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W.P.No.15101 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.02.2024

Pronounced on : 16.02.2024

C O R A M

The Hon'ble Dr.Justice D.NAGARJUN

**W.P.No.15101 of 2015
and
M.P.Nos.1 and 2 of 2015**

V.Vijayakumar

...Petitioner

Vs

1. The Managing Director,
The Cotton Corporation of India Ltd.,
Kapas Bhavan,
Plot No.3A
Sector 10, CBD, Belapur,
Navi Mumbai – 400 614.
2. The Branch Manager/Disciplinary Authority,
The Cotton Corporation of India Ltd.,
Door No.1057,
Trichy Road, Ramanathapuram,
Coimbotore – 641 045.
3. M.Neelameham
4. G.Sai Aditya

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for the issuance of a writ of certiorari calling for records relating to the impugned order dated 11.05.2015 in reference No.CCI/CBE/BM/15-16/712 passed by the second respondent and quash the same.



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For petitioner	:	Mr.K.Venkataramani Senior Counsel
For R1, R2 and R4	:	Mr.Varun Venkatesan for Ms.Sarvasharman
For R3	:	No appearanace

ORDER

This writ petition is filed seeking to quash the order passed in reference No.CCI/CBE/BM/15-16/712 dated 11.05.2015 by the second respondent and quash the same.

2. The facts in brief as per the affidavit enclosed in this writ petition are as follows:

2.1. The petitioner was appointed as a Junior Cotton purchaser in the second respondent Cotton Corporation of India on 13.10.1997 and served the Corporation for more than 18 years. His nature of duties includes purchase of cotton from the farmers, gin it in a ginning factory, get the cotton pressed into bales and to hand over the bales to the officer in charge of the cotton godowns, of cotton Corporation of India. At the time of handing over the bales, the cotton bales are weighed and checked by the godown keeper and thereafter was being supplied to the textile units.



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2.2. While so, the second respondent had issued a show cause notice to the petitioner on 20.03.2014 alleging that the petitioner had procured low quality of cotton which was dusty which, was not packed properly, and that abnormal weight loss of the bales. The petitioner has submitted his explanations dated 10.04.2014, however, the petitioner was served with a charge memo dated 15.05.2014 by the second respondent consisting of three charges.

2.3. The petitioner submitted detailed explanation on 07.07.2014 denying the charges stating that he has not purchased inferior quality of cotton; entire process of procuring the cotton from the farmers, ginning, packing etc., has been verified by the Branch Manager, Internal Auditor and Assistant Manager (Vigilance) and that there was no complaint regarding the same from the above said officers and that once the cotton bales are handed over to the store keeper, the petitioner is no way responsible or concerned for the shortcomings; cotton is procured from the field directly during the months of January, February and March and the cotton would have huge moisture cotton due to severe cold and dews and when they are supplied to textile units, due to high temperature in summer the cotton bales will have



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less weight; the value for the cotton seeds were collected only by the Branch office and the petitioner is no way related to it.

2.4. Having not satisfied with the explanation submitted by the petitioner the third and fourth respondents were appointed as enquiry officers and presentation officers, respectively. Both of them were not eligible to be appointed as per Rule 25 (2) of the Cotton Corporation of India Employees Conduct, Discipline and Appeal Rules, 1975, which contemplates that “whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehavior against an employee, it may itself enquire into or appoint any public servant, including retired Government servant of proven integrity or a retired Judge as inquiring authority to inquire into the truth thereof.” Third and fourth respondents are retired officials of National Textile Corporation, thereby, not public servants and hence, the appointment of both them as enquiry officer and presenting officer are not in accordance with law.

2.5. On completion of enquiry, report was submitted by the enquiry officer to the second respondent, who has issued show cause notice



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dated 14.01.2015 to the petitioner for which the petitioner has submitted his explanation on 04.02.2015. However, the second respondent passed impugned orders dated 11.05.2015 in reference No.CCI/CBE/BM/15-16/712, removing the petitioner from service. Aggrieved by the same this writ petition.

3. Counter affidavit has not been filed by the respondents. However, a brief note is filed by the second respondent specifying the dates of events.

4. The learned Senior Counsel representing the petitioner and the learned counsel appearing for the respondents were heard, perused the materials available on record.

5. Aggrieved by the impugned orders, the petitioner has preferred an appeal before the appellate authority however, the said appeal was returned with an endorsement that the appeal was filed belatedly and that the petitioner has already filed this writ petition and thereby, the matter has become sub judice.



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6. It is also submitted by learned Senior Counsel for the petitioner that the enquiry officer/third respondent is not a public servant as defined under Rule 3 (k) read with Section 21 IPC, thereby, his appointment is illegal and enquiry report filed by him cannot be accepted. However, main contention of the petitioner is that the disciplinary authority/ second respondent while issuing the show cause notice has pre-determined not only to accept the enquiry report submitted by the enquiry officer/third respondent, and that he but also decided to impose punishment to the petitioner.

