tirunelveli - 07.02.2019
4. The Deputy Director and Wild Life Warden,
Kalakad Sanctuary, Kalakad,



WEB COPY

Tirunelveli District.



W.P.(MD)No.3285 of 2020



WEB COPY



W.P.(MD)No.3285 of 2020

M.DHANDAPANI,J.

vji

W.P.(MD)No.3285 of 2020

05.01.2023