

(2009) 06 MAD CK 0145
In the Madras High Court
Case No : Writ Petition No. 13344 of 2006

K. Loganathan

APPELLANT

Vs

The Director of Rural Development and The Collector

RESPONDENT

Date of Decision : 09-06-2009

Acts Referred:

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 15, 17, 9

Citation : (2009) 5 MLJ 90

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : P. Mohanraj, for the Appellant; P. Gurunathan, GA, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—Heard both sides.

2. The petitioner filed O.A. No. 9412 of 1997, seeking to challenge an order of the second respondent, dated Nil/08/97, by which he was

imposed with the punishment of reduction in rank from the post of Assistant to that of Junior Assistant with the starting scale of pay on permanent

basis. Even at the time of filing of the original application, the petitioner had reached the age of superannuation and retired from service.

3. In view of the abolition of the Tribunal, the matter stood transferred to this Court and was renumbered as W.P. No. 13344 of 2006.

4. The petitioner during the year 1979 was working as a Rural Welfare Officer. He was given a charge memo under Rule 17(b) of the Tamil Nadu

Civil Service (Disciplinary and Appeal) Rules. The charge against the petitioner was that he manipulated the records relating to Intensive Manure

Scheme (IMS) loan and granted loans in the name of fictitious persons, who

were not the actual residents of the village. He also connived in fabricating the records with the Village Karnam and forged the signature of the village Headman. The petitioner submitted his explanation, dated 05.12.1979 and denied the charges.

5. Even before the disciplinary proceedings, a criminal case was instituted in C.C. No. 226 of 1976 before the learned Sub Divisional Magistrate, Villupuram. The petitioner was acquitted from the criminal case, by a judgment dated 28.12.1978. It was after the acquittal by the criminal court, the charge memo was issued.

6. The Divisional Development Officer, Thirukovilur was appointed as an Enquiry Officer. He submitted his report, dated 30.06.1986 and held that the charges levelled against the petitioner were not proved with corroborative evidence and recommended the dropping of the charges.

However, the second respondent being the disciplinary authority, disagreed with the enquiry report and held the charges were partly proved by order dated 23.12.1988.

7. He imposed the following punishment as found in the said order:

The seriousness of lapses which stands proved calls severest punishment. The lapses on the part of Government Employee has led to misuse of Government funds in the most brazen and devilish manner. Considering all these factors, it is hereby ordered awarding a punishment of stoppage of increment for five years with cumulative effect, which will definitely meet the ends of justice. This is, besides, recovery of the Government Funds embezzled by the involved Government Employees.

The effect of the awarded punishment on the pensionary benefits and service prospects of the delinquent has been duly considered and punishment ordered.

8. The petitioner preferred an appeal to the first respondent. The first respondent on entertaining the same, allowed the appeal on technical grounds by an order, dated 25.05.1996. In the operative portion of the order, it was stated as follows:

I, Director of Rural Development, have examined the above appeal position carefully and independently with reference to connected records and relevant Rules, and noticed the following technical infirmities in passing final

order.

The enquiry Report of the Enquiry Officer has not been drawn in the manner prescribed and also the E.R. has not been enclosed along with the

punishment order communicated to the applicant. As such the punishment order stand vitiated.

In view of the above, it is hereby ordered that the final orders passed by the Collector of Composite South Arcot District first read above

inflicting the punishment of stoppage of increment for five years with cumulative effect on the applicant be set aside without prejudice to the

disciplinary proceedings initiated against him and the Collector of Villupuram Ramasamy Padaiyachiar District is requested to start de novo

proceedings from the stage at which the defect crept in.

9. Instead of starting the process of enquiry at the place where the defect had crept in, the second respondent appointed the D.D.O., Thirukovilur

as the Enquiry Officer to conduct an enquiry afresh by an order dated 16.09.1996. This was done without regard to the relevant rule. The said

enquiry officer found the first charge namely manipulation of loan records relating to IMS loans was partly proved and the second charge of forging

the signature of Village Headman with the connivance of the Village Karnam was not proved. The second respondent accepting the said report

imposed the punishment of reduction in rank on permanent basis.

10. Mr. P.Mohanraj, learned Counsel for the petitioner made the following submissions:

a) When the first respondent had remanded the matter with restricted remand, it is not open to the second respondent to order for a fresh enquiry.

b) There was no justification in permanently reverting the petitioner to a lower post especially when the petitioner had reached the age of

superannuation.

c) The Block Development Officer (Kannamangalam), by name K.M.Mani, who was also similarly charge sheeted and was also found guilty by

the second respondent District Collector, however was let off by the Government vide G.O.(1D) No. 147, Rural Development Department, dated

25.06.1992 and hence there is discrimination in the matter of imposition of punishment.

d) In the case of the petitioner, the charges related to the years 1969-71 and the

first punishment was given during 1988 and the first respondent set aside the penalty during 1996 and thereafter, the second respondent finally imposed the punishment during 1997. By this process, more than 27 years have elapsed from the date of alleged occurrence of the charge. Therefore the long delay in concluding the disciplinary proceedings will vitiate the entire proceedings.

