

(2011) 12 MAD CK 0039
In the Madras High Court
Case No : Writ Petition (MD) No. 2648 of 2011

A. Majeed

APPELLANT

Vs

The Member Secretary, Tamil Nadu Pollution Control Board,
No. 76, Mount Salai, Guindy, Chennai-600032 and The
Chairman, Tamil Nadu Pollution Control Board, No. 76, Mount
Salai, Guindy, Chennai-600032

RESPONDENT

Date of Decision : 21-12-2011

Acts Referred:

Constitution of India, 1950 — Article 311
Tamil Nadu Government Servants Conduct Rules, 1973 — Rule 20
Tamil Nadu Pollution Control Board (Discipline and Appeal) Rules, 1988 — Rule 12, 19,
8(1), 8(2)

Citation : (2011) 12 MAD CK 0039

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : A. Thirumurthy, for the Appellant; D. Elaman, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice K. Chandru

1. The petitioner has filed the present Writ Petition challenging the order dated 03.01.2011, by which, his application for revision challenging the order of the appellate authority was rejected. The petitioner's request to cancel the demotion to a lower post by way of penalty was not acceded to. Hence, the petitioner has come up with the present Writ Petition for the reliefs stated earlier.

2. When the Writ Petition came up for admission on 07.03.2011, notice regarding admission was ordered. On notice from this Court, the respondents have filed a counter-affidavit dated 20.07.2011.

3. The case of the petitioner was that he was employed as a basic servant in the respondents-Tamil Nadu Pollution Control Board. He was appointed with effect from 18.04.1984 as an Office Assistant. Thereafter, his service was regularized

by a subsequent order dated 10.01.1989. The date of regularization was with effect from the date of entry, viz., 18.04.1984. His probation was also commenced from 18.04.1988 and he was posted to work at the District Environmental Engineer's Office at Madurai. The petitioner's probation was completed on 17.04.1985. Subsequently, he was promoted as Record Clerk on 08.02.2001. The petitioner was placed under suspension under Rule 8(1) of the Tamil Nadu Pollution Control Board (Discipline and Appeal) Rules with effect from 08.02.2001. Thereafter, a charge memo was made under Rule 8(2) of the same Rules.

4. The charges levelled against the petitioner, as found in the annexure to the charge memo, were two fold. The petitioner was accused of going to various factories during the Deepavali period and was receiving gift for the past two years and this information was received by the Joint Chief Environmental Engineer, Madurai. It was also stated that the service register was analyzed for the period from 1994 to 2000. At the time of every Deepavali festival, he had applied for leave. Therefore, he was accused of violating Rule 20 of the Tamil Nadu Government Servants Conduct Rules.

5. In the annexure-2 to the charge memo, his leave particulars for the year 1994 to 2000 was listed out. The leave for those seven years were sometimes taken on earned leave, sometimes on unearned leave on medical certificate. In the annexure-4, it was indicated that no witness was to be examined in respect of the charges. In the annexure-3, the only basis for enquiry was service record relating to leave particulars.

6. Pursuant to the charge memo, the petitioner sent an explanation dated 05.10.2001 stating that he is a diabetic patient and each time, the leave was taken only on medical ground and so far, he had taken several times leave on medical grounds. He denied the allegation that during the Deepavali, he had gone to various factories to receive the festival gift. He also enclosed the particulars regarding the leave taken by him on various periods even other than during Deepavali festival. The petitioner was asked to appear in the Office of Joint Chief Environmental Engineer, Madurai on 04.01.2002. But the petitioner did not appear. Thereafter, he was, once again, asked to appear on 25.02.2002 in the Joint Chief Environmental Engineer's Office at Coimbatore. On that day, the petitioner appeared and at that time, the Assistant Environmental Engineer, Coimbatore, by name Ashokan was present. During the said enquiry, the petitioner was asked as to whether he wanted to say anything orally. The petitioner replied that he do not want to say anything orally other than his explanation. It was recorded by the Joint Chief Environmental Engineer (by name V. Ganesan) that the petitioner was unable to give any explanation.

7. It was further recorded that during the leave taken from 11.10.2000, it was found that one Dhanasekaran, a General Assistant went to the house of the petitioner on 16.10.2000 and 17.10.2000. His wife informed him that the petitioner was not at home and she does not know where he has gone. When a

memo was given to him on 27.11.2000, by the office of the Joint Chief Environmental Engineer, he replied on 04.12.2000 that he was not at home at the relevant time. He was also gone out of station. At that time, he had taken leave on account of jaundice and it requires rest. Had he been really affected by jaundice, even if he had gone for any other doctor, he would not have gone out without informing his wife. Therefore, he recorded that it was a normal practice of the petitioner to take leave during Deepavali and it has been proved beyond doubt.

