

(2011) 09 MAD CK 0026

In the Madras High Court

Case No : Writ Petition No. 24210 of 2010 and M.P. No's. 2 and 3 of 2010

F. Ismail Pillai Annavi

APPELLANT

Vs

The Additional Chief Secretary to Government, Micro, Small
and Medium Enterprises (E.II.2) Department and The
Industries Commissioner and Director of Industries and
Commerce

RESPONDENT

Date of Decision : 30-09-2011

Acts Referred:

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17, 50(5)

Citation : (2011) 09 MAD CK 0026

Hon'ble Judges : K.N. Basha, J

Bench : Single Bench

Advocate : K. Rajkumar, for the Appellant; P.S. Sivashanmugasundaram,
Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.N. Basha, J.—The Petitioner has come forward with this petition seeking for the relief of quashing the G.O(2D) No. 17, Micro Small and

Medium Enterprises, (E.II.2) Department dated 18.03.2010 issued by the Additional Chief Secretary to Government, Micro, Small and Medium

Enterprises, (E.II.2) Department, Chennai, the first Respondent herein, in confirming the proceedings of the Industries Commissioner and Director

of Industries and Commerce, Chepauk, Chennai-5, the second Respondent herein, made in Rc. No. 21433/EG 4/2005 dated 29.10.2008 and

directing the Respondents herein to disburse the service benefits which has been withheld by the Respondents on account of the above penalty

namely (a) Sanction of annual increments (b) Denial of promotion to the post of Assistant Director of Industries and Commerce (Industrial

Cooperatives) on par with Junior (c) Seniority and all other benefits attached to the post and consequently to disburse all the arrears accrued

thereon within a stipulated time.

2. The case of the Petitioner is that the Petitioner joined the service as Industrial Cooperative Officer in the Industries Department on 13.09.1993

and he is due for his retirement on 31.05.2012. The Petitioner was issued with a charge memo dated 18.07.2005 under Rule 17(b) of Tamil Nadu

Civil Services (Discipline and Appeal) Rules. As per the charge memo, the following allegations were levelled against the Petitioner:

- (i) making certain payments without voucher
- (ii) not getting administrative approval
- (iii) paying rent without agreement and
- (iv) non-maintenance of production register etc.

The Petitioner, as per his representation dated 08.09.2005, sought for the relief of furnishing 14 documents, in order to enable him to submit his

explanation. However, the Respondents denied 5 vital documents of Stock Register, Wages Register etc. Without furnishing the documents

required by the Petitioner, an Enquiry Officer was appointed on 07.02.2006.

3. In the enquiry, the Enquiry Officer has straight away questioned the Petitioner alone. Thereafter, the Enquiry Officer accepted all the documents

presented by the department, but no witnesses have been examined to prove the documents nor an opportunity was given to cross examine the

witnesses. Ultimately, the Enquiry Officer has held that except charges 5, 8 and 9, all the other charges are held to have been proved against the

Petitioner. The Enquiry Report was furnished to the Petitioner on 11.03.2008 and the Petitioner has sent a further representation to the findings of

the Enquiry Officer on 01.04.2008.

4. The Disciplinary Authority, namely, the second Respondent herein without considering the said explanation offered by the Petitioner, by simply

accepting the Enquiry Report and without even discussing the contention raised by the Petitioner in the further representation, passed an order of

awarding punishment of stoppage of increment without cumulative effect for a period of three years and also ordering recovery of a sum of Rs.

62,811.45. Being aggrieved against the said order, the Petitioner preferred an

appeal to the Government on 05.01.2009 by raising various contentions and the Government sought for an opinion from the TNPSC on the appeal preferred by the Petitioner. The TNPSC offered its opinion on 28.01.2010 and the said opinion of the TNPSC was not furnished to the Petitioner and further, no opportunity was given to the Petitioner on the adverse report given against him. However, the Government, in violation of the principles of natural justice, passed the impugned order in G.O. (2D). No. 17, Micro, Small and Medium Enterprises (E.II.2) Department dated 18.03.2010, modifying the penalty as stoppage of two increments without cumulative effect and sustained the recovery of Rs. 62,811.45. Along with the final order, the opinion of the TNPSC was supplied subsequently. As a result of the above said penalty, the promotion due to the Petitioner to the post of Assistant Director of Industries and Commerce (Industrial Co-operatives) for the year 2010-2011 was denied. Being aggrieved against the said order, the Petitioner has been constrained to approach this Court with the above said prayer.

