



W.P.(MD).No.3641 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.08.2023

PRONOUNCED ON : 04.09.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD)No.3641 of 2022

and W.M.P(MD)Nos.3175 & 3183 of 2022

M.Ramkumar

... Petitioner

Vs.

1.The Director,

Tamil Nadu Fire and Rescue Services,
Rukmani Lakshmipathy Salai,
Egmore, Chennai - 600 008.

2.The Joint Director,

(Training - Rescue Operations),
Tamil Nadu Fire and Rescue Services,
State Training Centre,
Tambaram, Chennai - 600 047.



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3.The District Officer,
Tamil Nadu Fire and Rescue Services,
State Training Centre,
Tambaram,
Chennai – 600 047.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order in Na.Ka.No.304/Aa/2015-1 dated 15.12.2021 and the impugned order in impugned order in Na.Ka.No. 304/Aa/2015 dated 15.12.2021 on the file of the second respondent and the consequential impugned order in Ku.Pa.No.02/2020 dated 31.01.2022 on the file of the second respondent and quash the same as illegal.

For Petitioner : Mr.Aswin Rajasimman
for M/s.Lajapathi Roy & Associates

For Respondents : Mr.N.Muthu Vijayan
Special Government Pleader



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ORDER

The prayer of the Writ Petition is as follows:

The present Writ Petition has been filed for issuance of a Writ of Certiorari, to quash the impugned order in Na.Ka.No.304/Aa/2015-1 dated 15.12.2021 and the impugned order in Na.Ka.No.304/Aa/2015 dated 15.12.2021 on the file of the second respondent and the consequential impugned order in Ku.Pa.No. 02/2020 dated 31.01.2022 on the file of the second respondent.

2.The petitioner was appointed in the post of Fireman on 15.06.2009 in the first respondent Department. On the basis of the confession given by the accused persons, criminal cases in Crime No. 41 of 2015 and Crime No.42 of 2015 were filed as against the petitioner for the offences under Sections 398 and 511 of IPC on the file of Uppuliyapuram Police Station. While he was under judicial custody another criminal case in Crime No.113 of 2014 was registered as against the petitioner for the offences under Sections 457, 380 and

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414 of IPC on the file of Pulivalam Police Station, Trichy District. Since the petitioner was arrested and remanded to judicial custody on 31.01.2015 and lodged in Central Prison, Trichy, he was suspended from service with effect from 31.01.2015. Thereafter, a charge memo was issued on 22.09.2020 containing two charges. The first charge is that the petitioner was one of the accused in Crime Nos.41 and 42 of 2015 and the second charge is as to the registration of Crime No.113 of 2014 against the petitioner. The petitioner submitted his explanation that he was falsely implicated in the said cases based on the confession of the accused persons. Thereafter, enquiry was conducted and on the basis of which on 25.08.2021, the enquiry officer submitted the minutes of enquiry report and a copy of the same was furnished to the petitioner on 02.09.2021 asking for his explanation. The enquiry officer solely on the ground that the judicial custody was accepted by the petitioner has held that the charges were proved and made an observation that the petitioner did not come to duty from 17.12.2014.

3.In the meanwhile, the petitioner was acquitted in all three cases in S.C.No.91 of 2019 and S.C.No.121 of 2019 on the file of the learned First Additional District and Sessions Judge (PCR), Trichy on 27.04.2021. Similarly, he was also acquitted in another case in



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C.C.No.167 of 2015 on the file of the learned Judicial Magistrate, Thuraiyur on 04.10.2018. On the receipt of enquiry report, the petitioner submitted an elaborate explanation and thereafter, the third respondent, who is the disciplinary authority, issued the order dated 29.10.2021 of punishment of stoppage of increment for a period of two years with cumulative effect. It was also indicated by the disciplinary authority that the petitioner would be under probation and the said punishment order was delivered to him only on 05.11.2021 through registered post. In the said order, it was also intimated that the petitioner could file an appeal against the order of punishment within the stipulated period of two months before the Appellate Authority. But to the shock and surprise, the second respondent, who is the Appellate Authority, even before the completion of the statutory time limit for preferring an appeal ie., till 05.01.2022, has hastily issued the impugned order dated 15.12.2021 in which the punishment imposed on the petitioner was cancelled as per *suo motu* review powers granted to the second respondent under Rule 36(2)(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. Further after review, the second respondent has provisionally arrived at the conclusion to impose the punishment of dismissal from service on the petitioner. Following which, a consequential order dated 31.01.2022



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imposing a punishment of dismissal from service was also passed by the second respondent. Such an order is not only against the principles of natural justice but also against Rule 36(2)(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. Assailing the same, this Writ Petition came to be filed.

