IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.20796 of 2012
and
M.P.Nos.1 & 2 of 2012

T.Kannappan
Additional Secretary to Government (Retired),
Finance Department,
Secretariat, Chennai – 600 009. ...Petitioner

-Vs-

1.The Secretary to Government,
Animal Husbandry and Fisheries Department,
Secretariat, Chennai – 600 009.

2.The Secretary to Government,
The Finance Department,
Secretariat, Chennai – 600 009. ...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a direction in the nature of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order of the 1st respondent issued in G.O.(D)No.71 AHD&F Department dated 24.04.2012 and quash the same and to direct the respondents to settle the pensionary benefits without any deduction and pass such further orders.

For Petitioner : Mr.T.Ranganathan

For Respondents : Mr.M.Rajendiran
Additional Government Pleader

O R D E R

This writ petition is filed for issuance of a Writ of Certiorarified Mandamus to quash the impugned order of the 1st respondent issued in G.O.(D)No.71 AHD&F Department dated 24.04.2012 and to direct the respondents to settle the pensionary benefits without any deduction.

2. The case of the petitioner is that he was appointed as Junior Assistant in the year 1973 in the Finance Department of the Tamil Nadu Secretariat, recruited through the Tamil Nadu Public Service Commission in the Group II Competitive Examination held in 1972. The Finance Department in the Secretariat is a separate unit in Secretariat Services. He was promoted as an Assistant Section Officer in 1974 and as Section Officer in the year 1984. He was further promoted as Under Secretary to Government in 1994 and Deputy Secretary to Government in 1997 in the Finance Department. During his service, he was deputed to the Directorate of Animal Husbandry as Financial Advisor and Chief Accounts Officer. He served there from 25.06.1997 to 21.12.1998. After his relive from the Directorate of Animal

Husbandry, some allegations were made against Thiru.D.Ebenezer, the then Director of Animal Husbandry in the year 1998-1999. On a note initiated by the then Minister for Animal Husbandry on 15.02.1999 and approved by the then Chief Minister on 18.02.1999, a detailed enquiry by the DVAC was ordered in Government Lr.No.1/DS(AH)/99 dated 24.02.1999. The DVAC conducted a detailed enquiry and submitted its report on 03.03.2003 to the Tamil Nadu Vigilance Commission, which in turn forwarded the report to the Secretary to Government, Animal Husbandry, Dairy and Fisheries Department on 09.12.2003 vide its U.O.Note No.1346/VCI/2003-4, dated 09.12.2003. In the meantime, he was posted as Finance Officer at Madras University, then as Deputy Secretary to Government in the Finance Department and then promoted as Joint Secretary to Government in the Finance Department and posted as Financial Advisor in the Municipal Administration Directorate. In 2005, he was posted as Junior Secretary to Government in the Finance Department.

3. Learned counsel for the petitioner submitted that while serving as Joint Secretary to the Government Finance Department, the 1st respondent issued a charge memo in Government Lr.No.3884/AH-1/2006-5 dated 19.10.2006 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline

and Appeal) Rules with the following charges based on the report of the DVAC for the period he was on deputation as Financial Advisor and Chief Accounts Officer in the Directorate of Animal Husbandry.

> ***"CHARGE-I:***
>
> *Failed to give proper guidance in time for adopting the correct procedures as stipulated in G.O.Ms.No,193 Finance (SEC) Department dated 16.03.95 during the year 1998-99 and caused financial loss to the Government.*
>
> ***CHARGE NO.II***
>
> *Incorporate the guidelines prescribed by the World Bank in the bid documents as conditions and failed to give proper guidance in time, thereby paving the way for the entry of ineligible companies into the tender process.*
>
> ***CHARGE NO.III***
>
> *Recommend in time for the rejection of the bid documents of M/s. Scientific and General Traders, Chennai, for its failure to fulfil the conditions stipulated in the World Bank guidelines.*
>
> ***CHARGE NO.IV***
>
> *Without properly scrutinizing the bid documents of M/s.Optima Biotech wherein the price for the supply of semen analyzers was quoted as Rs.38,46,960/- inclusive of the purported customs duty of Rs.10,44,0000/- and sales tax of Rs.1,47,960/- when the actual customs duty was only Rs.6,85,280/- caused the committee to place orders for the supply of semen analyzers from the said company and caused the Animal Husbandry Department to pay the above said amount.*
>
> ***CHARGE NO.V***
>
> *Without properly scrutinizing and without rejecting the bid documents of M/s. Instruments De Medicines Veterinaire, France (IMV).*
>
> ***CHARGE NO.VI***
>
> *Without properly scrutinizing the bid documents of M/s.Instruments De Medicines Veterinaire, France*