7. The learned counsel appearing for the respondents per contra submits that even though the contents of the show cause notice dated 04.08.2014 issued by the disciplinary authority infavour of the petitioner appears as if the disciplinary authority has pre-determined to accept the report of the enquiry officer and punish the petitioner, the proceedings of the disciplinary authority would demonstrate that the disciplinary authority has followed the entire procedure scrupulously, without violating the principles of natural justice.



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8. The show cause notice issued by the second respondent in favour of the petitioner runs as under:

“Disciplinary Authority having fully agreed with the findings of the inquiry Authority and having proposed to Award any of the penalties as indicated in Rule No.23 of CDA Rules of Cotton Corporation of India Ltd and issued the show cause notice cited at reference No.(3) above, wherein Shri.V.Vijayakumar was given an opportunity to make representation as he may wish to make against the proposals of the undersigned/Disciplinary Authority in the matter of awarding the punishment”.

This notice referred above indicates that the disciplinary authority agreed with the findings of the enquiry officer and decided to impose penalty to the petitioner. On plain reading of the above it is clear that the disciplinary authority has accepted the report of the enquiry officer even before explanation is submitted by the petitioner. The disciplinary authority is not expected to decide about accepting the enquiry report and imposing the penalty prior to the submission of explanation by the petitioner. The disciplinary authority has to take a decision either to accept the enquiry report or to reject only after going through the enquiry officer's report and explanation submitted by the petitioner. If at all, the disciplinary authority has taken a decision basing on the report of the enquiry officer alone without considering the explanation of the petitioner,



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there is no point in asking the petitioner to submit the explanations and thereby, the said decision of the disciplinary authority can be termed as a biased.

9. The learned counsel appearing for the respondents tried to justify the actions of the second respondent stating that on account of poor drafting skills the show cause notice was not properly phrased. This submission is not convincing. The second respondent is expected to go through the show cause notice prior to affixing his signature. If at all, the show cause notice was cheaply drafted, the second respondent could have corrected it prior to approving the draft and affixing his signature on it. Therefore, this Court takes all the phrases contained in the show cause notice as consciously drafted and signed by the second respondent.

10. Further, if really the second respondents was not intending to accept the report of the enquiry officer and not intending to impose a penalty on the petitioner prior to submission of the explanation by the petitioner, the second respondent should have mentioned atleast in the impugned order that the relevant portions of the show cause notice were mentioned on account of poor draftsmanship. The respondents have also not filed any counter affidavit



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to the effect that on account of poor drafting only certain phrases were incorrectly mentioned in the show cause notice, though they were not intended to.

11. The learned counsel for the respondents has further submitted that though the phrases in the show cause notice given an impression that the disciplinary authority has taken a decision to impose punishment and on considering the explanation submitted by the petitioner alone the final impugned orders were passed.

12. The learned counsel for the respondents have circulated the following judgments:

1.The judgment in ***State Bank of Travancore vs. Mathew K.C.***, reported in ***MANU/SC/0054/2018***, the relevant portion of which is extracted below:

"17. The writ petition ought not to have been entertained and the interim order granted for the mere asking without assigning special reasons, and that too without even granting opportunity to the Appellant to contest the maintainability of the writ petition and failure to notice the subsequent developments in the interregnum. The opinion



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of the Division Bench that the counter affidavit having subsequently been filed, stay/modification could be sought of the interim order cannot be considered sufficient justification to have declined interference."

2. The judgement in ***Chandrama Singh vs. Managing Director***

Uttar Pradesh Cooperative Union, and others, reported in ***1991 SCC OnLine***

All 456, and the relevant portion runs as below:

"8. Having regard to the above noticed decisions of the Hon'ble Supreme Court of India, it is ruled that where a complete machinery/remedy for obtaining relief is provided in statute and such machinery and remedy fully covers the grievance of the petitioner then, unless extraordinary or exceptional circumstances exist or the machinery/remedy does not cover the grievance of the petitioner or the machinery or remedy is demonstrated and proved by the petitioner to be inadequate or inefficacious, the petitioner has to be relegated to the alternative remedy and the Court should not entertain a writ petition under Art. 226 of the Constitution of India for redressal of the grievance by the petitioner.

13. *On the pleadings contained in the instant petition the petitioner should not be allowed to invoke the jurisdiction of this Court under Art. 226 of the Constitution of India. The petitioner has complained violation of the provisions of S. 25-F of the Industrial Disputes Act, 1947, and for redressal of this grievance an adequate and efficacious remedy of reference under the provisions of 3. 10 of the said Act itself exists. The petitioner has neither pleaded nor proved the said remedy to be inadequate or inefficacious. He has also not demonstrated the existence of any exceptional or extraordinary circumstances to permit*



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him to bypass the alternative remedy available to him under the Industrial Disputes Act, 1947. The petition deserves to be dismissed on the ground of availability of alternative remedy to the petitioner."

3. The judgement in ***N. Narayanan Vs. Securities and Exchange***

Board of India, reported in ***MANU/TN/2309/2009***, the relevant portion of which is extracted hereunder:

"37. Therefore, having regard to the fact that alternative remedy is available to the petitioner and that alternative remedy is effective and efficacious as the Securities Appellate Tribunal is presided over by a retired Judge of High Court and two persons, having full expertise in respect of securities and further appeal remedy is provided to the Hon'ble Supreme Court against the decision of the Tribunal, the present writ petition filed by the petitioner cannot be entertained and hence, it is dismissed. Consequently, connected Miscellaneous Petition is also dismissed. No costs."

