
(2013) 06 MAD CK 0027
In the Madras High Court
Case No : Writ Petition No. 26922 of 2009

R. Mythili

APPELLANT

Vs

Principal Secretary to Government

RESPONDENT

Date of Decision : 17-06-2013

Acts Referred:

Citation : (2013) 7 MLJ 62

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : Ravi Shanmugam, for the Appellant; N. Srinivasan, Additional Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

T. