

**(2001) 09 MAD CK 0133**

**In the Madras High Court**

**Case No :** Writ Petition No's. 756 of 1993 and 16604 of 1998

A. Raghavan

APPELLANT

Vs

Tamil Nadu Civil Supplies Corporation Ltd.

RESPONDENT

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**Date of Decision :** 07-09-2001

**Acts Referred:**

Tamil Nadu Civil Supplies Corporation Limited Employees Service Regulations, 1989 — Rule 4

**Citation :** (2001) 09 MAD CK 0133

**Hon'ble Judges :** V.S. Sirpurkar, J

**Bench :** Single Bench

**Advocate :** S. Venkataraman, for the Appellant; V. Perumal, for the Respondent

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## **Judgement**

V.S. Sirpurkar, J.—The Petitioner herein challenges the punishment awarded to him, reverting him to the post of Packer for one year.

2. The following facts will help us to understand the controversy:

The Petitioner was working as a Bill Clerk. He came to be appointed at a godown at Thiruvannamalai, run by the first Respondent/Tamil Nadu Civil Supplies Corporation. Probably, he arrived there on account of transfer and joined duty at Thiruvannamalai godown on 28.06.1984. Barely few days thereafter, the said godown was inspected etc., In that inspection, number of irregularities were found and therefore, a charge memo came to be served to the Petitioner on 20.09.1984. His explanation was asked for and thereafter an additional charge memo came to be served on 16.05.1985. He gave his explanation to the additional charge memo also and ultimately he came to be dismissed on 25.11.1988 after an enquiry. The said enquiry was set aside by this Court on technical ground on 23.08.1990 and a fresh enquiry was directed to be held.

3. It seems that in that enquiry, the enquiry officer was the General Manager (Quality Control). It seems that during the earlier enquiries, the Petitioner had made as many as four representations, they being on 05.03.1993, 20.06.1993,

03.07.1993 and 09.07.1993. He immediately made his next representation on 16.05.1993. It is a detailed representation. In his earlier representations, he had claimed the assistance of the legal practitioner. He had also demanded that a list of witnesses in support of the charges should be supplied to him, so that he is able to cross-examine the witnesses, if necessary. He has also demanded the documents, which were mentioned in support of the charges framed against him. He pointed out in the last representation dated 16.05.1994 that there is no compliance made and that the representation had remained unanswered. The representation goes further and also points out that some 18 persons working were required to be called as witnesses as their cross-examination was felt necessary by the delinquent/Petitioner. He also gave the reasons as to why the said witnesses were necessary to be cross-examined. All this seems to have been fallen on the deaf-ears and thereafter, on the same day, i.e., on 16.05.1994, the enquiry seems to have proceeded wherein an order was passed by the enquiry officer, wherein he has put in the minutes as to what had happened on 16.05.1994. There is a clear reference in the minutes that the delinquent had required the presence of some witnesses. He also insisted on the supply of the documents. What is pointed out in the minutes is that seven volumes were made available to the Petitioner for perusal without suggesting as to what these seven volumes were and what they pertained to. It is then mentioned that as many as Four Registers were demanded by the Petitioner and those registers were also made available to him and therefore it is minuted that the Petitioner was not prepared to go on with the further enquiry.

4. It seems that on the basis of the so called enquiry, the enquiry officer went on to draft an enquiry report, which was served to the Petitioner by the Senior Regional Manager by his communication dated 02.08.1994. It seems that on that basis, the delinquent Petitioner gave a further representation wherein he reiterated all his earlier demands. In the further explanation, he has given the whole history and he has also mentioned the fact that he had worked for a very negligible period and that he could not have been held as responsible for the lapses. He also expressed in paragraph 4 that since all other delinquents were dismissed from service, his dismissal was also a foregone conclusion. He reiterated again that he had demanded four registers, which were never supplied to him and thereby caused great prejudices. He pointed out that the enquiry officer had rejected the demands and the prayers made by the delinquent during the enquiry. He, thus specifically pleaded the case of noncompliance with the principles of natural justice, during the enquiry. He pointed out that he has been consistently demanding the documents as also the list of witnesses, which were studiously avoided to be supplied to him. He also pointed out in paragraph 7 that it was not possible to him to find out the material from the seven volumes which were just produced on 16.05.1994. He pointed out that he was not furnished with the entire documents and was never given an opportunity to understand as to in what manner, they were discriminating documents. He pointed that in the enquiry report, it was strangely observed that it was upto the delinquent to prove