(IMV), by its Branch Office at Haryana wherein a price of Rs.21,72,990/- and a purported customs duty of Rs.23,73,010/-.

CHARGE NO.VII

In gross negligence of your official duty omitted to take appropriate steps to get customs duty exemption while purchasing 1588 liquid nitrogen containers."

4. Learned counsel further submitted that the above charge memo was served on 27.12.2006. The said charge memo was issued for the misconduct relating to the year 1997-1998 i.e. after a period of 8 years. The inordinate delay in issuing the charge memo after 8 years caused much prejudice to the petitioner. The letter dated 12.01.2007 was sent by the petitioner for perusal of all connected records mentioned in annexure III to the charge memo and the 1st respondent permitted the petitioner to peruse the records only on 06.03.2009 in Government Letter No.22498/AH1/2007-16 AHD&F department dated 25.02.2009. There was a delay over 2 years to produce the records for perusal, but the relevant records were not produced and he submitted his defence statement on 22.05.2009 with objections recorded. After the submission of the written statement/defence statement on 22.05.2009, the 1st respondent issued orders in G.O.D.No.148 AHD&F Department dated 12.06.2009 appointing Thiru.Shambhu Kallolikar, I.A.S. Commissioner of Fisheries, Chennai, as Enquiry Officer to enquire into the

charges framed against Dr.D.Ebanezer, Dr.R.Leelavathy and Thiru.T.Kannappan. However, no order has been issued invoking Rule 9A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules to conduct a common enquiry and served to the petitioner till date. The Enquiry Officer examined the other two officers, vi.z., Dr.D.Ebanezer and Dr.R.Leelavathy on 07.12.2009 and examined the petitioner on 11.12.2009. He made the deposition before the Enquiry Officer and disclosed all documentary evidence available in the records produced during the enquiry. He denied all the charges and also recorded with the Enquiry Officer that the relevant records were not shown to the petitioner or served copy of the same. In fact even the copy of the minutes of the tender processing committee meeting was not produced and the Enquiry Officer has submitted his report to the 1st respondent in his letter No.010/PD/TANSACS/2010 dated 08.07.2010. In his report and the Enquiry Officer concluded that the charges levelled against the petitioner are 'not proved'. However in letter No.21474/AH1/2009-12 dated 25.02.2011, the report of the Enquiry officer dated 08.07.2010 was communicated to the petitioner stating that the Disciplinary Authority disagrees with the findings of the Enquiry Officer but the said letter was approved and published only by a Deputy Secretary to Government on 25.02.2011, who is not the Competent Authority for the petitioner. The 1st respondent affixed her signature only on 04.03.2011, which clearly shows that the 1st respondent never applied her mind and passed the said order or the said conclusion of disagreeing with the findings of the Enquiry Office has been arrived by 3rd parties to the proceedings. It vitiates the entire proceeding as null and void.

5. Learned counsel further submitted that the letter No.21474/AH1/2009-10 AHD&F Department dated 25.02.2011, was signed by some 'R.Poongodi' for the 1st respondent, which is not permissible under the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The said impugned letter not signed by the competent Disciplinary Authority is void-ab-initio. It is well settled in law that an order must held valid.

(i) it should be passed by the competent Authority.

(ii) In the prescribed manner

(iii) Should be communicated to the person concerned.

