



W.P.No.1851 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

ORDER RESERVED ON : 13.02.2025

ORDER PRONOUNCED ON : 17.04.2025

CORAM

THE HON'BLE MRS. JUSTICE N.MALA

W.P.No.1851 of 2021

and

WMP.No.2086 of 2021

B.Charles Prabhakaran

...Petitioner

Vs.

1. The Secretary to Government,
Welfare of Differently Abled Persons Department,
Secretariat,
Chennai- 600 009.

2. The Commissioner,
Welfare of Differently Abled Persons Department,
Chepauk, Chennai- 600 005.

...Respondents

Writ Petition is filed under Article 226 of Constitution of India, praying to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the 1st Respondent issued in G.O.(D).No. 46, Welfare of the Differently Abled Persons (WDA.1) Department dated 11.12.2020 and quash the same.

For Petitioner : Mr.S.N.Ravichandran

For Respondents : Mr.L.S.M.Hasan Fazil,

Additional Government Pleader



W.P.No.1851 of 2021

WEB COPY

ORDER

Writ petition is filed for issuance of a writ of certiorari, calling for the records relating to the impugned order passed by the 1st respondent dated 11.12.2020 and quash the same.

2. The petitioner was employed as an Assistant Director in the Department of Welfare of Differently Abled Persons. On 29.06.2019, a charge memo was issued to the petitioner under Rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeals) Rules, 1955, levelling five charges. The petitioner submitted his explanation to the charge memo on 26.07.2019. The 2nd respondent appointed an enquiry officer who submitted his report on 29.08.2019. Meanwhile, on the eve of petitioners retirement from service, he was issued with a suspension order dated 29.08.2019. Thereafter vide order dated 30.08.2019, on attaining the age of superannuation, the petitioner was not allowed to retire from service. Based on the enquiry officer's report, the Director of Department of Welfare of Differently Abled persons, issued a show cause notice dated 30.09.2019, calling for the



W.P.No.1851 of 2021

petitioner's explanation on the findings of the enquiry officer's report. The

petitioner on 14.10.2019, submitted his explanation to the findings of the enquiry

officer. Thereafter, on 10.01.2020, the Secretary to Government, directed the

petitioner to submit his explanation on the findings of the enquiry officer's report.

The petitioner submitted his further explanation on 13.01.2010, and pursuant

thereto, the 1st respondent issued the letter dated 23.05.2020, calling for the

petitioner's explanation to the proposed punishment. The petitioner vide his reply

dated 28.05.2020, objected to the proposed punishment. However, the 1st

respondent passed the impugned order in G.O.(D) No.46, Welfare of the

Differently Abled Persons (WDA.1) Department, dated 11.12.2020, imposing the

punishment of cut in pension of Rs.500/- per month for 12 months and recovery of

Rs.3,52,000/- from the petitioners DCRG amount. Aggrieved by the impugned

punishment, the petitioner filed the above writ petition for the aforesaid relief.

3. The respondents filed counter denying all the allegations and contentions raised in the petitioner's affidavit. The respondents submitted that based on the



W.P.No.1851 of 2021

preliminary enquiry, the disciplinary proceedings were initiated against the petitioner. The respondents submitted that after conducting a fullfledged enquiry and after affording reasonable opportunity to the petitioner, the enquiry officer submitted his report, finding that all the 5 charges against the petitioner were proved. The respondents submitted that after giving the petitioner full opportunity to submit his explanations to the enquiry officer's report and the proposed punishment, the impugned order was passed. The respondents further submitted that the Tamil Nadu Public Service Commission, after scrutinizing the relevant documents gave concurrence to the action taken by the respondents, vide letter dated 14.10.2020. The respondents therefore submitted that there was no infirmity or illegality in the disciplinary proceedings and as the charges against the petitioner were proved the punishment was imposed under the impugned order. The respondents hence prayed that the writ petition deserved to be dismissed.

