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WP.No.32908 of 2012

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.07..2024

CORAM:

THE HONOURABLE MR.JUSTICE R.KALAIMATHI

WP.No.32908 of 2012

M.Panneerselvam

Petitioner

Vs

1. The Secretary to Government, Public Works Department
Chennai-9

2. Engineer In Chief (Building) and Chief Engineer (Buildings),
Chennai Region and Chief Engineer (General)
Public Works Department, Chennai-5

Respondents

Prayer:- This Writ Petition has been filed, under Article 226 of the Constitution of India, for issuance of Writ of Certiorarified Mandamus to call for the records of the 1st Respondent in GO(D)No.133 Public Works (E1) Department, dated 27.03.2012 and to quash the same and consequently to direct the 1st Respondent to include the name of the Petitioner in the panel for promotion to Superintending Engineer prepared in the year 2010 and grant him the promotion with effect from the date, on which his junior was promoted with all attendant benefits.

For Petitioner : Mr.K.Venkataramani, SC for Mr.M.Muthappan

For Respondents : Mr.R.U.Dinesh Rajkumar, AGP

ORDER

This Writ Petition is filed for issuance of Writ of Certiorarified Mandamus to call for the records of the 1st Respondent in GO(D)No.133 Public Works (E1) Department, dated 27.03.2012 and to quash the same and consequently to direct the 1st Respondent to include the name of the Petitioner



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in the list of panel for promotion to the post of Superintending Engineer prepared in the year 2010 and grant him such promotion with effect from the date, on which his junior was promoted, with all attendant benefits.

2. The facts, led to filing of this Writ Petition as set out in the affidavit filed in support of this Writ Petition, are stated as under:-

- (a) The Petitioner was selected through the Tamil Nadu Public Service Commission and he joined the Respondent Department as an Assistant Engineer on 28.10.1980 and he was subsequently promoted to the post of Assistant Executive Engineer with effect from 12.11.1997. He was working as an Assistant Executive Engineer in the Stanley Medical College Hospital, Chennai from 01.11.2000 till 21.08.2002. He was then promoted as an Executive Engineer and posted in the Office of the Commissioner, Hindu Religious and Charitable Endowment Department. At the relevant point of time, he was working as the Executive Engineer in the Public Works Department, South Vellar Basin Division, Pudukottai.
- (b) In 2009, the Petitioner was served with a charge memo, dated 26.08.2009 issued by the 2nd Respondent, proposing to hold an enquiry against the Petitioner under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. But, his explanation dated 03.09.2009 was not accepted and four charges were framed against him. In February 2010, the Enquiry Officer, who was appointed by the 2nd Respondent, conducted an enquiry and submitted a report based on the charges. In the mean while, a list of panel for promotion to the post of



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Superintending Engineer was drawn by the 1st Respondent and the name of the Petitioner was deferred from being included in the list of panel due to the pendency of the enquiry.

(c) The Petitioner participated in the enquiry and submitted his explanation and on 28.01.2011, the Enquiry Officer submitted his detailed report, holding that all the charges were not proved. However, after receiving the said report, dated 28.01.2011, in July 2011, a letter in No.44296/E1/2008-10, dated 21.07.2011, was addressed by the 1st Respondent, to the Petitioner, concluding that all the charges were held proved. The Petitioner sent a representation dated 08.08.2011 to the 1st Respondent. Thereafter, the impugned order came to be passed, imposing punishment of withholding of increment for two years with cumulative effect. Hence, contending that because of the belated and arbitrary action of the 1st Respondent, the Petitioner is deprived of his opportunity to put forth his case and to be considered for promotion to higher post and hence, the impugned order is not sustainable for violation of principles of natural justice, this Writ Petition has been filed.

3. This Court heard Mr.K.Venkataramani, learned senior Counsel for the Petitioner for Mr.M.Muthappan and Mr.R.U.Dinesh Rajkumar, learned Additional Government Pleader for the Respondents.

4. The learned Senior Counsel for the Petitioner would vehemently contend that when the Disciplinary Authority took a different view than the one taken by the Enquiry Officer, the procedure to be followed by him is that he has to give



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opportunity of hearing before coming to the conclusion and that in this case, though the Disciplinary Authority, in its orders, has differed from the views of the Enquiry Officer, he did not call for any explanation from the Delinquent Officer and thereby violated the principles of natural justice and hence, the impugned order is not sustainable. The learned Senior Counsel for the Petitioner, in support of his contentions, has relied on the following decisions:-

- i. 1998 7 SCC 84 (Punjab National Bank Vs. Kunj Behari Misra)
- ii. 2006 9 SCC 440 (Lav Nigam Vs. Chairman and Managing Director, ITI Limited)
- iii. Judgement of the Division Bench of this Court, dated 23.12.2011 made in WA.No.1699 of 2010.

5. Per contra, the learned Additional Government Pleader for the Respondents would contend that the Disciplinary Authority, by taking into consideration of all the representations and the explanations of the Delinquent Officer, has passed the impugned order, imposing punishment and therefore, it is perfectly valid. He would further submit that in the impugned order, under Ref.No.4, the further representation of the Delinquent Officer, dated 08.08.2011, is mentioned and hence, there is no violation of principles of natural justice, as alleged by the Petitioner.
6. This Court considered the submissions of the learned Counsel on either side and also perused materials placed on record, including the relevant decisions of the Honourable Supreme Court.
7. First of all, as regards the conduction of enquiry, there is no grievance for the Petitioner. The major grievance of the Petitioner is that the Disciplinary



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Authority took a different view and passed the impugned order, not accepting the findings of the Enquiry Officer and in such circumstances, as per the law laid down by the Honourable Supreme Court, before coming to the conclusion, the Disciplinary Authority ought to have called for explanation from the Petitioner. But, he failed to do so and thereby, the Petitioner is deprived of an opportunity to explain his case and the impugned order is vitiated on the ground of violation of principles of natural justice.