6. Learned counsel further submitted a detailed and fitting reply to the 1st respondent on 14.03.2011 and requested the 1st respondent to drop all further proceedings based on the recommendations of the fact finding authority, i.e. the Enquiry Officer, who is also an Officer belonging to the Indian Administrative Service. However, the 1st respondent has not applied

his mind and has also not examined the issues based on my further representation but simply arrived at the provisional conclusion of "imposing the punishment of pension cut of Rs.500/- per month for a period of one years". The said erroneous and arbitrary decision of the 1st respondent was not agreed to by the petitioner and properly contested in his letter dated 9.4.2012 on the following grounds:

> *"i) In the letter of disagreement (by Tmt.M.P.Nirmala IAS) no fair reasoning had been shown on the findings of the Enquiry Officer, which is supported by documentary evidences or personal witnesses.*
>
> *ii) The Disciplinary Authority has come to her own findings and decisions which is perverse and not sustainable under the Law.*
>
> *iii) The reasons adduced in the letter dated 25.02.2011 are "mere presumptions".*
>
> *iv) When I was not a party to the proceedings and the decisions the Disciplinary Authority cannot hold the charge as partially proved or proved.*
>
> *v) The Enquiry Officer categorically confirmed the facts with records that,*
>
> > *a) the bid notice for purchase of equipment for the year 1997-98 and 1998-99 was prepared on 03.12.1996.*
> > *b) I have joined as Financial Advisor and Chief Accounts Officer only on 25.06.1997*
> > *c) No original records produced by the Department.*
> > *d) The tender conditions were finalised by the Director of Animal Husbandry and the*

Disciplinary Authority with the Country Office of the World Bank at New Delhi, was not disputed by the Disciplinary. Authority. Therefore the question of guidance to the Director and Secretary (Disciplinary Authority) is beyond their imagination."

7. Learned counsel further submitted that the contention of the Disciplinary Authority is as follows:

"Each purchase committee is being represented, by the financial representative to scrutinize the tender document, whether the tender is in order or not. If no document supporting the tender is not available, either he could have called for the same or not finalized the tender. Hence, he has failed as a representative of the financial officer. Hence the charge is "proved."

is an unfair and arbitrary decision of the Disciplinary Authority because, my contention that,

(i) as a member of the tender Processing Committee I cannot reject or accept the bid documents;

(ii) decision was taken only based statement; on the comparative

(iii) even that comparative statement was given only during the Committee Meeting held in the Chambers of the Disciplinary Authority at Secretariat

(iv) and immediately taken back during the meeting or at the end of the meeting.

(v) the bid was finalised only by the Disciplinary Authority and the Director.

have been accepted by the Enquiry Officer and also not disputed by the Disciplinary Authority."

8. Learned counsel further submitted that the Disciplinary Authority has now informed the petitioner that it is provisionally decided to impose the "punishment of pension cut of Rs.500/- per month for a period of 1 years", The above decision is not only arbitrary but also illegal on the ground that the Disciplinary Authority who is the Chairman of the Tender Finalising Committee, is trying to make the petitioner as a scape goat without any fair reasoning on his further explanation. It is well- settled in law that no order or decision can be arrived at by the Authority who is a party to the Proceedings.

9. Learned counsel further submitted that it is well settled in law that the Disciplinary Authority cannot arrive at any decision based on the records/document statements which have not been marked as Exhibits during the enquiry and examined in the presence of the Accused Officer. The Disciplinary Authority has not produced any additional documents or evidence to override the findings of the Enquiry officer. The 1st respondent has treated his further explanation dated 14.3.2011 and his denial letter dated 9.4.2012 in a very casual and routine manner without considering the facts stated therein and decision was taken by the 1st respondent mechanically. The

non-application of mind is further substantiated by the way the 1st Respondent communicated his letters dated 14.3.2011 and 9.4.2012 to the Secretary, TNPSC in Lr.No.21474/H1/2009-18 AHD&F department dated 23.4.2012 along with 22 Records and documents running about 1000 Pages. The views of the TNPSC was obtained on 24.4.2012 itself. This shows that the 1st respondent has predetermined the issues and obtained the views /recommendations of the PC on the same day or in just one day after perusing the 22 records running to thousands of pages in a very casual manner.