4. The learned counsel for the petitioner submitted that the impugned order was vitiated and deserved to be set aside as it was a non-speaking order. The



W.P.No.1851 of 2021

learned counsel submitted that the entire disciplinary proceedings were liable to be quashed on the short ground of inordinate and unexplained delay of over 6 years in concluding the disciplinary proceedings. The learned counsel further submitted that the impugned order suffers from the vice of procedural irregularities. The learned counsel therefore submitted that the writ petition deserved to be allowed.

5.The learned counsel for the respondents on the other hand reiterated the contentions raised in the counter in support of the impugned order.

6. I have heard both the learned counsels and I have perused the materials placed on record.

7. The admitted facts are that, the petitioner was issued with a charge memo by the 2nd respondent on 29.06.2019, to which the petitioner submitted his explanation on 26.07.2019. Thereafter, the enquiry was conducted and the enquiry officer submitted his report to the 2nd respondent on 29.08.2019. Pursuant thereto,

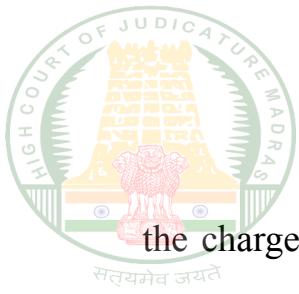


W.P.No.1851 of 2021

the 2nd respondent issued letter to the petitioner to submit his explanation to the findings of the enquiry officer which was received by the petitioner on 11.10.2019.

The petitioner submitted his detailed explanation on 14.10.2019, and after lapse of 3 months, the 1st respondent issued a letter to the petitioner on 10.10.2019, calling for his further explanation to the enquiry report. The petitioner submitted his further explanation to the said letter on 13.01.2020. Later, on 23.05.2020, the 1st respondent issued a communication to the petitioner calling for his explanation on the proposed punishment. The petitioner sent his reply on 28.05.2020, and thereafter, the impugned order dated 11.12.2020, was passed imposing the punishment of cut in pension of Rs.500/- for 12 months and for recovery of Rs.3,52,000/- on the DCRG amount of the petitioner. Aggrieved by the said order, the petitioner is before this court.

8. The first and foremost objection of the learned counsel for the petitioner against the impugned order of punishment is that it is a non speaking order. A perusal of the impugned order shows that the 1st respondent had merely referred to

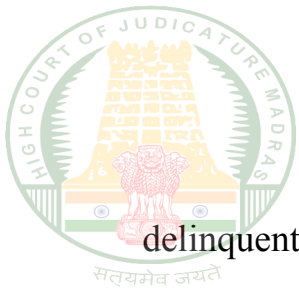


W.P.No.1851 of 2021

the charges, the explanation of the petitioner, the findings of the enquiry officer, the views of the Tamil Nadu Public Service Commission, dated 14.10.2020, and finally in Para 9 concluded that the 5 charges levelled against the petitioner were proved. The 1st respondent thereafter imposed the punishment of cut in pension of Rs.500/- for 12 months and recovery of Rs.3,52,000/- from the petitioners DCRG amount. From a reading of the entire impugned order, which runs to 12 pages, it is seen that there is absolutely no discussion on the explanations offered by the petitioner to the proposed punishment. The petitioner in his explanation dated 28.05.2020, raised several objections, few of which briefly stated, are as follows:

1. The charge memo was belatedly issued after 6 years of the incident, which took place between April 2013 and July 2014.
2. There was no mis-appropriation of Government money.
3. The preliminary and final enquiry was conducted by the same officer.
4. The charge memo was issued selectively and discriminately against the petitioner alone.

The petitioner in support of objection 4 above gave instances of 2 co-



W.P.No.1851 of 2021

delinquent officer's who were allowed to retire by waiving the charges. In my view when the petitioner raised several grounds, the 1st respondent ought to have considered the same and given cogent reasons for rejecting the same. Even without discussing any of the petitioner's objections, the 1st respondent merely stated that the records were perused and on independent scrutiny, it was found that all the 5 charges were proved. The 1st respondents failure to consider the petitioner's objections and provide reasons for rejection, in my view is a fatal flaw. Consequently, I agree with the learned counsel for the petitioner that the impugned order, is non-speaking in nature.