11. On notice from the Tribunal, the second respondent has filed a reply affidavit dated 19.1.1998. In the reply affidavit, the rationale behind the appointment of an another enquiry officer to conduct a denova enquiry as well as the long delay was not explained. Even the ground relating to discrimination regarding the charges being dropped against BDO-K.M.Mani, it was sought to be explained that the said person was the head of office and not a field level officer. The original file relating to the case was also circulated. But the said file does not contain any order passed by the second respondent in appointing an another enquiry officer after the order of remand.

12. Insofar as the appointment of another enquiry officer in conducting the denova enquiry, the same is not warranted. The first respondent never remitted the matter to conduct a fresh enquiry all over again and merely directed to start from the stage where the defect had crept in. According to the first respondent, the enquiry report was not drawn in a prescribed manner and it has not been sent along with the punishment order. If the enquiry report was not properly written, then it is open to the disciplinary authority to come to his own findings and communicate the same to the charged officer. There is no scope for ordering a denova enquiry.

13. In this context, it is necessary to refer to the judgment of the Supreme Court in K.R. Deb Vs. The Collector of Central Excise, Shillong, . The following passages found in paras 12 to 14 may be usefully extracted:

12. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground

that the report of the Inquiring Officer or Officers does not appeal

to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under

Rule 9.

13. In our view the rules do not contemplate an action such as was taken by the Collector on February 13, 1962. It seems to us that the Collector,

instead of taking responsibility himself, was determined to get some officer to report against the appellant. The procedure adopted was not only not

warranted by the rules but was harassing to the appellant.

14. Before the Judicial Commissioner the point was put slightly differently and it was urged that the proceedings showed that the Disciplinary

Authority had made up its mind to dismiss the appellant. The Judicial Commissioner held that on the facts it could not be said that the Disciplinary

Authority was prejudiced against the appellant. But it seems to us that on the material on record a suspicion does arise that the Collector was

determined to get some Inquiry Officer to report against the appellant.

14. The mere fact that the petitioner did not protest against ordering of a fresh enquiry and co-operated with the enquiry officer, as contended by

the second respondent will not cure the defect, in the absence of any Rule to that effect and also with a restricted remand order, the second

respondent could not have expanded the scope of his jurisdiction.

15. Further, the very same second respondent also found BDO-K.M.Mani guilty of similar charges. But, however, the Government while

considering the said charge by G.O.(1D) No. 147, Rural Development Department, dated 25.06.1992 did not accept the said report and

dropped the charges. The operative portion of the order of the Government regarding the case of K.M. Mani may be extracted below:

Though the delinquent explained that 9 loans out of 12 loans sanctioned under I.M.S. Scheme to the agriculturists of Kongampattu and

Chokkampattu Villages in Kandamangalam Block, the loans were not yet realised. The delinquent also accepts that the remaining three loans were

of course sanctioned to the impersonified loanees based on the certificates given by the Co-operative Credit society and the certificate by the

Tahsildar to the effect that the applicant is not yet a defaulter. However, the individual cannot be absolved of his responsibility by giving a

Government loan to the fictitious person or to the impersonified loanee. Therefore this charge may be held as proved.

3. The Government have carefully and independently examined the case with connected records in the light of the explanation offered by Thiru

K.M.Mani. They have decided to drop the charge as I.M.S. Loans are sanctioned on the basis of summary enquiries and identification of loanees

by the Village Officers. Accordingly, they direct that the charges pending against Thiru K.M. Mani, formerly Block Development Officer,

Kandamangalam now Joint Director of Rural Development, Manager, Tamilnadu Corporation for Women Limited with reference first read above

be dropped.

16. It must be seen from the above order of the Government that the said BDO was not let off on the ground that he was the head of office and

only field level officers were responsible for the lapses. The reasoning given by the second respondent could not be deduced from the said order.

Therefore, there is clear discrimination in the matter of imposition of punishment on the petitioner.

17. Hence the writ petition is allowed and the order of punishment imposed on the petitioner is set aside. The respondents are directed to consider

the case of the petitioner as if he retired without any reversion to the lower post and accordingly, fix his last drawn pay and calculate the pension

and other terminal benefits on the basis of the said pay. But the petitioner is not liable to get any monetary benefits on account of his reversion

being set aside since he has not worked in the higher post during the said period. But however he is entitled to get all arrears of pension and other

terminal benefits on account of his reversion being set aside. This exercise shall be carried out by the respondents within a period of 12 weeks from

the date of receipt of a copy of this order. But, there will be no order as to costs.