10. Learned counsel further submitted that the DVAC recommended inclusion of the name of Thiru. Mohan Varghese Chunkath, I.A.S., as one of the Accused. The Government declined to accept the views of the DVAC on the following grounds:-

> *"The evaluation report had been prepared on 25.08.1998 by the Officers of the Directorate of Animal Husbandry and placed before the Tender Proceeding Committee Meeting held on 31.08.1998 Except for the Secretary, Animal Husbandry and Fisheries Department, all other members of the Tender proceeding Committee were officers working in the Directorate of Animal Husbandry. The Tender Proceeding Committee had taken the decisions based on evaluation report only. The Primary responsibility for the correctness of evaluation of the Tenders will be that of the Director of Animal Husbandry and Subordinate Officers who actually scrutinised the bids and prepared the evaluation report. The Secretary to*

> *Government of the Administrative Department who headed as Chairman, Tender Proceeding Committee, cannot be expected to verify the correctness on a fool proof basis. As such, there appears to be no need to include Thiru. Mohan Varghese Chunkath as an addl. accused officer. In the circumstances, to include Thiru. Mohan Verghese Chunkath as additional accused is not agreed to and informed accordingly in Chief Secretary's Lr. No.4241/2000-1, Public (Spl.A) Department dated 31.7.2001.*

11. Learned counsel further submitted that what are all stated in the Chief Secretary's letter to exclude Thiru Mohan Verghese Chunkath, I.A.S., is also applicable to the petitioner, as he was also given only the comparative statement. He was not one of the persons mentioned as, "Director of Animal Husbandry and his subordinate officers who actually scrutinized the bids and prepared the evaluation report.

12. Learned counsel further submitted that he was not a part of the proceedings (Tender Committee Meeting) and this has been marked in the proceeding itself that he was on camp on 28.10.1998 in respect of charge 1. The report of the Enquiry Officer stating that the charges were not held proved has been disagreed with only by the Deputy Secretary to Government in Letter No.21474/AH1/2009/12 dated 25.02.2011 and not by the 1st respondent. The 1st respondent affixed her signature only on 02.03.2011. The

tender conditions were finalised by the Director of Animal Husbandry and the Disciplinary Authority with the Country Office of the World Bank at New Delhi. They were not disputed by the Disciplinary Authority and therefore, the 1st respondent is barred from acting as a Disciplinary Authority to decide the matter being party to the proceedings.

13. Learned counsel further submitted that the findings of the Enquiry Officer show the arbitrary decision of the 1st respondent on mere presumptions when the facts in the records were undisputedly proved. The petitioner is only a member and has no power to dispute the decision of the Director, who is the Chairman of the Committee and the 1st respondent, who is the deciding Authority, now acting as the Disciplinary Authority also. No file was routed through the petitioner for any advice or recommendations or decision. The files were not produced for verification by the Disciplinary Authority. The connected records were not produced to establish the charge or to disprove the charges. Aggrieved by the order passed by the 1st respondent by G.O(D)No.71 AHD & F Department dated 24.04.2012, the petitioner has come forward with the present writ petition.

14. A counter affidavit was filed on behalf of the respondents and

the relevant paragraphs are extracted hereunder for better appreciation and understanding:

