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W.A.No.1280 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2024

CORAM

THE HON'BLE MR. JUSTICE R. MAHADEVAN
AND
THE HON'BLE MR. JUSTICE MOHAMMED SHAFFIQ

W.A.No.1280 of 2024 & C.M.P. No.9321 of 2024

1. The Director
Fire & Rescue Service
17, RukmaniLakshmipathy Road
Egmore, Chennai – 600 008
2. The Deputy Director (Full In-charge)
Central Region
Tiruchirappalli
3. The District Officer
Fire and Rescue Service Department
Villupuram District

Appellants

Vs.

P.Arunachalam

Respondent

Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 30.06.2023 passed in W.P.No.22850 of 2019.

For appellants	Mr.Abhishek Murthy Government Advocate
For respondent	Mr.RS.Anandan



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JUDGMENT

(delivered by R. MAHADEVAN, J.)

The unsuccessful respondents in the writ petition being W.P. No.22850 of 2019, have questioned in this writ appeal, the correctness of the order dated 30.06.2023 passed in the said writ petition.

2 The summary of the facts that led to the institution of this writ appeal are as under:

2.1 The respondent, who is a Fireman Driver, was served with a charge memo dated 22.05.2017 by the third appellant containing three charges, the gist of which is as below:

In the address where one Hari Siddha Clinic is run, he holds a letter pad in the name and style of “Arunachala Fire and Safety Shop” and sells fire extinguishing appliances, issues false certificates on fire training and issues fake no objection certificates for schools by making false station and station officer seals.

2.2 In response, the respondent submitted his explanation dated 31.05.2017 specifically stating therein that he was not served with the copies of documents adverted to in the charge memo and also the statement of witnesses examined in respect of the charge memo. Subsequently, the Assistant District Officer was appointed as Enquiry Officer who held the charges as proved and submitted his report dated 25.07.2017 to the Disciplinary Authority.



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2.3 Thereafter, the Disciplinary Authority, *vide* notice dated 06.09.2017, by coming to a provisional conclusion and by enclosing a copy of the Enquiry Officer's report, directed the respondent to show cause, within 15 days, as to why he should not be inflicted with the punishment of stoppage of two increments with cumulative effect.

2.4 In reply, the respondent submitted his explanation dated 12.09.2017, in pursuance whereof, the Disciplinary Authority, *vide* proceedings dated 19.09.2017, imposed the punishment as provisionally concluded by him *vide* notice dated 06.09.2017.

2.5 Thereagainst, the respondent preferred an appeal dated 05.10.2017 before the Deputy Director (second appellant herein), who confirmed the punishment imposed by the Disciplinary Authority *vide* proceedings dated 08.02.2018. The mercy petition dated 14.05.2018 filed by the respondent before the Director (first appellant herein) also ended in rejection *vide* proceedings dated 14.09.2018.

2.6 Assailing the correctness of the proceedings of the Disciplinary Authority, Appellate Authority and the proceedings in the mercy petition, the respondent preferred the writ petition in W.P. No.22850 of 2019.



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2.7 The main grievance of the respondent, in essence, before the learned Judge was that there was not mere violation, but, rank violation of principles of natural justice, inasmuch as, he was not furnished with the copies of documents adverted to in the charge memo and also the copies of statement of witnesses examined in respect of the charge memo, enabling him to take an effective defence in the explanation to the charge memo nor was the Enquiry Officer's report furnished to him before the Disciplinary Authority came to the provisional conclusion *vide* the show cause notice dated 06.09.2017 and the Disciplinary Authority, ultimately, imposed the punishment without properly considering his explanation to the show cause notice in a right perspective.

2.8 The learned Judge, *vide* order dated 30.06.2023, noticing that the appellants had not denied in their counter affidavit the non-furnishing of (i) copies of documents referred to in the charge memo, (ii) statement of witnesses who were examined in respect of charge memo and the copy of the Enquiry Officer's report before the provisional conclusion was arrived at, held that principles of natural justice had been violated and eventually, allowed the writ petition. While allowing the writ petition, the learned Judge has observed that the judgment of the Supreme Court in **State of U.P. v Saroj Kumar Sinha**¹,

¹ Civil Appeal No.254 of 2008 decided on 02.02.2010



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relied on by the learned counsel for the respondent, would apply in all its fours to the case on hand.

