



W.P.No.11775 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE J.SATHYA NARAYANA PRASAD

W.P.No.11775 of 2020
and W.M.P.No.14482 of 2020

R.Rajagopal
Formerly Assistant Engineer,
Public Works Department,
Royapettah Section,
South West Sub-Division,
Teynampet, Chennai – 6.

...Petitioner

vs.

1.The Engineer-in-Chief, WRD &
Chief Engineer (General),
Public Works Department,
Chepauk, Chennai - 5.

2.The Principal Secretary to Government,
Public Works Department,
Fort St. George, Chennai - 9.

... Respondents

Prayer : Writ Petition filed under Article 226 of Constitution of India, for issuance of Writ of Certiorarified Mandamus, to call for the records of the 1st respondent in connection with the impugned order passed by him in Proc.No.CII(3)/483/2008-76 dated 03.09.2019 and confirmed by the 2nd respondent in his G.O.(D)No.96 Public Works (F2) Dept. dated 17.06.2020 and quash the same and direct the respondents to reinstate the



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petitioner into service and grant him all consequential service and monetary benefits.

For Petitioner : Mr.Venkataramani, Senior Counsel
for Mr.M.Muthappan

For Respondents : Mr.M.Rajendiran for R1 & R2
Additional Government Pleader

ORDER

The Writ Petition has been filed seeking to quash the orders passed by the respondents 1 and 2, and to direct the respondents to reinstate the petitioner into service and grant him all consequential service and monetary benefits.

2.The brief facts of the case are as follows:

(i)The case of the petitioner is that he entered the service as an Irrigation Inspector in the Public Works Department through a selection conducted by the Department on 07.02.1984. Thereafter, he was promoted as Overseer and subsequently, by seniority promoted as Assistant Engineer in the year 1993. On 19.01.2005, the Executive Engineer, Public Works Department, Chepauk, Chennai vide his Letter No.A3/5183/2001/1 fixed Rs.300/- per day for the cycle stand and the petitioner has been instructed to collect money from the existing agency



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who was running the cycle stand during the interim period till the approval is obtained from the Government.

(ii) In the year 2010, the petitioner who was serving as Assistant Engineer at Government Royapettah Hospital, was issued a charge memo under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, stating that during the period from January 2006 to February 2010, he has failed to remit the amount to the tune of Rs.2,41,800/- collected during the period from 2007 – 2010 from the cycle stand agency who was running the same in Royapettah Hospital Complex.

(iii) Thereafter, an enquiry was conducted and the first respondent vide proceedings dated 03.09.2019, imposed punishment of compulsory retirement from the service on the petitioner. Thereafter, the petitioner preferred a Statutory Appeal on 06.09.2019 to respondent through proper channel and by Registered Post on 28.09.2019. The Government passed the impugned order dated 17.06.2020, rejecting the Statutory Appeal of the petitioner and the same was served on the petitioner.



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(iv) Aggrieved by the order passed by the first respondent dated 03.09.2019 as well as by the second respondent dated 17.06.2020, the petitioner has come forward with the present Writ Petition.

3. Learned Senior Counsel appearing for the petitioner submitted that the charge memo dated 10.04.2015 was issued to the petitioner and the same is extracted hereunder:

Annexure I

**Statement of charges framed against
Thiru.R.Rajagopal, Assistant Engineer
(under suspension), P.W.D., under rule
17(b) of Tamil Nadu Civil Services
(Discipline & Appeal) Rules.**

Charge 1:

That Thiru.R.Rajagopal, Assistant Engineer (under suspension), P.W.D. while working in Royapettah section of South West Sub-Division, Teynampet under the control of Executive Engineer, South Presidency Division, Chennai – 5, during the period 01/2006 to 02/2010 had failed to remit the amount of Rs.2,41,800/- collected during the period from 16.12.2007 to 28.02.2010 for cycle stand at Royapettah Hospital complex,



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into the Government Account then and there and misappropriated the Government money, in violation of Article 273 of Tamil Nadu Financial Code.

Charge No.2

That Thiru.R.Rajagopal, Assistant Engineer (under suspension), P.W.D. while working in the above said office by misappropriating Government money has failed to maintain his absolute integrity to Government and devotion in his duties as warranted under rule 20 of Tamil Nadu Government Servants' Conduct Rules 1973.

