

(2016) 07 MAD CK 0110

In the Madras High Court

Case No : W.P. No. 7852 of 2015 and M.P. Nos. 1 & 2 of 2015 and W.M.P. No. 4373 of 2016

B.V. Surendra Sha

APPELLANT

Vs

The Secretary to Government Municipal Administration

RESPONDENT

Date of Decision : 11-07-2016

Acts Referred:

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17(a)

Citation : (2016) 6 MLJ 270

Hon'ble Judges : B. Rajendran, J.

Bench : Single Bench

Advocate : Mr. Jayaprakash Narayanan Senior Counsel for Mr. T. Ranganathan, Advocate, for Petitioner; Mr. S. Gunasekaran, Govt. Advocate, for Respondents

Final Decision : Allowed

Judgement

B. Rajendran, J.—This Writ Petition has been filed challenging the impugned orders passed by the 2nd respondent in Roc. No. 53108/2011/C4 dated 24.01.2012 and the consequential orders passed by the 1st respondent in G.O. (D) No.549 Municipal Administration and Water Supply Department dated 4.11.2013 and in G.O. (D) No. 376 M.A. & W.S. Department dated 7.10.2014.

2. Learned counsel for the petitioner submitted that while the petitioner was working as a Commissioner, Perambalur Municipality, the 2nd respondent in Roc. No. 53108/2011/C4 dated 08.12.2011 issued a Show Cause Notice under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955. Vide explanation dated 26.12.2011, the petitioner denied the charges. However, the said explanation was not considered by the disciplinary authority and vide order dated 24.01.2012, the 2nd respondent imposed the punishment of stoppage of increment for six months without cumulative effect. Challenging the same, the petitioner preferred an appeal before the 1st respondent on 31.03.2012 but the same was rejected. Hence, the petitioner filed a Review Petition dated 12.03.2014 before the Revisional authority. The same was also dismissed and

the 1st respondent issued G.O. (D) No. 376 MA & WS Department dated 07.10.2014 confirming the punishment of stoppage of increment for 6 months without cumulative effect. Aggrieved by the same, the petitioner has filed this Writ Petition, challenging all the three orders.

3. Learned counsel further submitted that during the pendency of the writ petition, a panel for the post of Selection Grade Municipal Commissioner for the year 2015-16 is being prepared and since the respondents are trying to exclude the name of the petitioner, on the ground that the currency of punishment is within the check period, the petitioner has also filed W.M.P. No. 4373 of 2016 seeking for a direction to consider his name for promotion as Selection Grade Municipal Commissioner without reference to the said punishment of stoppage of increment. It is further submitted that on completion of the minor punishment of stoppage of increment for six months without cumulative effect, the petitioner was given the next promotion as Municipal Commissioner Grade-I by the 1st respondent vide his orders dated 28.09.2013. While so, the check period cannot be an impediment for the second level of promotion for the petitioner as a Selection Grade Municipal Commissioner.

4. The challenge made by the learned counsel for the petitioner is mainly on the ground that following the original authority, either the Appellate authority or the Revisional authority has not considered the explanation offered by the petitioner. Even though, the punishment imposed is minor, under Tamil Nadu Civil Services (Discipline and Appeal) Rules, the Disciplinary authority had to give a finding before imposing the punishment. In this case, right from the Disciplinary Authority there is no explanation as to why the explanation given by the petitioner has not been considered. In this connection, learned counsel would also rely upon the judgment of this Court in the case of S. Karuppaiah v. Director of Rural Development, Chennai, reported in (2010) 4 MLJ 483, for the proposition that once an order is passed by the authority without considering the explanation, it has to be set aside. To substantiate his contention that the impugned order should contain proper reasoning, so as to make aware on what ground the appeal has been rejected, learned senior counsel would rely on the judgment of the Hon'ble Supreme Court reported in [2008] 16 VST 181 (SC), Steel Authority of India Limited v. Sales Tax Officer, Rourkela-I Circle and others. Since the petitioner is the senior most Grade I Municipal Commissioner, eligible for promotion to the post of Selection Grade Municipal Commissioner and this minor punishment should not be considered as an impediment to his next promotion, the petitioner is before this Court.