8. It is also relevant to refer to the decision of the Honourable Supreme Court, reported in **1998 7 SCC 84 (Punjab National Bank Vs. Kunj Behari Misra)**, wherein, the Honourable Supreme Court, while considering the Regulation 7(2) of the Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977, has held that the Regulation itself did not provide for giving of any notice before the Disciplinary Authority differed with the view of the Enquiry Officer. However, it has further held as under:-

“19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the Disciplinary Authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the Delinquent Officer an opportunity to represent before it records its findings. The report of the Enquiry Officer containing its findings will have to be conveyed and the Delinquent Officer will have an opportunity to persuade the Disciplinary Authority to accept the favourable conclusion of the Enquiry Officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the Officer charged of misconduct to file a representation before the Disciplinary Authority records its findings on the charges framed against the Officer.”



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9. The concluding remarks of the Honourable Supreme Court in **1998 7 SCC**

84 (Punjab National Bank Vs. Kunj Behari Misra) are as under:-

“21. Both the Respondents superannuated on 31.12.1983. during the pendency of these appeals, Misra died on 6.1.1995 and his legal representatives were brought on record. More than 14 years have elapsed since the Delinquent Officers had superannuated. It will, therefore, not be in the interest of justice that at this stage the cases should be remanded to the Disciplinary Authority for the start of another innings. We, therefore, do not issue any such directions and while dismissing these appeals, we affirm the decisions of the High court, which had set aside the orders imposing penalty and had directed the Appellants to release the retirement benefits to the Respondents.”

10. The above said view was also reiterated in one of the decisions of the Honourable Supreme Court reported in **1999 7 SCC 739 (Yoginath D. Bagde Vs. State of Maharashtra)**, wherein Rule 9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 was discussed and it is relevant to extract the relevant portion of the said decision as under:-

“Rule 9(2) Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 did not specifically provided for a Disciplinary Authority to give an opportunity of hearing to the Delinquent Officer before differing with the view of the Enquiry Officer.

But, the requirement of 'hearing' in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before the Disciplinary Authority finally disagrees with the findings of the enquiring authority, it would given an opportunity of hearing to the Delinquent Officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority do not suffer from any error and that there was no occasion to take a different view. The Disciplinary Authority, at the same time, has to communicate to the Delinquent Officer, the 'TENTATIVE' reasons for disagreeing with the findings of the enquiring authority so that the Delinquent Officer may further indicate that the reasons on the basis of which the Disciplinary Authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the finding of 'not guilty'



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already recorded by the enquiring authority was not liable to be interfered with.”

11. In 2006 9 SCC 440 (Lav Nigam Vs. Chairman and Managing Director, ITI

Limited), the Honourable Supreme Court has held that in case, the Disciplinary Authority differs from the view taken by the Enquiry Officer, he is bound to give a notice, setting out his tentative conclusion to the Delinquent Officer therein and that it is only after hearing the Delinquent Officer therein that the Disciplinary Authority would arrive at a final finding of guilt and that thereafter, the employee would again have to be served with a notice relating to the punishment proposed. It was ultimately held that the Disciplinary Authority shall recommence the proceedings from the stage of issuance of a fresh show cause notice to the Delinquent Officer therein, indicating his tentative disagreement with the findings of the Enquiry Officer.

12. In the case on hand, the Enquiry Officer has given his findings in respect of all four charges that all the charges were held not proved. By a letter dated, 21.07.2011 of the 1st Respondent, the report of the Enquiry Officer was communicated to the Petitioner/ Delinquent Officer and further representation was called for. The Petitioner was directed to submit his representation within fifteen days from the date of receipt of the said letter and the Delinquent Officer has sent his further representation, dated 08.08.2011 to the 1st Respondent.

13. A holistic perusal of the impugned order, dated 27.03.2012 in GO(D)No.133 Public Works (E1) Department, which is the final orders of the Disciplinary



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Authority, would explicate that though the Disciplinary Authority differed from the views of the Enquiry Officer before coming to such conclusion, the Disciplinary Authority did not call for any explanation from the Petitioner and hence, it is in violation of principles of natural justice, as has been held by the Honourable Supreme Court in the decisions cited supra.

14. Before taking a different view, the interest of justice expects the Disciplinary Authority to call for an explanation before coming to a different conclusion from that of an Enquiry Officer. In the case on hand, it is stated that the Petitioner was superannuated and hence, no useful purpose would be served in remanding the matter back to the Disciplinary Authority for issuance of a show cause notice, indicating his tentative disagreement with the findings of the Enquiry Officer. Therefore, I am of the considered view that the impugned order passed by the Disciplinary Authority is in utter violation of principles of natural justice and accordingly, it is not sustainable. Consequently, the impugned order stands quashed.

15. In the result, this Writ Petition is allowed. There is no order as to costs. Consequently, the connected MP is closed.

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Index:Yes/No
Web:Yes/No
Speaking/Non Speaking
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To

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1. The Secretary to Government, Public Works Department , Chennai-9
2. Engineer In Chief (Building) and Chief Engineer (Buildings), Chennai Region
and Chief Engineer (General), Public Works Department, Chennai-5



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R.KALAIMATHI, J.

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