

(2009) 09 MAD CK 0065

In the Madras High Court

Case No : Writ Petition No. 37500 of 2006 and O.A. No. 1721 of 1998

M. Rajendran

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 30-09-2009

Acts Referred:

Citation : (2009) 09 MAD CK 0065

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. This writ petition arose out of O.A. No. 1721 of 1998 filed by the petitioner before the Tamil Nadu Administrative Tribunal. In view of the abolition of the Tribunal, it was transferred to this Court and was renumbered as W.P. No. 37500 of 2006.

3. The petitioner sought for the issuance of a writ of certiorari to call for the records relating to the impugned order of the first respondent in G.O.

(D) No. 41, Transport (H-1) Department, dated 16.7.1997 confirming the orders passed by the second respondent in A1/15293/92, dated

14.3.1995 and to quash the said orders.

4. Originally, the petitioner was imposed with a punishment of stoppage of increment for two years and also recovery of Rs. 379.20 from the

salary for the loss committed by him, by an order of the second respondent. On appeal, the State Government, after consulting the TNPSC,

reduced the punishment to one year. The contention of the petitioner was that he is not eligible for any punishment. In fact, originally an enquiry

officer by name Ramalingam was appointed. He conducted an enquiry and submitted a report, dated 10.11.1992. Without communicating the said

report, another enquiry officer, by name M.Venkataraman, was directed to conduct a fresh enquiry. Once an enquiry officer was appointed and

was directed to conduct an enquiry, without disclosing the outcome of the said enquiry, it is not open to the respondents to order a fresh enquiry.

5. In the light of the above, this Court, by an order, dated 17.8.2009, directed the respondents to produce the original file. Accordingly, a partial

file was produced by the learned Government Advocate. A perusal of the said file does not contain the enquiry report allegedly submitted by the

enquiry officer Venkataraman. On the contrary, the proceedings, dated 30.4.93, was issued by the second respondent stating that Ramalingam had

conducted an oral enquiry and sent a report, dated 10.11.1992, but he did not examine the persons involved in the process of receiving the valves

and working in the job. The persons who handled the job and received the items have to be enquired. First of all, the file did not contain the

enquiry report submitted by the said Ramalingam.

6. If for some reasons, the enquiry report is defective or some witnesses have to be examined, then it is proper for the disciplinary authority to call

for a further evidence from the same enquiry officer. When once the report is submitted and if it is not palatable, the disciplinary authority can

always differ from the findings of the enquiry officer. But in the guise of ordering the second enquiry, he cannot attempt to fill up the lacuna in the

earlier enquiry. This position of law has been clarified by the Supreme Court in its judgment in K.R. Deb Vs. The Collector of Central Excise,

Shillong, .

7. In the light of the above, this writ petition stands allowed. However, there will be no order as to costs.