> ***"(iv)*** *Thiru. T. Kannappan, now Joint Secretary to Government, Finance Department, Chennai, while functioning as Financial Advisor and Chief Accounts Officer of Animal Husbandry Department and while acting as a member of Tender Processing Committee during the year 1997-98 and 1998-99 for the purchase of equipments and instruments under the Tamil Nadu Agricultural Development Project Scheme with World Bank assistance have without properly scrutinizing the bid documents of M/s. Optima Biotech, wherein the price for the supply of semen analyzer was quoted as Rs. 38,46,960/- inclusive of purported customs duty of Rs. 10,44,000/- and Sales Tax of Rs. 1,47,960/- when the actual customs duty was only Rs.6.85.284/ caused the committee to place orders for the supply of semen analyzer from the said company and caused the Animal Husbandry Department to pay the above said amount without making any negotiations to safeguard the financial interest of the Government and thereby facilitated M/s Optima Biotech to obtain unlawful pecuniary advantage of Rs.3,58,716/- in this transaction Thus he have failed to maintain absolute integrity and devotion to duty, failed to act in his best judgement in this transaction and conducted himself in a manner unbecoming of a member of Government service and thereby contravened the provisions of Rule 20 of Tamil Nadu Government Servants' Conduct Rules, 1973.*
>
> ***(v)*** *Thiru.T.Kannappan, now Joint Secretary to Government, Finance Department, Chennai, while functioning as Financial Advisor and Chief Accounts Officer of Animal Husbandry Department and while acting as a member of Tender Processing Committee during the year 1997-98 and 1998-99 for the purchase of equipments and instruments under the Tamil Nadu Agricultural Development Project Scheme with World Bank assistance have without properly scrutinizing and without rejecting the bid documents of M/s. Instruments De Medicines*

Veterenaire, France (IMV) on the reason of absence of effective competition as pointed out in the guidelines given by the World Bank caused the Tender processing committee to place orders with the said company for the supply of Bio Freezer. Thus he had failed to maintain absolute integrity and devotion to duty, failed to act in his best judgement in this transaction and conducted himself in a manner unbecoming of a member of Government service and thereby contravened the provisions of Rule 20 of Tamil Nadu Government Servants' Conduct Rules, 1973."

15. Learned Additional Government Pleader appearing for the respondents submitted that the petitioner as a member of the Committee constitued for the purchase of Foot and Mouth Vaccine during 1998-99 has failed to give proper guidance in time for adopting the correct procedures as stipulated in G.O. Ms. No. 193, Finance (Sal.) Department, Dated: 16.03.1995 and thereby caused the Committee to follow the Limited Tender System instead of the Open Tender System with regard to the purchase of Foot and Mouth Vaccine under the Centrally Sponsored Scheme during the year 1998-99 and caused financial loss to the Government. Thus he had failed to maintain absolute integrity and devotion to duty, failed to act in his best judgement in this transaction and conducted himself in a manner unbecoming of a member of Government service and thereby contravened the provisions of Rule 20 of Tamil Nadu Government Servants Conduct Rules, 1973 and failed to incorporate the guidelines prescribed by the World Bank

in the bid documents as conditions and failed to give proper guidance in time and thereby paved the way for the entry of ineligible companies into the tender process and caused the selection of such ineligible companies to supply the above said equipments and instruments for higher price to the Animal Husbandry Department causing loss to the Government.

16. Learned Additional Government Pleader further submitted that while acting as a member of the Tender Processing Committee during the year 1997-98 and 1998-99 for the purchase of equipments and instruments under the Tamil Nadu Agricultural Development Project Scheme with World Bank assistance he failed to recommend in time for the rejection of the bid documents of M/s. Scientific and General Traders, Chennai, for its failure to fulfil the conditions stipulated in the World Bank guidelines. The 1st respondent herein pursued the report of the Inquiry Officer and called for further representation of the petitioner, stating that charge 1 as "Partially proved" and charge nos. 2 to 7 are "Proved" by deviating from the findings of the Inquiry Officer. The petitioner submitted his further representation as called by the Government. Based on the charges, findings of the Inquiry Officer, further representation of the petitioner and the related records, the 1st respondent herein arrived at a conclusion as the charges proved and decided