5. Heard both sides.

6. It is found that the only ground of attack is that the orders passed by the authorities lack explanation, for which we have to analyse the orders passed by the Disciplinary authority and the other orders passed by the Appellate and Revisional authorities. The grounds for which he was charged is only for not attending an office meeting. Although as per records the petitioner has given a

detailed explanation for not attending the meeting, the ultimate resultant portion of the order reads as follows :

"After examining the charges framed against the Delinquent Officer, his explanation and connected records, it is clear that the individual had taken belated action in the execution of scheme works and he had not attended the Collector's Meetings as and when called for. Hence, the explanation given by the Delinquent Officer is not accepted. Therefore, it is construed that the charges framed against Thiru B.V. Surendra Sha, Municipal Commissioner, Perambalur is held proved. For the proven charges, the individual is awarded a punishment of stoppage of next increment for six months without cumulative effect.

The above punishment is exclusive of any leave period during the period of punishment and it shall not affect his pension"

Against which he preferred an appeal and the Appellate authority has passed the following order :

jpU/ gp/tp/Rnue;jpu c&h. Kd;dhs; efuhl;rp Mizau;. bguk;gY}u; efuhl;rp mtu;fspd; nky;KiwaPl;oid muR bjhlug[ila Mtz";fSIDk;. nju;thizaj;jpd; fUj;Jf;fSIDk; Rakhft[k;. ftdkhft[k; Ma;t[bra;jj/ Ma;t[f;Fg;gpd; efuhl;rp epu;thf Mizauhy; th";fg;gl;l mLj;j Cjpa cau;tpid jpuz;l gadpd;wp MW khjj;jpw;F epWj;jp itj;jy; vDk; jz;lidia vjpu;j;J jpU/ gp/tp/Rnue;jpu c&h. Kd;dhs; efuhl;rp Mizau; mtu;fs; muRf;F mspj;j nky;KiwaPl;oid rhukw;wjhf fUjp epuhfupf;fyhk; vd Kot[bra;J mt;thnw muR MizapLfpwJ

The revisional authority has also denied consideration and passed the following order :

jpU/ ngh/tp/Rnue;jpu c&h. Kd;dhs; efuhl;rp Mizau;. bguk;gY}u; efuhl;rp mtu;fspd; kW Ma;t[kDtpid muR bjhlug[ila Mtz";fSIDk;. Rakhft[k;. ftdkhft[k; Ma;t[bra;jj/ Ma;t[f;Fg;gpd; jpU/ ngh/tp/Rnue;jpu c&h. Kd;dhs; efuhl;rp Mizau; mtu;fs;. muRf;F mspj;j kW Ma;t[kDtpid rhukw;wjhf fUjp epuhfupf;fyhk; vd Kot[bra;J mt;thnw muR MizapLfpwJ/ nkYk; nkny ,uz;lhtjhf gof;fg;gl;l bray;Kiwapy; efuhl;rp epu;thf Mizauhy; th";fg;gl;l mLj;j Cjpa cau;tpid jpuz;l gadpd;wp MW khjj;jpw;F epWj;jp itj;jy; vDk; jz;lid cWjp bra;ag;gLfpwJ

7. On a careful reading of all the three orders, it is found that the conclusion has been arrived by the Authorities, by simply placing the narration of the facts. As rightly pointed out by the learned senior counsel appearing for the petitioner, either in the appellate order or in the revisional order, no reasoning has been given as to why the explanation of the petitioner has not been accepted or acted upon and in what way the order passed by the disciplinary authority is accepted. In this connection, learned senior counsel has also rightly referred to the order cited supra, wherein, in paragraphs 16, 17 and 18, it has been observed as follows :

"16. The learned counsel for the petitioner also brought to the notice of this Court a decision of this Court rendered by a learned single Judge and reported in

(Nawabkhan v. Superintendent of Police, Chengai MGR East District, Chennai and another) (2008) 7 MLJ 1275. In that judgment, it was held that neither the disciplinary authority nor the appellate authority have given any cogent reasons for coming to the conclusion that the charges against the petitioner had been proved and therefore the disciplinary proceedings are vitiated.

