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W.P.No. 25715 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.02.2024

CORAM

THE HONOURABLE MR.JUSTICE BATTU DEVANAND

W.P.No. 25715 of 2017

V. Muthu Irulandi

... Petitioner

Vs.

1.State of Tamil Nadu,
Rep., by the Administrative Sub-Committee/
Appellate Authority,
Tamil Nadu Small Industries
Corporation (TANSI),
Guindy, Chennai – 600 032.

2.The Additional Chief Secretary/
Chairman & Managing Director,
Industries Commissioner and
Director of Industries & Commerce,
Chennai – 600 032.

3.Managing Director (Admn.)
Tamil Nadu Small Industries
Corporation (TANSI),
Guindy, Chennai – 600 032.

4.The Manager (Admn.)
Tamil Nadu Small Industries
Corporation (TANSI),
Guindy, Chennai – 600 032.

5.The General Manager,
Tamil Nadu Small Industries
Corporation (TANSI),
Guindy, Chennai – 600 032.

.. Respondents



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Writ petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records of the second respondent pertaining to his proceedings which is made in Proc. No.56/EBI/2013 dated 30.12.2016 signed by the fifth respondent and the order of appellate authorities i.e., first and second respondents made in Proc. No.57/EB/2017 dated 07.08.2017 signed by the fifth respondent and quash the same, consequent to direct the respondents to restore all the service benefits to the petitioner.

For Petitioner : Mr. R. Malaichamy

For Respondents : Mr. L.S.M. Hasan Fizal, for R1 & R2
Additional Government Pleader
M/s. V.R. Kamalanathan, for R3 to R5
for Mr. R. Manibarathi

ORDER

Heard the learned counsel for the petitioner and the learned counsel for the respondents and perused the records.

2. The case of the petitioner is that the petitioner was working as Foreman, Grade-I, in the respondents Corporation at Tirunelveli. While he was working as Project Officer, incharge at Omalur, he was issued with a charge memo dated 14.03.2013 under Rule 38(b) of TANSI Service Rules, 1990. The charge levelled against the petitioner was that while the petitioner was working as Works Manager, incharge, TANSI Fabrication Works, Palani



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from 14.10.2011 to 12.06.2012 and as Project Officer, incharge, TANSI Project Cell, Pollachi from 16.05.2011 to 13.12.2012 had caused loss to the Corporation in executing some works. The petitioner submits that 9 charges were framed against him vide charge memo dated 14.03.2013. As per him, all the allegations of charges were vague charges. Therefore, the first respondent did not list any documents under Annexure-III and also the name of the witnesses under Annexure-IV in the charge memo.

3. Learned counsel for the petitioner submits that the first respondent herein is the Appellate Authority and the third respondent is the Appointing Authority. But charge memo was issued by the Appellate Authority. On receipt of the charge memo dated 14.03.2013, the petitioner submitted a detailed reply dated 16.04.2013. The learned counsel further submits that no proper enquiry was conducted for allegations made against the petitioner. The Enquiry Officer conducted personal enquiry in the form of question and answer type on 14.05.2014 and held the charge-I as partly proved, charges-2 to 8, proved and with regard to charge-9 he has left the choice to the first respondent to decide the charge based on the findings in respect of other 8 charges.



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4. The learned counsel further submits that from the report of the Enquiry officer dated 15.07.2014, it is evident that he has not conducted the enquiry in a proper manner. He has not discussed anything about the allegations in detail with oral or documentary evidence. As such, the learned counsel contends that the first respondent ought to have remitted the matter to conduct fresh enquiry after affording all reasonable opportunity, but they did not do so. On receipt of enquiry report, dated 15.07.2014, the petitioner submitted a detailed reply on 11.08.2014 to the third respondent who is the Disciplinary Authority. But the fifth respondent has signed the order dated 30.12.2016 on behalf of the second respondent imposing punishment of stoppage of increment with cumulative effect for a period of two years. The learned counsel would submit that the second respondent also is the Appellate Authority but he has passed such an order through the fifth respondent as he is the Disciplinary Authority.

5. Aggrieved by the order dated 30.12.2016, the petitioner preferred an appeal dated 27.01.2017 to the Appellate Authority and submitted a reminder on 08.03.2017. Since no order was passed on appeal, the petitioner approached this Court by filing W.P.(MD) No.11103 of 2017. The said writ petition was disposed of by order dated 15.06.2017 directing the Appellate



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Authority to dispose of the appeal. Thereafter, the appeal was rejected by the Appellate Authority. Against the order of the Appellate Authority in rejecting his appeal, the petitioner filed this writ petition.

