

(2010) 01 MAD CK 0101

In the Madras High Court

Case No : Writ Petition No. 33834 of 2006

C.N. Prem Sagar

APPELLANT

Vs

Principal Chief Conservator of Forests, Conservator of Forests
and District Forest Officer Nilgiris South Division

RESPONDENT

Date of Decision : 11-01-2010

Acts Referred:

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

Citation : (2010) 01 MAD CK 0101

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : M. Ravi, for the Appellant; Jenita, for Forests, for the Respondent

Judgement

D. Hariparanthaman, J.—The Original Application in O.A. No. 7864 of 1998 before the Tamil Nadu Administrative Tribunal is the present

writ petition.

2. The petitioner was initially appointed as Forest Guard on 22.11.1973. He was promoted as Forester in December 1992. While so, a charge

memo was issued by the third respondent under Rule 17(a) of the Tamil Nadu Civil Services (D & A) Rules and the petitioner also submitted his

explanation on 08.01.1995 denying the charges. The third respondent issued proceedings dated 18.05.1995, cancelling the earlier charge memo

dated 07.12.1994 and issued a fresh charge memo, which contained the same allegations. The petitioner submitted his explanation dated

25.06.1995 denying the allegations. The enquiry was initially conducted by Assistant Conservator of Forests, Mr. K.K. Sugirtharaj and later on by

another Assistant Conservator of Forests, Mr. T. Dhandapani. The enquiry was conducted on 27.01.1997, 17.03.1997 and 07.05.1997 and the

Enquiry Officer submitted his report. The second respondent passed the impugned order dated 27.02.1998, based on the report of the Enquiry

Officer imposing the punishment of recovery of a sum of Rs. 34,167/-. Aggrieved by the same, the petitioner filed O.A.7864 of 1998 (W.P. No.

33834 of 2006) to quash the aforesaid order dated 27.02.1998 of the second respondent.

3. The second respondent filed a reply affidavit refuting the allegations.

4. Heard Mr. M. Ravi, learned Counsel for the petitioner and Ms. Jenita, learned Counsel for the respondents (Forests).

5. The learned Counsel for the petitioner submits that the impugned order is violative of principles of natural justice. When the impugned order

relies on the findings of the Enquiry Officer, the principles of natural justice requires that a copy of the same should be furnished to the petitioner

before relying on the same for imposing the punishment. The learned Counsel relies on a decision of this Court in Nawabkhan v. Superintendent of

Police, Chengai Mgr. East District, Chennai and Anr. reported in (2008) 7 MLJ 1275 in this regard.

6. Per contra, the learned Counsel for the respondents submits that since the punishment was imposed under Rule 17(a) of the Tamil Nadu Civil

Services (D & A) Rules, the findings of the Enquiry Officer need not be furnished to the petitioner before imposing the punishment.

7. I have considered the submissions made on either side.

8. In my view, even in case of minor punishment if the same is imposed relying on the findings of the Enquiry Officer, the second respondent ought

to have furnished a copy of the same before imposing the punishment so as to provide opportunity to the petitioner to submit his views on the

finding of guilt recorded in the enquiry. It is a different matter, if no enquiry was held and punishment was imposed based on the explanation

submitted by the petitioner. It is true, that the Rule 17(a) of the Tamil Nadu Civil Services (D & A) Rules does not contemplate holding of enquiry.

But the authority decides to hold the enquiry and also relied on the same for imposing punishment, the authority should furnish a copy of the report

of the Enquiry Officer, before imposing punishment. The judgment relied on by the learned Counsel for the petitioner, squarely applies to the facts

of the case. Paragraph 11 of the Judgment of this Court reported in (2008) 7 MLJ

1275 is extracted here-under:

11. The above rulings will make it very clear that when the enquiry officer is not the disciplinary authority, the petitioner delinquent has got a right to

have a copy of the report of the enquiry officer before the disciplinary authority arrives at a conclusion with regard to the guilt or innocence of the

delinquent with regard to the charges levelled against him. A denial of the report is a denial of reasonable opportunity. It is a right of an employee

to have the report of the enquiry officer to defend himself effectively, otherwise he would not know in advance whether the report is in his favour or

against him and what is held against him. If the report is furnished to him, he could have persuaded the disciplinary authority that the finding arrived

at by enquiry officer is perverse or that the finding is based on no evidence or irrelevant materials and evidence. Definitely it would cause prejudice

to a delinquent, if the report is not furnished to him. Hence, for the reasons stated above, I am in full agreement with the learned Senior Counsel

appearing for the petitioner that non-furnishing of the report of the enquiry report ha vitiated the entire proceedings.

9. In view of the categorical pronouncement of this Court, the impugned order is liable to be quashed and accordingly the same is quashed. No

costs.