4. Thereafter, the petitioner given his explanation/reply on 04.05.2015 to the above charge memo dated 10.04.2015 that the cycle stand parking fee collected “was directly” received by the agents (appointed by the ruling party) from the customers. The agents have not been regular or prompt in handing over the parking fee to the petitioner in time, there has been inordinate delay in handing over the collection to the petitioner by the agency which resulted in the delay of depositing the due amount to the Government account.



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5.Learned Senior Counsel appearing for the petitioner submitted that no documents were marked and no witnesses were examined during the enquiry proceedings. He drew the attention of this Court to the findings of each article of charges and the same is extracted hereunder:

The Executive Engineer, PWD, South Presidency Division, Chepauk, Chennai-5 vide lr No K3/5183/2000-1 dated 29.12.2005 has fixed Rs 300/day as a rent for the cycle stand collection and the Assistant Executive Engineer, PWD, South presidency sub division, Chepauk, Chennai-5 has been instructed to collect the rent from the existing agency itself for the interim period till the approval obtained from the Government for avoiding any loss of revenue to the Govt.

In this connection, the Assistant Executive Engineer, PWD, South West sub division, DPI Campus, Chennai-6 has also been instructed to collect rent Rs 300/day for the period from 15.01.2007 to 14.01.2010 and remit it once in every seven days in the Government account vide the Executive Engineer, PWD, South Presidency Division, Chepauk, Chennai-5 vide lr No



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K3/5183/2000 dated 28.02.2007.

Hence, it is observed that Thiru R.Rajagopal, Assistant Engineer (Under suspension) has failed to collect and remit the rent from the agency who have collected the rent for cycle stand from the customers during the period from 16.12.2007 to 28.02.2010. He had belatedly collected the amount. It is not misappropriation. But he had failed to collect the rent within stipulated time.

6.Learned Senior Counsel further submitted that in the impugned order of the first respondent dated 03.09.2019, mentioned about the pendency of another disciplinary proceedings against the Delinquent Officer and the departmental disciplinary action under Rule 17(b) is also pending against the petitioner which was initiated vide his charge memo No.CII(2)/425/2008-11, dated 12.10.2009 for the shortage of materials to the tune of Rs.29,028/- (Rupees twenty nine thousand and twenty eight only). Mentioning of the above disciplinary proceedings of the petitioner would have prejudiced the minds of the officer while passing the order by the first respondent. While taking decisions of the Disciplinary Authority,



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it has been stated that the criminal case registered against Thiru.R.Rajagopal, Assistant Engineer (under suspension) P.W.D. vide F.I.R.No.229/2010 of E2 Royapettah Police Station under Section 420 of IPC had been quashed by this Court by its order dated 19.02.2019 in CrI.O.P.No.21453 of 2018 by taking note of the fact that Thiru.R.Rajagopal, Assistant Engineer (under suspension) had remitted the entire amount to the Government.

7.It is always open to the Disciplinary Authority to disagree with the findings of the Enquiry Officer's report and hold that the charges have been proved but it should be done by following procedures viz., the Disciplinary Authority/the first respondent has to issue notice to the Delinquent Officer mentioning the tentative reason for deviating the views of the Enquiry Officer and the Delinquent Officer should be directed to submit a reply and after receiving a reply by giving an opportunity to the Delinquent Officer to put forth his contention. Thereafter, hold that the charges have been proved and again issue another notice for disagreement and thereafter, only impose a punishment based on the decided findings.



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8. In the case on hand, admittedly, no such notice to the Delinquent Officer has been issued before deviating with the views of the Enquiry Officer's report. There is no opportunity to the petitioner to persuade the Disciplinary Authority to accept the findings of the Enquiry Officer which is in favour of him but the Disciplinary Authority has straight away disagree with the views of the Enquiry Officer's report for deviation and imposed a major punishment of compulsory retirement which is in violation of principles of natural justice.

9. Learned Senior Counsel further submitted that in the Enquiry Officer's report dated 25.06.2016, it has been stated that the amount has been belatedly remitted by the Delinquent Officer into the Government account due to the delay in receipt of the amount from the agency and held that the Charge No.1 is partially proved. The Enquiry Officer's report in respect of Charge No.2 has held that the rent for the cycle stand for the period from 16.12.2007 to 28.02.2010 has not been collected from the agency by the petitioner, the Delinquent Officer has failed to collect the rent from the agency within the stipulated time and held that the Charge No.2 has not been proved. Besides, the Enquiry Officer in his report has held that it is not the case of misappropriation but there was a



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delay in collecting the rent within the stipulated time from the agency.

