

(2008) 02 MAD CK 0058

In the Madras High Court

Case No : Writ Petition No. 28781 of 2007 and M.P. No. 1 of 2007

M. Ratnavel

APPELLANT

Vs

The Managing Director, Tamil Nadu Housing Board

RESPONDENT

Date of Decision : 08-02-2008

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 15, 9
Tamil Nadu State Housing Board Service Regulations, 1969 — Regulation 37

Citation : (2008) 02 MAD CK 0058

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : N.R. Chandran, SC for D. Sukumar, for the Appellant; R. Girirajan, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—Heard the arguments of Mr. N.R. Chandran, learned Senior Counsel appearing for Mr. D. Sukumar, counsel for the

petitioner and R. Girirajan, learned Standing Counsel for the respondent Board and perused the records.

2. The petitioner was working as an Executive Engineer in the respondent Housing Board. In the present writ petition, he is challenging the order

dated 31.5.2007 wherein an Enquiry Officer was appointed to enquire into the charges framed against him. Pursuant to the decision of the

respondent Board vide resolution dated 23.4.2007, it was resolved to conduct denova enquiry against the petitioner and 12 others and the

petitioner was charge sheeted by a charge memo dated 16.10.1999 in terms of Regulation 37(b) of the Tamil Nadu Housing Board Service

Regulations 1969. The charge against the petitioner was very serious that inasmuch as during the period from 08.5.1989 to 03.8.1989, when he

was working as Executive Engineer-cum-Administrative Officer at the Madurai Sub-Division, he had failed to supervise and extract work from the allotted staff and also committed irregularities which are listed out in Annexure I to the charge memo. It was stated that because of his lack of supervision during the short tenure of the petitioner, the Board had suffered a loss to the extent of Rs. 3,94,219/-, which was also listed in Annexure IV to the charge memo.

3. One V. Shanmughanathan, who was the Financial Adviser of the Tamil Nadu Housing Board, was appointed as an Enquiry Officer. Since the said Financial Adviser went on transfer, one R. Ramachandran, Chief Revenue Officer, Tamil Nadu Housing Board was appointed as an Enquiry Officer by an order dated 03.01.2002. As he had also gone on leave, another Financial Adviser, by name, P. Palanivel was appointed as the Enquiry Officer vide order dated 01.4.2002. An enquiry was conducted on 21.8.2002 by the said Palanivel, who had recorded the statement of the petitioner. Thereafter, in the place of Palanivel, one K. Ganesan, Financial Adviser, was appointed as an Enquiry Officer and he had completed the enquiry against the petitioner on 12.11.2004.

4. In that enquiry held on 02.11.2002, the said Enquiry Officer had also put questions to the petitioner. He found that the charges levelled against the petitioner were not proved and recorded a finding to that effect. Instead of taking further action on that report, the respondent, by the impugned order dated 31.5.2007, once again, ordered for a fresh enquiry to be conducted by another Financial Adviser, by name, N. Rajendran.

It is this order, which is under challenge in this writ petition. Notice was ordered and interim order was granted staying further proceedings.

5. Mr. N. R. Chandran, learned Senior Counsel appearing for the petitioner submitted that there was inordinate delay in conducting the enquiry.

The charges, which were originally initiated against the petitioner relate to the year 1989 and the petitioner is now 65 years old and having reached the age of superannuation during October 1999, the further enquiry proceedings should be quashed. He also submitted that the charges were vague and on that ground, the writ petition is liable to be quashed.

6. With reference to the delay, the learned Senior Counsel relied upon the judgment of the Supreme Court reported in P.V. Mahadevan Vs. M.D.,

Tamil Nadu Housing Board, . In that judgment, it was held that conducting of enquiry with considerable amount of delay will be prejudicial to an employee and keeping an employee on a protracted proceedings will create mental agony. But in the present case, the charge sheet was given as early as on 16.10.1999 and the petitioner had given reply on 29.11.1999 and 28.3.2000. At that point of time, the petitioner did not raise any ground of prejudice. But, on the contrary, on 21.8.2001, an Enquiry Officer was appointed. Subsequently, when the third Enquiry Officer came to be appointed, he also participated in the enquiry on 21.8.2002 and his statement was recorded and again, before the fourth Enquiry Officer on 12.11.2004, he had given further statement. Therefore, P.V. Mahadevan's case (cited supra) does not help the case of the petitioner.