5. Mr. K. Rajkumar, Learned Counsel appearing for the Petitioner mainly contended that the impugned order was passed in violation of the principles of natural justice, as the Petitioner was not given sufficient and adequate opportunity to put forward his case and more particularly, the documents required by the Petitioner were not served and even the adverse opinion given by the TNPSC was also not furnished to the Petitioner before passing the award of punishment. It is further contended that even in respect of holding that the charges have been proved against the Petitioner, there is absolutely no evidence and no witnesses have been examined on the side of the department to substantiate the allegations levelled against him. It is also contended by the Learned Counsel for the Petitioner that it is stated in the counter that there is no necessity for examination of any witness and it is the discretion of the Enquiry Officer to go ahead with the enquiry without examining any witness. Therefore, it is contended that the non-examination of the witnesses and marking the documents alone is fatal to the enquiry and the whole enquiry is vitiated. The Learned Counsel for the Petitioner in support of his contentions placed reliance on the following decisions:

(i) Roop Singh Negi Vs. Punjab National Bank and Others,

(ii) L.I.C. of India and Anr. v. Ram Pal Singh Bisen reported in (2010) 3 MLJ 1370 (SC)

It is submitted that this Court has also taken a similar view in W.P. No. 16851/2010 by the order 22.08.2011.

6. The Learned Counsel for the Petitioner submitted that non-communication of the TNPSC opinion before passing the final order and

communicating the same along with the final order is fatal and the punishment is liable to be set aside. To substantiate such contention, the Learned

Counsel for the Petitioner placed reliance on the following decisions:

(i) Unreported order of this Court dated 15.07.1976 in W.P. No. 6580 of 1973

(ii) State Bank of India and others Vs. D.C. Aggarwal and another,

(iii) S.N. Narula Vs. Union of India (UOI) and Others,

7. It is also pointed out by the Learned Counsel for the Petitioner that there is an inordinate and unexplained delay in initiating disciplinary

proceedings, as the alleged incident is of the year 1996, whereas the charge memo was issued only in the year 2005 and as such, there is a delay

of 9 years in initiating disciplinary proceedings which is fatal to the enquiry. In support of such contention, the Learned Counsel for the Petitioner

placed reliance on the following decisions:

(i) P.V. Mahadevan v. MD, T.N. Housing Board, reported in (2005) 6 SCC 636

(ii) Ranjeet Singh v. State of Haryana and Ors. reported in 2008 (3) CTC 78

8. Per contra, Mr. P.S. Sivashanmugasundaram, learned Additional Government Pleader submitted that there is no infirmity or illegality in passing

the impugned order by the Respondents. It is contended that the enquiry was conducted as per the procedure contemplated, by affording

reasonable opportunity to the Petitioner. It is further contended that documents required have been supplied to the Petitioner and if it is the

grievance of the Petitioner that certain documents have not been furnished, nothing prevented the Petitioner to peruse those documents and as a

matter of fact, the Petitioner has also perused those documents. It is also contended that in respect of the main charge, the Petitioner has not

submitted any explanation and only in respect of other charges, the Petitioner has submitted his explanation and that too during the enquiry only. It

is also pointed out that the Petitioner was already awarded six punishments.

9. This Court carefully considered the rival contentions put forward by either side and thoroughly perused the entire materials available on record including the impugned order.

10. At the outset, it is to be stated that this is a case of no evidence, as admittedly, during the enquiry the department has not chosen to examine any witness and on the other hand, it is the claim of the Enquiry Officer as per the counter to the effect that it is his discretion to examine or not to examine any witness. I am afraid that such a procedure is unknown in the service matters more particularly in respect of disciplinary proceedings.