8. In the light of the above and since complaints were received from telephone that he had gone to various factories during the Deepavali period seeking for gift/mamool, the charges were proved to the extent that he had misused the medical leave and that he was not found in the house or in the station.

9. Thereafter, the petitioner gave a further explanation denying the charges. In fact, he has made an accusation against the enquiry officer stating that he was prejudiced against the petitioner and that the enquiry officer should be changed. This request was given during the staff grievance redressal held at the Chennai office. Notwithstanding the explanation, the first respondent, by an order dated 04.03.2003, reverted the petitioner from the post of Record Clerk to the post of Office Assistant. In that order, he had stated that his explanation was not acceptable. Therefore, he will be reverted to a lower post carrying a lower scale of pay. The petitioner was informed that if he so desires, he can file an appeal to the Chairman of the Tamil Nadu Pollution Control Board under Rules 12 and 19 of the Tamil Nadu Pollution Control Board (Discipline and Appeal) Rules.

10. Pursuant to the same, the petitioner sent an appeal dated 30.04.2003 claiming that the charge memo was based upon mere presumption and there was no legal basis. The Chairman of the Tamil Nadu Pollution Control Board, by her order dated 04.03.2004, dismissed the appeal and fixed the date for demotion from 04.03.2003 to 03.03.2006. The petitioner sent a further appeal to the Board on 01.06.2004. The matter was placed before the Board in its meeting held on 27.08.2004 and since no new reasons were stated, the appeal to the Board was rejected. Thereafter, the petitioner sent a detailed revision petition to the Board containing 24 pages. In the revision petition, he had raised the issue that there was no material to hold the petitioner's guilty of the charges. In fact, there was a newspaper publication against one officer that he was getting drenched in mamool collections by contacting directly the factory managements. During Deepavali season, he had intensified his collection. Instead of taking action against such officer, that officer himself was being made as the enquiry officer. It was an irony. He also stated that during the suspension period, he was not paid subsistence allowance properly and he has been put under great handicap in defending himself. He further stated that the conclusions are not based upon any enquiry, but merely based upon surmises and conjectures.

11. In the counter-affidavit filed by the respondents, it was stated that a complaint was received by the Joint Chief Environmental Engineer, Madurai about

the petitioner demanding money during Deepavali period. After availing medical leave, he did not stay in the house and out of station. The disciplinary authority has examined the charge memo and the report of the enquiry officer as well as the other records and thereafter, passed the final orders and the Service Register showed that he has applied for ML and EL.

12. It is rather surprising that the Tamil Nadu Pollution Control Board, which is the statutory authority having battery of lawyers and a legal cell, passed an order, which is totally opposite to all principles of natural justice and fair play. The charges levelled against the petitioner were two fold. One was to avail leave on false grounds and the second was during the leave period, he had made contacts with various factory Management and demanding Deepavali mamool. With reference to the charge of contacting various factory managements and demanding mamool, there was no proof except that a telephone message was received. In fact, a person, who made the complaint, himself has become the enquiry officer. Even for that, no telephone registers were produced and the messages received from the so-called complaints were recorded. Even if any such records were kept, that can only be a hearsay and cannot be a substantive proof of the petitioner having demanded mamool. When the enquiry officer himself never said that the first part of the charge was proved, it is unthinkable as to how the respondents-Tamil Nadu Pollution Control Board can hold that during the leave period, he had made mamool demands.

13. Insofar as the second charge was concerned, the enquiry report itself revealed one incident which had happened in the year 2000 and not during November and December 2000. Mere analysis of the service record relating to the leave taken alone cannot bring any misconduct. Even though leave was sanctioned by the Board at the relevant time, no action was taken rejecting his leave application. Having sanctioned the leave on the basis of medical certificate, the respondents cannot presume that the leave availed was bogus intended to achieve some other purpose. Further, the said charge of misuse of leave was sought to be proved by the visit of one Dhanasekaran, the General Assistant to the house of the petitioner. Even if such an Assistant had visited his house on two days and the wife of the petitioner had informed that she was not aware of the place to which the petitioner had gone, that by itself cannot be a ground to presume that the leave availed was misused or requested on a false pretext. The finding that if the petitioner had gone to some other doctor for treatment, certainly his wife would have known about it and, therefore, the leave requested for undergoing treatment for jaundice was taken on a false pretext is a perverse finding and not borne out by records. It was purely based on surmises and conjectures. A suspicion cannot be raised a develop of proof. The larger question whether an every leave for over a period of six years was only availed for certain various motives cannot be proved by examining the leave request during taken in the month of November and December 2000. It is surprising as to how such an elementary approach was adopted by the Board, though the petitioner had appealed to them more than once.