Hence, in view of the findings rendered by the Enquiry Officer and the findings of the Disciplinary Authority holding that the entire charges have been proved against the petitioner cannot be sustained and no punishment can be imposed on the petitioner.

10.He further submitted that in regard to the criminal case filed against the petitioner in Crime No.229/2010 as no charge sheet has been laid. The petitioner approached this Court and this Court by its order dated 09.02.2019 in CrI.O.P.No.21453 of 2018 quashed the First Information Report on the sole ground that the entire amount has been remitted to the Government's account by the petitioner and there is no other criminal case pending against the petitioner. The Disciplinary Authority ought to have taken into consideration that there is no other criminal case pending against the petitioner as on date, before passing the orders of the disciplinary proceedings by imposing major punishment of compulsory retirement on the petitioner.

11.The criminal case registered against Thiru.R.Rajagopal, Assistant Engineer (under suspension) P.W.D vide F.I.R.No.229/2010 of



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the E2 Royapettah Police Station under section 420 of IPC has been quashed by this Court vide order dated 19.02.2019 in Cr.O.P.No.21453 of 2018 by taking note of the fact that Thiru.R.Rajagopal, Assistant Engineer (under suspension) had remitted the entire amount to the Government.

12.In the explanation/reply dated 04.05.2015 to the charge memo dated 10.04.2015, the petitioner has submitted that the cycle stand parking fee was directly received by the agency (appointed by the ruling party) from the customers, the agency have not been regular or prompt in handing over the parking fee to the petitioner in time and there has been inordinate delay in handing over the collection to the petitioner by the agency which resulted in delay of depositing the due amount to the Government account.

13.Moreover, in the absence of any order, it would be impossible for the petitioner to direct the agency to pay the rent for the cycle stand every week in order to remit the amount to the Government account and in the absence of any payment by the agency, the petitioner cannot pay the amount.

14.The Enquiry Officer has held that the Charge No.1 against the



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Delinquent Officer was partially proved and the Charge No.2 was not proved.

15.Learned Senior Counsel further submitted that in the impugned order passed by the first respondent, wherein it has been stated that the petitioner (under suspension) has remitted the amount in cash during the years 2011 and 2014, there is no proof to show that the Delinquent Officer had actually collected the amount from the agent later. Furthermore, when the Delinquent Officer had been relieved from the Government service under suspension with effect from 18.03.2010, how can he collect the arrears of parking fee from the agent on behalf of the Government during the years 2011 and 2014?. Therefore, it is clear that Thiru.R.Rajagopal, Assistant Engineer (under suspension) P.W.D., (the petitioner) had misappropriated the Government money to the tune of Rs.2,41,800/- and remitted the amount later during the years 2011 and 2014 in various instalments with a view to escape from the criminal case pending against him. Therefore, the Charge No.1 against Thiru.R.Rajagopal, Assistant Engineer (under suspension) P.W.D. held as proved.



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16.Since the Charge No.1 is held as proved and the consequential Charge No.2 is also held as proved. Hence, the first respondent has deviated from the enquiry report submitted by the Enquiry Officer dated 24.05.2016 and held that both the charges are proved. Thereafter, the first respondent has decided to impose punishment of “Compulsory Retirement” prescribed in clause (vi) of Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on Thiru.R.Rajagopal, Assistant Engineer (under suspension) P.W.D. since the charges held as proved against him.

17.The petitioner has misappropriated a sum of Rs.2,41,800/- collected during the period 2007 - 2010 and violated Article 273 of the Tamil Nadu Financial Code and the petitioner had also failed to maintain absolute integrity and violated Rule 20 of the Tamil Nadu Government Servants Conduct Rules, 1973. Thereafter, the petitioner was suspended from service vide proceedings of the Chief Engineer dated 18.03.2010. Based on the complaint preferred by the Superintendent Engineer, Public Works Department for misappropriation, a criminal case was registered against the petitioner in Crime No.229/2010 on the file of E2 Royapettah



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Police Station for the offence under Section 420 of IPC. The enquiry was conducted on 08.03.2016 and 29.03.2016, no witness was examined on the side of the Department. The petitioner was directed to submit the written statement of defence for the Enquiry Officer report dated 24.05.2016 held that the Charge No.1 was partially proved and the Charge No.2 was not proved.

