
(2004) 12 MAD CK 0112

In the Madras High Court

Case No : Writ Petition No. 3436 of 2003

K.K. Sankarappan

APPELLANT

Vs

The Managing Director, Tamilnadu Agro Engineering and
Service Co-operative Federation Ltd.

RESPONDENT

Date of Decision : 16-12-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 12 MAD CK 0112

Hon'ble Judges : K.P. Sivasubramaniam, J

Bench : Single Bench

Advocate : V.M. Ravichandran, for the Appellant; A.S. Thambusamy, for the Respondent

Final Decision : Allowed

Judgement

K.P. Sivasubramaniam, J.—The petitioner prays for certiorarified mandamus to call for the entire records of the respondent's order dated 3.1.2003 terminating the petitioner from his service and quash the same and direct the respondent to give all benefits.

2. Having regard to the nature of the disposal of the writ petition, it is not necessary to deal with the merits of the charges framed against the petitioner, nor about the findings rendered by the enquiry officer, holding that the charges have been proved.

3. When the petitioner was working with the respondent as Regional Manager, he was subjected to a departmental enquiry. Charges were framed against him on 17.12.1999. He submitted his explanation on 4.1.2000. Not being satisfied with the explanation furnished by the petitioner, an enquiry was instituted. The charges were based on the vigilance report. The grievance of the petitioner is that a copy of the vigilance report was not furnished to him, even though the petitioner had specifically asked for the supply of a copy of vigilance report.

4. The respondent conducted enquiry. Even though the notices of enquiry were duly served on the petitioner, he did not take part in the enquiry and he had also communicated to the respondent that he was not inclined to cross examine the witnesses. In view of the stand taken by the petitioner, the respondent proceeded with the enquiry. The enquiry officer found that the charges were proved against the petitioner.

5. Thereafter, the impugned order of dismissal came to be passed by the disciplinary authority on 3.1.2003. Aggrieved by the said order, the petitioner has approached this court.

6. Learned counsel for the petitioner submits that in the charge memo, reference was made to the vigilance report and therefore, he had asked for a copy of the vigilance report. However, by letter dated 21.1.2000, the said request was rejected and he was only directed to peruse the records. Subsequently, he was not permitted to peruse the records. Therefore, he had expressed that as a fair and reasonable opportunity was not given to the petitioner, he did not opt to take part in the enquiry or to cross examine the witnesses. Learned counsel for the petitioner states that the stand of the petitioner was taken advantage and the respondent had proceeded further to pass final order terminating the service of the petitioner, without even calling upon the petitioner to show cause against the proposed punishment and without furnishing a copy of the enquiry report.

7. Learned counsel for the respondent however, submits that a copy of the enquiry report was not furnished only because the petitioner himself did not opt to take part in the enquiry or to cross examine the witnesses. Therefore, the petitioner cannot complain of any prejudice due to the non supply of the copy of the enquiry report. In this context, learned counsel relies on a judgment of the Supreme Court reported in S.K. Singh Vs. Central Bank of India and Others, , in support of his contention that an order of punishment cannot be interfered with by mere non-supply of copy of enquiry report, if no prejudice is caused due to such non-supply.

8. I have considered the submissions of both sides.

9. The petitioner is aggrieved by two circumstances, as aforesaid. The first is that a copy of the vigilance report was not furnished to him and that a copy of the enquiry report was not furnished to him before the disciplinary authority.

10. With reference to the first objection, namely, non furnishing of the vigilance report, though it is true that the respondent had refused to furnish a copy of the vigilance report, the fact remains that the petitioner was permitted to peruse the file by letter dated 21.1.2000, while informing the petitioner that a copy of the report cannot be furnished. The petitioner at the same time was informed that he was free to peruse the file in the office of the Director. However, it is seen that the petitioner did not take any step to peruse the records. On the other hand, by letter dated 15.3.2000, he merely expressed that when he comes to Madras during monthly meeting, he would peruse the records and submit his report. In a

subsequent letter dated 10.4.2000 also, he has merely stated that he will peruse the files and submit his explanation. The petitioner has not made any complaint to the authorities expressing his grievance that he was not permitted to peruse the records. Therefore, I am unable to sustain the first objection of the petitioner that he was not permitted to peruse the records which includes the vigilance report. On the issue of non furnishing of the enquiry report, it is admitted by the respondent that before passing of the order of termination, the petitioner was not furnished with a copy of the enquiry report. In the writ petition, the petitioner has raised a contention that the non furnishing of the enquiry report had resulted in violation of the dismissal order.

11. Apart from the grievance above expressed by the petitioner, I find that there is an error in the manner of conduct of enquiry. The entire text of the enquiry report is recorded as a part of the impugned order in paragraph 11. Learned counsel for the respondent agrees that paragraph 11 of the impugned order is the full text of the enquiry officer's report and there is no separate enquiry report. A perusal of the said paragraph 11 of the dismissal order, discloses that the enquiry officer has based his conclusions only on the vigilance report. There is no other independent material available before the enquiry officer. No witness appears to have been examined by the enquiry officer, nor any document marked before the enquiry officer. The enquiry officer has based his conclusions only on the vigilance report, as could be seen from the extract of the report of the enquiry officer. Reference is made only to the vigilance report and the fact that in the vigilance enquiry, about 38 witnesses have been examined and 26 reports have been submitted by the Vigilance Department. There is no independent consideration of any material otherwise than the reliance placed on the vigilance report. The said methodology adopted by the enquiry officer cannot at all be sustained. It may be the delinquent chose to remain exparte and did not cross examine any witness. But the obligation of the enquiry officer to conduct a proper enquiry and record his satisfaction regarding the proof of the charge is essential and he cannot blindly rely on the report of the vigilance officer and conclude that charges have been proved. If such is the position of law, then in all cases, there need not be separate enquiry than the vigilance report and it can be taken into consideration as proof of charges.

12. Therefore, the course adopted by the enquiry officer cannot at all be sustained and considering that even the said copy of the enquiry report was not furnished to the petitioner, I am inclined to hold that the petitioner is greatly prejudiced by violation of principles of natural justice.

13. The enquiry officer has to be satisfied independently on the materials produced before him, oral and documentary and the conclusion cannot be based only on the vigilance report. It is needless to mention that the vigilance report is based on the statement of witnesses, who are not subjected to any cross examination. The vigilance report is nothing more than a basis for prima facie satisfaction of the Department to initiate disciplinary proceedings and it can

never be final.

With the result, I am inclined to hold that the enquiry proceedings and report are totally arbitrary and illegal and cannot be sustained.

14. In result, writ petition is allowed. Both the order of disciplinary authority, dismissing the petitioner from his service and enquiry report are quashed with liberty to the respondent to proceed afresh in accordance with law.

15. Having regard to the nature of charges and the allegations against the petitioner being serious, it is up to the respondent to place the petitioner under suspension and to continue the proceedings by fresh enquiry. Writ petition is allowed with the above observations. No costs.