certain things. A detailed complaint was given that on the day when the enquiry was allegedly held not a single witness was examined nor a single document was exhibited. He also made a complaint in this that there was non-compliance of Rule 4 of Chapter V of the Tamil Nadu Civil Supplies Corporation Limited Employees' Service Regulations, 1989 (hereinafter referred to as "TNCSC Regulations") lastly in paragraph 17, he pointed out that the enquiry officer who was appointed was senior person and superior officer as compared to the disciplinary authority since the enquiry officer was the General Manager while the disciplinary authority was the Senior General Manager. He therefore contended that the enquiry report should have been made available to some superior authority like the Chairman-cum-Managing Director and not to subordinate officer like the senior Regional Manager. Thus, he pleaded that there was no question application of free mind to the further explanation and the enquiry report by the disciplinary authority.

5. It seems that by the order dated 19.09.1996 the disciplinary authority i.e., the Senior Regional Manager found him guilty and awarded the punishment of reversion from the cadre of Bill Clerk to the lower cadre of Packer for a period of one year. The Petitioner was then ordered to be re-instated and further ordered to be posted as Packer.

6. An appeal came to be filed by the Petitioner herein. The appeal was decided by the General Manager (Administration), by his order dated 13.08.1998 and the appeal was dismissed. The enquiry proceedings, the orders passed thereupon and the appeal order are challenged by the Petitioner in the present case.

7. learned Counsel for the Petitioner firstly drew my attention towards Rule 4 of TNSCS Regulations which pertains to the procedure to award major penalties. It is pointed out that in the first part of the rule, it was imperative that the delinquent against whom the enquiry is instituted should be given a memo regarding the basis of the charge and such memo should also quote the relevant rules and the instructions. It is further provided in this Rule that the delinquent informed of the list of documents relied upon as the basis of the charge the list of witnesses whose versions were also form the basis of the charge & the list etc., charges and then the delinquent is required to furnish the list of witnesses for his defense -

8. learned Counsel for the Petitioner points out with reference to the Charge Memo that all this is conspicuously absent. learned Counsel then drew my attention to the Charge Memo dated 20.09.1984 as also to the Additional Charge Memo dated 16.05.1985. A perusal of these charge memos does not suggest either the list of the witnesses having been supplied nor do they refer to the documents which are proposed to be relied upon in the Departmental enquiry. learned Counsel for the Petitioner thus points out that the basic guidelines of Rule 4 were flouted. He than points out that there are umpteen representations made and yet the said lists were not supplied to the Petitioner at any point of time.

9. Mr. V. Perumal, learned Counsel appearing for the Corporation however suggests that in fact, it was for the delinquent to see the documents, which were produced at the time of enquiry in Seven Volumes. It is really strange that inspite of the number of reminders, the concerned authority should have not either supplied the delinquent with the list of witnesses or the list of documents relied upon. After all, the Seven Volumes which were not supplied to him and kept present at the time of enquiry could have not been said to be the documents relied upon. It was imperative that some documents should have been specifically mentioned.

10. It is therefore obvious that Rule 4 of TNCSC Regulations has been observed only in its breach. Mr. Venkataraman, learned Counsel for the Petitioner also pointed out that even on the earlier occasion, this Court had entertain the writ petition filed against the punishment of dismissal, wherein the Court had found that the Petitioner was not given any adequate opportunity to represent his case. In as much as he was not furnished with all the relevant documents and to enquiry was conducted as per the Rules.