to award punishment as "Pension cut of Rs. 500/- per month for a period of one year" vide G.O (D) 71, Animal Husbandry, Dairying and Fisheries (AH1) Department, dated 24.4.12, after obtaining the views of the Tamil Nadu Public Service Commission and allegations against the petitioner were referred to the appropriate authority for investigation. Accordingly, the appropriate authority (i.e) Director of Vigilance and Anti-Corruption carried out the investigation and submitted the report. After pursuing the report of the appropriate authority, the Government (ie) the 1st respondent framed the charges under rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, so there is a delay in initiating the disciplinary proceedings due to the process involved in it, but it cannot be called an undue delay. The charges were framed clearly, stating the irregularities committed by the petitioner in collusion with other members of the committee. The GO (2D) 57, Animal Husbandry and Fisheries (AH1) Department, dated 24.6.2005 was issued for the initiation of disciplinary action in a common proceeding against the delinquent officers who were from different departments, under rule 9 A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, under copy marked to the petitioner to serve the same through his parent Department (ie) Finance Department. The 1st respondent herein, communicated the Government letter No.21474/AH1/2009-12, dated

25.2.11, deviating from the findings of the inquiry officer by not following the rules laid down in the Tamil Nadu Civil Services (Discipline and Appeal) Rules, is not at all acceptable. The letter addressed to this petitioner is based only on the orders of the competent authority, which have been clearly stated in the letter. Further, it is only a correspondence and not any orders. So the signature question does not arise. Further, if he wants the letter with the authority's signature, he might have represented the disciplinary authority to send a copy, duly signed by the competent authority letter dated 25.2.11.

17. Learned Additional Government Pleader further submitted that the charges against the petitioner were held as proved by the Competent Authority, i.e. the 1st respondent herein and approved with her signature on 21.1.2011 itself. Therefore, in order to follow the procedure under rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the letter calling for further representation of the petitioner was issued only after getting approval of the competent authority that the charges were proved. It is merely a letter calling for his further representation in order to follow the procedure in the disciplinary case. The 1st respondent, as per the existing rule, consulted the Tamil Nadu Public Service Commission for its view under regulation 18(1) (c) of the Tamil Nadu Public Service Commission

Regulations, 1954, on the proposed punishment. On the advice of the Tamil Nadu Public Service Commission, the punishment has been imposed vide GD (D) No.71, Animal Husbandry, Dairying & Fisheries (AH1) Department, dated 24.412. Further, it is submitted that the punishment awarded to the petitioner is in order and as per the rules in vogue. The Disciplinary Authority (i.e) 1st respondent after careful examination of all the relevant records and depositions, arrived at the conclusion of imposing the punishment said supra, which was thoroughly examined and advised by the Tamil Nadu Public Service Commission to impose the proposed punishment. It is submitted that the orders passed by the disciplinary authority is in order and as per rules.

18. Learned Additional Government Pleader further submitted that the petitioner cannot find fault on the 1st respondent (i.e) the Government for not having included the name of the then Secretary to Government, Animal Husbandry, Dairying & Fisheries Department, Thiru. Mohan Varghese Chunkath,I.A.S., as Additional Accused Officer. As Secretary to the Government, he might have formally passed orders based on the detailed recommendations of the Committee, only because of this fingers cannot be blatantly pointed at him as stated by the petitioner. Further it is submitted that there is no discrimination against the petitioner since the other accused

Officers, viz., Dr. D.Ebenezer, Formerly Director of Animal Husbandry and Dr. R.Leelavathy, Formerly Director of Veterinary Services were placed under suspension and not permitted to retire from service on superannuation. Charges were framed against the petitioner based on the investigation report of the appropriate authority and for the irregularities committed in collusion with the other members of the Tender Processing Committee while he was working as the Financial Advisor and Chief Accounts Officer in the Directorate of Animal Husbandry.

19. Heard both sides and perused the materials available on record.

20. The impugned order has to be quashed on the following grounds/reasons:

1. **The petitioner served as Financial Adviser and Chief Accounts Officer in the Directorate of Animal Husbandry, i.e from 25.06.1997 to 21.12.1998.**
2. **The misconduct relates to the year 1997-1998.**
3. **Date of order of D.V.A.C. enquiry dated 24.02.1999.**
4. **The D.V.A.C report is dated 03.03.2003.**
5. **Charge memo was issued on 19.10.2006 under Section 17(b) of the**

Tamil Nadu Civil Services (Discipline and Appeal) Rules.