9. The learned counsel for the petitioner further stated that there was an unexplained inordinate delay of 6 years in initiating and concluding the disciplinary proceedings. For an incident which took place between April 2013 to July 2014, the charge memo was issued on 29.06.2019, which is 5 years after the incident. The enquiry report was submitted on 29.08.2019 and thereafter, after a lapse of one year, the impugned order was passed. It is therefore seen that there



W.P.No.1851 of 2021

was a delay of 5 years in initiating the proceedings and more than 1 ½ years in concluding the same. There is absolutely no explanation for the long delay of over 6 years by the respondents. It is also not the respondents case that the petitioner was responsible for the delay.

10. It is seen that though the petitioner in the affidavit had taken a categorical stand that the impugned proceedings were vitiated for delay and latches, the respondents did not categorically deny the same in the counter. The respondents merely stated that the petitioner had not raised the objection earlier. In my view, in the absence of any justifiable reasons for the delay, the mere fact that the petitioner had not earlier objected to the same, cannot be a ground for rejecting the said contention. In the counter, there is absolutely no denial of delay and latches. It is pertinent to note that the respondents are bound to specifically deny the averments. Mere denial for the sake of denial cannot be taken as an answer to specific allegations raised in the affidavit. When the petitioner had taken a specific stand that the entire proceedings were vitiated due to lapse of 6 years in initiating



W.P.No.1851 of 2021

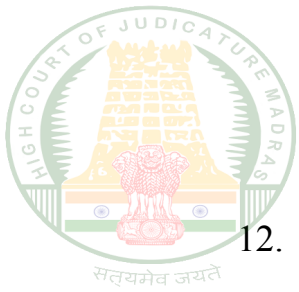
and concluding the proceedings, the respondents were bound to explain the delay.

WEB COPY

11. The Hon'ble Supreme Court in the case of *State of A.P vs. N.Radhakishan*, reported in 1998 (4) SCC 154, on the aspect of delay in disciplinary proceedings held as follows:

“19.....Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse consideration.”

So also, in the judgment of the Hon'ble Supreme Court in the case of *State of Madhya Pradesh vs Bani Singh* and another reported in 1990 Supp SCC 738, the Hon'ble Supreme Court held that in the absence of an explanation for the inordinate delay it would be unfair to permit the continuation of the disciplinary proceedings.



W.P.No.1851 of 2021

12. The Division Bench of this court in the case of *Union of India and another Vs. Central Administrative Tribunal and another*, reported in 2005 (2)

CTC 169, held that, “ *The delay remains totally unexplained. Therefore, we have no hesitation at all in concluding that the ground of inordinate delay in proceeding with the departmental enquiry as referred to above by us, would come in the way of Government to continue with the enquiry any further.* ”

I am therefore of the view that the disciplinary proceedings culminating in the impugned order of punishment cannot be sustained.

13. The learned counsel for the petitioner submitted that the entire disciplinary proceedings were also vitiated for the procedural lapses in conducting the disciplinary proceedings. It is trite that it is the bounden duty of the respondent/ employer to first lead evidence against the charged employee and thereafter, provide opportunity to the employee to cross-examine the witnesses of the employer. Only thereafter, the employee would be required to explain and lead evidence rebutting the evidence produced against him. Useful reference in this



W.P.No.1851 of 2021

regard can be made to the judgment of the Hon'ble Supreme court in the case of

State of Uttaranchal and others vs. Kharak Singh (2008 (8) SCC 236). On the

facts of this case it is seen that IV Annexures were attached to the charge memo;

Annexure III related to the documents relied on by the employer and in Annexure

IV relating to the list of witnesses, the marking was “NIL”. When the respondents

relied on certain documents, it was incumbent on them to mark and prove the

same through witnesses. Therefore in the absence of witnesses, the documents

could not have been proved. From the records, it is seen from the enquiry report,

which is annexed in the type set of papers, that the enquiry officer had merely

referred to the charges and the explanation given by the petitioner and his own

conclusions for rejecting the same. From the enquiry officer's report, it is clear that

no witnesses were examined and no documents were filed by the respondent's.