13. On careful perusal of the impugned order, it is clear that there is no mention that the grounds taken in the explanation submitted by the petitioner have been specifically considered by the disciplinary authority. If really the submissions of the petitioner in the explanation were taken into consideration, the impugned order should have narrated in detail, about the grounds mentioned in the explanation. Therefore, this aspect also shows that



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prior to filing the explanation by the petitioner the disciplinary authority has taken a decision in respect of accepting the enquiry report and imposing a penalty.

14. The learned counsel for the petitioner has cited a decision of Hon'ble Supreme Court of India, reported in **1994 Supp (2) SCC 391**, wherein it is held that:

“The reason why the right to receive the report of the Inquiry Officer is considered an essential part of the reasonable opportunity at the first stage and also a principle of natural justice is that the findings recorded by the Inquiry Officer form an important material before the disciplinary authority which along with the evidence is taken into consideration by it to come to its conclusions. It is difficult to say in advance, to what extent the said findings including the punishment, if any, recommended in the report would influence the disciplinary authority while drawing its conclusions. The findings further might have been recorded without considering the relevant evidence on record, or by misconstruing it or unsupported by it. If such a finding is to be one of the documents to be considered by the disciplinary authority, the principles of natural justice require that the employee should have a fair opportunity to meet, explain and controvert it before he is condemned. It is the negation of the tenets of justice and a denial of fair opportunity to the



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employee to consider the findings recorded by a third party like the Inquiry Officer without giving the employee an opportunity to reply to it. Although it is true that the disciplinary authority is supposed to arrive at its own findings on the basis of the evidence recorded in the inquiry, it is also equally true that the disciplinary authority takes into consideration the findings recorded by the Inquiry Officer along with the evidence on record. In the circumstances, the findings of the Inquiry Officer do constitute an important material before the disciplinary authority which is likely to influence its conclusions. If the Inquiry Officer were only to record the evidence and forward the same to the disciplinary authority, that would not constitute any additional material before the disciplinary authority of which the delinquent employee has no knowledge. However, when the Inquiry Officer goes further and records his findings, as stated above, which may or may not be based on the evidence on record or are contrary to the same or in ignorance of it, such findings are an additional material unknown to the employee but are taken into consideration by the disciplinary, authority while arriving at its conclusion. Both the dictates of the reasonable opportunity as well as the principles of natural justice, therefore, require that before the disciplinary, authority comes to its own conclusions, the delinquent employee should have an opportunity to reply to the Inquiry Officer's findings. The disciplinary authority is then required to consider the evidence, the report of the Inquiry Officer and the representation of the employee against it.”



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15. In the case on hand, prior to submission of explanation by the petitioner disciplinary authority has made up its mind not only to accept the report but also to impose a penalty, which is not acceptable.

16. It is further submitted by the learned Senior Counsel for the petitioner that the disciplinary authority/ second respondent has not applied his mind into the quantum of punishment but simply copied all the findings of the enquiry officer/ third respondent and passed the impugned final orders. It is true that certain parts in the report of the enquiry officer/third respondent are reproduced in the impugned order by the second respondent and passed final orders.

17. However, basing on the re-production of certain parts of the enquiry report in the impugned order by the second respondents, it cannot be said that the second respondent has not independently taken a decision. If at all the second respondent has passed a non-speaking order then the submission of the learned Senior Counsel for the petitioner can be accepted. But the second respondent has passed speaking impugned orders and thereby, the submissions of the petitioner cannot be considered.



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18. The learned Senior Counsel for the petitioner as well as the respondents did not canvass in respect of the charges framed and findings given by the enquiry officer.

19. The learned Senior Counsel for the petitioner has cited an authority in *Union of India Vs. T.R.Varma*, reported in *1957 AIR 882*, wherein it is observed that this writ petition under 226 should have not been entertained if alternative statutory remedy is available.

20. It is submitted by the learned counsel for the respondents that the petitioner without filing the statutory appeal has directly filed this writ petition, thereby, this writ petition has to be dismissed. It is an admitted fact that the petitioner subsequent to filing of this writ petition has filed belatedly an appeal before the appellate authority. However, the said appeal was rejected by the appellate authority on the ground that the matter has become sub-judice before this Court and that delay in filing of the appeal cannot be condoned. The petitioner has challenged the impugned order mainly on the ground that the principals of natural justice have not been followed, thereby even though



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statutory appeal is there still the petitioner can entertain writ petition basing on the grounds on which the writ petition is filed. Even otherwise the petitioner has though filed statutory appeal even belatedly, still same was rejected. Hence, this statutory appeal is not a ground to discard the writ petition.

21. In view of the above the impugned orders passed by the respondents are liable to be set aside.

22. In the result, this writ petition is allowed. Connected M.P. is closed. No costs.

16.02.2024

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Internet	:	Yes/No
Index	:	Yes/No
Citation	:	Yes/No



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Dr.D.NAGARJUN,J

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Pre-delivery order made in
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