

(2009) 03 MAD CK 0105

In the Madras High Court

Case No : Writ Petition No. 29512 of 2005

L. Perumal Chetty

APPELLANT

Vs

The Principal Commissioner and Commissioner for Revenue
Administration, The District Revenue Officer, The Revenue
Divisional Officer and The Registrar, The Tamil Nadu
Administrative Tribunal

RESPONDENT

Date of Decision : 14-03-2009

Acts Referred:

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 15, 17, 27, 9

Citation : (2009) 4 MLJ 1205

Hon'ble Judges : P.K. Misra, J;K. Chandru, J

Bench : Division Bench

Advocate : R. Saseetharan, for the Appellant; Neelakantan, GA, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—The petitioner challenges the order passed by the Tamil Nadu Administrative Tribunal (4th respondent) made in O.A. No. 4108 of 2002 dated 11.2.2004. By the aforesaid order, the Tribunal dismissed the Original Application and confirmed the order of punishment of removal given to the petitioner. It is this order which is under challenge before this Court. The writ petition was admitted on 14.9.2005. On notice from this Court, the respondents have filed a counter affidavit dated 29.8.2006. This Court also directed the original records to be circulated before this Court. It was accordingly done by the learned Government Advocate.

2. The petitioner was working as a Village Administrative Officer at Achavadi Village, Harur Taluk, Dharmapuri District. He was given a charge memo dated 08.7.1997. The allegation against the petitioner was that he demanded and accepted bribe from one Singaram for a patta transfer. He also demanded and accepted bribe from one Chellan to assign patta in favour of his wife. He further

demanded and accepted bribe from one Chinnathambi for making arrangement to assign poramboke land and also demanded and accepted bribe from one Rajkannu for issuing patta in the name of his wife. The petitioner gave a reply dated 28.7.1997 denying the charges.

3. The State Government issued G.O.(2D). No. 286, Revenue, dated 17.11.1997 directing the second respondent Commissioner for Revenue Administration to instruct the District Collector to conduct departmental proceedings against the petitioner. On the basis of the direction, the second respondent framed a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules by a memo dated 23.3.1998. After receiving the petitioner's explanation, dated 28.4.1998, the Special Tahsildar, Adidraavidar Welfare, Harur Unit-I was appointed as the Enquiry Officer. The said Enquiry Officer submitted his enquiry report dated 17.7.1998.

4. He held that in respect of Charge No. 1 only because there was a delay in granting patta transfer, the complaint has been given. In respect of Charge No. 2, he rejected the contention of acceptance of bribe and only blamed the petitioner for improperly dealing with the grievance of the public. In the same way, in respect of Charge No. 3, he held that the complainant had not come forward to substantiate the charge. In respect of the fourth charge he had recorded that the complainant had not appeared. With regard to the fifth charge, he stated that without permission, the petitioner was not staying in the village though he had stated that he was attending to his duty from 7.00 a.m. till 8.00 p.m. in the village and thereafter was going to his residence. The enquiry officer recommended action only in respect of the fifth charge. But in respect of other four charges of receiving and taking bribes, he held that there was no legal evidence in support of the same.

5. After getting the enquiry report, the competent authority, namely, the District Revenue Officer did not pass any orders on report dated 17.7.1998. It transpires from the original records that the Deputy Superintendent of Police, Vigilance and Anti Corruption, Special Unit, Krishnagiri made a complaint about the way in which the Special Tahsildar, Harur (Enquiry Officer) conducted the enquiry to the Director of Vigilance and Anti-Corruption, Chennai. The complaint was that the Tahsildar did not conduct the enquiry properly and that he had not attached the list of documents in the enquiry report. It was also stated that the charge memo given to the petitioner was not sent to the DV & AC department.

6. The District Collector on being informed by the Directorate of Vigilance and Anti-Corruption, sent a letter dated 22.5.2005 to the Assistant Collector, Dharmapuri stating that he must take remedial steps so as to rectify the defects pointed out by the vigilance police.

7. In the light of these developments, a fresh charge memo dated 27.8.1999 was given by the RDO, Dharmapuri. The petitioner submitted his explanation dated 19.10.1999. The Special Tahsildar, Harur conducted a fresh enquiry and gave a

report dated 15.9.2000 holding the petitioner guilty of charge Nos. 1, 2, 3 and 5. On the basis of the said report, the petitioner's explanation was called and it was given by him on 17.12.2001. The Revenue Divisional Officer, Dharmapuri by the order dated 23.3.2001 accepted the enquiry findings and ordered the removal of the petitioner from service. Though the petitioner had a right of appeal to the DRO, he moved the Tribunal challenging the order of removal by O.A. No. 3169 of 2001. In that O.A. he had stated in Ground Nos. 4 and 5 that the conducting of the second enquiry was illegal and the respondent ought to have proceeded on the basis of the original enquiry report given by the Tahsildar. He also contended that the Rules do not contemplate a second enquiry on the very same charges.

8. On notice from the Tribunal, the RDO, Dharmapuri filed a detailed counter affidavit dated 31.8.2001. The RDO tried to meet the contention in the following words:

Para 8. ...The then Special Tahsildar (Adi-Dravidar Welfare) Harur, was appointed as the Enquiry Officer, and had proceeded with the enquiry. In the meantime, the Enquiry Officer, who had conducted the enquiry was transferred and posted as regular Tahsildar, Harur and the successor in office for the post of the Special Tahsildar (ADW) Harur conducted the enquiry, obviously and necessarily.

