IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.06.2024

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

W.A.Nos.318 & 320 of 2021
and
C.M.P.Nos.1312 & 1314 of 2021

1.The Special Commissioner
and Transport Commissioner,
Department of Transport, Chepauk,
Chennai – 600 005. ... Appellant
in WA.No.318/2021

2.The Transport Commissioner,
Department of Transport, Chepauk
Chennai – 600 005. ... Appellant
in WA.No.320/2021

Vs.

S.Ravi ... Respondent
in both WAs

Prayer in WA.No.318/2021: Writ Appeal filed under Clause 15 of Letters Patent to set aside order dated 01.04.2014 in W.P.No.41699 of 2006 and allow the writ appeal.

Prayer in WA.No.320/2021: Writ Appeal filed under Clause 15 of Letters Patent to set aside order dated 01.04.2014 in W.P.No.34889 of 2007 and allow the writ appeal.

For Appellant	: Mr.S.John J.Raja Singh Additional Government Pleader (in both WAs)
For Respondent	: Mr.S.Sarath Kumar (in both WAs)

COMMON JUDGMENT

[Judgment was delivered by **S.M.SUBRAMANIAM, J.**]

The two writ appeals have been filed challenging the common order dated 01.04.2014 in W.P.Nos.41699 of 2006 and 34889 of 2007. The writ petition in W.P.No.41699 of 2006 was filed against the order of dismissal and writ petition in W.P.No.34889 of 2007 was filed against the order of suspension.

2. The petitioner was holding the post of Motor Vehicle Inspector Grade – I in Transport Department. A charge memo under Rule 17(b) of the Tamil Nadu Civil Services Discipline and Appeal Rules, 1955 was issued.

The charges are relating to demand and acceptance of bribe of Rs.7000/- from one Mr.Devaraj of Christia Nagar, Udangudi for the inspection and registration of vehicle and other two charges are relating to registration of 16 vehicles between 12:15 P.M. and 2:00 P.M. on 12.06.1991.

3. The respondent / writ petitioner submitted his explanation denying the charges. Not satisfied with the statement of defence, an Enquiry Officer was appointed by the Disciplinary Authority, who in turn conducted an enquiry by affording an opportunity to the delinquent Officer. The respondent participated in the departmental enquiry and defended his case. The Enquiry Officer submitted his final report holding that all the three charges are not proved. The report was examined by the Disciplinary Authority namely the Special Commissioner and Transport Commissioner, who in turn accepted the findings with reference to Charge No.1 and 2 but deviated the findings with reference to Charge No.3 relating to demand and acceptance of bribe. Since the Disciplinary Authority deviated the findings of the Enquiry Officer regarding the allegation of demand and acceptance of bribe, a show cause notice was issued in proceedings dated 03.12.1999 in order to afford an opportunity to the respondent to submit his further

explanation. The Disciplinary Authority has categorically stated in proceedings dated 03.12.1999, that he had agreed with the findings of the Enquiry Officer in respect of Charge Nos.1 and 2. However, he was not inclined to accept the report of the Enquiry Officer in respect of Charge No.3 for the following reasons that, P.W.1 Mr.V.Devaraj has stated that on 12.06.1991, the accused Officer Thiru.S.Ravi, Motor Vehicles Inspector Grade-I had demanded bribe of Rs.7000/- for registering the Swaraj Mazda vehicle newly purchased by P.W.1 and that on the next day 13.06.1991, the accused Officer accepted the bribe amount. It is a fact on record that the above vehicle was registered on 12.06.1991 at Regional Transport Officer's Office, Thoothukudi and that Registration No.4873 was allotted to the above vehicle. The accused Officer has not attributed any motive for P.W.1 Mr.V.Devaraj. Therefore, there is no necessity for P.W.1 to level false allegation against the accused. In his enquiry report, the Enquiry Officer has stated that "P.W.1 has deposed before the Enquiry Officer that he paid the amount of Rs.7000/- as bribe to the accused Officer at 12:30 hours on 13.06.1991, whereas it is stated that the bribe of Rs.7000/- was paid to the accused Officer at 10:30 hours on 12.06.1991. Since no statement was recorded from P.W.1 during the preliminary enquiry it is not proper on the part of the Enquiry Officer to compare the deposition of P.W.1 with the preliminary Enquiry report. The Enquiry Officer has given only minor reasons for holding the charges as not proved. There is no strong reason to disbelieve the testimony of P.W.1, who has absolutely no motive against the accused Officer.