14. As to what constitutes an elementary principles of conducting enquiries came to be considered by the Supreme Court, vide its judgment in *Meenglas Tea Estate Vs. Its Workmen*, and in paragraph No.4, it was held as follows:

4.....It is an elementary principle that a person who is required to answer a charge must know not only the accusation but also the testimony by which the accusation is supported. He must be given a fair chance to hear the evidence in support of the charge and to put such relevant questions by way of cross-examination as he desires. Then he must be given a chance to rebut the evidence led against him. This is the barest requirement of an enquiry of this character and this requirement must be substantially fulfilled before the result of the enquiry can be accepted. A departure from this requirement in effect throws the burden upon the person charged to repel the charge without first making it out against him....

15. Thus, even the minimum elementary principle of conducting an enquiry was not followed in the case of the petitioner. It was only the petitioner who was questioned by the so-called enquiry officer without there being any further proof, except the service record showing the details of leave particulars. It must be noted that every time when the leave was sanctioned, it was supported by medical certificates. Unless those leaves were cancelled, the question of proceeding against the petitioner for availing leave will not arise.

16. With reference to contacting various factory managements during the Deepavali season demanding mamool, absolutely there was no evidence. The leave for seven years during Deepavali time has been taken as a basis for proving the first portion of the charge of demanding mamool during deepavali period by the petitioner. It is not clear as to how that could be a substantive evidence in respect of the first charge. On the other hand, the petitioner, in his explanation, stated that during his tenure of service for nearly two decades, he has taken 75 times leave on medical grounds and they were sanctioned. Since the respondents have imposed a major penalty of demotion to a lower post, certainly it requires an enquiry in accordance with the procedure for imposing a major penalty. In the present case, except cross-examining the petitioner, no other evidence was let in. Even Dhanasekaran, the General Assistant was not examined and the proof for having received the complaint from factory management was also not produced.

17. When a person is reverted to a lower post on charges of misconduct, whether it required conducting of an enquiry came to be considered by the Supreme Court in *Parshotam Lal Dhingra Vs. Union of India (UOI)*, wherein in paragraph No.28, the Supreme Court had observed as follows:

28.....If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of the rules and

Article 311, which give protection to Government servant have not been complied with, the termination of the service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant.

18. Further, the Supreme Court in P.C. Wadhwa Vs. Union of India (UOI) and Another, had held in paragraph No.19 as follows:

19....If on a consideration of those factors the conclusion is that the reduction is by way of punishment involving penal consequences to the officer, even though Government has a right to pass the order of reduction, the provisions of Article 311 of the Constitution are attracted and the officer must be given a reasonable opportunity of showing cause against the action proposed to be taken against him. Our conclusion is that in the present case the appellant was reverted by way of punishment, but he was given no opportunity of showing cause against the action proposed to be taken against him. Therefore, the order of reversion dated November 3, 1958 was in violation of the provisions of Article 311 of the Constitution.

19. On the question of desirability of conducting an enquiry even in case of a false declaration for securing an appointment came to be considered by the Supreme Court in Kamal Nayan Mishra Vs. State of Madhya Pradesh and Others, and in paragraphs 23 and 24, the Supreme Court had held as follows:

23. We also find from an examination of the terms of the attestation form that termination without notice or inquiry was contemplated only in the context of furnishing false information in and around the time of the appointment. Note (1) of the preamble warns that:

the furnishing of false information or suppression of any factual information in the attestation form would be a disqualification and is likely to render the candidate unfit for employment.

Similarly, the certificate at the end of the attestation form states that:

I am not aware of any circumstances which might impair my fitness for employment under the Government. I agree that if the above information is found false or incomplete in any material respect, the appointing authority will have a right to terminate my services without giving notice or showing cause.

Be that as it may.

24. The termination of the appellant without an inquiry or hearing was illegal and invalid.....

20. In view of the above, the Writ Petition is allowed with costs. Cost quantified at Rs.5,000/-[Rupees five thousand only] payable by the respondents to the petitioner. Cost is imposed, only because the respondents having huge establishment of a legal cell and number of legal advisors, cannot conduct farce of an enquiry and impose a major punishment. The respondents are hereby directed to restore the petitioner to the post of Record Clerk from the date of his

suspension and pay all the consequential monetary benefits. The said exercise shall be carried out by the respondents, within a period of eight weeks from the date of receipt of a copy of this order.