



W.P.(MD).No.25016 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.02.2024

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THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.25016 of 2023
and W.M.P(MD) Nos.21209, 21210 of 2023

M.Ariramachandran

... Petitioner

Vs

1. The State of Tamil Nadu,
Rep. by its Special Secretary to Government,
Home (Tr-II A) Department,
St. George Fort, Chennai-600 009.

2. The Transport Commissioner,
O/o. Transport Commissioner,
Chennai- 600 005.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the 2nd respondent in his proceedings in Proc.R.No.40744/VA2/2017, dated 25.09.2023 and quash the same as illegal.

For Petitioner : Mr.M.Ajmal Khan (Senior Counsel)
for M/s.Ajmal Associates

For Respondents : Mr.John Rajadurai
Government Advocate



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nearby the table of the petitioner, for which, he was not able to give satisfactory explanation. In response to the said charge memo, the petitioner submitted a detailed explanation stating that he was not present in his seat and he was sitting in the main gangway of the office and he did not know anything about the seizure of money. Not being satisfied with his explanation, an Enquiry Officer was appointed for conducting enquiry. Having conducted an elaborate enquiry, the Enquiry Officer concluded his report that the charges framed as against the petitioner stood not proved.

(iii).Despite the finding of the Enquiry Officer that the petitioner was not involved in the said incident as alleged in the charge memo, the second respondent further issued a show-cause notice, dated 10.05.2023 against the petitioner, without assigning the reasons for differing from the conclusion of the Enquiry Officer. However, the petitioner submitted his explanation on 24.05.2023. Pursuant to the same, the second respondent vide impugned proceedings, dated 25.09.2023 imposed a punishment of stoppage of increment for two years with a cumulative effect. Challenging the same, this writ petition came to be filed.



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4.(i).The learned Senior Counsel appearing for the petitioner submitted that the impugned punishment is perse illegal and non-sustainable for the reason that the second respondent had proceeded to impose a punishment without recording reasons as to how, he deviated and disagreed with the finding of the Enquiry Officer in the capacity of Disciplinary Authority. The second respondent has proceeded to impose a punishment by simply recording that the Enquiry Officer had gone beyond the scope of enquiry, without elaborating the nature as to how he gone beyond the scope of enquiry.

(ii).The learned Senior Counsel drew my attention to the elaborate enquiry report of the Enquiry Officer, which runs to 190 pages, wherein, the Enquiry Officer had duly recorded the fact that the three persons including the petitioner were not present in the spot of seizure of alleged amount at the time of seizure. That apart, the Enquiry Officer has also categorically referring to the cross-examination of Ms. J. Roopa Gita Rani, one of the official witness, dated 11.08.2023, who had deposed that the alleged money was not directly recovered from the three Superintendents, including the delinquent/petitioner M.Arirmachandran.

(iii).The learned Senior Counsel appearing for the petitioner also drew my attention to the fact that in P.No. 118 of the enquiry report, it was



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clearly stated that there was no eyewitness, which would prove that the unaccounted money was seized from the office. Only on the basis of the evidence deposed by the various witnesses and available materials, the Enquiry Officer has concluded his report that charges framed against the delinquents including the petitioner were not proved. However, the second respondent vide show-cause notice, dated 10.05.2023 decided to proceed as against the petitioner, observing that the Enquiry Officer has gone beyond the scope of the enquiry. Thereafter, even in the impugned punishment order imposed by the Disciplinary Authority, apart from the observation made by him in the show-cause notice, he has not elaborated as to the way in which, the Disciplinary Authority deviated from the conclusion of the Enquiry Officer. On that basis, he sought for interference in the impugned order and prayed to allow the writ petition.

5.The learned Government Advocate appearing for the respondents filed a counter submitted by the second respondent and contended that the petitioner without availing the remedy of appeal, filed this writ petition. On that ground, the impugned order need not be interfered. That apart, before taking a deviated view from the report of the Enquiry Officer, the Disciplinary



Authority has called for the views of the Directorate of Vigilance and Anti-Corruption and they offered the following remarks:

“The Enquiry Officer has applied the principle of Preponderance of probability for the seizure of unaccounted money of Rs.1,52,560/-seized by the investigation authorities in various places inside the Regional Transport Office, Dindigul and concluded that there is no evidence for the seizure of amount other than the surprise check team officials. PW-1 Tmt.M.R.Kannagi, Inspection Cell Officer, Madurai is the Officer in the capacity of Deputy Collector. PW-2 is the typist who worked in the office of the Inspection Cell Officer. The Enquiry Officer has not appreciated the evidence of the Inspection Cell Officer and typist rather he general public who visited the Regional Transport Office, Dindigul for various works on the day of surprise check.