4.Heard Mr.Aswin Rajasimman, learned counsel appearing for the petitioner and Mr.N.Muthu Vijayan, learned Special Government Pleader appearing for the respondents and perused the materials available on record.

5.A careful perusal of the records would reveal that the disciplinary authority has imposed the punishment on 29.10.2021. The punishment order at the first instance was delivered to the petitioner only on 05.11.2021. Therefore, the statutory time limit for filing an appeal expires only on 05.01.2022. But the Appellate Authority has commenced the proceedings for *suo motu* revision on 15.12.2021 itself which is against Rule 36(2)(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955.



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6.Rule 36(2)(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 is extracted as follows:

"36.Revision:-

(2) No proceeding for revision shall be commenced --

(a) Where no appeal has been preferred, before the expiry of the period of limitation for an appeal."

7. Rule 36(2)(c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 provides as follows:

"36.Revision:-

(2) No proceeding for revision shall be commenced --

(c) An application for revision shall be dealt with in the same manner as if it were an appeal under these rules."



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8. Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 is extracted as follows:

"23. (1) In the case of an appeal against an order imposing any penalty specified in rule 8 or 9, the appellate authority shall consider--

(a) whether the facts on which the order was based have been established;

(b) whether the facts established afford sufficient ground for taking action; and

(c) whether the penalty is excessive, adequate or inadequate and pass orders-

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case;

Provided that --

(i) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (iv), (v) , (vi), (vii) and (viii) of rule 8 and an inquiry under sub-rule (b) of rule 17 has not already been held in the case, the appellate authority shall, subject to the provisions of sub-rule (c) of rule



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17, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of sub-rule (b) of rule 17 and thereafter, on a consideration of the proceedings of such inquiry make such orders as it may deem fit;

(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (iv), (v), (vi), (vii) and (viii) of rule 8 and an inquiry under sub-rule (b) of rule 17 has already been held in the case, the appellate authority shall, after giving the appellant a reasonable opportunity of making representation against the penalty proposed on the basis of the evidence adduced during the enquiry, make such orders as it may deem fit; and

(iii) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of sub-rule (a) of rule 17 of making representation against such enhanced penalty.

(2) Any error or defect in the procedure followed in imposing a penalty may be disregarded by the appellate authority if such authority considers, for reasons to be recorded in writing, that error or defect was not material and has neither cause injustice to the person concerned nor affected the decision of the case."



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Contrary to the mandate of Rule 36(2)(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, the second respondent even before the completion of the statutory time limit for preferring an appeal by the petitioner, invoking the revision powers conferred on him under Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, issued a show cause notice as to why the punishment of stoppage of increment for a period of 2 years with cumulative effect inflicted on the petitioner vide order dated 29.10.2021, shall not be enhanced one as dismissal from service. The content of the said show cause notice would reveal that the same has been issued with a preconceived determination to inflict the punishment of dismissal from service on the petitioner and consequently the same day the order of cancellation of the punishment inflicted on the petitioner at the first instance came to be passed.

9. Though the second respondent, as an Appellate Authority, is empowered to call for the records relating to the disciplinary proceedings including the enquiry officer's report, ought not have taken a decision without following the procedure contemplated under Rule 23 of the Tamil Nadu Civil Services (Discipline



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and Appeal) Rules, 1955. Precisely in the instant case, there was no adjudication except issuance of a show cause notice with a predetermination to impose enhanced punishment of dismissal on the petitioner.

10.The Hon'ble Apex Court in the case of **ORYX Fisheries Private Limited vs. Union of India (UOI) and others** reported in **(2010) 13 SCC 427**, while dealing with a case of disciplinary proceedings has elaborated the procedure to be followed in case of issuance of a show cause notice and the relevant portion of which is extracted as follows:

"22. Relying on the underlined portions in the show cause notice, learned Counsel for the appellant urged that even at the stage of the show cause notice the third respondent has completely made up his mind and reached definite conclusion about the alleged guilt of the appellant. This has rendered the subsequent proceedings an empty ritual and an idle formality.