18.The petitioner was furnished with a copy of the enquiry report dated 24.05.2016 and directed to submit his representation. The petitioner has submitted his further representation on 13.06.2016 and the personal hearing was conducted by the Chief Engineer on 24.05.2019 and the first respondent in his proceedings dated 03.09.2019 accepted the findings of the Enquiry Officer report and held that Charge No.1 is fully proved without any show cause notice for deviating the findings of the Enquiry Officer report as well as the Charge No.2 held proved and for the proven charges imposed a punishment of compulsory retirement from service on the petitioner.

19.Learned Senior Counsel appearing for the petitioner placed reliance on the judgments of the Hon'ble Supreme Court and by this



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Court are as follows:

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(a)***Lav Nigam vs. Chairman & MD, ITI Ltd. and another reported in (2006) 9 SCC 440 (Civil Appeal No.1891 of 2006 decided on 03.04.2006).***

(b)***Roop Singh Negi vs. Punjab National Bank and Others reported in (2009) 2 SCC 570 (Civil Appeal No.7431 of 2008 decided on 19.12.2008).***

(c)***State of Uttaranchal and Others vs. Kharak Singh reported in (2008) 8 SCC 236 (Civil Appeal No.4531 of 2007 decided on 13.08.2008).***

(d)***R.Arasu vs. The District Collector, Kancheepuram District and Others in W.P.No.32466 of 2014 dated 07.04.2022.***

20.The counter affidavit has been filed on behalf of the respondents on 19.11.2021.

21.Learned Additional Government Pleader appearing for the respondents submitted that the agency for collecting parking fee was appointed by following due procedures and the petitioner stated that the



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agent who was entrusted with the task of collecting parking fee was not regular or prompt in remitting the charges. If that is so, then the petitioner who was the Assistant Engineer responsible to ensure the prompt collection of parking fee and remittance of the same into the Government account, should have taken immediate action to cancel the permission given to the agent concerned to collect the parking fee. Instead of doing so, the petitioner simply allowed the agent to collect the parking fee which would only imply that he was in connivance with the agent concerned to misappropriate the Government money.

22.Learned Additional Government Pleader further submitted that the petitioner was given every opportunity provided under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules to defend himself from the charges framed against him. After the receipt of further representation from the petitioner, on the report of the Enquiry Officer, the final orders on the disciplinary proceedings against him were kept in abeyance in view of the pendency of related criminal case against the petitioner. After quashing the criminal case against the petitioner by this Court, the petitioner was provided with an opportunity of personal



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hearing before passing the final orders by the respondents 1 and 2.

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23.He further submitted that though the Statutory Appeal preferred by the petitioner against the final orders passed by the first respondent has been rejected by the second respondent after due consultation with the Tamil Nadu Public Service Commission in G.O.(D)No.96, Public Works (F2) Department, dated 17.06.2020 confirming the order passed by the first respondent imposing punishment of compulsory retirement from service on the petitioner.

24.Learned Additional Government Pleader further submitted that this Court by order dated 19.02.2019 in CrI.O.P.No.21453 of 2018 had quashed the criminal case against the petitioner in Crime No.229/2010 on the file of E2 Royapettah Police Station for the offences under Section 420 of IPC. On the basis of the fact that the petitioner remitted the amount misappropriated by him back into the Government account and also considering the false submission made by the petitioner, his suspension was revoked by the first respondent and by misleading the Court, that his suspension was revoked got the criminal case against him



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quashed by this Court.

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

26. In this case, the petitioner was working as Assistant Engineer, PWD, in Royapettah Section, South West Sub-Division, Teynampet, Chennai under the control of the Executive Engineer, South Presidency Division, Chennai from 01.12.2005. The petitioner was incharge of maintenance of Royapettah Government Hospital and the cycle stand is also situated at the hospital which was leased out to private agency for collecting parking fee.

27. The Executive Engineer, Public Works Department, Chepauk vide his Letter No.A3/5183/2000/1 dated 19.01.2005 has fixed Rs.300/- as rent per day for the cycle stand and the Assistant Engineer, PWD has been instructed to collect the amount from the existing agency which was running during the interim period till the approval is obtained from the Government in order to avoid loss to the Government as interim measure, before awarding maintenance by the contractor through proper procedure and the Assistant Engineer has also been instructed to collect the rent of Rs.300/- for the period from 15.01.2007 to 14.01.2010 and remit it once



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in 7 days to the Government account vide proceedings of the Executive Engineer No.A3/5183/2000 dated 28.02.2007.