2.9 The correctness of the aforesaid order is called into question in the instant writ appeal.

3 Heard the learned Government Advocate appearing for the appellants and the learned counsel for the respondent and also perused the materials placed on record.

4 The first contention of the learned Government Advocate is that the respondent himself has admitted in his affidavit filed in support of the writ petition, wherein, there is a specific whisper to the effect that he has been furnished with a copy of the enquiry report. This contention does not have legs to stand for the following reasoning.

5 It is true that a copy of the Enquiry Officer's report was furnished to the respondent. But, the question is when it was furnished to him. It is common knowledge that the report of the Enquiry Officer should be furnished to the delinquent enabling him to make an effective defence before the



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Disciplinary Authority comes to a conclusion. But, in this case, as stated above, no doubt, the respondent has been served on a copy of the report of the Enquiry Officer, but, be it noted, it has been served on him only after the Disciplinary Authority has arrived at a provisional conclusion of imposing punishment on him, thereby making the service of report of the Enquiry Officer an empty formality. It is not sufficient if justice is done. It should also be seen to be done. It is also worth pointing out that when the law requires a thing to be done in a particular manner, it should be done only in the said manner and not in a manner deviating from the prescribed manner (See **Cherukuri Mani v Chief Secretary, Government of Andhra Pradesh**²). We hasten to add that though there is no statute involved in the case on hand, the fact remains that the respondent was not furnished with the copy of the Enquiry Officer's report when it ought to have been furnished.

6 The second contention of the learned Government Advocate that the learned Judge ought not to have quashed the disciplinary proceedings without delving into the merits of the case also has to fall to ground for the reason that the question of delving into the merits of the case arises only when there is equity and fairplay in the conduct of disciplinary proceedings. When

² (2015) 13 SCC 722



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the disciplinary proceedings is admittedly vitiated by nonfurnishing of copies of documents adverted to in the charge memo, statement of witnesses examined in respect of the charge memo and also copy of the enquiry report prior to arriving at a provisional conclusion, there is absolutely no need whatsoever for the learned Judge to go into the merits of the matter.

7 Coming to the next contention of the learned counsel for the appellants that the admission of the respondent himself during the enquiry that he had issued false certificates on fire training and no objection certificates to schools, besides making forged seals, it is pertinent to point out that this contention also gets subsumed with the appellants' contention that the Single Judge has quashed the disciplinary proceedings without delving into the merits of the case. However, it will not be out of place to state here that mere admission of the respondent himself will not give carte blanche to the appellants to conduct disciplinary proceedings giving a go by to the established procedure.

8 The last contention of the learned counsel for the appellants is that the respondent has not established as to in what way he has been prejudiced by nonfurnishing of the report of the Enquiry Officer and hence, on that score, the



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enquiry proceedings cannot be held to be vitiated. To buttress this contention, he invited the attention of this Court to the Constitution Bench judgment of the Supreme Court in **Managing Director, E.C.I.L., Hyderabad & Others v B. Karunakar & Others**³, which has been quoted with approval in **Burdwan Central Cooperative Bank Ltd. v Asim Chatterjee**⁴. There cannot be any quarrel on the proposition propounded in the said judgments. But, in the said cases, seemingly, mere nonfurnishing of the copy of the report of the Enquiry Officer was the issue, in which circumstances, the Supreme Court held that the order of punishment should not be set aside mechanically on the ground that the copy of the enquiry report had not been supplied to the employee. But, distinguishably, the instant case is not one of mere nonfurnishing of enquiry report alone, but, concededly, as already stated, the documents referred to in the charge memo and copies of statement of witnesses examined in respect of the charge memo also were not supplied to the respondent, thereby prejudicing his right of making an effective defence. Accordingly, this contention also cannot be allowed to stand.

³ (1993) 4 SCC 727

⁴ (2012) 2 SCC 641



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For all the aforesaid reasons, we do not find any ground to interfere with the well merited order of the learned Judge. As a sequel, this writ appeal fails and is accordingly dismissed, however, sans costs. Connected C.M.P. stands closed.

[R.M.D, J.] [M.S.Q, J.]
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