

(2011) 02 MAD CK 0253

In the Madras High Court

Case No : Writ Petition No. 1014 of 2007 (OA. No. 3371 of 2000)

M. Munirathinam

APPELLANT

Vs

The District Collector and The Director of Rural Development

RESPONDENT

Date of Decision : 15-02-2011

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 3

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

Citation : (2011) 02 MAD CK 0253

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : R. Subburaj, for S.M. Subramaniam, for the Appellant; R. Murali, G.A., for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The Petitioner in these 3 writ petitions is one and the same person. While he was working as Selection Grade Accountant in the Block Development Office at Tiruvallur, he filed O.A. No. 8022 of 1999, seeking to challenge an order dated 06.12.1999 and after setting aside the same seeks for a direction to promote him to the post of Extension Officer retrospectively with effect from 24.02.1996.

2. By the impugned order, the Petitioner was informed that his name could not be considered for promotion since his punishment falls during the panel year of 1999-2000 and his name will be considered only in the next panel year 2000-2001.

3. The Tribunal ordered notice of motion on the Original Application on 04.01.2000. In view of the abolition of the Tribunal, the matter stood transferred to this Court and was re-numbered as W.P. No. 38972 of 2006.

4. Even while the earlier OA was pending before the Tribunal, the Petitioner filed O.A. No. 3371 of 2000 before the Tribunal, seeking for a prayer to include him in

the panel for promotion to the post of Extension Officer for the year 2000-2001 as informed by the earlier order. In that OA notice of motion was ordered on 28.06.2000. In view of the abolition of the Tribunal, the matter stood transferred to this Court and was re-numbered as W.P. No. 1014 of 2007.

5. In the mean while, when these two matters were pending, the Petitioner reached his age of superannuation on 30.11.2006 and he is no longer in service. After his retirement, he filed a Writ petition before this Court being W.P. No. 20956 of 2007, seeking to set aside the order of the third Respondent, the District Collector, Tiruvallur dated 18.05.1999 as well as the order of second Respondent dated 10.03.2003 confirming the order of the third Respondent and the further order of the second Respondent dated 06.01.2004. That writ petition was admitted on 20.06.2007. On notice from this Court, the third Respondent had filed a counter affidavit dated 13.11.2007.

6. It is seen from the records that the Petitioner was issued with a charge memo dated 10.12.1995 under Rule 17(b) of the Tamil Nadu Civil Services (D & A) Rules for certain allegations, including acquisition of assets, disproportionate to known source of income. The District Collector by proceedings dated 18.05.1999 inflicted the punishment of stoppage of increment for 3 months without cumulative effect. Thereafter, the Petitioner filed an appeal before the second Respondent Director of Rural Development, Chennai. On the said appeal, the second Respondent found that the enquiry was not held properly and therefore, he directed fresh enquiry to be conducted vide order 12.11.2001. Accordingly, charge memo was framed under Rule 17(b) once again on 08.01.2002 and final orders were passed once again inflicting the punishment of stoppage of increment for a period of one year without cumulative effect by an order dated 10.03.2003. As against the said order, the Petitioner preferred an appeal to the second Respondent. The second Respondent dismissed the appeal by an order dated 06.01.2004.

7. The ground raised by the Petitioner was that there was no evidence to show that the Petitioner had assets disproportionate than the known sources of his income. Secondly, he contended that there was no scope for conducting second enquiry since the issue is covered by the judgment of the Supreme Court in K.R. Deb Vs. The Collector of Central Excise, Shillong, . But that was a case where instead of disagreeing with the enquiry report and come to different conclusion, a fresh enquiry was ordered by the disciplinary authority in order to fill up the gaps, which was frowned upon by the Supreme Court as seen from Paragraphs 13 and 14, which is as follows:

13. 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.

14. 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.

8. But in the present case, the Appellate Authority had set aside the earlier order passed by the District Collector and ordered *denova* enquiry which is supported by the Rules. Secondly, the Petitioner never challenged the order of the second Respondent dated 12.11.2001. Infact, it is on the appeal made by the Petitioner, the Appellate Authority had set aside the enquiry.

9. It was further contended by the Petitioner that the Petitioner's explanation was not considered by the authorities and the order only contained reasons but not conclusions. In the absence of explanation being considered, the impugned order must be held to be nonapplication of mind. For this purpose, the counsel for the Petitioner relied upon the judgment of a Division Bench of this Court in *The Tamil Nadu Civil Supplies Corporation Limited rep. By Sub-Regional Manager v. S. Sampath* reported in 2005-1-L.W.795.

10. However, this Court is not inclined to accept the contentions raised by the Petitioner. In the present case, the Petitioner had participated in the enquiry and the charges leveled against him were very serious. In the matter of disproportionate assets, the showing of so much latitude itself is never contemplated. The Petitioner was unable to substantiate some of the purchases made by him. Even thereafter, the Petitioner was only given a penalty of stoppage of increment for a period of one year. The Petitioner has also retired from service. Once an enquiry was held for inflicting of major penalty and finally, after conducting an enquiry, the Petitioner was imposed with minor penalty, this Court is unable to interfere with the quantum of penalty imposed on the Petitioner.

11. It must be noted that the Supreme Court vide its judgment in *Praveen Bhatia Vs. Union of India (UOI) and Others*, dealt with the scope of judicial review over interference with the penalty relating to non-filing of property returns by an Air Force officer. In paragraphs 12.22 and 12.23, 13 and 14, it was observed as follows:

12.22. It may be generally stated that the conduct rules of the Government and public sector corporations constitute a code of permissible acts and behaviour of their servants.

12.23. The scheme of the Conduct Rules, almost invariably, is to first of all

enunciate a general rule of conduct and behaviour followed by specific prohibitions and restrictions. For example, Rule 3 of the Central Civil Services (Conduct) Rules, 1964 which occurs under the heading "General" provides that every Government servant shall at all times:

- (i) maintain absolute integrity;
- (ii) maintain devotion to duty; and
- (iii) do nothing which is unbecoming of a government servant.

The aforesaid aspects were highlighted in *M.M. Malhotra v. Union of India*, SCC at pp.362-63, paras 16-23.

13. The power of the court to interfere with the quantum of punishment is extremely restricted and only when the relevant factors have not been considered the court can direct reconsideration or in an appropriate case to certain litigation, indicate the punishment to be awarded; and that can only be in very rare cases.

14. It is evident from the record that the prescribed period for filing property return is six months and though the Appellant was aware of the requirement he did not choose to file any return; even during the course of enquiry no return was filed and ultimately after show-cause notice was issued it was filed. That being so there is no merit in this appeal which is accordingly dismissed.

12. Hence, W.P. No. 20956 of 2007 stands dismissed. In respect of other two writ petitions, the first related to bypassing his name for not being in the promotion panel was due to the charges pending against him and in the second, denial was due to the subsequent penalty imposed on him. The said action of the Respondent is fully in consonance with the Government guidelines in G.O. Ms. No. 368 P & AR Department dated 18.10.1993. Hence, those writ petitions are also liable to be rejected.

13. In the result, all the three writ petitions are dismissed. However, there will be no order as to costs.