
(2010) 11 MAD CK 0062

In the Madras High Court

Case No : Writ Petition No. 1236 of 2009 and M.P. No's. 1 and 2 of 2009

C. Natarajan

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 18-11-2010

Acts Referred:

Government Servants Conduct Rules, 1973 — Rule 20

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

Citation : (2010) 11 MAD CK 0062

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : K. Sridhar, for the Appellant; V. Arun, Additional Government Pleader, for the Respondent

Judgement

B. Rajendran, J.—By consent of counsel for both sides, the writ petition itself is taken up for final disposal.

2. The Petitioner, who was working as Motor Vehicle Inspector, Grade-II was facing disciplinary proceedings initiated by the Respondents under

Rule 17 (a) as well as 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The disciplinary proceedings initiated against the

Petitioner under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules ended in imposition of punishment.

3. As far as the present case is concerned, it relates to the fact that when the Petitioner was working as Unit Officer, Red Hills, Chennai, he was

transferred and posted to the Regional Transport Officer, Sankari by proceedings dated 31.08.2007 of the second Respondent. According to the

Petitioner, he was on eligible leave from 10.08.2007 and thereafter, he submitted a representation to the Respondents to consider his claim for

retention at Chennai itself. According to the Petitioner, the said representation was accepted by the second Respondent and the transfer order

dated 31.08.2007 was modified and a fresh proceedings dated 11.01.2008 was issued by which the Petitioner was retained at Chennai and

posted in the office of the Joint Transport Commissioner in the then existing vacancy, thereby the order of transfer 31.08.2007 given to the

Petitioner, posting him at Sankari, stood cancelled. On receipt of the modified order, the Petitioner also joined duty on 14.01.2008 in the office of

the Joint Commissioner, Chennai. While so, the second Respondent issued the charge memo dated 07.01.2008 under Rule 17 (a) of the Tamil

Nadu Civil Services (Discipline and Appeal) Rules on the ground that even though the Petitioner was relieved from duty on 09.08.2007 from Red

Hills, Chennai, he failed to join duty at the Regional Transport Office at Sankari and thereby he disobeyed the order of the second Respondent

dated 31.08.2007 and also violated Rule 20 of the Government Servant Conduct Rules, 1973.

4. According to the Petitioner, the transfer order itself was dated 31.08.2007 and therefore, the question of he being relieved on 09.08.2007, 22

days prior to the order dated 31.08.2007 from Red Hills Station, does not arise and consequently, the alleged disobedience of the orders of the

second Respondent or violation of Government Servant Conduct Rules is unsustainable. Furthermore, the transfer order dated 31.08.2007 itself

was modified pursuant to his representation by issuing an order dated 11.01.2008 retaining him in Chennai, therefore, he was under the impression

that the charges framed under Rule 17 (a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on 07.01.2008 had been dropped and

that is the reason why he has not given any explanation to the charge memo. After the modified order dated 11.01.2008, the earlier order dated

31.08.2007 do not subsist and therefore also, the charges framed against the Petitioner would get lapsed automatically. However, the second

Respondent, without taking into consideration of any of the above said facts, has erroneously awarded the punishment of stoppage of one

increment for a period of six months, without cumulative effect, which is unwarranted. Aggrieved by the imposition of punishment, the Petitioner

has come forward with the present writ petition.

5. The learned Counsel for the Petitioner would contend that the very charge itself is per se illegal inasmuch as the Petitioner was allegedly directed

to join duty by the second Respondent on 09.08.2007 by a proceedings dated 31.08.2007. Even otherwise, the order of transfer itself was

modified by issuing a modified order on 11.01.2008 and therefore, the entire disciplinary proceedings as well as the imposition of punishment

against the Petitioner are vitiated.

6. The Respondents have filed counter contending that though the Petitioner was originally ordered to be transferred on 08.08.2007 from Red Hills

Station, Chennai to the Regional Transport Office at Sankari, however due to administrative exigency, no posting orders was issued to the

Petitioner. Subsequently, the Petitioner was relieved from duty on 09.08.2007, but instead of joining duty at Sankari, he went on leave from

10.08.2007. Thereafter only the second Respondent, issued posting orders transferring him to the Regional Transport Office, Sankari on

31.08.2007. Subsequently, the order dated 31.08.2007 was also modified on 11.01.2008 and the Petitioner also joined duty on 14.01.2008 at

Chennai. Therefore, they would contend that the charge only indicates that in spite of his relieving from duty, he has not obeyed the order dated

31.08.2007 and the Petitioner has also not given any explanation for the charge memo. Merely because subsequent order was passed cancelling

the order of transfer dated 31.08.2007, it will not confer any right to the Petitioner to say that the charge is vitiated. Further, the punishment was

imposed only because of the reason the Petitioner has not chosen to send any reply to the charge memo, hence, the second Respondent was left

with no other reason except to impose the punishment by invoking Rule 17 (a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

Therefore, the second Respondent would justify the imposition of punishment on the Petitioner.

7. Heard both sides and perused the material records. The Petitioner would mainly contend that the charge was levelled against him on the ground

that he has disobeyed the order of transfer issued by the second Respondent on 31.08.2007 by not joining the post on 09.08.2007. Even as

admitted by the Respondents, the Petitioner was on leave from 10.08.2007 and the order of transfer itself was passed only on 31.08.2007. Then,

how could a charge would emanate against the Petitioner in respect of an alleged violation or disobedience of the order prior to the order itself

being passed. There could not be any violation either on 09.08.2007, the date on which the Petitioner was allegedly relieved or on 10.08.2007

from which date the Petitioner went on leave. Even if this is taken into consideration, as per the counter, if really the charge that the transfer order

was issued on 08.08.2007, the second Respondent himself admitted that due to administrative reasons, the Petitioner could not be issued any

posting order. Therefore, the order of transfer originally emanate from the Respondents only on 31.08.2007. In the meanwhile, the Petitioner went

on leave from 10.08.2007 which is also admitted by the second Respondent in the counter.