7. Very recently, the Supreme Court in AIR 2007 SCW 1639 [Government of A.P. and Ors. v. V. Appala Swamy] has held the parameters of interfering with a charge sheet on the ground of delay in paragraphs 10, 12 and 13, which read as follows:

Para 10: So far as the question of delay in concluding the departmental proceedings as against a delinquent officer is concerned, in our opinion, no hard and fast rule can be laid down therefor. Each case must be determined on its own facts. The principles upon which a proceeding can be directed to be quashed on the ground of delay are:

- (1) Where by reason of the delay, the employer condoned the lapses on the part of the employee.
- (2) Where the delay caused prejudice to the employee.

Such a case of prejudice, however, is to be made out by the employee before the Inquiry Officer.

Para 12: Learned Counsel appearing on behalf of the respondent, however, placed strong reliance on a decision of this Court in M.V. Bijlani Vs.

Union of India (UOI) and Others, . That case was decided on its peculiar facts. In that case, even the basic material on which a departmental

proceedings could be initiated was absent. The departmental proceedings was initiated after 6 years and continued for a period of 7 years. In that fact situation, it was held that the appellant therein was prejudiced.

Para 13: Bijlani (supra), therefore, is not an authority and, in fact, as would appear from the decision in P.D. Agrawal (supra), for the proposition

that only on the ground of delay the entire proceedings can be quashed without considering the other relevant factors therefor.

8. On the ground of vagueness, the learned Senior Counsel relied upon a judgment of the Division Bench of the Karnataka High Court reported in

2004 (1) L.L.J. 36 [G.V. Aswathanarayana v. Central Bank of India and Ors.]. In paragraph 13 of the said judgment, the Court after going

through specific charges, held that the charges were vague and, therefore, it does not stand to scrutiny.

9. Per contra, Mr. Girirajan, learned Standing Counsel appearing for the Tamil Nadu Housing Board, brought to the notice of this Court the

judgment of the Supreme Court reported in 2006 (8) SCC 776 [P.D. Agrawal v. State Bank of India and Ors.] and submitted that the petitioner

had not raised the issue at the appropriate time. But, having participated in the enquiry and allowing it to proceed, he cannot now raise the issue of

charges being vague and also about the delay in conducting the enquiry. In this context, the learned Counsel referred to paragraphs 17 and 29 of

the judgment, which are extracted below:

Para 17: The validity of the disciplinary proceeding and/or justifiability thereof on the ground of delay or otherwise had never been raised by the

appellant before any forum. It was not his case either before the Appellate Authority or before the High Court that by reason of any delay in

initiating the disciplinary proceeding he had been prejudiced in any manner whatsoever. It may be true that delay itself may be a ground for arriving

at a finding that enquiry proceeding was vitiated in the event it is shown that by reason thereof the delinquent officer has been prejudiced, but no

such case was made out.

Para 29: In this case, as noticed hereinbefore, the appellant did not raise the question of delay before any forum whatsoever. He did not raise such

a question even before the disciplinary authority. He not only took part therein without any demur whatsoever, but, as noticed hereinbefore, cross-

examined the witnesses and entered into the defence.

10. Therefore, this Court is not able to agree with the submission made by the learned Senior Counsel appearing for the writ petitioner. The

respondent Tamil Nadu Housing Board had circulated the original file relating to the enquiry held against the petitioner.

11. The last Enquiry officer, K. Ganesan, had recorded the following finding, which is available at page No. 1607 of the file circulated by the learned Counsel:

The claim of the accused officer Thiru M. Ratnavel, that he has not issued any allotment orders (Thiru K. Sundararaj, Assistant Executive engineer alone issued allotment orders) could not be denied. As he has not issued allotment orders, the charge against him could not be held as proved beyond doubt.