23. This Court finds that there is a lot of substance in the aforesaid contention.

24. It is well settled that a quasi-judicial authority, while acting in exercise of its statutory power



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must act fairly and must act with an open mind while initiating a show cause proceeding. A show cause proceeding is meant to give the person proceeded against a reasonable opportunity of making his objection against the proposed charges indicated in the notice.

25. Expressions like "a reasonable opportunity of making objection" or "a reasonable opportunity of defence" have come up for consideration before this Court in the context of several statutes.

26. A Constitution Bench of this Court in Khem Chand v. Union of India and Ors. reported in MANU/SC/0120/1957 : AIR 1958 SC 300, of course in the context of service jurisprudence, reiterated certain principles which are applicable in the present case also.

27. Chief Justice S.R. Das speaking for the unanimous Constitution Bench in Khem Chand (supra) held that the concept of 'reasonable opportunity' includes various safeguards and one of them, in the words of the learned Chief Justice, is:

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges leveled against him are and the allegations on which such charges are based;

28. It is no doubt true that at the stage of show cause, the person proceeded against must be told the charges against him so that he can take his defence



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and prove his innocence. It is obvious that at that stage the authority issuing the charge- sheet, cannot, instead of telling him the charges, confront him with definite conclusions of his alleged guilt. If that is done, as has been done in this instant case, the entire proceeding initiated by the show cause notice gets vitiated by unfairness and bias and the subsequent proceeding become an idle ceremony.

29. Justice is rooted in confidence and justice is the goal of a quasi-judicial proceeding also. If the functioning of a quasi-judicial authority has to inspire confidence in the minds of those subjected to its jurisdiction, such authority must act with utmost fairness. Its fairness is obviously to be manifested by the language in which charges are couched and conveyed to the person proceeded against. In the instant case from the underlined portion of the show cause notice it is clear that the third respondent has demonstrated a totally close mind at the stage of show cause notice itself."

11.The instant case is a typical example where a show cause notice has been issued with a closed mind and the pre-determined notion of inflicting punishment of dismissal from service on the petitioner, as a result of which the petitioner has no other option rather knocking at the doors of this Court seeking justice,



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fully losing confidence as to the possibility of the petitioner getting an effective opportunity to rebut the allegations in the show cause notice, before the disciplinary authorities.

12.This Court in the case of **W.P.No.1901 of 2007, dated 02.04.2013 (T.Chandrasekaran (died) and others Vs. The Revenue Divisional Officer, Perambular and another)**, while dealing with a similar issue, has passed a favourable order to the petitioner therein and the relevant portion of which is extracted as follows:-

"8..... Part V of the Tamil Nadu Civil Services (Discipline and Appeal) Rules deals with revision. Rule 36 provides as follows:

"36. REVISION

(1)Notwithstanding anything contained in these rules -

(i) the State Government; or

(ii) the head of the department directly under the State Government, in the case of a Government servant serving in a department or office under the control of such head of the department, or departments; or



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(iii) the appellate authority, other than the State Government, within six months of the date of the order proposed to be revised; or
(iv) any other authority specified in this behalf by the State Government by a general or special order, and within such time as may be prescribed in such general or special order; may at any time, either on their or its own motion or otherwise call for the records of any inquiry and after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary and revise any order made under these rules, may -

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority directing such authority to make such further enquiry as it may consider proper in the circumstances of the case; or

(d) pass such other orders as they or it may deem fit;

Provided that no order imposing or enhancing any penalty shall be made by any



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revising authority unless the Government Servant concerned has been given a reasonable opportunity of making his representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (iv), (v)), (vi), (vii) and (viii) of rule 8 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, if any inquiry under sub-rule (b) of rule 17 has not already been held in the case no such penalty shall be imposed except after an inquiry in the manner laid down in the said sub-rule (b) of rule 17 which shall be subject to the provisions of sub-rule (c) thereof, and except after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary;

Provided further that no power of revision shall be exercised by the head of the department, unless--

(i) the authority which made the order in appeal, or

(ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.