8. The subsequent conduct that on 11.08.2008 the second Respondent has passed an modified order of transfer has also to be taken note of. By

the said order dated 11.08.2008, the earlier order dated 31.08.2007 itself was cancelled and the Petitioner was ordered to be retained and

posted in Chennai. In this connection, it is pertinent to point out here that in the order dated 11.01.2008, in modification of the earlier order dated

31.08.2007, it is very clearly stated that the modification is not only relating to the order passed to the Petitioner, but also to others. In so far as the

Petitioner is concerned, in the column ""present station"", it is clearly stated that ""on leave"". Further it is stated that the earlier posting given to the

Petitioner was to Regional Transport Office, Sankari and the present place to which he is transferred is Office of the Joint Commissioner, Chennai

Enforcement. Therefore, when the modified order itself was issued on 11.01.2008 stating that the Petitioner was on leave and he is retained in

Chennai, the question of alleged disobedience of the order of transfer dated 31.08.2007 of the second Respondent, by the Petitioner, does not

arise. When the Petitioner was on leave from 10.08.2007, it is not possible for him to violate or disobey the order dated 31.08.2007 of the second

Respondent. Therefore, the charge that the Petitioner had allegedly disobeyed the order dated 31.08.2007 of the second Respondent is per se not

sustainable.

9. When we read the charge issued to the Petitioner on 07.01.2008, it is clearly stated as follows:

(1) On transfer to Regional Transport Office Sankari though you were relieved of your duties at Unit office, Red Hills on 09.08.2007, you have

not joined duty at the Regional Transport Office, Sankari. You have thus disobeyed the orders of the Transport Commissioner in Proc.R. No.

T1/39277/07 dated 31.08.2007 (E.O. No. 447/2007).

10. The charge was issued to the Petitioner on 07.01.2008. If really the Petitioner had disobeyed the order dated 31.08.2007 and the charge is

proposed to be issued to him, then the second Respondent ought not to have issued the modified order of transfer dated 11.01.2008, that too,

pursuant to the representation of the Petitioner to retain him in Chennai, which is mentioned as ref. No. 3 in the modified order dated 11.01.2008.

Therefore, it is reasonable to accept the explanation offered by the Petitioner that when once the modified order was issued, the entire charge

stood dropped and that is the reason why he has not submitted his explanation under the bonafide impression that the charges pending against him

were dropped and he need not submit his explanation. Under those circumstances, because the Petitioner has not given his explanation, without

affording any further opportunity, the second Respondent ought not to have straightaway passed the impugned order of punishment. This Court as

well as the Honourable Supreme Court have time and again held that even if there is no explanation offered by the delinquent, the disciplinary

authority should not inflict punishment and the disciplinary authority should consider whether the charge has been made out. Unfortunately, in the

charge memo issued to the Petitioner, the Respondents would only state that the Petitioner had disobeyed the order dated 09.08.2007 in respect

of an order passed on 31.08.2007. Further, when the order was modified treating the period as leave, cancelling the order of transfer and

accepting the representation of the Petitioner for retention at Chennai, it is no longer open to the Respondents to contend that the Petitioner had

disobeyed the order of the second Respondent or violated the Government Servants Conduct Rules, 1973. Inasmuch as the second Respondent

has not chosen to give one more opportunity to the Petitioner to putforth his case, the entire proceedings resulted in imposition of punishment are

vitiated.

11. In the modified order dated 11.01.2008 itself, in para-2, it is stated that the

""RTO"s concerned are requested to relieve the individuals immediately without waiting for substitutes"". The word used in para-2 is to relieve the transferees, including the Petitioner, who was stated to be " on leave". Only on 11.01.2008, the Petitioner was directed to be relieved by the second Respondent. Therefore, it is not open to the second Respondent to contend that in spite of the Petitioner being relieved on 09.08.2007, he did not obey the order of transfer order and joined duty to the transferred place. The Petitioner was relieved only after the order dated 11.01.2008 was passed and till such time he was on leave, which was also confirmed, agreed and accepted in the said order dated 11.01.2008. On 14.01.2008, the Petitioner also joined duty. Under those circumstances, I am of the view that the Respondents, before inflicting the punishment, ought to have considered the above aspects, but failed to do so and imposed the punishment. Contra, in the impugned order, only one sentence is used namely ""as the charged official has not submitted his explanation, it is presumed that the charged official has accepted the charge, hence, the charge is proved."" The second Respondent ought to have considered in detail that even though no explanation was offered by the Petitioner, subsequently, the order of transfer dated 31.08.2007 was modified and a modified order dated 11.01.2008 was issued, therefore, the punishment imposed on the Petitioner is illegal and the impugned order is not in accordance with law. Hence, the order dated 14.09.2008, which is impugned in this writ petition is quashed.

12. In so far as the prayer of the Petitioner to consider his name for promotion is concerned, it will be decided by the department, provided the Petitioner is otherwise eligible and taking into consideration that any other charge is pending against him or enquiry is pending.

13. In the result, the writ petition is partly allowed. No costs. Consequently, connected miscellaneous petitions are closed.