4. The reasons are furnished for disagreeing with the findings of the Enquiry Officer in his final enquiry report. The charge was that the respondent had demanded bribe of Rs.7000/- for registering the Swaraj Mastang vehicle, newly purchased by PW1 and that on the next day 13.06.1991, the accused Officer accepted the bribe amount. The reasons stated by the Disciplinary Authority would reveal that the accused Officer has not attributed any motive for PW1 Mr.V.Devaraj. Therefore, there is no reason for PW1 to level false allegation against the accused. Even in the enquiry report, the Enquiry Officer has stated that the said Mr.Devaraj paid the amount of Rs.7000/- of bribe to the accused Officer at 12:30 hours on 13.06.1991.

5. The Disciplinary Authority has recorded the reasons which cannot

be brushed aside. With reference to the allegations of demand and acceptance of bribe by the public servants, preponderance of probabilities would be sufficient. Factual inference can be drawn with reference to the available evidence. The Hon'ble Supreme Court of India held that even oral evidences are admissible in departmental disciplinary proceedings in such nature of allegations.

6. In the present case, PW1 / Mr.Devaraj in clear terms deposed before the Enquiry Officer that he paid the amount of Rs.7000/- of bribe to the accused Officer at 12:30 hours on 13.06.1991. In spite of the fact that PW1 has given a statement before the Enquiry Officer, the third charge was held as not proved. Thus, we do not find any infirmity in respect to the show cause notice issued by the Disciplinary Authority in proceedings dated 03.12.1999 deviating the findings of the Enquiry Officer in his report with reference to Charge No.3.

7. Opportunity was granted to the respondent to submit his explanation to the further show cause notice dated 03.12.1999. Instead of submitting his explanation, the respondent adopted a delay tactics and requested time. The

respondent / delinquent Officer had participated in the enquiry before the Enquiry Officer and defended his case. The Enquiry Officer held that all the three charges are held not proved. After issuing the further show cause notice deviating the findings with reference to charge No.3, the respondent / delinquent Officer evaded by not submitting his further defence on the show cause notice dated 03.12.1999. Further, time was not granted by the Disciplinary Authority. The Disciplinary Authority considered the materials available on record and passed final order imposing punishment of dismissal from service in proceedings dated 03.03.2000.

8. The respondent filed original application before the Tamil Nadu Administrative Tribunal challenging the order of dismissal, which was subsequently transferred to the High Court. Since the Tamil Nadu Administrative Tribunal granted stay of the dismissal order, the appellants / 'State' issued an order of suspension. The said suspension order was also challenged by the respondent.

9. It is brought to the notice of this Court that different set of charges were laid against the respondent and final order of punishment was imposed

in the said disciplinary proceedings. The respondent filed writ petition in Madurai Bench of Madras High Court in W.P.MD.No.6122 of 2012 and the learned Single Judge in the writ petition directed the respondent / Department to consider the issue after giving personal opportunity to the writ petitioner. However, we are not concerned about the said departmental disciplinary proceedings or the writ petition filed by the respondent.

10. As far as the present writ appeals are concerned, the learned Single Judge proceeded on the basis that demand and acceptance of bribe by the respondent has been considered by the Enquiry Officer based on the material available on record. Since the Enquiry Officer in his findings has stated that the respondent has no role to play regarding demand and acceptance of bribe, the decision of the Disciplinary Authority deviating the findings is unsustainable. Further, the Writ Court has stated that no statement was obtained from PW1 in the course of preliminary enquiry and he was examined first time in the departmental enquiry.

