

(2011) 07 MAD CK 0315

In the Madras High Court

Case No : Writ Petition No. 12618 of 2010 and M.P. No's. 1 and 2 of 2010

G. Ashok Kumar

APPELLANT

Vs

The Special Commissioner and Transport Commissioner and
The Principal Secretary to Government Home Department

RESPONDENT

Date of Decision : 06-07-2011

Acts Referred:

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

Citation : (2011) 07 MAD CK 0315

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

Bench : Single Bench

Advocate : K. Venkataramani for M. Muthappan, 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 impugned order passed by the first Respondent in proceedings R. No. 65331/TA1/2007 dated 12.08.2009 and confirmed by the 2nd Respondent in G.O.(2D) No. 27, Home (Transport-II-A) Department dated 20.01.2010.

2. The case of the Petitioner is that he is an engineering graduate in mechanical engineering and joined the service as Motor Vehicle Inspector, Grade-II, as selected by the Tamil Nadu Public Service Commission and appointed on 10.02.1995. The Petitioner was promoted as Motor Vehicle Inspector, Grade-I on 16.09.1999 and he was working as Motor Vehicle Inspector, Grade-I in the Regional Transport Office (East) at Tondiorpet. On 11.11.2005, a surprise inspection was conducted by the District Inspection Cell Officer along with some Vigilance and Anti-Corruption police officials. A report was submitted by the Inspection Cell Officer to the Transport Commissioner, pointing out certain lapses detected during the inspection. The Transport Commissioner, on the basis of the inspection report, framed charges against the Petitioner under Rule 17(b) of

TNCS(D&A) Rules. Three charges were framed against the Petitioner as hereunder:

Charge I- Allowed touts to operate inside the office premises with huge unaccounted money in their possession. A sum of Rs. 16,905/- was found in the possession of the four touts for which they could not account for satisfactorily. A bag containing 21 RC Books, some forms and receipts were found kept under the chair of the Assistant. The Assistant and the Motor Vehicles Inspector could not offer any satisfactory explanation for the same. The prevalence of touts in the office premises was in violation of Transport Commissioner's Circular instruction in Letter No. 45570/V4/2000 dated 28.8.2000.

Charge II- A sum of Rs. 3,630/- was found hidden beneath the old registers piled up on a rack inside the office room of Motor Vehicles Inspector, Gr-I.

Charge III - A sum of Rs. 1,880/- was found hidden outside the cashier room in between the wall and counter.-

3. The Enquiry Officer namely the Regional Transport Officer, Kancheepuram was appointed by the disciplinary authority. During the enquiry only 5 witnesses namely P Ws.5, 7, 8, 10 and 12 have been examined, though 32 witnesses have been cited in the charge memo and among them P Ws.5, 7, 10 and 12 gave depositions in respect of charge Nos. 1 and 3. In respect of charge No. 2, only one witness namely PW8 was examined, who was not produced by the prosecution, but opted to dispense with the enquiry in the consent letter dated 27.09.2008. Therefore, except the departmental officials who conducted the inspection namely P Ws.1 and 2, there is no witness on the prosecution side to give evidence pertaining to charge No. 2. The Enquiry Officer submitted a report to the first Respondent holding that all the three charges were not proved.

4. The first Respondent through the communication dated 17.03.2009 accepted the findings of the Enquiry Officer in respect of charge Nos. 1 and 3, but disagreed with the views of the Enquiry Officer in respect of charge No. 2, holding that charge No. 2 has been proved and issued a dissenting minute. The first Respondent issued a notice calling upon the Petitioner to submit his explanation within 15 days for the dissenting minute. The Petitioner submitted a detailed explanation and sought for the relief of dropping further action. In the representation, the Petitioner stated that due to the non-examination of PW8, who was not produced at the time of enquiry inspite of repeated adjournments, the Petitioner was not able to avail the opportunity of cross-examining the said witness to prove his innocence. The first Respondent has placed reliance upon the statement recorded by the Inspecting Officer from PW8 namely one Saravanan dated 28.11.2005 for the purpose of arriving at a conclusion to the effect that the 2nd charge is proved. The second charge is to the effect that a sum of Rs. 3,630/- was found hidden beneath the old registers piled up on a rack inside the office room of the Petitioner. The first Respondent has given the finding without any evidence to the effect that the money was recovered from the

dustbin kept under the table of the Petitioner and the said finding is contrary to charge No. 2. The first Respondent by the order dated 12.08.2009 has held that charge No. 2 has been proved and awarded the punishment of stoppage of increment for two years with cumulative effect. Being aggrieved against the said order of the first Respondent dated 12.08.2009, the Petitioner preferred an appeal before the second Respondent and the said appeal was rejected by the second Respondent by the order dated 20.01.2010. Hence the Petitioner has come forward with the present writ petition, challenging the said orders as stated above.

5. Mr. K. Venkataramani, learned Senior Counsel appearing for the Petitioner vehemently contended that the Enquiry Officer rightly held that all the three charges were not proved and the dissenting minute issued by the first Respondent, disagreeing with the views of the Enquiry Officer's report, is baseless. It is contended that even as per charge No. 2, the amount of Rs. 3,630/- was found hidden beneath the old registers piled up on a rack inside the office room of the Petitioner, but the finding of the first Respondent as per the impugned order dated 12.08.2009 is to the effect that the said amount was recovered from the dustbin kept under the table of the Petitioner and as such, the finding is contrary to the charge framed against the Petitioner. The learned Senior Counsel pointed out that even for such finding, there is no evidence available on record and the finding given by the first Respondent on mere presumption, is untenable. It is contended that the second Respondent rejected the appeal preferred by the Petitioner, challenging the order of the first Respondent, by the order dated 20.01.2010, without assigning any valid reason. Therefore, it is contended that both the orders are liable to be set aside.