6. **The charge memo is issued after an inordinate delay of 8 years.**
7. **No order in violation of Rule 9A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules to conduct a common enquiry was served to the petitioner.**
8. **The Enquiry Officer submitted his report dated 08.07.2010 holding that the charges levelled against the petitioner were not proved. The Enquiry Officer is also a Senior I.A.S. Officer.**
9. **In the letter dated 25.02.2011, the report of the Enquiry Officer was communicated to the petitioner and it was also mentioned that the disciplinary authority (first respondent) disagrees with the findings of the Enquiry Officer, but the letter was not signed by the 1st respondent.**
10. **There is no proper reasoning for disagreement on the finding of the Enquiry Officer.**
11. **The bid notice for the purchase of the equipment for the year 1997-1998 and 1998-1999 was prepared on 03.12.1996 much before the petitioner joined his duty in the Directorate of Animal Husbandry, i.e. on 25.06.1997.**
12. **The tender conditions were finalized by the Director of Animal**

Husbandry.

13.The bid was finalized by the 1st respondent (Disciplinary Authority) and the Director of Animal Husbandry.

14.The petitioner is only a member of the tender committee.

15.The Disciplinary Authority is the Chairman of the tender finalizing committee.

16.No order or decision can be arrived at by the Authority who is a party to the proceedings.

17.The Disciplinary Authority (1st respondent) has not produced any additional documents or evidence to overrule the findings of the Enquiry Officer.

18.The letter was sent by the 1st respondent to the Secretary, TNPSC on 23.04.2012 for its views and the same was obtained on the next day itself, i.e. on 24.04.2012.

19.Reason for deviation from the findings of the Commissioner for Disciplinary Proceeding:-

> ***"The Accussed Officer should not shrink his responsibility as a Financial Advisor. If he had carefully scrutinized the document, he could have detected the mistake. Hence, the charge is held as "Proved".***

20.The petitioner retired on 31.03.2011.

21.The Enquiry Officer report dated 08.07.2010, the letter intimated to the petitioner disagreeing with the findings of the Enquiry Officer on 25.02.2011 and the letter sent to TNPSC for opinion on 23.04.2012 after a delay of one year from the date of superannuation of the petitioner on 31.03.2011.

22.The punishment imposed on the petitioner by the impugned order on 24.04.2012 after a delay of nearly 2 years from the date of the enquiry report on 08.07.2010.

23.In regard to Charge No.1 even the Disciplinary Authority admitted the petitioner was in camp, but subsequently he has not perused the file, hence, partially proved.

24.The comparative statement is taken back immediately in the chamber of the 1st respondent.

25.The charge was held proved by the Competent Authority on 21.01.2011 according to para 8 of the counter affidavit, but the opinion of the TNPSC was sought for only on 23.04.2012 after a delay of more than one year and after a delay of one year from the date of superannuation of the petitioner on 31.03.2011.

26.The D.V.A.C. in its report has recommended to include the name of the then Secretary to Government, Mr.Mohan Verghese

Chunkath, I.A.S. but the Government did not agree for the same and it is also stated in the counter affidavit that as Secretary to Government, he might have formally passed an order in the tender and the same cannot be countenanced by this Court for the reason he was also the Chairman of the tender proceeding committee.

27.The tender conditions were finalised by the Director and the Disciplinary Authority (1st respondent) with the World Bank at New Delhi.

28.The reasoning given by the Disciplinary Authority in differing from the finding of the Enquiry Officer is only based on presumption and assumption and the same is crystal clear and evident on perusal of the records.