12. It is, thereafter, the administrative Sub-Committee Meeting was convened and a note was submitted by the Managing Director before the Sub Committee. In respect of item No. 4, viz., L. Navaneethan, Superintending Engineer (retired) and 16 others (which includes the name of the petitioner), the Committee recorded finding which reads as follows:

The Administrative Sub-Committee after detailed discussion and on perusal of Inquiry Officer report has observed to wait for the outcome of SLP in Apex Court to be filed by the Board. This is brought to the notice of the Board for kind information.

13. The said Mr. L. Navaneethan, Superintending Engineer, had filed a writ petition being W.P. No. 5768 of 2000 before this Court and the same was allowed vide order dated 28.01.2005. Thereafter, a Division Bench of this Court, vide judgment dated 17.11.2005, dismissed the writ appeal filed by the respondent Board in W.A. No. 2080 of 2005. The charges made against the said Navaneethan were dropped by the Board vide proceedings dated 03.10.2006. When the matter came up before the Board, the Board passed an order on 23.4.2007 resolving to send the report against the Enquiry Officer to the Government and also to resolve to conduct denova enquiry and to appoint the present Financial Adviser as an Enquiry Officer.

14. It is pursuant to this decision, the impugned order dated 31.5.2007 was issued to conduct the enquiry against the petitioner and 12 others. But in the case of Navaneethan, the Superintending Engineer, the charges were dropped pursuant to the Division Bench judgment of this Court. In respect of one K. Sundararajan and K. Palaniappan, Accountant, as they had expired, the proceedings became abated and one U. Subramanian, an Assistant, was dismissed in an another case. The respondents have not made

it clear as to why in case of Navaneethan, they had accepted the Division Bench judgment and did not pursue the remedy before the Supreme Court but passed a positive order dropping the proceedings in his favour alone whereas in other cases, they have decided to pursue the matter. Since the petitioners have not pleaded any grounds of discrimination, the said question is not decided herein.

15. Since the Enquiry officer had found the petitioner not guilty on the basis of the enquiry conducted and materials made available to him, the only course open to the respondent Board is either to accept the report of the Enquiry Officer or to come to a different conclusion on the existing materials after notice to the petitioner. Ordering of denova enquiry is not permissible in the absence of any specific rules in this behalf.

16. In this context, it is relevant to point out the judgment of the Supreme Court reported in K.R. Deb Vs. The Collector of Central Excise, Shillong, . The relevant passages found in paragraph Nos. 10, 12 and 13 are extracted below:

Para 10: A number of points have been raised before us but we need only mention one point viz that the Collector had no authority to appoint Shri

K.P. Patnaik to inquire into the charge after the Inquiry Officers had reported in his favour. It was urged before us that such an inquiry is not

contemplated by the Central Civil Services (Classification, Control and Appeal) Rules, 1957. It was contended that Rule 15 of the Classification

and Control Rules did not contemplate successive inquiries, and at any rate, even if it contemplated successive inquiries there was no provision for

setting aside earlier inquiries without giving any reason whatsoever. It was further contended that the order, dated February 13, 1962, was mala

fide.

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.

17. Therefore, in the light of the above judgment, the impugned order will have to be set aside preventing the respondents from conducting denova

enquiry. But, however, the respondents are permitted to pass appropriate orders on the basis of the enquiry report and available materials. In case

they want to disagree for which a decision was taken in the Board Meeting held on 23.4.2007, the respondent will have to give notice to the

petitioner and after hearing his views and after communicating the dissent note, can take a final decision in the disciplinary proceedings initiated

against the petitioner.

18. Since the petitioner had reached the age of superannuation on 31.5.2000 and also receiving provisional pension and he is at present 65 years

old, the respondents shall undertake an exercise in this regard and complete the process within a period of twelve weeks from the date of receipt

of a copy of this order. The writ petition stand disposed of accordingly. However, there will be no order as to costs. Connected Miscellaneous

Petition is closed.