
(2011) 12 MAD CK 0005
In the Madras High Court
Case No : Writ Petition No. 19209 of 2010

N.G. Rathinaselvan

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 07-12-2011

Acts Referred:

Constitution of India, 1950 — Article 320(3)

Citation : (2011) 12 MAD CK 0005

Hon'ble Judges : M.M. Sundresh, J

Bench : Single Bench

Advocate : G. Elanchezhian, for the Appellant; K.V. Dhanapalan, AGP, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr.Justice M.M. Sundresh

1. This writ petition has been filed, challenging the order impugned dated 29.6.2010, by which, the petitioner has been removed from service by compulsory retirement.
2. The petitioner herein was issued with Charge Memo dated 26.10.2005, during the period, he was working as Assistant Divisional Engineer, (Highways) Tirukovilur. The charges are to the effect that the petitioner colluded with other employees and committed serious irregularities by way of making false entries in the go down log book regarding the purchase and utilization of bitumen, apart from preparing bogus bills, causing huge loss to the Government. The petitioner gave his explanation dated 26.11.2005. Not being satisfied with the explanation given by the petitioner, an Enquiry Officer was appointed.
3. The Enquiry Officer found that certain charges are proved namely the charge Nos.1 to 3 and 5. The 1st respondent communicated the report of the Enquiry Officer with a direction to the petitioner to show cause as to why appropriate punishment shall not be imposed by accepting the report of the Enquiry Officer.

The petitioner made a further representation to the 1st respondent. Thereafter, the order impugned was passed on 29.06.2010 holding that the charge Nos.2 to 3 and 5 are proved. Accordingly, a punishment of compulsory retirement was made against the petitioner based upon the Enquiry Officer's report and after getting opinion on the proposed punishment from the Tamil Nadu Public Service Commission. Challenging the same, the present writ petition has been filed.

4. Mr. R. Thiagarajan, the learned Senior Counsel appearing for the petitioner submitted that the time limit granted by this Court, on an earlier occasion, has not been complied with. The order impugned is not a speaking order, therefore, the same cannot be sustained. For the alleged occurrence said to have happened in between the years 1998-2000, charges have been framed in the year 2005 and concluded in the year 2010 and therefore, the proceedings are liable to be set aside on the question of delay. The report of Tamil Nadu Public Service Commission has not been furnished to the petitioner before passing the order impugned. The learned counsel placed reliance upon the judgment of Hon'ble Apex Court in the case of Union of India (UOI) and Others Vs. S.K. Kapoor, and in the case of S.N. Narula Vs. Union of India (UOI) and Others, in support of his submissions.

5. Reliance was also made on the judgment of this Court rendered in W.P.No.13551 of 2007 dated 18.01.2011, wherein this Court has held that when the Delinquent Officer gives his reply, the same will have to be considered by the Disciplinary Authority while making final decision by way of speaking order.

6. Per contra, the learned Government Pleader submitted that after the constitutional amendment made to Art.311(2) of the Constitution of India under 42 amendment, the petitioner is not entitled to be heard on the proposed punishment. The respondent has made the decision by considering the relevant materials available on records. A mere consideration of Tamil Nadu Public Service Commission would not have any bearing on the decision made by the 1st respondent and in any case, the petitioner is not entitled to have a copy of the same. The 1st respondent has considered the relevant materials available on record namely representation of the petitioner vis-avis Enquiry Officer's report, while coming to the decision by way of the order impugned. Therefore, the writ petition will have to be dismissed.