Para 9. ...The contention in this para that second charge memo dated 27.8.1999 for the very same charges had been served to him. In view of the transfer of the then Special Tahsildar (ADW), Harur, conducted the enquiry and his succession in office by another Special Tahsildar (ADW) Harur for other administrative reasons, and as finding, a procedural error which of course can be curable beneficial to the applicant and detrimental to the prosecution in the interest of justice and fairness a communication dated 27.8.1999 through the office of the respondent was served on the applicant. Such a communication was advanced by the applicant misconceptively herein.

9. But it transpires that the petitioner sent an appeal to the DRO dated 02.4.2001 which was rejected by an order dated 17.1.2002. A further revision made to the second respondent was also rejected by an order dated 08.4.2002. It is in this order, the second respondent in paragraph 6 had stated that while the first enquiry officer was dealing with the issue, a letter was received from the Director of Vigilance and Anti-Corruption dated 04.6.1999 holding that the departmental enquiry was not conducted in their presence and the earlier charge memo was defective. It was thereafter the RDO, Dharmapuri was given advice to make a correction in the charge memo and a subsequent enquiry was conducted by the Tahsildar in the presence of the Vigilance police and it was completed.

10. The Tribunal by its order dated 11.2.2004 recorded that the petitioner's earlier challenge to the amended charge memo dated 27.8.1999 in O.A. No. 3169 of 2001 was dismissed. Therefore, the petitioner cannot raise the very same contention in the subsequent enquiry. The Tribunal upheld the second charge memo as well as the de novo enquiry. It also discussed the evidence

recorded in the second enquiry and concurred with the views taken by the enquiry officer as well as the penalty imposed on the petitioner.

11. But the fact of the matter is that OA. No. 3169 of 2001 challenging the charge memo was allowed to be withdrawn since the petitioner had stated that his appeal against the dismissal was pending before the DRO and not on the merits of the charge memo. The Tribunal was wrong in holding that the earlier challenge to the charge memo operates as a *res judicata* and there was nothing wrong in framing a fresh charge memo and proceed with the enquiry *de novo*.

12. The learned Counsel for the petitioner placed reliance upon the judgment of the Supreme Court in *K.R. Deb Vs. The Collector of Central Excise, Shillong*, . The following passages found in paragraphs 12 and 13 may be usefully extracted below:

Para 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.

Para 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.

13. The said judgment came up for consideration by the Supreme Court in its decision in *Union of India and Others Vs. P. Thayagarajan*, . After referring to *K.R. Deb's* case, it was observed by the Supreme Court in para 8 which is as follows:

8. A careful reading of this passage will make it clear that this Court notices that if in a particular case where there has been no proper enquiry because of some serious defect having crept into the enquiry or some important witnesses were not available at the time of the enquiry or were not examined, the disciplinary authority may ask the enquiry officer to record further evidence but that provision would not enable the disciplinary authority to set aside the previous enquiries on the ground that the report of the enquiry officer does not appeal to the disciplinary authority. In the present case, the basis upon which the disciplinary authority set aside the enquiry is that the procedure adopted by the enquiry officer was contrary to the relevant Rules and affects the rights of the parties and not that the report does not appeal to him. When important

evidence, either to be relied upon by the Department or by the delinquent official, is shut out, this would not result in any advancement of any justice but on the other hand, result in a miscarriage thereof. Therefore we are of the view that Rule 27(c) enables the disciplinary authority to record his findings on the report and to pass an appropriate order including ordering a de novo enquiry in a case of the present nature.

14. In the present case, the decision of the Supreme Court will squarely apply to the case of the petitioner. It is not open to the respondents to issue a fresh charge memo after the receipt of the enquiry report dated 17.7.1998 sent by the first enquiry officer. The original file clearly shows that the respondents were largely influenced by the objections raised by the DV & AC police and not adhered to the Rules relating to conducting a departmental enquiry. If for some reason the respondents wanted to dislodge the enquiry report given by the original enquiry officer, they could have disagreed with the enquiry report and issued a fresh showcause notice. The Rules do not contemplate the dislodging of the original enquiry report and after framing of a fresh charge memo follow the entire rigmarole all over again.

15. The findings of the Tribunal that the earlier order of the Tribunal will operate as res judicata is not born out by records. On the contrary, the petitioner had withdrawn the OA challenging the original order of removal in view of the pendency of the statutory appeal before the DRO. The further finding that there is no prohibition to conduct a de novo enquiry on account of the defective charge memo does not appeal to reason and it is clearly contrary to the dicta laid down by the Supreme Court in K.R. Deb's case (cited supra) and Thiagarajan's case (cited supra).

16. In the light of the above, we have no hesitation to set aside the order of the Tribunal. The writ petition stands allowed and the order of the Tribunal as well as the order of removal passed against the petitioner will stand set aside. The enquiry report dated 17.7.1998 will stand restored to the file and it is open to the respondents to proceed in accordance with law.

17. Since the petitioner even at the time of filing of the writ petition (in the year 2005) was already 62 years, the respondents are directed to expedite the disposal of the case. In any event take a decision within a period of three months from the date of receipt of a copy of this order.