



W.A.(MD)No.1371 of 2015

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Judgment	Date of Pronouncing the Judgment
03.01.2024	09.01.2024

CORAM:

**THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE C.KUMARAPPAN**

**W.A.(MD)No.1371 of 2015
and
M.P.(MD)No.1 of 2015**

P.Venkateswaran

... Appellant

vs.

1.The Secretary to Government,
Revenue Department,
Government of Tamil Nadu,
Secretariat,
Chennai – 600 009.

2.The District Collector,
Thanjavur District,
Thanjavur.

... Respondents

PRAYER : Writ Appeal filed under Clause 15 of the Letters of Patent, against the order dated 14.09.2015, made in W.P.(MD)No.16610 of 2015.



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For Appellant

: Mr.T.Lajapathi Roy
Senior Counsel
for Mr.S.Rajasekar

For Respondents

: Mr.A.K.Manikkam
Special Government Pleader

JUDGMENT

**DR.G.JAYACHANDRAN, J.
and
C.KUMARAPPAN, J.**

The appellant herein having lost before the learned Single Judge, had preferred this intra-court appeal to consider his prayer for issuance of Writ of Certiorari, to call for the records pertaining to Charge Memo No.13545/Ser-2 (2)/2012-2, dated 18.09.2012, on the file of the first respondent and consequential order in imposing punishment in G.O.(1D)No.315, Revenue Service 2(2) Department, dated 09.07.2015, on the file of the first respondent and quash the same as illegal.

2. The facts leading to the appeal in short is that, in the year 1997 the appellant/petitioner was recruited as Junior Assistant (Group IV service) in the Tamil Nadu State and Subordinate Services. Gradually, he climbed the ladder of



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hierarchy and finally, reached the post of Deputy Tahsildar and was posted as the Additional Head Quarters Deputy Tahsildar at Taluk Office, Tanjavur, vide proceedings dated 11.05.2010.

3. The Commissioner of Land Reforms, vide proceedings dated 14.02.2011, taking note of the fact that the Assistant Settlement Officers/Settlement Officers passing orders without jurisdiction under the Abolition Acts on the time barred applications in respect of Government Poramboke lands, which were settled during the currency of Ryotwari settlement, instructed all the District Collectors to forward details from the year 2001, in the prescribed format about whether any order passed by Assistant Settlement Officers/Settlement Officers affecting the settled registries of the lands in their respective Districts, by entertaining applications without jurisdiction.

4. While so, contrary to the above instruction, the application made by one Napoleon, S/o.Xavier, for grant of Patta in respect of land measuring about 17424 sq.ft. in T.S.No.21, Block 6, Ward 4, Neelagiri Therku Thottam, Thanjavur, was taken up for consideration by the Assistant Settlement Officer (North) and Patta



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was granted. In the enquiry, the appellant/writ petitioner participated and gave information contrary to the facts found in the record. Hence, the Commissioner of Land Reforms having found that the said land in fact, classified as Government Anadeenam in the 'A' Register, it is also recorded as District Collector's Bungalow and Camp Office, initiated departmental proceedings under Rule 17(b) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules, against the officials, who colluded and granted Patta of the land classified as Anadeenam / Government Poramboke to and in favour of a private individual Napoleon, S/o.Xavier.

5. Six charges were framed against the the appellant/writ petitioner and enquiry was conducted. In the departmental enquiry, the appellant/writ petitioner was found guilty for grave misconduct and dereliction of duty, for aiding the Assistant Settlement Officer to issue Patta in favour of Napoleon for the property worth Rs.1,74,24,000/- owned by the Government. Instead of protecting the Government's property, the delinquent/appellant in the farce enquiry conducted by Assistant Settlement Officer, knowingly deposed falsely that the Napoleon is the owner of the property and recommended for issuance of Patta in favour of Napoleon.



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6. The domestic enquiry report was against the appellant/writ petitioner. Hence, a copy of the enquiry report was served on him and explanation called for. Opportunity granted to the delinquent by the disciplinary authority before passing the final order was availed by the delinquent/appellant. Thereafter, the disciplinary authority for the proven charges (3) and (6), imposed punishment of stoppage of three increments with cumulative effect.

7. P.Venkateswaran the appellant herein, challenging the charge memo, dated 18.09.2012 and the consequential order of punishment dated 09.07.2015, preferred the Writ Petition in W.P.(MD)No.16610 of 2015 and on its dismissal, had filed the present Writ Appeal.