28. Thereafter, since the Assistant Engineer (the petitioner) has not collected the rent and remitted to the Government he was suspended from service vide proceedings of the Chief Engineer on 18.03.2010. Based on the complaint preferred by the Superintendent Engineer, Public Works Department for misappropriation, a criminal case was registered against the petitioner in Crime No.229/2010 on the file of E2 Royapettah Police Station for the offence under section 420 of IPC. The enquiry was conducted on 08.03.2016 and 29.03.2016 and no witness was examined on the side of the Department. The memo dated 10.04.2015 was issued to the petitioner in which two charges were framed against the petitioner are as follows:

Charge 1:

That Thiru.R.Rajagopal, Assistant Engineer (under suspension), P.W.D. while working in Royapettah section of South West Sub-Division, Teynampet under the control of Executive Engineer, South Presidency Division, Chennai – 5, during the period



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01/2006 to 02/2010 had failed to remit the amount of Rs.2,41,800/- collected during the period from 16.12.2007 to 28.02.2010 for cycle stand at Royapettah Hospital complex, into the Government Account then and there and misappropriated the Government money, in violation of Article 273 of Tamil Nadu Financial Code.

Charge No.2

That Thiru.R.Rajagopal, Assistant Engineer (under suspension), P.W.D. while working in the above said office by misappropriating Government money has failed to maintain his absolute integrity to Government and devotion in his duties as warranted under rule 20 of Tamil Nadu Government Servants' Conduct Rules 1973.

29. Thereafter, the petitioner submitted his explanation on 04.05.2015 and the Executive Engineer submitted his report dated 24.05.2016. In the enquiry proceedings, no witnesses were examined and no documents were marked. In the Enquiry Officer's report, it is held that Charge No.1 was partially proved and Charge No.2 was not proved.



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30.It is pertinent to mention the findings of each article of charges by the Enquiry Officer. In regard to Charge No.1, it was stated by the Executive Engineer, PWD, South Presidency Division, Chepauk, Chennai-5 vide Letter.No K3/5183/2000-1 dated 29.12.2005 has fixed Rs.300/day as a rent for the cycle stand collection and the Assistant Engineer, PWD, South Presidency Sub Division, Chepauk, Chennai-5 has been instructed to collect the rent from the existing agency itself for the interim period till the approval obtained from the Government for avoiding any loss of revenue to the Government. In this connection, the Assistant Engineer, PWD, South West Sub Division, DPI Campus, Chennai-6 has also been instructed to collect rent Rs.300/day for the period from 15.01.2007 to 14.01.2010 and remit it once in every seven days in the Government account vide Letter.No.K3/5183/2000 dated 28.02.2007 of the Executive Engineer, PWD, South Presidency Division, Chepauk, Chennai-5. Hence, it is observed that Thiru R.Rajagopal, Assistant Engineer (Under suspension) has failed to collect and remit the rent from the agency who have collected the parking fee for cycle stand from the customers during the period from 16.12.2007 to 28.02.2010. He had belatedly collected the rent and it is not misappropriation, but he had failed to collect the rent within stipulated time.



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31.It is pertinent to note that even in the above findings of the Enquiry Officer in regard to Charge No.1, he has clearly stated that Thiru.R.Rajagopal, Assistant Engineer (under suspension) P.W.D. that he had already collected the rent for the cycle stand from the agent during the period from 16.12.2007 to 28.02.2010 for misappropriation but he had failed to collect the amount within the stipulated time and held that the charge No.1 is partially proved. In regard to charge No.2, the Enquiry Officer has observed that the rent for the cycle stand during the period from 16.12.2007 to 28.02.2010 has not been collected by the petitioner from the agency who had collected the parking fee from the customers. Therefore, Thiru.R.Rajagopal, Assistant Engineer (under suspension) P.W.D. has failed to collect the rent from the agency within the stipulated time and hence, the charge was not proved.

32.Thereafter, the first respondent did not accept the Enquiry Officer's report and held that the Charge Nos.1 and 2 are proved. In regard to Charge No.1, the findings of the first respondent is that when the Delinquent Officer had been relieved from the Government service



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under suspension with effect from 18.03.2010, how can he collect the arrears of parking fee from the agent on behalf of the Government during the years 2011 and 2014. Therefore, it is clear that Thiru.R.Rajagopal, Assistant Engineer (under suspension) P.W.D., (the petitioner herein) has misappropriated the Government money to the tune of Rs.2,41,800/- and remitted the amount later during the years 2011 and 2014 in various instalments. Hence, the Charge No.1 against the petitioner is proved and in regard to Charge No.2, he has stated that since the Charge No.1 is held to be proved and the consequentially Charge No.2 is also held to be proved and therefore, imposed major punishment of compulsory retirement on the petitioner by order dated 03.09.2019. Thereafter, the Statutory Appeal preferred by the petitioner to the second respondent dated 28.09.2019 was rejected by the order of the second respondent dated 17.06.2020.