(2) No proceeding for revision shall be commenced --



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*(a) where no appeal has been preferred,
before the expiry of the period of limitation for
an appeal, or*

*(b) where an appeal has been preferred,
before the disposal of such appeal*

*(c) An application for revision shall be
dealt with in the same manner as if it were an
appeal under these rules.”*

9. Sub-Clause (2) of Rule 36 prescribes a condition that no proceedings for revision shall be commenced before the expiry of the period of limitation for an appeal where no appeal has been preferred and where an appeal has been preferred, before the disposal of such appeal. The commencing of suo-motu revision before the expiry of the period of limitation for appeal, as rightly contended by the learned senior counsel for the petitioner, will curtail the right of the delinquent from preferring an appeal as much prejudice would be caused if the Appellate Authority/Revisional Authority initiates suo-motu revision before the expiry of the limitation for such appeal, in which event the grounds on which the delinquent wants to prefer an appeal and other grounds in support of his case would not be placed before the authority commencing the suo-motu revision. The haste in which the second respondent commenced the suo-motu revision will show that the second respondent did not want to give the opportunity to the first writ



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petitioner to file an appeal against the order of the disciplinary authority, namely the first respondent. It should also be noted that not only the commencement of the suo motu revision was within the period of limitation for filing the appeal, but also the date of order passed in the suo-motu revision fell within that period of two months.

10. Hence, this Court is satisfied that there is violation of not only clause (a), but also clause (b) of Sub-clause (2) of Rule 36 of Tamil Nadu Civil Services (Discipline and Appeal) Rules. The appellate authority under Rule 23 does have powers even for enhancement of punishment and the second respondent could have waited for the delinquent to file an appeal and then passed an order for enhancement of the punishment if the second respondent was of the view that the punishment imposed was not commensurate with the gravity of the misconduct. In such an event the delinquent would have satisfaction of having placed the materials and arguments in support of his case either for exoneration or for reduction of the punishment. Such an opportunity was lost to him because of the hasty action taken by the second respondent. This Court is of the considered view that the order of the second respondent dated 26.04.1998 is against the mandatory provision of Sub-clause 2 of Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and hence, as rightly



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contended by the learned senior counsel, the same is liable to be termed illegal having no effect."

13.From the above discussion, it is palpable that no proceedings for revision shall be commenced before the expiry of the period of limitation for preparing an appeal has expired. In the instant case, the period for filing an appeal would expire only on 05.01.2022, however the disciplinary authority commenced the proceeding of *suo motu* revision on 15.12.2021 itself, curtailing the right of the delinquent petitioner from preparing an appeal thereby causing prejudice and injustice to the petitioner. Hence, I am fully satisfied that there is a violation of not only clause (a), but also clause (b) of sub-clause (2) of Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. The above discussion results in concluding that the impugned show cause notice dated 15.12.2021 suffers from legal impropriety, which vitiates the consequential order passed on the same day, cancelling the punishment inflicted on the petitioner on 29.10.2021 and the final order of dismissal from service dated 31.01.2022.



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14.The case being one of delinquency of a uniformed service cadre, it shall not be desirable to simply set aside the impugned orders, which shall have the effect of restoring the order of the third respondent. Because the impugned orders are to be quashed on a technical ground, the proper course to be adopted is to direct the second respondent to follow the provision found in Rule 36 of clause (2) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 in commencing *suo motu* revision once again. If the petitioner is interested in preferring an appeal, he may be given with an opportunity to prefer an appeal within 60 days from the date of receipt of a copy of this order. In case the petitioner prefers an appeal, he shall be dealt with as contemplated under Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. If he fails to prefer an appeal after the completion of 60 days time from the date of receipt of a copy of this order, the second respondent shall commence *suo motu* revision proceedings once again as contemplated in Rule 36 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955.



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15.In fine, the impugned order in Na.Ka.No.304/Aa/2015-1 dated 15.12.2021 and the impugned order in Na.Ka.No.304/Aa/2015 dated 15.12.2021 on the file of the second respondent and the consequential order of dismissal from service dated 31.01.2022 are hereby quashed and the entire file is remanded back to the second respondent to deal with the same in terms of the above directions.

16.Accordingly, the Writ Petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

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NCC : Yes

Index : Yes

Internet : Yes

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To

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Tamil Nadu Fire and Rescue Services,
Rukmani Lakshmipathy Salai,
Egmore,
Chennai - 600 008.

2.The Joint Director,
(Training - Rescue Operations),
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L.VICTORIA GOWRI, J.

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