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W.P.No.14243 of 2024



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2024

CORAM

THE HONOURABLE MR.JUSTICE D. BHARATHA CHAKRAVARTHY

W.P.No.14243 of 2024
and WMP.Nos.15431 to 15433 of 2024

N. Senthil Kumar

... Petitioner

-Vs-

1. The Secretary
Revenue and Disaster Management Department
Survey & Settlement Wing
SS4 (2) Section
Secretariat, Fort St.George,
Chennai 600 009.
2. The Commissioner
Directorate of Survey and Settlement
Central Survey Office, Survey House
PWD Estate, Chepauk,
Chennai 600 005.
3. The Commissioner
Tribunal for Disciplinary Proceedings
Ramasamy Nagar, Puliakulam
Coimbatore - 641 045.
4. The Assistant Director of Survey
Collectorate, Tiruchenkodu
Namakkal.
5. The Deputy Superintendent of Police
Vigilance & Anti Corruption
Nallipalayam, Tiruchenkodu Main road,



W.P.No.14243 of 20

Namakkal - 637 003.

... Respondents

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Prayer :- Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records pertaining to the impugned order dated 08.12.2023 passed by the 3rd respondent in T.D.P case No.02 of 2017 and the consequential proceedings of the 2nd respondent in Na.Ka.ya./21[Ne.A] [3] dated 08.04.2024 and quash the same.

For Petitioner : Mr.V.Chandrasekaran

For Respondents : Mr.S.Balamurugan
Government Advocate

O R D E R

This writ petition has been filed for issuance of Writ of Certiorari to call for the records pertaining to the impugned order dated 08.12.2023 passed by the 3rd respondent in T.D.P case No.02 of 2017 and the consequential proceedings of the 2nd respondent in Na.Ka.ya./21[Ne.A] [3] dated 08.04.2024 and quash the same.

2. The petitioner is working as a Field Surveyor in the office of the 4th respondent. While so, on 30.11.2017 a charge memorandum was issued containing a charge that he demanded and accepted illegal gratification of Rs.6,000/- from the complainant through his son and further demanded a sum



of Rs.5,000/- was levelled against him. The petitioner denied the charge and submitted his explanation. Thereafter, an enquiry officer was appointed and a detailed oral enquiry was conducted and the Commissioner, Tribunal for Disciplinary Proceedings being the Enquiry authority submitted its report on 27.06.2022. By the said report, the Tribunal has held that the charge has been partly proved. Thereafter, the Disciplinary authority by a communication dated 06.10.2023 requested the Tribunal to clarify the finding i.e., whether the charge against the delinquent was 'proved' or 'not proved'. Based on the said communication, once again the enquiry authority had reconsidered the entire issue and re-submitted another report dated 18.12.2023. In the second report, the enquiry authority held the charges as 'proved' against the petitioner. Thereafter, the said report was forwarded to the petitioner by a second show cause notice dated 08.04.2024 calling for his further explanation. At this stage, the petitioner has filed the present writ petition.

3. The learned counsel appearing for the petitioner submitted that when the enquiry authority has concluded that the charge is partly proved, the course is open to the disciplinary authority as per Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal Rules) is to first forward the said report to the petitioner and hear the explanation of the petitioner. Even if the disciplinary



authority wants to disagree with the findings of the enquiry officer, he can only come to a tentative conclusion and the petitioner should be heard on the said tentative conclusion and thereafter only any further orders can be passed. The finding of the enquiry officer which is partly in favour of the petitioner cannot be altered or changed or disagreed upon without hearing the petitioner. Therefore, at that stage, the petitioner is entitled to a second show cause notice and without hearing the explanation of the petitioner the further communication dated 06.10.2023 ought not to have been issued. Therefore, he would submit that the entire exercise starting from 06.10.2023 up to the enquiry authority submitting the revised report dated 18.12.2023 were all done behind the back of the petitioner. Therefore, second the enquiry report and the second show cause notice issued on the basis of such vitiated report are erroneous in law and therefore this Court should interfere.

4. Per contra, the learned Government Advocate appearing for the respondents submitted that since it was only a clarification that was needed a communication was sent and accordingly the authority clarified its perception and now due opportunity is granted to the petitioner by way of a second show cause notice.



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

6. The facts are not in dispute. Once the enquiry authority submits its report, the course to be undertaken by the disciplinary authority is contained in Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal Rules) and the relevant portion is extracted as hereunder:-

“(ii) After the inquiry or personal hearing referred to in clause (i) has been completed, the Authority competent to impose the penalty specified in that clause, is of the opinion, on the basis of the evidence adduced during the inquiry, that any of the penalties specified in Rule 8 should be imposed on the person charged, it shall, before making an order imposing such penalty, furnish to him a copy of the report of the inquiry or personal hearing or both, as the case may be, and call upon him to submit his further representation, if any, within a reasonable time, not exceeding fifteen days. Any representation received in this behalf within the period shall be taken into consideration before making any order imposing the penalty, provided that such representation shall be based on the evidence adduced during the inquiry only. It shall not be necessary to give the person charged any opportunity of making representation on the penalty proposed to be imposed.”