At this juncture, it is relevant to refer to the decision of this Court dated 22.08.2011 in W.P. No. 16851/2010, wherein this Court has referred to the decision of the Hon''ble Apex Court as hereunder:

21. In Roop Singh Negi Vs. Punjab National Bank and Others, , the Hon''ble Apex Court held as hereunder:

14. Indisputably, a Departmental proceeding is a quasi-judicial function. The charges levelled performs a quasi-judicial function. The charges

levelled against the delinquent officer must be found to have been proved. The Enquiry Officer has a duty to arrive at a finding upon taking into

consideration the materials brought on record by the parties. The purported evidence collected during investigation by the Investigating Officer

against all the Accused by itself could not be treated to be evidence in the Disciplinary proceeding. No witness was examined to prove the said

documents. The management witnesses merely tendered the documents and did not prove the contents thereof. Reliance, inter alia, was placed by

the Enquiry Officer on the F.I.R which could not have been treated as evidence. We have noticed herein before that the only basis evidence

whereupon reliance has been placed by the Enquiry Officer was the purported confession made by the Appellant before the police. According to

the Appellant, he was forced to sign on the said confession, as he was tortured in the police station. Appellant being an employee of the bank, the

said confession should have been proved. Some evidence should have been brought on record to show that he had indulged in stealing the Bank

draft book. Admittedly, there was no direct evidence. Even there was no indirect evidence. The tenor of the report demonstrates that the Enquiry

Officer had made up his mind to find him guilty as otherwise he would not have

proceeded on the basis that the offence was committed in such a manner that no evidence was left.

22. The Hon''ble Apex Court further held in the said decision as hereunder:

A decision must be arrived at on some evidence, which is legally admissible. The provisions of the Evidence Act may not be applicable in a

Departmental proceeding but the principles of Natural Justice are. As the report of the Enquiry Officer was based on merely ipse dixit as also

surmises and conjectures, the same could not have been sustained. The inferences drawn by the Enquiry Officer apparently were not supported by

any evidence. Suspicion, as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.

23. The Hon''ble Apex Court in the said decision also referred to and relied on its earlier decisions in Union of India (UOI) Vs. H.C. Goel, , Moni

Shankar Vs. Union of India (UOI) and Another, and Narinder Mohan Arya v. United India Insurance Company Ltd., reported in 2006 (4) SCC

173.

24. This Court in M. Marimuthu v. General Manager (D and PB), SBI reported in 2010 (5) MLJ 925 held as follows:

In the absence of examination of the authors of accusations against the delinquent, the statements exhibited during the course of enquiry before the

enquiry officer is of no evidentiary value.

In a disciplinary proceeding like a civil matter, the Department should come out with all evidence to establish that there is preponderance of

probability to nail the erring employee on the charges levelled against him.

25. The principles laid down by the Hon''ble Apex Court and this Court in the decisions cited supra are squarely applicable to the facts of the

instant case as in this case also the disciplinary authority placed reliance on the sole piece of material, viz., the report sent by the Director of

Government Examination without examining its author and as such, by no stretch of imagination, it could be considered to be a legal evidence to

prove the charge levelled against the delinquent. Therefore, this Court has no hesitation to hold that this is a classic case of no evidence available on

record to prove the charge levelled against the Petitioner and the disciplinary authority has simply overlooked the legal requirement and basic

principle for establishing a charge by adopting the procedure known to law and arriving at the conclusion on the basis of legal evidence.

The principle laid down by the Hon'ble Apex Court in the decision cited supra is squarely applicable to the facts of the instant case, as it is already

pointed out that the department has not examined any witness to substantiate the allegations or the charges framed against the Petitioner.

Therefore, the impugned order is liable to be set aside on this sole ground.

11. Now coming to the other contention to the effect that the Petitioner has not been served with the required documents, it is to be stated that the

Petitioner has sought for 14 documents, but he has been furnished with only 9 documents and his grievance is that certain vital documents namely

Stock Register, Wages Register etc., were not served. However, it is pointed out by the learned Additional Government Pleader that the

disciplinary authority has also placed reliance on the opinion/views obtained from the TNPSC and the said opinion was admittedly not furnished to

the Petitioner before passing the impugned order of awarding punishment. At this juncture, it is relevant to refer to the latest decision of the

Hon'ble Apex Court in S.N. Narula Vs. Union of India (UOI) and Others, , wherein the Hon'ble Apex Court has held as hereunder:

6. We heard the Learned Counsel for the Appellant and the Learned Counsel for the Respondent. It is submitted by the counsel for the Appellant

that the report of the Union Public Service Commission was not communicated to the Appellant before the final order was passed. Therefore, the

Appellant was unable to make an effective representation before the disciplinary authority as regards the punishment imposed.