8. The primary contention of the appellant is that he was not afforded reasonable opportunity to defend the charges and that the domestic enquiry was not conducted fairly. The explanation given by him were not considered by the enquiry officer. His further explanation to the disciplinary authority was never taken note before imposing the punishment. He was deputed to attend the enquiry before the Assistant Settlement Officer, in a short notice. He was not



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communicated with the copy of the advice note issued by the Commissioner of Land Reforms regarding non-competency of Assistant Settlement Officer/Settlement Officer to conduct enquiry under Abolition Acts and pass orders on time barred applications in respect of Government Poramboke lands, which were settled during the currency of Ryotwari settlement.

9. Further, his participation in the enquiry conducted by the Assistant Settlement Officer, was in pursuant to the communication received from the proper channel. The enquiry by the Assistant Settlement Officer was pursuant to the order dated 21.12.2011, passed by the Principal Seat of this Court in W.P.No. 28700 of 2011, filed by Napoleon. The enquiry was, therefore, not without authority, but in reverence to the order of the High Court. Therefore, it was not an intentional voluntary act to aid anyone against the interest of the Government, contrarily, it was in the course of discharge of duty as required under the law. During the relevant point of time, he was in-charge Zonal Deputy Tahsildar (1), since the post was lying vacant. On 20.01.2012 he was deputed to attend the enquiry before Assistant Settlement Officer on 23.01.2012. With the intervening weekly holiday, he had hardly any time to verify the records. It was an additional



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WEB COPY duty assigned to him, since Zonal Deputy Tahsildar post was vacant and also he was to attend the Court duty at High Court and meet the Additional Government Pleader in connection with a pending writ petition, regarding land acquisition on the said day. In the enquiry conducted by Assistant Settlement Officer along with him, the Village Administrative Officer and Town Surveyor also participated with the records. The Assistant Settlement Officer passed order on 24.01.2012, granting Patta to Napoleon and also ordered for subdivision. Accordingly, the Tahsildar made subdivision of the land. He being innocent ought not to have been penalized with stoppage of increment.

10. According to the learned Senior Counsel for the appellant, these explanations were not considered by the Secretary to Government before imposing the punishment, but mechanically concurred the unreasonable finding of the enquiry officer, without applying his mind independently.

11. The learned Special Government Pleader in response to the submissions made by the learned Senior Counsel for the appellant, submitted that the representation of Napoleon to the Director of Survey and Settlement, was



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negatived citing G.O.(Ms)No.714, Commercial Taxes and Religious Endowment Department, dated 29.06.1987. After getting the said negative reply from the Assistant Settlement Officer (South), W.P.No.28700 of 2011 was filed before the Principal Seat of this Court. While disposing of the said Writ Petition, this Court pointing out that opportunity was not given to the said Neopolen, directed the Settlement Officer to afford opportunity to Neopolen and decide his representation afresh pertaining to the delay in making representation. Whereas, the Assistant Settlement Officer, the other co-delinquent, without considering the delay aspect, with an ulterior motive, had conducted the farce enquiry, recorded the statement of the writ petitioner, who was then the Zonal Deputy Tahsildar [In-charge] and immediately, passed order in favour of Napoleon, granting Patta and also directed to effect sub-division. While passing this order in haste, contrary to the Commissioner of Land Administration's instruction and even without taking note of the enormous delay in making representation, the Assistant Settlement Officer had taken the aid and assistance of the writ petitioner, regarding his false statement suppressing the fact that the land under dispute is classified as 'Government Dry' and recorded as 'P.W.D. Bungalow – Anadeenam' in the remarks cloumn.



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12. While the record and 'A' Register indicate as above, the appellant herein had given a false evidence stating that the disputed land is on the back side of the District Collector's Camp Office. Except the land used for the purpose of exit gate of the Collector's Camp Office, remaining piece of land is vacant. Relying upon this statement, Patta has been granted to Napoleon. Therefore, the appellant herein cannot claim innocence or ignorance of the facts, which are found on the records. On review of the orders passed by the Assistant Settlement Officers / Settlement Officer, contrary to law, usurping the power of the Revenue Administration under the guise of exercising the power under the Settlement Act, the grave misconduct and dereliction of duty by public servants came to light and subsequently, the departmental proceedings was initiated. Sufficient opportunity was given during the enquiry and also before passing of final order on punishment. The representations were considered and found unsatisfactory. On taking note of the gravity of the offence and the explanation, the disciplinary authority held that Charge Nos.3 and 6 alone proved against the appellant and imposed stoppage of increment for three years with cumulative effect. The finding of guilt as well as the punishment was imposed taking into consideration



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the entire facts and the gravity of the offence, including the explanations and representations given by the delinquent/appellant.