29. The findings of the Enquiry Officer is extracted hereunder:

SI.No.	Findings of the Enquiry Officer	Presumption of the Disciplinary Authority
1	On the date of meeting the petitioner was on camp hence his participation in the proceedings is not proved and therefore charge 1 is not proved.	On the date of meeting he was on camp. But subsequently, there is no evidence to show that either he has perused the file or not. Hence the charge is held as partially proved
2	The bid notice dated 3.12.96 for the If he had given his guidance in purchase of equipments for the time the loss caused to the year 1997-1998 and 1998-1999 Government could have been was originally prepared	If he had given his guidance in time the loss caused to the Government could have been averted. Hence the charge is held as proved

Sl.No.	Findings of the Enquiry Officer	Presumption of the Disciplinary Authority
	before the averted. Hence the charge is held petitioner joined in the office on as proved 25.06.1997. Hence charge 2 is not proved.	
3	There is no evidence to show that the petitioner has not instructed the program section properly the check the correctness of the duty charges since the files are not made available. Hence charge 3 is not proved.	The price coated by the Company was nearly 2.2 times higher than the actual cost of the equipments. He has not guided properly. Hence charge is held as proved
4	After the meeting, the entire Without the relevant document records would have been sent to World Bank Office (through basis on which, as a member, he TNADP) under the standard normal procedure and the entire matter checked and cleared by the Work Bank, including the aspect regarding the price and customs duty. To verify the contention the bill of entry is not available in the records. Hence discharge could not be established against the petitioner. Hence charge 4 is not proved.	Without the relevant document such as bills, it is not know the basis on which, as a member, he has approved the tender. There is no document to prove that he had call for the same for finalization. Hence, the charge is held as Proved.
5	The contention of the Petitioner that he was given merely a comparative statement during the meeting held at the chambers of the Chairman of the Committee and was taken back immediately. The comparative statement taken back relevant records are not available and therefore the charge could not be established and therefore the charge 5 is held as not proved.	If no document supporting the tender is not available, either he could not called for the same or not finalized the tender. Hence, he has failed as a representative of the financial officer. Hence, the charge is held as proved.
6	For this charge also, connected records are needed to establish the charge against the petitioner. Hence charge 6 is held as not proved.	It is duty of the financial officer who is also a member of the purchase committee to go in detail to see whether the purchase is in order or not. He has failed his duty as a

Sl.No.	Findings of the Enquiry Officer	Presumption of the Disciplinary Authority
		financial representative. Hence, the charge is held as proved.
7	The contention of the Petitioner that he got exemption from customs duty and demurrage charge to the tune of Rs.43.00 lakhs could not be verified since the reconstructed file No.67772 does not contain these papers. Hence charge 7 is held as not proved.	The accused officer should not shirk his responsibility as Financial Advisor. If he had carefully scrutinized the document, he could have detected the mistake. Hence, the charge is held as proved.

30.There is a delay in each and every stage of the proceedings

1. Report of DVAC – 2003 (period of occurrence – 1998-1999 (Delay of 4 years)

2. Charge memo dated 19.11.2006 (Delay of 8 years)

3. Appointment of Enquiry Officer on 12.06.2009 (delay of 3 years)

4. Enquiry Officer report on 08.07.2010 TNPSC opinion 24.04.2012 (delay of 2 years)

31.order after 14 years.

21. In view of the above factual matrix of the case, this Court is of the considered view that the impugned order of the 1st respondent issued in G.O.(D)No.71 AHD & F Department dated 24.04.2012 is liable

to be quashed and the same is hereby quashed.

In the result, **the writ petition stands allowed and the respondents are directed to settle the pensionary benefits without any deduction to the petitioner within a period of six weeks from the date of receipt of a copy of the order.** Consequently, connected miscellaneous petitions are closed.

27.03.2024

cda
Index : Yes / No
Speaking / Non Speaking Order

J.SATHYA NARAYANA PRASAD, J.

cda

To

1.The Secretary to Government,
Animal Husbandry and Fisheries Department,
Secretariat, Chennai – 600 009.

2.The Secretary to Government,
The Finance Department,
Secretariat, Chennai – 600 009.

W.P.No.20796 of 2012

27.03.2024