



W.P.(MD)No.13407 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 28.11.2024

CORAM:

**THE HONOURABLE MR.JUSTICE B.PUGALENDHI**

**W.P.(MD)No.13407 of 2021**

**and**

**W.M.P.(MD)Nos.10515 and 10368 of 2021 and 4389 of 2022**

B.Rajesh

... Petitioner

versus

1. State of Tamil Nadu,  
Rep. By Principal Secretary to Government,  
Health and Family Welfare Department,  
Fort St. George, Secretariat,  
Chennai – 600 009.
2. The Director of Public Health and  
Preventive Medicine,  
O/o. the Directorate of Public Health  
and Preventive Medicine,  
359, Anna Salai, DMS Complex,  
Teynampet,  
Chennai – 600 006.
3. The Deputy Director of Health Services,  
Meenakshinayakanpatti Post  
Dindigul 624 004,  
Dindigul District.



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4. The Deputy Director of Health Services,  
Palani Health District,  
Government Hospital Campus  
Palani 624 601  
Dindigul District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari, to call for the records relating to the impugned order for imposing punishment of stoppage of increment for two years issued by the 3<sup>rd</sup> respondent in Na.Ka.No.3701/A1/12 dated 28.05.2014, the subsequent impugned order issued by the 2<sup>nd</sup> respondent rejecting the appeal petition filed by the petitioner in Na.Ka.No. 081888/Ona/Iru3/2019 dated 29.07.2020 and the subsequent impugned order of recovery issued by the 4<sup>th</sup> respondent in Na.Ka.No.5341/A1/2020 dated 24.03.2021 served on the petitioner dated 29.03.2021 and to quash the same.

For Petitioner : Mr.G.Sankaran

For Respondents : Mr.P.T.Thiraviam,  
Government Advocate

### **ORDER**

The Petitioner, while working as Junior Assistant in the Office of the Deputy Director of Health Services, Dindigul, was issued with a charge memo dated 14.08.2012 by the 3<sup>rd</sup> respondent that the Flag Day collection and unused receipt books for the year 2008-2009 were handed over to the



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office. The petitioner has submitted his reply on 29.08.2012. Subsequently, an Enquiry Officer was appointed to conduct an enquiry. The petitioner questioned the appointment of Enquiry Officer by way of filing a writ petition before this Court that the Enquiry Officer/Administrative Officer is the actual concerned Authority for execution of work related to Flag Day collection and he is the culprit and therefore, he cannot be an Enquiry Officer. That issue went upto the appeal and a Division Bench of this Court has decided the issue in W.A.(MD)No.482 of 2014 on 26.03.2014 as under:

“7. Insofar as the first ground of attack is concerned, the question as to whether the appellant is answerable for the charges or the respondents 6 to 12 are answerable for the charges is actually a question of fact into which this Court will not go in writ petition under Article 226 of the Constitution. The appellant had an opportunity to put-forth this point before the Enquiry Officer. He was entitled to lead all evidence, at his command, to show before the Enquiry Officer that it was the respondents 6 to 12, who are responsible. As a matter of fact, he seems to have partly succeeded in getting a finding from the Enquiry Officer in the penultimate paragraph of the Enquiry Report, where the Enquiry Officer has suggested four measures for resolving the issue. The second suggestion made by the Enquiry



Officer is to call for reports from all the 7 Block Medical Officers. Therefore, on this question of fact, the appellant cannot invoke the writ jurisdiction of this Court to challenge the charge memo and the finding by the Enquiry Officer.

8. Insofar as the second ground is concerned, the contention of the appellant cannot be accepted for two reasons. The first is that the allegation of bias against the Enquiry Officer, ought to have been made by the appellant, immediately after the appointment of the 4<sup>th</sup> respondent as the Enquiry Officer. The Appellant did not do this. On the other hand, the appellant submitted himself to the enquiry.

9. The second difficulty for the appellant is that though the Enquiry Officer held all the four charges proved against the appellant, the Enquiry Officer seems to have partly accepted the suggestions or the contentions of the appellant that reports are to be called for from the 7 Block Medical Officers. Therefore, to that extent, the allegation of bias, cannot now be looked into in a writ petition.

10. Insofar as the 3<sup>rd</sup> objection is concerned, we do not know where the Enquiry Officer was actually employed. The Report of the Enquiry is signed on 15.07.2013 and it describes the Enquiry Officer as the Administrative Officer in the Office of the Deputy Director of Health Services, Dindigul. This is a matter, which the appellant can very well agitate before the Disciplinary Authority. Hence, the opinion



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of the learned Judge, dismissing the writ petition challenging the charge memo cannot be interfered with.

11. Mr.G.Thiagarajan, learned counsel for the appellant, last contend that the finding of guilt recorded by the Enquiry Officer goes contrary to the recommendations made by the Enquiry Officer in the penultimate paragraph of his report. If it is so, it is a point well be taken by the appellant before the disciplinary authority and not before this Court. Therefore, we see no justification to interfere with an enquiry which has almost come to close with the Enquiry Officer concluding the proceedings and submitting a report.

12. The only relief that could be granted to the appellant is that he can be granted some more time to submit his objection to the Enquiry Report. Since the appellant was before this Court for quite some time, we grant a time of two weeks from the date of receipt of a copy of this order to the appellant to submit his objections to the enquiry report. Thereafter, the disciplinary authority shall consider all the objections, point by point and pass final orders, in accordance with law and on the merits of the case.”

