



W.P.(MD)No.9134 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :27.04.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.9134 of 2023
and
W.M.P.(MD).No.8255 of 2023

K.Thangaraj

... Petitioner

Vs.

1.The Secretary to the Government,
Department of Highways and Minor Ports
(HL2) Department,
Secretariat, Fort.St.George,
Chennai-600 009.

2.The Director General,
Highways Department,
Guindy, Chennai 600 025.

3.The Chief Engineer (Projects),
Highways Department,
Guindy, Chennai 600 025.

4.The Superintending Engineer (Projects),
Highways Department,
Madurai 600 002.

5.The Divisional Engineer,



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Highways, Quality Control Division,
Madurai 625 002.

6.The Divisional Engineer,
Highways (Projects) Department,
Tirunelveli.

7.The Assistant Secretary,
Tamil Nadu Public Service Commission,
Chennai 600 003.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari calling for the records pertaining to the impugned orders issued by the second respondent in Order No. 3232/Confdl.3(1)/2018 dated 21.03.2020 and also the confirmation order issued by the first respondent in his order No.G.O.(D).No.111 Highways Minor and Ports (HL2) Department dated 30.06.2022 along with the report of the seventh respondent vide letter No.25-001/6/DCD-C2/2022-1 dated 28.02.2022 and quash the same.

For Petitioner :Mr.P.Mahendran

For Respondents :Mr.G.Suriyananth
Additional Government Pleader for R1 to R6

:Mr.J.Anandkumar
Standing Counsel for R7



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ORDER

The writ petitioner was appointed as Assistant Engineer in the Highways Department in the year 2008. He became Assistant Divisional Engineer later. He was issued with charge memo dated 28.06.2018. The disciplinary authority proposed to take action under Rule 17(a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. The petitioner offered his explanation and not satisfied with the same, the disciplinary authority rejected the petitioner's explanation and issued proceedings dated 21.03.2020 holding with the charges framed against the petitioner stood proved and imposed punishment of stoppage of increment for a period of three months without cumulative effect. Questioning the same, the petitioner filed an appeal before the Government. The Government had confirmed the order passed by the disciplinary authority and rejected the appeal vide G.O(D).No.111 Highways Minor and Ports (HL2) Department, dated 30.06.2022. Challenging the same, the present writ petition came to be filed.



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2. The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of this petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

3. The respondents submitted that the impugned proceedings do not warrant any interference.

4. I carefully considered the rival contentions and went through the materials on record.

5. The first contention advanced by the learned counsel for the petitioner is that he had been denied the opportunity of showing cause against the punishment. This argument is bereft of merits. Rule 17(a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, is as follows:

Rule 17.(a). *In every case where it is proposed to impose on a member of a service or a person holding a civil post under the State any of the penalties specified in items (i), (ii), (iii), (v) and (ix) in rule 8 or*



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in rule 9, he shall be given a reasonable opportunity of making any representation that he may desire to make and such representation, if any, shall be taken into consideration before the order imposing the penalty is passed;

Provided that the requirements of this sub-rule shall not apply where it is proposed to impose on a member of a service any of the penalties aforesaid on the basis of facts which have led to his conviction by a Court martial or where the officer concerned has absconded or where it is for other reason impracticable to communicate with him;

Provided further that, in every case where it is proposed, after considering the representation, if any, made by the Government servant, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay without cumulative effect for a period exceeding three years or to withhold increment of pay with cumulative effect for any period, the procedure laid down in sub-rule (b) shall be followed



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*before making any order imposing on the Government
servant any such penalty.*

6. Penalties can be categorized into minor and major. Where it is proposed to impose a minor penalty, an opportunity of showing cause alone is given. Only if the withholding of increment is with cumulative effect or it is for a period exceeding three months, then and then alone, major penalty procedure has to be followed. In this case, the punishment imposed on the petitioner is only stoppage of increment for a period of three months. Admittedly, it is a minor penalty. Therefore, the petitioner was issued only with a show cause notice and no regular enquiry was held. Only after considering the petitioner's explanation, the order dated 21.03.2020 came to be passed. There is no violation of principles of natural justice. The disciplinary authority adhered to Rules 17(a) in letter and spirit. If the contention of the learned counsel for the petitioner is accepted, then the delinquent must be given opportunities at two stages (a) his explanation must be obtained in response to the charges and if the authority decides to impose minor penalty, again the delinquent has to be put on notice. When



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the statutory Rule does not contemplate such a procedure, it would not be open to the writ Court to incorporate an additional requirement.

(b) It is true that in the instant case, the appellate authority obtained opinion from Tamil Nadu Public Service Commission before rejecting the petitioner's appeal. It is the fact that the opinion received from TNPSC vide letter, dated 28.02.2022 was not furnished to the petitioner before passing G.O(D).No.111 dated 30.06.2022.

7. The question is whether the petitioner can take advantage of the decision of the Hon'ble Apex Court reported in **2011 (4) SCC 591 (S.M.Narula Vs. Union of India)**. The Hon'ble Apex Court in the said decision had held that the disciplinary authority before imposing punishment obtains the opinion of the Service Commission and if such punishment is imposed without serving a copy of the same to the delinquent, the punishment becomes bad in law. But the said decision cannot be applied to the case on hand. This is because what was imposed on the petitioner was only a minor penalty. In my view, the appellate authority



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need not have sought the opinion of Tamil Nadu Public Service Commission at all. Merely because the appellate authority necessarily chose to obtain opinion from the Service Commission, that does not mean that copy of the opinion should be furnished to the delinquent and his explanation must have been obtained.

8. The charge against the writ petitioner was that he did not join in the transferred place and instead, went on submitting appeals and representations for a long period of time. I am more than satisfied that all the relevant aspects have been taken into account before passing the impugned order and no interference is warranted.

9. Accordingly, the writ petition stands dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

27.04.2023

NCC :Yes/No
Internet :Yes/No
Index :Yes/No

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G.R.SWAMINATHAN, J.

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