33.It is also pertinent to note that even according to the opinion of the Tamil Nadu Public Service Commission, wherein it has been categorically stated that if the agency has failed to remit the parking fee which has to be done on a weekly basis, then the appellant



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(petitioner herein) should have taken action to cancel the permission given to the agency to collect the parking fee and he had allowed the agency to collect the parking fee, years together which clearly shows that inordinate delay on the part of the appellant (petitioner) with an intention to misappropriate the Government money. Since the petitioner was under suspension with effect from 18.03.2010 for which he has no authority to collect the parking fee arrears on behalf of the Government. Therefore, on the basis of the above facts, the charges framed against the appellant (petitioner) held as “proved beyond any doubts”.

34.At this juncture, it is also pertinent to mention the findings of the Enquiry Officer has rendered a finding that the petitioner has belatedly collected the amount and it is not misappropriation, but he failed to collect the rent within the stipulated time.

35.In regard to the criminal case against the petitioner in Crime No.229 of 2010 on the file of E2 Royapettah Police Station for the offence under Section 420 of IPC was quashed by this Court vide order in CrI.O.P.No.21453 of 2018 dated 19.02.2019 by taking note of



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the fact that the petitioner has remitted the entire amount to the Government account.

36.The delay in remitting the charges collected from the customers is on the part of the agency who have been appointed by the ruling party which resulted in delay in remitting the amount to the Government by the petitioner. The findings of the Disciplinary Authority that the petitioner has misappropriated the Government money to the tune of Rs.2,41,800/- cannot be sustained in the absence of any evidence against the petitioner and even in the Enquiry Officer report clearly shows that there is no misappropriation on the part of the petitioner and the petitioner has failed to collect the rent from the agency within the stipulated time.

37.In the impugned order passed by the first respondent, it is admitted that Thiru.R.Rajagopal, Assistant Engineer (under suspension) P.W.D., had remitted the amount in cash during the years 2011 and 2014 and there is no proof to show that the Delinquent Officer had actually collected the amount from the agency later. Hence, it is clear evident that the petitioner has remitted the entire amount to the Government account



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and the same was recorded by this Court while passing the order in

Crl.O.P.No.21453 of 2018 dated 19.02.2019.

38.It is also pertinent to mention that the Executive Engineer, Public Works Department, Chepauk, Chennai vide his Letter No.A3/5183/2001/1 has fixed Rs.300/- per day for the cycle stand and the petitioner has been instructed to collect the rent from the existing agency during the interim period till the approval is obtained from the Government. If it is so, how can the petitioner cancel the permission given to the agency to collect the parking fee. The petitioner is not the authority who granted permission to the agency to collect the rent and it is only the Executive Engineer granted the permission to the agency. The petitioner was only instructed to collect the rent from the agency and he was not given power under any circumstances to cancel the permission granted to the agency for collecting the parking fee. Hence, the petitioner is not responsible for not cancelling the permission.

39.In the order passed by the second respondent dated 17.06.2020



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vide G.O.(D)No.96 Public Works (F2) Dept., wherein it has been stated that the petitioner has not put forth any fresh ground for worthy of consideration and the punishment of compulsory retirement imposed on the petitioner is not excessive and the Government has rejected the appeal as devoid of merits.

40.Learned Senior Counsel has placed reliance on the judgments of the Hon'ble Supreme Court and by this Court are as follows:

(a) *Lav Nigam vs. Chairman & MD, ITI Ltd. and another reported in (2006) 9 SCC 440 (Civil Appeal No.1891 of 2006 decided on 03.04.2006).*

Service Law - Departmental enquiry - Enquiry report - Findings favourable to charged employee - Disciplinary authority taking view different to the one taken by enquiry officer - Procedure to be followed by disciplinary authority in such a case - Giving opportunity of hearing - Necessity of - Held, disciplinary authority is bound to give a notice setting out his tentative conclusions to the charged employee - It is only after hearing the said employee that the disciplinary authority can arrive at a