The enquiry officer based on the charges, and the explanation given by the

petitioner to the same, recorded his conclusions. In absence of any evidence by

the employer, either oral or documentary, to establish the charges against the

petitioner, merely on the basis of the petitioners explanation alone the charges



could not have been held “proved”. It is further seen that, in the letter of the 1st

respondent calling for explanation from the petitioner against the enquiry report, it

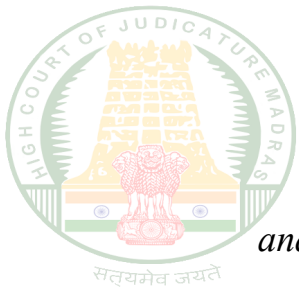
was stated as follows:

“The undersigned is directed to enclose a copy of the report of the Inquiry Officer appointed to inquiry into the charges framed in the Government letter / Memo cited against Thiru B.Charles Prabhakaran, Assistant Director, Commissionerate for Welfare of the Differently Abled, Chennai (under suspension).

2. On a careful consideration of the report of the Inquiry Officer aforesaid, the Government/ undersigned agree(s) with the findings of the Inquiry Officer in so far as it relates to the charge Nos.1 to 5 and for the reasons stated in the Annexure to this Letter holds that charge Nos.1 to 5 which the inquiry officer has held as proved.

3. Thiru B.Charles Prabhakaran is hereby given an opportunity of making further representation on the findings on the charges referred to in para 2 above.

4. If the said Thiru B.Charles Prabhakaran fails to submit his further representation within 15 days from the date of receipt of this letter it will be presumed that he has no representation to make



W.P.No.1851 of 2021

and further action will be taken on merits of the case.

WEB COPY

5. The receipt of this letter should be acknowledged.”

From a reading of the aforesaid letter calling for explanation on the enquiry officer's report, it is clear that the respondent predetermined the issue by holding that charges 1 to 5 were proved. Therefore the issuance of the letter was, as rightly contended by the petitioner's counsel, a mere formality. I therefore find that the disciplinary proceedings suffer from procedural lapses.

14. The learned counsel further submitted that the impugned order was vitiated for not furnishing the copy of the report of the Tamil Nadu Public Service Commission, which was relied on by the respondents in the impugned order. I find force in the submissions of the learned counsel for the petitioner in this regard.

15. In the impugned order, the respondent relied on the report submitted by the Tamil Nadu Public Service Commission. When the respondent relied on the said report, in all fairness, he ought to have given a copy of the report to the



W.P.No.1851 of 2021

petitioner. A document secured behind the back of the delinquent employee cannot be relied on. The petitioner was entitled to a copy of the Tamil Nadu Public Service Commission's report and non furnishing of the same to the petitioner, moreso, when the same is relied in the impugned order, amounts to gross violation of principles of natural justice. I therefore find that the impugned order cannot be sustained on this ground also.

16. In the light of the above discussions, I am of the view that the impugned order deserves to be set aside, on the grounds that it is non speaking order and lacks application of mind, for procedural lapses and unexplained and inordinate delay of 6 years, in concluding the disciplinary proceedings.

For all the above reasons, I find merit in the writ petition and hence, the same is allowed. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

17.04.2025

Index: Yes/No

Speaking Order: Yes/No

15/17



W.P.No.1851 of 2021

Neutral Citation: Yes/No

dsn

To

1. The Secretary to Government,
Welfare of Differently Abled Persons Department,
Secretariat,
Chennai- 600 009.

2. The Commissioner,
Welfare of Differently Abled Persons Department,
Chepauk, Chennai- 600 005.



WEB COPY



W.P.No.1851 of 2021

N.MALA,J.

dsn

Pre-Delivery Order in W.P.No.1851 of 2021

Order Pronounced on 17.04.2025