In the meantime, the enquiry was conducted on 10.10.2012. In conclusion of the enquiry, the petitioner was called upon to offer his further explanation on the enquiry report submitted by the Enquiry Officer by a notice dated 23.07.2013. The petitioner has made a request for furnishing the copies of



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deposition of the enquiry, in order to enable him to offer his explanation against the enquiry report, on 06.09.2013. In these circumstances, the Division Bench of this Court has decided the issue as stated supra on 26.03.2014. Therefore, the petitioner has submitted his further representation on 05.05.2014 as against the enquiry report. The third respondent, namely, the disciplinary authority passed a final order on 28.05.2014 imposing a punishment of stoppage of increment for a period of two years with cumulative effect. As against the order of punishment passed by the disciplinary authority dated 28.05.2014, the petitioner has preferred an appeal before the 2<sup>nd</sup> respondent, after a period of six years. The 2<sup>nd</sup> respondent, by order dated 29.07.2020, dismissed the appeal confirming the punishment imposed by the third respondent. Thereafter, the petitioner has also filed an appeal before the Government. When the appeal is pending before the Government, based on the order of the 3<sup>rd</sup> respondent dated 12.10.2020, the 4<sup>th</sup> respondent, by proceedings dated 24.03.2021, ordered for recovery of Rs.59,000/- from the petitioner's salary to be paid in the office of Assistant Director, Ex-Serviceman Welfare, Dindigul. Challenging the order of punishment passed by the 3<sup>rd</sup> respondent dated 28.05.2014, the dismissal order of the appellate authority dated 29.07.2020



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and the order of recovery passed by the 4<sup>th</sup> respondent dated 24.03.2021, the petitioner has filed this writ petition.

2. The learned counsel appearing for the petitioner submits that the Administrative Officer was the main person responsible for the collection of Flag Day, however, he was appointed as an Enquiry Officer. Therefore, the enquiry was conducted by the Enquiry Officer in a biased manner. He further submits that the petitioner was not furnished with the deposition copies of the enquiry and only based on the enquiry report dated 13.12.2019, the order of punishment was passed by the disciplinary authority. He further submits that the enquiry report was also not furnished to the petitioner. Therefore, the entire proceedings is vitiated and liable to be set aside.

3. The learned Government Advocate appearing for the respondents submits that all the grounds raised by the petitioner has already been addressed by the Division Bench of this Court in W.A.(MD)No.482 of 2014, by order dated 26.03.2014. He further submits that the charge memo was issued to the petitioner on 14.08.2012 and he offered his explanations to the



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charge memo on 29.08.2012. Thereafter, the enquiry was contemplated and an Enquiry Officer was appointed. As against the appointment of the Enquiry Officer, the petitioner filed a writ petition before this Court in WP(MD)No.17072 of 2013 and the same was dismissed by this Court by order dated 21.10.2013. Thereafter, the enquiry was proceeded and the Enquiry Officer has submitted his report, based on which, a further explanation was called for from the petitioner on 23.07.2013. The petitioner asked for certain copies of the deposition of witnesses in the enquiry, by his representation dated 06.09.2013 and simultaneously, he filed a writ appeal before this Court in WA(MD)No.482 of 2014, challenging the order passed by this Court in WP(MD)No.17072 of 2013, dated 21.10.2013. The writ appeal was also disposed of by Judgment dated 26.03.20214 as stated supra. Thereafter, the petitioner was constrained to offer his explanation, based on certain materials. After considering the petitioner's explanation, the disciplinary authority has passed the order of punishment, which was confirmed by the appellate authority as well as by the Government.

4. Heard the learned counsel appearing for the petitioner as well as



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the learned Government Advocate appearing for the respondents.

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5. The petitioner has filed this writ petition as against the order of punishment passed by the 3<sup>rd</sup> respondent/disciplinary authority and order of the 2<sup>nd</sup> respondent/Appellate Authority and the order of recovery passed by the 4<sup>th</sup> respondent.

6. As rightly pointed out by the learned Government Advocate, all the grounds raised by the petitioner has already been addressed by the Division Bench of this Court in W.A.(MD)No.482 of 2014, by Judgment dated 26.03.2014 as stated supra. Based on the orders of the Division Bench of this Court, the petitioner has submitted his further representation on 05.05.2014. After considering the petitioner's representation, the disciplinary authority/3<sup>rd</sup> respondent has passed the punishment order dated 28.05.2014, which was confirmed by the appellate authority/2<sup>nd</sup> respondent and also by the Government. After the dismissal of the appeal filed by the petitioner before the 2<sup>nd</sup> respondent, the 4<sup>th</sup> respondent passed the order of recovery as against the petitioner. Therefore, this Court does not find any perversity in the disciplinary proceedings.



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7. Further, the scope of judicial review in matters relating to disciplinary proceedings is very limited. It is meant to ascertain as to whether due process was followed and whether a fair opportunity was accorded to the employee concerned. The power of Courts is limited to reviewing the decision making process, rather than the merits of the decision itself. This is to ensure fairness in treatment and not the fairness of the conclusion. The Courts should not interfere with the findings of the fact arrived at in the departmental enquiry proceedings, except in cases of mala fide or perversity.

8. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

**28.11.2024**

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NCC : Yes / No.

Index : Yes / No.

Internet : Yes / No.



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**B.PUGALENDHI, J.**

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