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final finding of guilt - Thereafter, the employee would again have to be served with a notice relating to the punishment proposed - In the present case, no notice was given to the delinquent employee before the disciplinary authority recorded its final conclusions differing with findings of enquiry officer - However, employee was given opportunity of making representation in respect of the penalty proposed - On such facts, decision of High Court confirming the punishment imposed by the disciplinary authority, held, was not sustainable - Hence, set aside - However held, proceedings may be recommenced from the stage of issuance of a fresh show-cause notice by the disciplinary authority to the employee concerned indicating his tentative disagreement with the findings of the enquiry officer - Conduct, Discipline and Appeal Rules, 1975 of the ITI Ltd., R. 25(f) - Constitution of India, Art. 311(2)

(b)Roop Singh Negi vs. Punjab National Bank and Others
reported in (2009) 2 SCC 570 (Civil Appeal No.7431 of 2008 decided on
19.12.2008).



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A. Service Law - Departmental enquiry - Nature of - Held, is a quasi-judicial proceeding

B. Service Law - Departmental enquiry - Enquiry officer - Function of - Held, is quasi-judicial in nature

*C. Service Law - Departmental enquiry - Documentary evidence - Manner in which required to be proved - Held, mere production of documents is not enough - Contents of documentary evidence has to be proved by examining witnesses - **Further held, FIR in itself is not an evidence without actual proof of facts stated therein** - Criminal Procedure Code, 1973, S. 154*

*D. Service Law - Departmental enquiry - Admission/Confession - Proof of - Appellant alleged to have confessed to police that he was involved in stealing of bank draft book - Held, so-called confession itself was not sufficient - **Some evidence ought to have been brought on record that appellant was involved in stealing -Evidence Act, 1872 – S.25***

(c)State of Uttaranchal and Others vs. Kharak Singh reported in

(2008) 8 SCC 236 (Civil Appeal No.4531 of 2007 decided on



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13.08.2008).

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A.Service Law - Departmental enquiry - Natural justice - Enquiry, held, should not be an empty formality - A witness should not be the enquiry officer - Departmental evidence should be led in the first instance and in presence of charged employee - Copy of enquiry along with material relied on should be furnished to charged employee - These requirements not fulfilled in the present case – Enquiry therefore held bad

(d)R.Arasu vs. The District Collector, Kancheepuram District

and Others in W.P.No.32466 of 2014 dated 07.04.2022.

10.Indisputably, a departmental proceeding is a quasi judicial proceeding. The Enquiry Officer performs a quasi judicial function. The charges leveled against the delinquent officer must be found to have been proved. The enquiry officer has a duty to arrive at a finding upon taking into consideration the materials brought on record by the parties. The purported evidence collected during investigation by the



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*Investigating Officer against all the accused by itself could not be treated to be evidence in the disciplinary proceeding. **No witness was examined to prove the said documents. The management witnesses merely tendered the documents and did not prove the contents thereof.** Reliance, inter alia, was placed by the Enquiry Officer on the FIR which could not have been treated as evidence. We have noticed herein before that the only basic evidence whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the appellant before the police. According to the appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the said confession should have been proved. **Some evidence should have been brought on record to show that he had indulged in stealing the bank draft book.** Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry Officer had made up his mind to find him guilty as otherwise he would not have proceeded on the basis that the*



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offence was committed in such a manner that no evidence was left. □

11.The aforesaid extract is self-explanatory. As held by the Hon-ble Supreme Court, when some documents are subject matter of the departmental enquiry, the contents of such documents require to be established in oral evidence.

17.It is no doubt true that the charges against the petitioner, who was holding the post of Village Administrative Officer, is very severe in nature. When such severe charges are imputed against a revenue official, the respondents ought to have diligently followed the procedures and ensured that the domestic enquiry is conducted, in accordance with the Rules and the Principles of Natural Justice. But a lethargic approach has been extended by the respondents during the course of a domestic enquiry by flouting the procedure for conduct of the enquiry at every stage commencing from the inception i.e., since the charges were leveled till passing of the



final order by the Revisional Authority, which concluded with an inordinate delay of about 7 years.

18.This Court expresses its dissatisfaction to the manner in which such serious charges have been dealt with by the Department. However, merely because the charges are serious in nature, it cannot be automatically construed that the charges are true, unless and until, it is properly proved during the course of enquiry. Such proof is obviously missing in the present case and therefore, the consequential punishment imposed on the petitioner cannot be sustained.

41.The impugned order passed by the Disciplinary Authority/the first respondent dated 03.09.2019 as well as the order passed by the Appellate Authority/the second respondent dated 17.06.2020 has to be quashed for the following reasons:

(i)The Enquiry Officer in his report has clearly stated **that it is not the case of misappropriation** but there was a delay in collecting the



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amount within the stipulated time from the agency by the petitioner.