Further, it is specific in the seizure of amount Rs.4,000/- that the amount was seized under the table of the Accused Officer. Therefore, it is clear that the Accused Officer is responsible for the amount of Rs.4,000/- seized under his table. The Enquiry Officer has not appreciated the evidence of PW-1 & 2”

(ii).Having received the remarks from the Directorate of Vigilance and Anti-Corruption appreciated the fact that the Enquiry Officer had not considered the evidence of PW1 and PW2, decided to proceed as against the



petitioner and only on that basis, the impugned punishment order came to be passed. Hence, prayed for dismissal of the writ petition.

6.However, perusal of the enquiry report would reveal that the remarks offered by the Directorate of Vigilance and Anti-Corruption is incorrect. The Enquiry Officer has duly examined PW1, Ms.M.R.Kannagi and PW2, Mr.S.Ganesh, who were examined and at the time of cross-examination, both of them had confirmed that money was not seized directly from any of the delinquents including the petitioner.

7.This Court in the case of (i). ***M.Muthu Anand vs The Principal Secretary***, reported in ***2011(6) MLJ 122*** has dealt with a similar case and the operative portion is extracted as follows:

“....But if the Disciplinary Authority, instead of recording a tentative opinion with reasons, for disagreement, proceeds to hold him guilty of the charges and thereafter, issue notice to the charged official, then it is nothing but a post-decisional hearing. It should also be borne in mind that principles of natural justice require that before the disciplinary authority records his final finding on the charges, he has to examine various aspects stated supra. But, without examining the same, if the Disciplinary



Authority arrives at a final finding on the charges as proved, and thereafter, call upon the charged official to offer his further representation on the finding and also on the procedural aspects, then it is only an empty formality, for the reason, there is not only a post decisional hearing on the findings, but it is also on the procedural aspect.”

(ii).In ***M/s. Kranti Asso. Pvt. Ltd. & Anr vs Masood Ahmed Khan & Ors*** reported in ***2010(9) SCC 496*** has dealt with the case of disciplinary proceedings and the relevant portion is extracted hereunder:

51. Summarizing the above discussion, this Court holds:

- a. In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
- b. A quasi-judicial authority must record reasons in support of its conclusions.*
- c. Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.*
- d. Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.*
- e. Reasons reassure that discretion has been exercised by the decision maker on relevant grounds and by disregarding extraneous considerations.*



f. Reasons have virtually become as indispensable a component of a decision making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

g. Reasons facilitate the process of judicial review by superior Courts.

h. The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision making justifying the principle that reason is the soul of justice. i. Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

j. Insistence on reason is a requirement for both judicial accountability and transparency. k. If a Judge or a quasi-judicial authority is not candid enough about his/her decision making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism. l. Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or 'rubber-stamp reasons' is not to be equated with a valid decision making process.



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m. It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor (1987) 100 Harvard Law Review 731-737).

n. Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See (1994) 19 EHRR 553, at 562 para 29 and Anya vs. University of Oxford, 2001 EWCA Civ 405, wherein the Court referred to [Article 6](#) of European Convention of Human Rights which requires, "adequate and intelligent reasons must be given for judicial decisions".

o. In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "Due Process".

(iii).This Court has dealt with a similar case in ***W.P.No.9733 of 2014, dated 17.10.2022***, which is applicable to the facts and circumstances of this case and the same is extracted as follows:



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“6. The procedures, as contemplated under Rule 17(b) of the Rules, have been given ago-by in the instant case. A perusal of the impugned order reveals that the respondents herein had extracted the findings of the Enquiry Officer, as well as the advice of the Tamil Nadu Public Service Commission (TNPSC) and without any discussion, had imposed the major punishment. Though the impugned order of punishment runs to about 12 pages, the findings of the Disciplinary Authority is found only in the penultimate paragraph of the order. Even therein, there is absolutely no findings, except for a solitary sentence that the Government have carefully considered the enquiry report and the TNPSC's views and had decided to impose the punishment of removal from service.

