

(2009) 11 MAD CK 0022

In the Madras High Court

Case No : Writ Petition No. 26801 of 2003

M. Antonysamy

APPELLANT

Vs

Tamil Nadu Cements Corporation Ltd.

RESPONDENT

Date of Decision : 11-11-2009

Acts Referred:

Citation : (2009) 11 MAD CK 0022

Hon'ble Judges : N. Kirubakaran, J

Bench : Single Bench

Advocate : R. Kamatchi Sundaresan, for the Appellant; Kalyani Kailasam, for the Respondent

Judgement

N. Kirubakaran, J.—The petitioner has come up with the present Writ Petition challenging the punishment order imposed on him, namely

punishment of two increment cut with cumulative effect. 2. The facts of the case is that the petitioner was serving as Assistant Manager in the

Respondent Corporation and he was charge sheeted on 02.04.1998 which are as follows:

a. Thiru M. Anthony Samy, Deputy Manager (Process & C-Kiln) who is incharge of the operation and maintenance of the Alangulam Cement

Plant has miserably failed to discharge his duties diligently and properly and the same has resulted in a major fire accident in Kiln-I ESP and also

heavy damages and a loss to the Corporation.

b. He has failed to take prompt action to find out the cause of the fire mishap and also to fix responsibility on the concerned persons on account of

whose Negligence and Neglect of duty, the said fire mishap had occurred.

c. Instead of taking immediate disciplinary action on the erring persons

concerned, he has shown a lenient, lethargic and careless attitude which are detrimental to the interest of the organisation.

d. Due to his lack of proper supervision over the personnel working under his control and because of his gross negligence and neglect of duty ensuring the smooth and trouble free performance of the plant, the fire mishap had occurred in the Kiln-I ESP which not only resulted in heavy damages but also caused heavy financial loss to TANCAM.

The charges relate to the fire accident that occurred on 1997. The petitioner brought to the notice of the Organisation and appointment an Enquiry

Committee to investigate into the probable cause of the accident. The said Committee could not give any specific reason for the accident.

However, as stated above the petitioner was served with Charge Memo dated 02.04.1998 and for which an explanation was given by the petitioner.

3. An Enquiry was conducted and the Enquiry Officer who came to the conclusion that the charges alleged against the petitioner were not established. However, another Enquiry for the same charges was conducted by Mr. M. Chandrasekaran who was part of the earlier enquiry on 27.06.1998.

4. The Enquiry Report gave findings in favour of the petitioner stating that the charges were not proved. However, without furnishing the Enquiry Report the Respondent Corporation by order dated 05.04.1999, contrary to the enquiry finding came to the conclusion the petitioner was guilty and imposed major punishment of two increment cut with cumulative effect. An appeal against the said punishment order was rejected on 08.09.1999 which was communicated on 10.09.1999.

5. The petitioner has approached this Court against the said orders contending that the orders would have adverse effect on his salary and ten years through out his carrier. The other contention of the petitioner is that the Enquiry Report was not furnished and show cause notice was not issued to him informing about the proposed punishment. The petitioner contended for violation of principles of natural justice, the Impugned Order is liable to be set aside.

6. The learned Counsel for the petitioner submitted that when the Enquiry Report

is in favour of the petitioner it can not be very lightly overturned by the punishing authority and there should be cogent reasons for overturning the Enquiry Report findings and for imposing punishment. Secondly, an opportunity of hearing should have been given to the petitioner especially when the disciplinary wanted to differ from the findings of the enquiry report otherwise he would be condemned unheard. He relied upon the judgment of Hon"ble Supreme Court in Yoginath D. Bagde Vs. State of Maharashtra and Another, which it was held that the charged Officer should have been given an opportunity before the disciplinary authority before the final findings on the charges are recorded and punishment imposed. In the above Judgment, the Hon"ble Supreme Court relied on a three-Judge Bench Judgment of the Apex Court in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, . The learned Counsel also relied upon the single Judge order dated 27.02.2003 passed in Writ Petition No. 776 of 2000 filed by Mr. Justice E. Padmanabhan. In that case the Manager of the Respondent Corporation who was charged for the very same fire accident. The said Writ Petition was allowed by the single Judge of this Court and the said order attained finality.

7. The learned Counsel for the respondents admits that there was no second show cause notice and however added the findings of the Enquiry Report was furnished subsequent to the punishment order. In the opinion of this Court the subsequent serving of punishment order can not condone the act of the respondents non furnishing of the Enquiry Report before imposing punishment and therefore this Court holds that the impugned order is vitiated.

8. The matter is covered by the Constitution Bench decision of the Hon"ble Supreme Court in Managing Director ECIL v. B. Karunakar reported in 1993 (4) SCC 721 wherein it is declared that the principle of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. In view of the categorical of the Hon"ble Supreme Court as stated above, the delinquent officer should have been given an opportunity to put forth which is lacking in this case.

9. The learned Counsel for the petitioner submits that the officer namely, the petitioner already retired from service since the Writ Petition is allowed and the Impugned Order is quashed. If any benefits is available out of

quashing the Impugned Order, the respondents is directed calculate and determine to pay the same within eight weeks from the date of receipt of copy of this order. No costs.