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(ii)The enquiry was not conducted in a fair and proper manner and no documents were produced and the same was also not examined by any witnesses. Hence, it is in violation of principles of natural justice.

(iii)The Enquiry Officer has submitted his report that the Charge No.1 is partially proved and in regard to the Charge No.2 is not proved.

(iv)The Disciplinary Authority has deviated from the findings of the Enquiry Officer's report. In such a case, a notice should have been given to the petitioner and an opportunity of personal hearing also should have been given to the petitioner to put forth his contentions.

(v)The Disciplinary Authority thereafter should have held that the charges have been proved, and again issue another notice for disagreement and thereafter, only impose a punishment based on the decided findings.



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(vi)The petitioner has remitted the entire amount to the Government but with a delay which is due to the delay caused by the agency in collecting the parking fee from the customers and remitting the same to the petitioner.

(vii)The petitioner does not have power to cancel the permission granted to the agency to collect the rent which was fixed by the Executive Engineer and only the Executive Engineer has got the power to cancel the permission granted to the agency and not the petitioner. The petitioner is only an Assistant Engineer who has been delegated power only to collect the rent from the agency.

(viii)The Appellate Authority have also not discussed the order in detail and in the order passed it is only mentioned that the petitioner has not put forth any fresh grounds worthy of consideration and hence, the appeal is rejected.

(ix)The Appellate Authority ought to have passed a detailed order whether the Disciplinary Authority has imposed punishment of compulsory retirement on the petitioner is correct? Since the



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Disciplinary Authority has deviated from the Enquiry Officer's report wherein it has been held that the Charge No.1 is partially proved and Charge No.2 is not proved. In such a case, the Appellate Authority ought to have seen that on what documentary basis and evidence, the Disciplinary Authority has deviated and held that Charge Nos.1 & 2 were proved and imposed punishment of compulsory retirement.

(x)The Disciplinary Authority before passing the order on 03.09.2019, should have taken into consideration the order passed by this Court much earlier i.e. on 19.02.2019 in Crl.O.P.No.21453 of 2018_quashing the First Information Report since no charge sheet has been laid and fact that the entire amount has been remitted by the petitioner to the Government. It is very clear that this aspect was not taken into consideration by the Disciplinary Authority while passing the order dated 03.09.2019.

(xi)The Disciplinary Authority while passing the order has referred to another delinquency committed by the petitioner which



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he should not have done because that would have prejudiced in the minds of the Disciplinary Authority while imposing the punishment in the case on hand.

(xii)The ratio laid down by the Hon'ble Supreme Court of India in the case stated supra and the orders passed by the learned Single Judge of this Court in W.P.No.32466 of 2014 dated 07.04.2022.

(xiii)In regard to the criminal case, the FIR has been quashed by this Court since no charge sheet has been laid taking into consideration that the petitioner has remitted the entire amount to the Government's account.

(xiv)There is no other criminal case pending against the petitioner and the first respondent before imposing the major punishment of compulsory retirement on the petitioner should have taken this into consideration, but he failed to do so.

(xv)The major punishment of imposing compulsory retirement on the petitioner is highly disproportionate to the delinquency



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committed by the petitioner.

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42. In view of the above factual matrix of the case, the reasons, the ratio laid down by the Hon'ble Supreme Court and by this Court, the orders passed by the first respondent vide Proc.No.CII(3)/483/2008-76 dated 03.09.2019 and the order passed by the second respondent vide G.O.(D)No.96 Public Works (F2) Dept. dated 17.06.2020 are liable to be quashed. Accordingly, the orders passed by the respondents 1 and 2 are quashed.

43. “The respondents are directed to reinstate the petitioner into the service and grant him all consequential service and monetary benefits within a period of three months from the date of receipt of a copy of this order”.

44. In the result, the Writ Petition stands allowed with the above observations and directions. No costs. Consequently, connected miscellaneous petition is closed.



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13.12.2024

Index : Yes

Speaking/Non Speaking order

Neutral Citation: Yes/No

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To
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- 1.The Engineer-in-Chief, WRD & Chief Engineer (General),
Public Works Department,
Chepauk, Chennai – 5.
- 2.The Principal Secretary to Government,
Public Works Department,
Fort St. George, Chennai - 9.



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J.SATHYA NARAYANA PRASAD, J,

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