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Writ Petition No.29980 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.10.2024

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Writ Petition No.29980 of 2024

&

W.M.P.Nos.32680, 32682 and 32684 of 2024

N.Senthil Kumar
S/o.Nachimuthu

... Petitioner

Vs.

1.The Secretary,
Government of Tamil Nadu,
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 Assistant Director of Survey,
Collectorate, Tiruchenkodu,
Namakkal.

4.The Commissioner,
Tribunal for Disciplinary Proceedings,
Ramasamy Nagar, Puliakulam,
Coimbatore - 641 045.

... Respondents



Writ Petition No.29980 of 2024

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorari to call for the records pertaining to the impugned order dated 22.08.2024 passed by the 1st respondent in Letter No.8200/SS4(2)/2024-3 and the consequential proceedings of the third respondent in Na.Ka.A2/1758/23 dated 02.09.2024 and quash the same.

For Petitioner : Mr.V.Chandrasekaran

For Respondents : Mrs.V.Yamunadevi

ORDER

This writ petition has been filed challenging the impugned proceedings of the first respondent dated 22.08.2024 wherein the first respondent has called upon the petitioner to submit his further representation for the reasons assigned for deviating from the findings of the TDP charge.

2. Heard Mr.V.Chandrasekaran, learned counsel for petitioner and Mrs.V.Yamunadevi, learned Special Government Pleader appearing for respondents.



3. The petitioner was working as a field surveyor in the office of the third respondent. On 30.11.2017, a charge memorandum was issued containing a charge that the petitioner demanded and accepted illegal gratification of a sum of Rs.6,00,000/- from the complainant through his son and further demanded a sum of Rs.5,000/-. The petitioner, on receipt of the charge memorandum, submitted his explanation by denying the charge. Thereafter, an enquiry officer was appointed and an enquiry was conducted. The enquiry officer submitted a report on 27.06.2022 stating that the charge has been partially proved.

4. The disciplinary authority, by a communication dated 06.10.2023, requested the enquiry officer to clarify the finding and give a specific finding as to whether the charge against the petitioner has been proved or not proved. On receipt of the same, a second report was submitted by the enquiry officer holding that the charges against the petitioner has been proved. Thereafter, the said report was forwarded to the petitioner through a second show cause notice dated 08.04.2024 calling for further explanation of the petitioner. The same was put to challenge by the petitioner in W.P.No.14243 of 2024.



5. This Court, on hearing both sides, allowed the writ petition

by an order dated 06.06.2024 in the following terms:

"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;
- (v) 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.
- (vi) No costs. Consequently, miscellaneous petitions are also closed."

6. Pursuant to the above order, the first respondent, through impugned letter dated 22.08.2024, served the petitioner the reasons for deviating from the findings of the enquiry officer and called upon the petitioner to submit his further representation within ten days. Aggrieved



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by the same, the present writ petition has been filed before this Court.

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7. The main ground urged by learned counsel for petitioner is that this Court had specifically directed the first respondent to give tentative reasons if the first respondent is disagreeing with the report of the enquiry officer, whereas, a final reason has been given by the first respondent, which goes against the direction issued by this Court. That apart, this Court had directed the first respondent to afford an opportunity to the petitioner, which was also not complied with. The petitioner had also given a reply dated 12.09.2024, which was also not considered. Therefore, learned counsel submitted that the impugned proceedings of the first respondent is vitiated and the same requires the interference of this Court.

8. Learned Special Government Pleader appearing on behalf of respondents submitted that the impugned proceedings of the first respondent dated 22.08.2024 is strictly in line with the directions issued by this Court at Clause (iii) of paragraph No.9 of the order dated 06.06.2024. Learned Special Government Pleader submitted that the petitioner ought to have given his explanation, instead, the petitioner has



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straight away come to this Court once again questioning the impugned letter dated 22.08.2024 and that there is absolutely no ground to interfere with the proceedings of the first respondent. Accordingly, learned Special Government Pleader sought for dismissal of this writ petition.

9. On carefully reading the order passed by this Court, it is seen that this Court had interfered with the earlier report dated 18.12.2023 mainly on the ground that the disciplinary authority had followed an illegal procedure. In order to correct the same, this Court had expressly given the proper procedure that has to be followed by the first respondent. Accordingly, this Court directed the disciplinary authority to issue a second show cause notice to the petitioner by spelling out the reasons for the tentative disagreement with the report of the enquiry officer and to hear the petitioner on the same and thereafter, arrive at a conclusion. In view of this direction issued by this Court, the first respondent, through impugned letter dated 22.08.2024 had given reasons for deviating from the findings of the fourth respondent, who is the enquiry officer. The petitioner has construed this reasoning as the final reasoning and not a tentative disagreement with the report of the enquiry officer.



10. The reasons assigned by the first respondent for deviating from the findings of the fourth respondent need not be considered to be the final decision of the first respondent. The first respondent has given various reasons as to why the first respondent is not in agreement with the findings of the fourth respondent. These reasons must only be taken to be a tentative disagreement on the part of the first respondent to deviate from the reasoning given by the fourth respondent.

11. This Court had directed the first respondent to hear the petitioner after the show cause notice is given along with the tentative disagreement with the findings of the enquiry officer. This personal hearing has not taken place, whereas, a subsequent proceeding has been initiated through proceedings dated 08.10.2024 initiating disciplinary proceedings under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules by framing charges.

12. Even though this Court is not inclined to interfere with the impugned proceedings dated 22.08.2024, this Court finds that the petitioner has given a reply on receipt of the notice on 12.09.2024. However, the affidavit does not state as to whether this explanation was sent though post or it was handed over in person.



13. Learned counsel for petitioner, on instructions, submitted that the explanation was handed over in person. If that is so, the first respondent should have called the petitioner and heard him in person as directed by this Court in the earlier order dated 06.06.2024. This has not taken place, whereas, fresh proceedings are sought to be initiated against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

14. In view of the above, in order to protect the interest of the petitioner, this Court is inclined to dispose of this writ petition in the following manner:

- (a) the petitioner is directed to submit a fresh explanation for the impugned communication dated 22.08.2024 to the first respondent within a period of one (1) week from the date of receipt of a copy of this order;
- (b) on receipt of the explanation, the first respondent shall call upon the petitioner and give him a personal hearing as directed by this Court in Clause (iii) of paragraph No.9 in W.P.No.14243 of 2024, dated 06.06.2024;
- (c) the first respondent shall proceed further in accordance in law and



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take a final decision within a period of eight (8) weeks thereafter; and

(d) in the light of the above terms, the charge memo that was issued to the petitioner through proceedings dated 08.10.2024 pales into insignificance.

No costs. Consequently, connected miscellaneous petitions are closed.

14.10.2024

Neutral Citation: Yes/No

Index: yes/no

Speaking Order/Non-Speaking Order
gm

Issue order copy on 17.10.2024

To

1. The Secretary to Government of Tamil Nadu
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 Assistant Director of Survey
Collectorate, Tiruchenkodu
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4. The Commissioner
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N.ANAND VENKATESH, J
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