6. Per contra, Mr. P.S. Sivashanmugasundaram, learned Additional Government Pleader contended that there is no illegality or infirmity in the impugned order passed by the Respondents 1 and 2. It is contended that charge No. 2 is in respect of an amount of Rs. 3,630/- found hidden beneath the old registers piled up on a rack inside the office room of the Petitioner and the Petitioner has not denied the said factor and on the other hand, he has stated that the amount would have been left behind by one of the person who had fled away on seeing the police. The learned Additional Government Pleader submitted that the recovery of the amount from the room of the Petitioner from the dustbin kept under his table clearly establishes the charge No. 2. It is further contended by the learned Additional Government Pleader that it is sufficient for proving the charge by preponderance of probabilities and the charge need not be proved beyond reasonable doubt against the delinquent and as such, the first Respondent rightly held that charge No. 2 was proved.

7. I have carefully considered the rival contentions put forward by either side and thoroughly scrutinized the entire materials available on record and perused the impugned orders passed by the Respondents 1 and 2 dated 12.08.2009 and 20.01.2010.

8. The fact remains that the Enquiry Officer submitted the report on 14.11.2008 holding that all the three charges were not proved. The disciplinary authority namely the first Respondent herein though accepted and agreed the findings of the Enquiry Officer in respect of the charges 1 and 3, has disagreed with the view of the Enquiry Officer in respect of charge No. 2 and initiated disciplinary proceeding against the Petitioner. At the risk of repetition, the said charge No. 2 is extracted hereunder: "Charge II- A sum of Rs. 3,630/- was found hidden beneath the old registers piled up on a rack inside the office room of Motor Vehicles Inspector, Gr-I."

It is pertinent to note that in respect of charge No. 2, the prosecution placed reliance only on the solitary witness, PW8, but the said witness was not examined during the course of enquiry conducted by the Regional Transport Officer, Kancheepuram, as he was not produced at the time of enquiry inspite of repeated adjournments. Therefore, the Petitioner was deprived of his opportunity to cross-examine the said witness PW8 namely one Saravanan. The first Respondent while passing the impugned order dated 12.08.2009, has also not placed any reliance on the statement recorded from PW8 namely Saravanan, by the Investigating Officer. It is needless to state that such a statement recorded behind the back of the Petitioner cannot be relied by the disciplinary authority. It is pertinent to note that even while passing the dissenting minute, the first Respondent has not assigned valid reasons for disagreeing with the views of the Enquiry Officer.

9. The perusal of the impugned order passed by the first Respondent dated 12.08.2009 reveals that the first Respondent has not assigned valid reasons and his findings incorporated only at Para 8.1 merely stating that the explanation of the Petitioner is not convincing and further stating that the money was recovered from the dustbin kept under his table and further held that charge No. 2 is held proved, taking the circumstantial evidence and on the preponderance of probabilities. This Court is of the considered view that such an order passed by the first Respondent, by assigning such a finding, is nothing but a cryptic order. It is pertinent to note that even the said finding is contrary to charge No. 2 framed against the Petitioner. As far as charge No. 2 is concerned, as already incorporated to the effect that an amount of Rs. 3,630/- found hidden beneath the old registers piled up on a rack inside the office room of the Petitioner, but the finding of the first Respondent is to the effect that the money was recovered from the dustbin kept under his table. It is to be stated that even for such finding, there is absolutely no evidence available on record. The first Respondent also not pointed out any circumstantial evidence and as such, the question of proving the charge by preponderance of probabilities does not arise.

10. At this juncture, it is relevant to refer a decision of the Hon"ble Apex Court in M.V. Bijlani Vs. Union of India (UOI) and Others, . The Hon"ble Apex Court has held in the said decision as hereunder:

25. It is true that the jurisdiction of the court in judicial review is limited.

Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e., beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.

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 in this case also there is not an iota of material available on record to prove charge No. 2 against the Petitioner and further, the finding of the first Respondent is contrary to charge No. 2 framed against the Petitioner.

11. It is also worthwhile to refer yet another decision of the Hon''ble Apex Court in *Roop Singh Negi Vs. Punjab National Bank and Others*, . The Hon''ble Apex Court has held in the said decision as hereunder:

23. ...The materials brought on record pointing out the guilt are required to be proved. 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.

The settled principle laid down by the Hon''ble Apex Court in the above said decision is also squarely applicable to the facts of the instant case. In the instant case, even assuming there is a suspicion raised against the Petitioner, as pointed out by the Hon''ble Apex Court, the suspicion however strong cannot be substituted for legal proof. The Hon''ble Apex Court in the earlier decision cited supra has held that the disciplinary proceedings being quasi-criminal in nature, there should be some evidence to prove the charge. But as far as the case on hand is concerned, as already pointed out, this is a clear case of no evidence. The appellate authority namely the second Respondent also simply confirmed the order passed by the first Respondent without assigning any valid reason. Therefore, this Court has no hesitation to hold that the impugned orders passed by the Respondents 1 and 2 are liable to be set aside.

12. Accordingly, this Court is constrained to set aside the impugned order passed

by the first Respondent in proceedings R. No. 65331/TA1/2007 dated 12.08.2009 and also the order passed by the second Respondent in G.O.(2D) No. 27, Home (Transport-II-A) Department dated 20.01.2010. Consequently, the Respondents herein are hereby directed to give all the attendant benefits, as per the entitlement of the Petitioner.

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