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W.P.No.11481 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

W.P.No.11481 of 2011

T.V.Inian

....Petitioner

Vs

1. The Government of Tamil Nadu,
Rep. By the Secretary to the Government,
Finance (OP-I) Department, Fort St.George,
Chennai – 600 009.

2. The Joint Secretary to the Government,
Finance (OP-I) Department,
Fort St. George, Chennai – 600 009.

....Responden

ts

PRAYER: Writ Petition is filed under Article 226 of Constitution of India, pleaded to issue a Writ of Certiorari to call for the records relating to the impugned order of the first respondent in G.O.Ms.No.89, Finance (OP-I) Department dated 10.03.2011 and quash the same and direct the first respondent to grant all consequential benefits to the petitioner.

For Petitioner : Mr.P.Mohanraj

For Respondents : Mr.U.M.Ravichandran
Spl. Govt Pleader



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ORDER

The Writ Petition has been filed to call for the records relating to the impugned order of the first respondent in G.O.Ms.No.89, Finance (OP-I) Department dated 10.03.2011 and quash the same and direct the first respondent to grant all consequential benefits to the petitioner.

2. It is the submission of the learned counsel for the petitioner that, petitioner was working as Assistant Section Officer, Finance Department (other duty) Bills, ADW Department, Fort St. George, Chennai. Petitioner was issued charge memo by the 2nd respondent on 25.08.2008 under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. The charge was that, petitioner has received a sum of Rs.30,000/- from one Rajagoppal of Perungalathur promising that he would get job for four persons in the ITI Section. After submitting his explanations on 30.09.2008, Enquiry Officer was appointed and enquiry was conducted. Enquiry Officer submitted his report on 16.03.2009 holding the charge was proved. Petitioner was directed to submit his explanation.



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3. Thereafter, 1st respondent issued order in G.O.Ms.No.89, Finance (OP-I) Department dated 10.03.2011 imposing punishment of Reduction to lower post for one year with cumulative effect. The 1st Respondent imposed this punishment upon the views expressed by the Tamil Nadu Public Services Commission. The copy of the views of the Tamil Nadu Public Services Commission was not served on the petitioner before imposing the punishment, but it was communicated to him along with punishment order and that was not appropriate. Therefore, this Writ Petition is filed.

4. In support of his submission, the learned counsel for the petitioner relied on the judgement of this Court in **S.Baskar Vs. The Government of Tamil Nadu and other** in **W.P.No.17682 of 2017** and in **N.G.Rathinaselvan Vs. The State of Tamil Nadu and other** in **W.P.No.19209 of 2010** and in **Dr.K.Alagarsamy Vs. The State of Tamil Nadu and others** in **W.P.No.21165 of 2015**. He further submitted that, as per these judgements, it is necessary that, if the views of the TNPSC has been sought for imposing the punishment to the delinquent, the views of the TNPSC has to be communicated to the delinquent before imposing the punishment. That is not done in this case. Therefore, punishment cannot be sustained.



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5. In response, it is the submission of the learned counsel for the respondents that, after the enquiry was over, the copy of the enquiry report was communicated to the petitioner to offer his explanation. In the final order passed, it was made clear that, petitioner's representation on enquiry report was not satisfactory. Therefore, the Government decided to impose punishment of reduction in rank for one year without cumulative effect. However, the views of the TNPSC was called. TNPSC on going through the Enquiry Report suggested to impose punishment of reduction in rank for one year with cumulative effect. Accordingly, punishment was imposed. Petitioner was given show cause notice before framing charges. The 2nd show cause notice was served after the filing of enquiry report, calling for his explanation. Therefore, it is not necessary to issue 3rd show cause notice. He further submitted that, considering the gravity of the misconduct committed by the petitioner, enquiry report and rule positions in Fundamental Rule, especially Rule 29(1), punishment of reduction in rank with cumulative effect was imposed and it is just and appropriate. Thus, he prays for dismissal of this punishment.

6. Considered the rival submissions and perused the records. The main ground on which, the learned counsel for the petitioner challenges the



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Writ Petition is non compliance of certain procedures especially the non-supply of the views of TNPSC before imposing the punishment. Other things like issuance of Show Cause Notice contents of the charge memo and other things are not seriously canvassed.