6. In the counter affidavit filed by the fifth respondent, it is averred that the petitioner was working as Works Manager, incharge, TANSI Fabrication Works, Palani from 14.10.2011 to 12.06.2012 and as Project Officer, incharge, TANSI Project Cell, Pollachi from 16.05.2011 to 13.12.2012 and as Project Officer, incharge of TANSI Project Cell, Omallur. During the course of such employment of the petitioner, disciplinary action was initiated against him under Rule 38(b) of TANSI Service Rules, 1990 for certain lapses. Subsequently, a charge memo was issued containing 9 charges. The petitioner submitted his explanation denying the charges. Therefore, an enquiry officer was appointed, who conducted an enquiry in which the petitioner participated. After conclusion of enquiry, the enquiry officer submitted his report stating that charge No.1 is partly proved and the other charge Nos. 2 to 8 are proved against the petitioner. The petitioner also submitted his explanation. The Disciplinary authority, on considering the further explanation of the petitioner and the report of the enquiry officer, imposed the punishment of stoppage of increments with cumulative effect for



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a period of two years. Aggrieved by the same, the petitioner has preferred an appeal dated 27.01.2017. When the appeal was pending, the petitioner filed W.P(MD) No. 11103 of 2017 for a direction to the appellate authority to dispose of his appeal. By order dated 15.06.2017, this Court directed the appellate authority to dispose of the appeal within eight weeks. Pursuant to such direction, the appellate authority has taken up the appeal and rejected it by an order dated 07.08.2017.

7. Further, in the counter affidavit, it was stated that there is no valid reason to adduce any aspiration of the Appellate Administrative Committee. The Appellate Authority orders on the appeal petition is independent in all respects in arriving at a common conclusion adopting due process of natural justice. The petitioner retired from service on 31.12.2018 and he was relieved from service with settlement of terminal benefits after withholding monetary value of two increments in pursuant to the punishment awarded by disciplinary authority. Finally, it is prayed by the respondents to dismiss the writ petition.

8. The main ground raised by the petitioner in this writ petition against the orders passed by the Original Authority and Appellate Authority is



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that one Ambuj Sharma, I.A.S., the Additional Chief Secretary / Chairman and Managing Director, Industries Commissioner and Director of Industries and Commerce as the Disciplinary Authority passed order dated 30.12.2016 and imposed punishment of stoppage of increment for two years with cumulative effect against the petitioner. The very same officer i.e., Ambuj Sharma I.A.S., sitting as Appellate Authority, passed order on 07.08.2017, is Appeal filed against the order dated 30.12.2016.

9. The learned counsel vehemently contends that the same person who passed the order dated 30.12.2016 which was challenged in the appeal, cannot sit as Appellate Authority and pass orders, which is arbitrary, illegal and also amounts to violation of principles of natural justice.

10. On careful perusal of the entire materials available on record, it appears that the second respondent has passed proceeding No.56/EBI/2013 dated 30.12.2016 imposing punishment against the petitioner in disciplinary proceedings. In the appeal filed against the said order, the Administrative Sub Committee / Appellate Authority passed order in appeal in proceeding No.57/EB/2017 dated 07.08.2017 rejecting the appeal of the petitioner upholding the order dated 30.12.2016 issued by the Disciplinary Authority.



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There is no dispute that one Thiru Ambuj Sharma, I.A.S., who was working as the Additional Chief Secretary / Chairman and Managing Director, passed the order of punishment dated 30.12.2016 as Disciplinary Authority and he was also one of the member of the Administrative Sub Committee / Appellate Authority who passed order dated 07.08.2017 wherein, the appeal of the petitioner was rejected and disciplinary order is upheld.

11. The Hon'ble Apex Court and various High Courts time and again declared that one cannot sit as Appellate Authority against his own orders. In the present case, the Disciplinary Authority who passed order dated 30.12.2016, decided the appeal filed against his own order, which is impermissible under law and it has to be declared as unjust, arbitrary, illegal and violation of principles of natural justice and against the settled proposition of law. Accordingly, the order impugned in this writ petition is liable to be set aside.

12. Accordingly, this Writ Petition is allowed with the following directions:

- (i) The proceeding No.56/EBI/2013 dated 30.12.2016 issued by the second respondent and the order of first



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respondent in proceeding No.57/EB/2017 dated 07.08.2017 are

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(ii) The matter is remanded back to the first respondent to conduct fresh enquiry by following due process of law and pass appropriate orders in accordance with law after giving opportunity to the petitioner to put forth his case.

13. There shall be no order as to costs.

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Index :Yes/No

Neutral Citation :Yes/No

AT

To

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Appellate Authority, State of Tamil Nadu, Tamil Nadu Small Industries Corporation (TANSI), Guindy, Chennai – 600 032.

2.The Additional Chief Secretary/

Chairman & Managing Director,
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BATTU DEVANAND, J.

AT

5.The General Manager,
Tamil Nadu Small Industries Corporation (TANSI), Guindy,
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