17. In this case, neither the disciplinary authority nor the disciplinary authority have given any reasons for arriving at a conclusion to impose the punishment against the petitioner which discloses their non-application of mind. Further, it is necessary to refer to Rule 23 (1) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, which is extracted hereunder:-

"23. (1) In the case of an appeal against an order, imposing any penalty specified in rule 8 or 9, the appellate authority shall consider:-

(a) whether the facts on which the order was based have been established:

(b) whether the facts established afford sufficient ground for taking action; and

(c) whether the penalty is excessive, adequate or inadequate and pass orders:-

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case:

18. It is seen from Rule 23 that in the event of an appeal against an order, imposing any penalty, the appellate authority should consider whether the facts on which the order was based have been established; whether the facts established afford sufficient ground for taking action; and whether the penalty is excessive, adequate or inadequate and then pass orders. In this case, the appellate authority has passed a cryptic order. In fact, the appellate authority gave personal hearing and after recording the same, straightaway confirmed the order of the disciplinary authority without any discussion or assigning any reasons holding that on examination of the documents and evidences, no new ground has been made or any evidence has been let in by the petitioner and therefore the order of the disciplinary authority was confirmed. A reading of the order of the appellate authority, extracted above, would make it clear that Rule 23 has not been complied with. There is no discussion whether the facts on which the order was based have been established; whether the facts established afford sufficient ground for taking action; and whether the penalty is proportionate to the charges. Therefore, even for confirming the order of the disciplinary authority, the appellate authority ought to have given some reasons. As per the decision of the Honourable Supreme Court referred to above, an order of affirmation need not contain as elaborate reasons as an order of reversal, but that does not mean that the order of affirmation need not contain any reasons whatsoever. Further, whether there was an application of mind or not can only be disclosed by some reasons, at least in brief, mentioned in the order of the appellate authority. In this case, both the disciplinary authority as well as the

original authority have passed the orders without assuming any reason which discloses that there is no application of mind. The orders impugned are not in consonance with the decision of the Honourable Supreme Court referred to above. Therefore, on this technical ground, the orders which are impugned in WP No. 1059 of 2007 are liable to be set aside."

8. Although it might be a technical ground, it is a reasonable ground taken by the petitioner, since his promotion is affected, which is subsequent to the amendment of the Rule. Originally, as per the Government order, if it is a Censure or a punishment of reduction of time scale of pay or increment cut, the future promotions will not be affected. Under such circumstances, we do not find even a single reason as to why the respondents have come to this conclusion. In this connection, I am fortified by the judgment of the Hon"ble Supreme Court reported in [2008] 16 VST 181 (SC), *Steel Authority of India Limited v. Sales Tax Officer, Rourkela-I Circle and others*, wherein, the Hon"ble Supreme Court held as follows:-

"12. A bare reading of the order shows complete non-application of mind. As rightly pointed out by learned counsel for the appellant, this is not the way a statutory appeal is to be disposed of. Various important questions of law were raised. Unfortunately, even they were not dealt with by the first appellate authority.

13. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same it becomes lifeless. (See *Raj Kishore Jha v. State of Bihar* 2003 11 SCC 519.

14. Even in respect of administrative orders Lord Denning, M.R. in *Breen v. Amalgamated Engg. Union* 1971 1 All ER 1148, observed: "The giving of reasons is one of the fundamentals of good administration". In *Alexander Machinery (Dudley) Ltd. v. Crabtree* 1974 ICR 120 (NIRC) it was observed: "Failure to give reasons amounts to denial of justice". "Reasons are live links between the mind of the decision-taker to the controversy in question and the decision or conclusion arrived at". Reasons substitute subjectivity by objectivity. The emphasis on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system; reasons at least sufficient to indicate an application of mind to the matter before Court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made; in other words, a speaking-out. The "inscrutable face of the sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance."

9. In view of the above, the impugned order is liable to be set aside. However, this Court cannot directly sit on appeal, but can only remit the matter back to the

authorities for fresh consideration. The respondents shall take on file the explanation submitted by the petitioner and permit the petitioner to produce the documents in support of his claim and after affording an opportunity for personal hearing, the respondents shall pass orders on merits, as expeditiously as possible, by giving proper reasoning.

10. Accordingly, the Writ Petition is allowed. Consequently, connected Miscellaneous Petitions are closed. No costs.