7. We find that the stand taken by the Central Administrative Tribunal was correct and the High Court was not justified in interfering with the

order. Therefore, we set aside the judgment of the Division Bench of the High Court and direct that the disciplinary proceedings against the

Appellant be finally disposed of in accordance with the direction given by the Tribunal in para 6 of the order. The Appellant may submit a

representation within two weeks to the disciplinary authority and we make it clear that the matter shall be finally disposed of by the disciplinary

authority within a period of 3 months thereafter.

12. In yet another earlier decision in State Bank of India and others Vs. D.C.

Aggarwal and another, , the Hon''ble Apex Court has held as hereunder:

The disciplinary authority, while imposing punishment, major or minor, cannot act on material which is neither supplied nor shown to the delinquent.

Imposition of punishment on an employee, on material which is not only not supplied but not disclosed to him, cannot be countenanced. Procedural fairness is as much essence of right and liberty as the substantive law itself.

The order of the disciplinary authority in this case is vitiated not because of mechanical exercise of power or for non-supply of the inquiry report

but for relying and acting on material which was not only irrelevant but could not have been looked into. Purpose of supplying document is to

contest its veracity or give explanation. Effect of non-supply of the report of Inquiry Officer before imposition of punishment need not be gone into

nor it is necessary to consider validity of Rule 50(5) of the S.B.I. Supervisory Staff (Service) Rules. But non-supply of CVC recommendation

which was prepared behind the back of Respondent without his participation, and one does not know on what material which was not only sent to

the disciplinary authority but was examined and relied on, was certainly violative of procedural safeguard and contrary to fair and just inquiry. The

submission that CVC recommendations are confidential, copy of which could not be supplied, cannot be accepted. Taking action against an

employee on confidential document which is the foundation of order exhibits complete misapprehension about the procedure that is required to be

followed by the disciplinary authority. Once the disciplinary authority found that the action of the Respondent did not cause any harm to the Bank

nor the Respondent gained out of it, the order had been rightly quashed by the High Court for procedural error.

The principles laid down by this Court and the Hon''ble Apex Court in the decisions cited supra are squarely applicable to the facts of the instant

case as in this case also, admittedly, the adverse remarks offered by the TNPSC was not served on the Petitioner before passing the order of

awarding punishment and as such, this Court has no hesitation to hold that the impugned order is liable to be set aside on this ground also.

13. Now coming to the last ground namely inordinate and unexplained delay in initiating disciplinary proceedings, it is to be stated that the alleged

transactions said to have taken place as early as in the year 1996 and the charge memo was issued only in the year 2005 and as such, there is a

delay of 9 years and there is absolutely no explanation from the Respondents for such an inordinate delay. At this juncture, it is relevant to refer the

decision of the Hon''ble Apex Court in P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, , wherein the Hon''ble Apex Court has held that

the inordinate and unexplained delay in conducting the departmental proceedings pursuant to the issue of charge memo would vitiate the

departmental proceedings and the relevant portions of the said decision are better to be incorporated as here under:

4. In the first case The State of Madhya Pradesh Vs. Bani Singh and another, , an O.A. was filed by the officer concerned against initiation of

departmental enquiry proceedings and issue of charge sheet on April 22, 1987 in respect of certain incidents that happened in 1975-76 when the

said officer was posted as Commandant 14th Battalion, SAF Gwalior. The Tribunal quashed the charge memo and the departmental enquiry on

the ground of inordinate delay of over 12 years in the initiation of the departmental proceedings with reference to an incident that took place in

1975-76.

The Appeal against the said order was filed in this Court on the ground that the Tribunal should not have quashed the proceedings merely on the

ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits.

5....