11. Be that as it may, atleast, when the enquiry was held afresh, the Corporation could have supplied the documents as also the list of witnesses to the delinquent which is obviously not done. It has therefore to be said that even on the second occasion, the enquiry officer has failed in his duty. So also, the disciplinary authority has also failed in his duty in supplying the defective charge memo, sans a list of witnesses or the list of documents relied upon.

12. As if this is not sufficient, there is another one ghastly error committed by the Chairman cum Managing Director i.e., the appointment of an officer, who is higher in status to the disciplinary authority. In this case, the disciplinary authority was the Senior General Manager. It is obvious that the Charge Memo has been filed by him against the delinquent/Petitioner. It is really surprising that an officer who was superior in rank like the General Manager (Quality Control) should have been appointed as an enquiry officer. The very look of the Rule 4 suggests that the disciplinary authority has to take into account the enquiry report as also the further explanation submitted by the delinquent regarding the enquiry report. It is upto the disciplinary authority to agree and at times, the disciplinary authority can even disagree with the findings and reject them if he does not agree with those findings. Now, here if the findings were recorded by a superior officer like the General Manager (Quality Control), one wonders what discretion was the Senior General Manager left with to freely appreciate the enquiry report and to consider the further explanation of the delinquent.

13. This question was also put before the Appellate Authority and the appellate authority has simply brushed aside the question by saying that there was likelihood of no prejudice. It may be true that the General Manager (Quality Control) may have no concern with the establishment section or the general administration as such, but the fact remains and always remained that in the same organisation he was working as a General Manager and it was the report of

the General Manager, that the Senior Regional Manager, who was definitely a subordinate officer, had to appreciate. There was definite likelihood of prejudice on this account alone. The Senior Regional Manager could not have appreciated the enquiry report with the free mind. Be that as it may, we do not find as to why the extraordinary step was taken by Chairman cum Managing Director, at least there is no explanation offered in the counter.

14. The only explanation tried to be given by the learned Counsel is that this was a fraud involving a sum of Rs. 22,00,000/- and therefore, the enquiry was directed to be conducted by the General Manager (Quality Control). There was no difficulty in appointing the General Manager (Quality Control) as an enquiry officer and all in that case, the enquiry report should have been sent to the Superior Officer for further action. The report should have been sent atleast to a co-ordinate officer, instead it was sent to an inferior officer. This is patently against Rule 4 of the TNCSC Regulations and the specific language in as much as the Rules Specifically says that

The competent authority to impose the major penalty thereon shall appoint an enquiry officer, immediately subordinate to him (punishing authority) to conduct an objective enquiry into the charges in the presence of the delinquent.....

15. Therefore in spirit, Rule 4 of the TNCSC Regulations requires an inferior officer to hold an enquiry and report to the superior officer who is the disciplinary authority. Exactly reverse has been done in this case. Therefore, this Court is constrained to hold that the whole proceedings suffer from illegality of various kinds. this Court quashes the enquiry report as well as the proceedings as well as the subsequent order awarding punishments.

16. It is reported that the Petitioner has already retired. It is also reported that in another proceedings, he has been allowed to retire compulsorily. In that view, there will be no direction to hold fresh enquiry.

17. In the result, the Petitioner succeeds in this writ petition and the same is allowed and the Rule is made absolute.

W. P. No. 756 of 1993: 18. In this writ petition, it is doubtful as to whether recovery order has been communicated against the Petitioner separately.

19. The Petitioner has challenged the order of recovery dated 14.06.1992 which does not purport to have been passed against him, but against some named persons. The recovery is ordered against some other persons. Mr. S. Venkataraman, learned Counsel for the Petitioner says that there is no such recovery order against the Petitioner herein. The Government Pleader also could not show any such order. In that view, there is no cause of action for the petition. Therefore, the petition is disposed of without being decided one way or the other regarding the liability of recovery, if there is an order passed against the Petitioner.

20. As there is no cause of action presently against the Petitioner, the petition

cannot be proceeded and this petition is disposed of. No costs.