11. We are of the considered opinion that the departmental disciplinary proceedings cannot be compared with the trial before the Court

of Law. The procedures contemplated for departmental disciplinary proceedings are distinct and different. To convict a person under Criminal Law, strict proof is required. However, no such strict proof is required to punish an employee under the departmental disciplinary proceedings. Preponderance of probabilities are sufficient to punish a public servant under the Disciplinary Rules. Therefore, High Court in exercise of powers of judicial review need not re-appreciate the evidence and materials considered by the Department during the course of enquiry proceedings. If at all such findings are absolutely perverse and not supported with any document or evidence, then alone the High Court may consider the issues.

12. The Hon'ble Supreme Court of India in the case of ***State of Karnataka and Another vs. Umesh*** reported in ***2022 Live Law (SC) 304*** settled the principles regarding the exercise of judicial review in the matter of departmental disciplinary proceedings by stating that the Court in exercise of judicial review must restrict its review to determine whether;

(1) The rules of natural justice has been complied with.

(2) The finding of misconduct is based on some evidence.

(3) The Statutory Rules governing the conduct of the disciplinary enquiry has been observed.

(4) The findings of the Disciplinary Authority suffer from perversity.

(5) The penalty is disproportionate to the proven misconduct.

13. The findings in the enquiry report is not binding on the Disciplinary Authority. The Disciplinary Authority is empowered to deviate the findings of the Enquiry Officer. While deviating the findings, the Disciplinary Authority has to issue further show cause notice by assigning reasons to the delinquent Officer, enabling him to submit his explanation / objection on such findings deviating the findings in the enquiry report.

14. In the present case, the show cause notice as contemplated under the rules were issued by the appellant in proceedings dated 03.12.1999. Reasons were also stated for deviating the findings of the Enquiry Officer. With reference to the charge relating to the demand and acceptance of bribe, the Disciplinary Authority considered the deposition of the PW1, who states that he had paid the amount of Rs.7000/- of bribe to the accused Officer at

12:30 hours on 13.06.1991. The accused Officer has not attributed any motive for PW1 / Mr.Devaraj. In the absence of any personal motive against the public servant, the deposition of the complainant is to be relied upon and it was rightly relied upon by the Disciplinary Authority and show cause notice was issued. There is no reason to disbelieve the deposition of PW1 in the present case, which was considered by the Disciplinary Authority for deviating the findings. Therefore, we do not find any infirmity in respect of the show cause notice issued in proceedings dated 03.12.1999 and the subsequent final order passed by the Transport Commissioner in proceedings dated 03.03.2000 imposing the punishment of dismissed from service.

15. The order of suspension was issued, since the Tamil Nadu Administrative Tribunal granted stay of the dismissal order. Since we have agreed with the order passed by the Transport Commissioner, it is unnecessary to deal with the suspension order, since it was issued pursuant to the stay order granted by the Tamil Nadu Administrative Tribunal.

16. In view of the facts and circumstances, we are of the considered opinion that the procedures as contemplated under the Discipline and Appeal

Rules were followed by the Department. The rules of natural justice has been complied with. Opportunity was afforded to the delinquent Officer to defend his case. The allegation proved against the respondent is demand and acceptance of bribe of Rs.7000/- for registering a vehicle in the Transport Department. Thus, we do not find any disproportionality regarding quantum of punishment imposed by the Disciplinary Authority.

17. For all these reasons, the writ appeals are reconsidered and the common order dated 01.04.2014 passed in W.P.Nos.41699 of 2006 and 34889 of 2007 is set aside and the Writ Appeals are allowed. Consequently, connected Miscellaneous Petitions are closed. However, there shall be no order as to costs.

[S.M.S., J.] **[C.K., J.]**
05.06.2024

Jeni
Index : Yes
Speaking order
Neutral Citation : Yes

S.M.SUBRAMANIAM, J.
and
C.KUMARAPPAN, J.

Jeni

W.A.Nos.318 & 320 of 2021

05.06.2024