7. The course to be adopted by the disciplinary authority upon receipt of the enquiry report was recently considered by this Court in W.P.No 10380 of 2024 and this Court considered the relevant Supreme Court rulings and it is held as follows:-

*“14. It can be seen that the disciplinary authority should form an opinion based on the evidence adduced during the enquiry as to whether any of the penalties specified in Rule 8 should be imposed or not. If it concludes any penalty should be imposed, then an opportunity shall be granted to the delinquent employee to submit his further representation on the enquiry report and such report is to be considered by the Disciplinary Authority. The Rule does not expressly deal with the situation where the Disciplinary Authority proposes to disagree with the findings of the Enquiry Authority. In that case, the matter would be governed by the law laid down by the Hon’ble Supreme Court of India in **Punjab National Bank Vs.Kunj Behari Misra (1998) 7 SCC 84**. It is relevant to extract paragraph 19, which reads as follows:*

“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."

(Emphasis Supplied)

15. Similarly in **Yoginath D.Bagde vs. State of Maharashtra (1999) 7 SCC 739** the Supreme Court of India held in paragraph 31 as follows:

"31. In view of the above, a delinquent employee has the right of hearing not only during the enquiry proceedings conducted by the enquiry officer into the charges levelled against him but also at the stage at which those findings are considered by the disciplinary authority and the latter, namely, the disciplinary authority forms a tentative opinion that it does not agree with the findings records by the enquiry officer. If the findings recorded by the enquiry officer are in favour of the delinquent and it has been held that the charges are not proved, it is all the more necessary to give an opportunity of hearing to the delinquent employee before reversing those findings. The formation of opinion should be tentative and not final. It is at this stage that the delinquent employee should be given an opportunity of hearing after he is informed of the reasons on the basis of which the disciplinary authority has proposed to disagree with the findings of the enquiry officer. This is in consonance with the requirement of Article 311(2) of the Constitution as it provides that a person shall not be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges. So long as a final decision is not taken in the matter, the enquiry shall be deemed to be pending. Mere submission of findings to the disciplinary authority does not bring about the closure of the enquiry proceedings. The enquiry proceedings would come to an end only when the findings have been considered by the disciplinary authority and the charges are either held to be not proved or found to be proved and in that event punishment is inflicted upon the delinquent. That being so, the "right to be heard" would be available to the delinquent up to the final stage. This right being a constitutional right of the employee cannot be taken away by any legislative enactment or service rule including rules made under Article 309 of the Constitution."

16. Thus, it is clear that even though the Rules say that based on the evidence adduced during the enquiry, the Disciplinary Authority can decide to punish after issuing a show-cause notice, further principles of natural justice have to be read into Rule 17b (ii) that if the Enquiry Officer's report is in favour of the delinquent and if the Disciplinary Authority proposes to disagree, such reasons have to be specifically communicated to the delinquent employee and only after granting him an opportunity to submit further explanation on such reasons to disagree and only after considering the same, punishment can be imposed. Needless to state such communication of the reasons by the Disciplinary Authority can only be tentative and without hearing the delinquent employee, the Disciplinary Authority cannot render any final finding as to the disagreement with the enquiry report and impose a punishment."

8. Therefore, it must be seen that the very purpose of issuance of the 2nd

show cause notice is that, if the enquiry report is in favour of the petitioner, the



petitioner can put forth such submissions to the disciplinary authority to persuade him to accept the report of the enquiry officer. If the enquiry report is against the petitioner, he can put forth such submissions to the disciplinary authority to dissuade him from coming to a different conclusion. In this case, it is partly in favour of the petitioner and partly against the petitioner. It is open for any enquiry authority to hold the charge as partly proved. The disciplinary authority upon perusing the report believes that the finding of the enquiry authority that the charge is partly proved may not be correct then the course open to him is to issue a second show cause notice to the concerned delinquent employee, by giving his tentative reasons as to why he is differing from the enquiry authority and after hearing the concerned delinquent employee a decision to differ from the enquiry officer has to be arrived at. He cannot once again redirect the enquiry authority to come up with a different finding. In any event, even if there is some confusion in the report or any clarification is needed that can never be done behind the back of the delinquent officer and without affording him an opportunity.

9. In that view of the matter, the proceedings starting from 06.10.2023 up to 18.12.2023 that have happened behind the back of the petitioner and without affording any opportunity are vitiated and have to be set aside by this Court. Accordingly, this writ petition is allowed on the following terms:-



(i) The impugned report dated 18.12.2023 and the second show cause notice dated 08.04.2024 are set aside;

(ii) The disciplinary authority can apply his mind on the enquiry officer's report dated 27.06.2022 afresh;

(iii) If he tentatively decides to disagree with the enquiry officer's report in part or full, he can issue a second show cause notice to the petitioner by spelling out reasons for the tentative disagreement and hear the petitioner on the same and thereafter arrive at a decision of guilt or otherwise and accordingly impose a punishment or exonerate as the case may be in the manner known to law;

(iv) Even if the disciplinary authority upon once again on application of mind finds that a further enquiry inquiry is needed in the matter, even then a show cause notice to that effect has to be issued to the petitioner and thereafter only a decision can be arrived at;

(vi) The Authority shall consider the matter afresh, complete the proceedings and pass final orders as expeditiously as possible in any event not later than three months from the date of receipt of a copy of this order.

(vii) No costs. Consequently, miscellaneous petitions are also closed.

06.06.2024

Neutral Citation: Yes/No
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D. BHARATHA CHAKRAVARTHY, J.

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