7.In the said circumstances and in the light of the ground raised by the learned counsel for the petitioner, it is relevant to consider the judgements relied by the learned counsel for the petitioner. When considering the similar case, this Court in **N.G.Rathinaselvam Vs. The State of Tamil Nadu & Others** in **W.P.No.19209 of 2010**, Court observed as follows:

9. Insofar as the furnishing of the report of the Tamil Nadu Public Service Commission is concerned, considering an identical situation and after taking note of the earlier pronouncement, the Hon'ble Apex Court in Union of India and others v. S.K.Kapoor reported in (2011) 4 SCC 589 has held as follows:-

"7. In the aforesaid decision, it has been observed in SCC para 25 that "the provisions of Article 320(3)) of the Constitution of India are not mandatory". We are of the opinion that although Article 320(3)(c) is not mandatory, if the authorities do consult the Union Public



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Service Commission and rely on the report of the Commission for taking disciplinary action, then the principles of natural justice require that a copy of the report must be supplied in advance to the employee concerned so that he may have an opportunity of rebuttal. Thus, in our view, the aforesaid decision in T.V. Patel case is clearly distinguishable.

8. There may be a case where the report of the Union Public Service Commission is not relied upon by the disciplinary authority and in that case it is certainly not necessary to supply a copy of the same to the employee concerned. However, if it is relied upon, then a copy of the same must be supplied in advance to the employee concerned, otherwise, there will be violation of the principles of natural justice. This is also the view taken by this Court in S.N.Narula v. Union of India.

9. It may be noted that the decision in S.N.Narula case was prior to the decision in T.V.Patel case. It is well settled that if a subsequent coordinate Bench of equal strength wants to take a different view, it can only refer the matter to a larger Bench, otherwise the prior decision or a coordinate Bench is binding on the subsequent Bench of equal strength. Since the decision in S.N.Narula case was not noticed in T.V.Patel case, the latter decision is a judgment per incuriam. The decision in S.N.Narula case was binding on the subsequent Bench of equal strength and hence, it could not



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take a contrary view, as is settled by a series of judgments of this Court."

10. Therefore, in the light of the clear dictum of the Hon'ble Apex Court, referred supra, this Court is of the view that the order impugned is also liable to be set aside on the ground that the remarks of Tamil Nadu Public Service Commission has not been furnished to the petitioner.

8. The same view had been taken by this Court in **S.Baskar Vs. The Government of Tamil Nadu & Other in W.P.No.17682 of 2017**, wherein in para (6), it is held as follows:

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



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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.

9. Then, in **Dr.K.Alagarsamy Vs. The State of Tamil Nadu & Others** in **W.P.No.21165 of 2015**, it is held as follows:

*6. In the instant case, a perusal of the impugned order reveals that the respondents herein had extracted the findings of the enquiry officer and without any discussion had imposed the punishment. Further the views of the TNPSC has to be supplied to the petitioner before passing the order of punishment. The 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, had 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. Thus, the manner in which the disciplinary proceedings had culminated into the impugned punishment is contrary to the Regulations and settled propositions of law.*

10. From these judgements, it is made clear that, when Government decided to obtain the views of the TNPSC, it is necessary that, copy of the views must be supplied in advance to the delinquent concerned to give an



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opportunity to differ the views. It is not in dispute that, such an opportunity was not given to the petitioner. Therefore, in the light of the legal proposition settled in **Union of India, Ministry of Defence and another Vs. The Registrar, Central Administrative Tribunal, Chennai and another** reported in **(2005) 2 MLJ 154**, this Court finds that imposition of punishment to the petitioner without serving the copy of the views of TNPSC is not appropriate and in accordance with law. Therefore, punishment imposed against the petitioner of reduction in rank with cumulative effect is set aside.

11. It is open to the respondents to serve copy of the report from the TNPSC to the petitioner calling for his views and pass suitable orders in the manner known to law. Accordingly, this Writ Petition is disposed of. No costs.

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G.CHANDRASEKHARAN, J

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