6. In the second case State of Andhra Pradesh Vs. N. Radhakishan, , the Respondent was appointed as Assistant Director of Town Planning in

the year 1976. A report dated 7.11.1987 was sent by the Director General, Anti-Corruption Bureau, Andhra Pradesh, Hyderabad to the

Secretary to the Government, Housing, Municipal Administration and Urban Development Department, Andhra Pradesh, Hyderabad, about the

irregularities in deviations and unauthorised constructions in multi storied complexes in the twin cities of Hyderabad and Secunderabad in collusion

with municipal authorities. On the basis of the report, the State issued two memos both dated 12.12.1987 in respect of three officials including the

Respondent Radhakishnan, the then Assistant City Planner. In this case, till

31.07.1995, the articles of charges had not been served on the Respondent.

7. The Tribunal, however, held that the memo dated 31.7.1995 related to incidents that happened ten years or more prior to the date of the memo and that there was absolutely no explanation by the Government for this inordinate delay in framing the charges and conducting the enquiry against the Respondent and that there was no justification on the part of the State now conducting the enquiry against the Respondent in respect of the incidents at this late stage.

This Court, in para 19 has observed as follows:

It is not possible to lay down and predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the Court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings, the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is not blamed for the delay or

when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations.

8. This Court held that there was hardly any explanation worth consideration as to why the delay occurred. In the circumstances, this Court held that the Tribunal was justified in quashing the charge memo dated 31.7.1995 and directing the State to promote the Respondent as per recommendation of the DPC ignoring memos dated 27.10.1995 and 1.6.1996. Accordingly, the appeal filed by the State of Andhra Pradesh was dismissed.

The Hon''ble Apex Court in the said decision further observed at paragraph 10 as follows:

10. The very same ground has been specifically raised in this appeal before this Court wherein it is stated that the delay of more than 10 years in initiating the disciplinary proceedings by issuance of charge memo would render the departmental proceedings vitiated and that in the absence of any explanation for the inordinate delay in initiating such proceedings of issuance of charge memo would justify the prayer for quashing the proceedings as made in the writ petition.

The Hon''ble Apex Court ultimately held in the decision cited supra as here under: (para 15)

15. We, therefore, have no hesitation to quash the charge memo issued against the Appellant. The appeal is allowed. The Appellant will be entitled to all the retiral benefits in accordance with law. The retiral benefits shall be disbursed within three months from this date. No costs.

14. The Division Bench of this Court also quashed the charge memo on the ground of inordinate and unexplained delay of issuing charge memo in

A. Obaidhullah Vs. The State of Tamil Nadu and The Tamil Nadu Administrative Tribunal, by following the Apex Court's decision (Mahadevan's

case). Another Division Bench of this Court in D. Amaladoss Vs. The State of Tamil Nadu and The High Court of Judicature at Madras, ,

quashed the charge memo on the ground of delay as well as conduct of parties. In yet another Division Bench decision of this Court in Union of

India (UOI) and Another Vs. V. Sekar and Another, the charge memo was set aside on the ground of inordinate and unexplained delay in issuing

the charge memo.

15. In a similar matter, a learned Single Judge of this Court by placing reliance on the decision of the Division Bench of this Court in A.

Obaidhullah Vs. The State of Tamil Nadu and The Tamil Nadu Administrative Tribunal, has held that the charge memo is liable to be quashed on

the ground of inordinate and unexplained delay.

16. The principles laid down by the Hon"ble Apex Court and this Court in the decisions cited supra, are squarely applicable to the facts of the

instant case as in this case also, there is a total delay of 9 years in initiating disciplinary proceedings and in awarding the punishment as stated

above.

17. In view of the aforesaid reasons, this Court is of the considered view that the impugned order is unsustainable in law. Accordingly, this Court is

constrained to set aside the G.O(2D) No. 17, Micro Small and Medium Enterprises, (E.II.2) Department dated 18.03.2010 issued by the

Additional Chief Secretary to Government, Micro, Small and Medium Enterprises, (E.II.2) Department, Chennai, the first Respondent herein, in

confirming the proceedings of the Industries Commissioner and Director of Industries and Commerce, Chepauk, Chennai-5, the second

Respondent herein, made in Rc. No. 21433/EG 4/2005 dated 29.10.2008. Consequently, the Petitioner is entitled to get all attendant benefits

including promotion, if he is otherwise eligible for such promotion from the year 2010-11. It is made clear that the above said exercise shall be

completed within a period of four (4) weeks from the date of receipt of a copy of this order.

18. With the above direction, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.