13. Heard the learned counsels and perused the record.

14. It is a clear case of false testimony before the Settlement Officer contrary to the facts found on the record. Apart from doubtful authority of the Assistant Settlement Officer to deal with the representation of Napoleon, the manner in which the enquiry conducted and the order passed by the Assistant Settlement Officer itself shows vested interest and *mala fide* action.

15. The point under consideration in this appeal is whether before imposing the punishment of stoppage of increment for three years with cumulative effect, the delinquent/appellant was given opportunity and whether that opportunity was adequate and properly considered.

16. From the records, it is found that the delinquent/appellant had attended the enquiry proceedings initiated by the Assistant Settlement Tashildar (North),

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Chennai. The notice for enquiry, dated 06.01.2012, intimating the date of enquiry as 23.01.2012 at 04.00 p.m. at the Office of the Assistant Settlement Officer (North), Chepauk, has been informed to the delinquent/appellant through the Tahsildar, Thanjavur. Accordingly, the delinquent/appellant has attended the enquiry and deposed before him allegedly based on the records. Though he claims that the notice was very short and he had gone by the report given by the Village Administrative Officer and Surveyors, such excuse cannot be countenanced. The said excuse itself clearly shows his dereliction of duty.

17. While deposing before a quasi judicial authority, the Officer of responsibility is supposed to be conversant with the records and depose what is found in the records and files and not contrary to it. In this case, admittedly, the delinquent/appellant has deposed contrary to the entries found in the "A" Register and the remarks column. It is failure of devotion to duty, had led to issuance of Patta to a private person, who is not entitled for it. Furthermore, the land, which belongs to the Government and used as Collector's Bungalow Camp Office, has been assigned Patta to Napoleon in gross violation of law and facts. The explanations rendered by the delinquent/appellant does not address how he



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deposed that the said land is vacant and there cannot be any objection to assign Patta to Napoleon, who does not have any right or title over the property and the manner in which, he claims title also clouded with suspicion.

18. The learned counsel for the appellant harping on the decision rendered by the Hon'ble Supreme Court in **Managing Director, ECIL, Hyderabad vs. B.Karunakar and others** reported in **1993 (4) SCC 727**, emphasized that consideration of representation is a *sine qua non* for principle of natural justice. Mere affording opportunity to give representation alone is not sufficient, but the discussion about the representation is necessary to deem it as a speaking order or else, the opportunity of being heard will only be a farce exercise.

19. Referring the impugned order, the learned Senior Counsel for the appellant submitted that nowhere in the impugned order, there is a discussion about the second representation given by the delinquent/appellant except stating that the representation has been considered.



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WEB COPY **20.** On this aspect, the examination of the orders passed by the disciplinary authority scrutinized and this Court finds that though the disciplinary authority while imposing punishment, had not spoken in many words regarding the explanation, he has extracted the explanation given by him and the reasonings for not accepting the explanation has been couched in a different term and words. Particularly, the disciplinary authority had considered the 18 years of service without any blemish of the delinquent and had imposed the punishment of stoppage of increment for three years cumulatively, though the gravity of the offence warrants a capital punishment of removal from service. Application of mind is to be manifested in the decision and not by empty words. In this case, the final decision of the disciplinary authority clearly show that there was proper application of mind, which manifested through the punishment imposed proportionate to the charges proved as well as the explanation and the past track record of the delinquent/appellant.

21. In the above said facts and circumstances, this Court is not inclined to interfere with the order passed by the disciplinary authority, which has been confirmed by the learned Judge in the Writ Petition. Accordingly, this Writ



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Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes
NCC : Yes / No
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[G.J., J.] [C.K., J.]
09.01.2024

To

- 1.The Secretary to Government,
Revenue Department,
Government of Tamil Nadu,
Secretariat,
Chennai – 600 009.
- 2.The District Collector,
Thanjavur District,
Thanjavur.



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and
C.KUMARAPPAN, J.

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PRE-DELIVERY JUDGMENT MADE IN
W.A.(MD)No.1371 of 2015

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