7. A perusal of the order impugned would show that the representation of the petitioner has not been considered in proper perspective. The report of the Enquiry Officer is nothing but a piece of evidence to be appreciated by the Disciplinary Authority when the petitioner was asked to show cause and suitable reply was given. The respondent is duty bound to consider the case, as the order passed against the Delinquent Officer, admittedly, has got civil consequences. Considering the very same issue, this Court in W.P.No.13551 of 2007 Dated 18.01.2011 has held as follows:-

26 As rightly contended by the learned counsel for the petitioner that the

Disciplinary Authority, though has taken note of the further representation, dated 10.05.2000, submitted by the petitioner on the findings of the enquiry officer, has failed to advert to the grounds and pass a reasoned order, excepting to record that it was carefully and independently considered before accepting the findings of the enquiry officer. What has been done by the Disciplinary Authority in the above said Government Orders, is nothing but conclusions of the disciplinary proceedings, without assigning any reasons, as to why the defence put up by the delinquent officer was not acceptable. Absolutely, there is no discussion on the points raised by the petitioner.

27. In this context, it is worthwhile to extract a decision of the Supreme Court in Union of India (UOI) Vs. Mohan Lal Capoor and Others, which was later on followed by the Division Bench of this Court in Tamil Nadu Civil Supplies Corporation v. S. Sampath (W.A.Nos.84 to 87 of 2000, dated 18.02.2005), while adjudicating similar contention regarding nonapplication of mind, while passing orders on the disciplinary proceedings, held that,

Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi judicial. They should reveal a rational nexus between the facts considered and the conclusions reached. Only in this way can opinions or decisions recorded be shown to be manifestly just and reasonable.

8. Therefore, applying the ratio laid down therein and after analysing the order impugned, this Court is of the view that the same is liable to be quashed on the ground of not providing sufficient reasons for coming to the conclusion.

9. Insofar as the furnishing of the report of the Tamil Nadu Public Service Commission is concerned, considering an identical situation and after taking note of the earlier pronouncement, the Hon'ble Apex Court in Union of India (UOI) and Others Vs. S.K. Kapoor, has held as follows:-

7. In the aforesaid decision, it has been observed in SCC para 25 that "the provisions of Article 320(3)(c) of the Constitution of India are not mandatory". We are of the opinion that although Article 320(3)(c) is not mandatory, if the authorities do consult the Union Public Service Commission and rely on the report of the Commission for taking disciplinary action, then the principles of natural justice require that a copy of the report must be supplied in advance to the employee concerned so that he may have an opportunity of rebuttal. Thus, in our view, the aforesaid decision in T.V. Patel case is clearly distinguishable.

8. There may be a case where the report of the Union Public Service Commission is not relied upon by the disciplinary authority and in that case it is certainly not necessary to supply a copy of the same to the employee concerned. However, if it is relied upon, then a copy of the same must be supplied in advance to the employee concerned, otherwise, there will be violation of the principles of natural justice. This is also the view taken by this Court in S.N. Narula v. Union of India.

9. It may be noted that the decision in S.N. Narula case was prior to the decision in T.V.Patel case. It is well settled that if a subsequent coordinate Bench of equal strength wants to take a different view, it can only refer the matter to a larger Bench, otherwise the prior decision or a coordinate Bench is binding on the subsequent Bench of equal strength. Since the decision in S.N. Narula case was not noticed in T.V. Patel case, the latter decision is a judgment per incuriam. The decision in S.N. Narula case was binding on the subsequent Bench of equal strength and hence, it could not take a contrary view, as is settled by a series of judgments of this Court.

10. Therefore, in the light of the clear dictum of the Hon''ble Apex Court, referred supra, this Court is of the view that the order impugned is also liable to be set aside on the ground that the remarks of Tamil Nadu Public Service Commission has not been furnished to the petitioner.

11. Accordingly, the writ petition is allowed and the respondent is directed to furnish a copy of the remarks of Tamil Nadu Public Service Commission to the petitioner within a period of four weeks from the date of receipt of a copy of this order. After receipt of the same, the petitioner shall give suitable reply within a period of four weeks there from. Thereafter, the 1st respondent is directed to pass appropriate orders by taking into consideration the representation given by the petitioner already, the representation to be given by the petitioner vis-a-vis the Enquiry Officer''s report and the recommendation of the Tamil Nadu Public Service Commission by way of speaking order.

12. The writ petition is ordered accordingly. No costs.