7. Rule 17(b)(ii) of the Rules prescribes the procedure to be adopted by the disciplinary authority before imposing a penalty. As per the said procedure, any further representation received by the disciplinary authority, within the period prescribed in the show-cause notice, shall be taken into consideration before making any order imposing the penalty, provided that such representation shall be based on the evidences adduced during the enquiry only. In the instant case, when the Government had earlier issued a second show notice on 16.09.2010, it had accepted the findings of the Enquiry Officer with regard to charges 1 to 3 and deviated from charge No.4. No separate notice was given by the first respondent for the proposal to deviate from the Enquiry Officer's findings with regard to charge No.4.



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8. *It is a settled proposition of law that whenever the disciplinary authority intends to differ with the findings of the Enquiry Officer, the principles of natural justice require to be read into at that stage and a separate show-cause notice calling for the delinquent's objections should be given before a decision to finally disagree is taken. Furthermore, an opportunity of hearing should also be extended to the delinquent officer, in order to afford an opportunity to him to substantiate his stand.*

9. *In the case of **Yoginath D. Bagde vs. State of Maharashtra and another reported in (1999) 7 SCC 739**, this proposition was upheld by the Hon'ble Supreme Court in the following manner:-*

“29.... The rules does not specifically provide that before recording its own findings, the disciplinary authority will give an opportunity of hearing to a delinquent officer. But the requirement of “hearing” in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before the disciplinary authority finally disagrees with the findings of the enquiring authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority do not suffer from any error and that there was no occasion to take a different view. The disciplinary authority, at the same time, has to communicate to the delinquent officer the “TENTATIVE” reasons for disagreeing with the findings of the enquiring authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not germane



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and the finding of “not guilty” already recorded by the enquiring authority was not liable to be interfered with.”

10. A similar view was also taken by the Hon'ble Supreme Court in the case of **Punjab National Bank and others vs. Kunj Behari Misra** reported in (1998) 7 SCC 84, in the following manner:-

“19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7 (2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the Enquiry Officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the Enquiry Officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

11. Contrary to the procedure enunciated by the Hon'ble Supreme Court in the aforesaid two decisions, the Government had taken a final decision to deviate with the views of the Enquiry Officer and by holding charge No.4 as proved, had thereafter called for the objections from the late employee. Moreover, no opportunity of personal hearing was given to the late employee before a final decision on such deviation was



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taken. These procedures are opposed to the ratio laid down in the aforesaid decisions of the Hon'ble Supreme Court and hence, all consequential actions would necessarily stand annulled, owing to the violation of the rule position and the procedural irregularity.”

8.Despite the concrete and categorical findings of the Enquiry Officer vide report, dated 22.11.2023, all the charges framed were concluded to be disproved by the Enquiry Officer, the second respondent/Disciplinary Authority deviating from the views of the Enquiry Officer proceeded to issue the show-cause notice, dated 10.05.2023. After calling for the explanation from the petitioner, the second respondent/Disciplinary Authority has passed the impugned punishment order, dated 25.09.2023.

9.However, in the impugned order of punishment, no additional reason has been recorded by the Disciplinary Authority apart from those reasons, which has been set forth in the show-cause notice. When the Disciplinary Authority indulged to proceed as against the delinquent/petitioner, despite the fact that the set of charges were disproved in favour of the delinquent, the Disciplinary Authority ought to have recorded the reasons elaborately for taking such a deviated view from the conclusion of the Enquiry



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Officer. In the absence of the same, it would prevent the delinquent from giving an appropriate explanation to defend himself from the charges framed as against him. Such an action would amounts to violation of principles of natural justice, which would prevent the petitioner from providing appropriate explanation to prove his innocence.

9.That apart, the learned Government Advocate vehemently submitted that despite of availing the appeal remedy, the petitioner has filed this writ petition.

10.However, this Court is of the considered view that the delinquent/petitioner was denied from providing appropriate explanation to prove his innocence, the Disciplinary Authority without elaborating reasons tactfully proceeded further with the departmental action and passed the impugned order.



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11. In view of the above discussion, I hereby inclined to quash the impugned order. Accordingly, this writ petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes
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To

1. The Special Secretary to Government,
Home (Tr-II A) Department,
St. George Fort, Chennai-600009.
2. The Transport Commissioner,
O/o. Transport Commissioner,
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L.VICTORIA GOWRI, J.

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ORDER IN
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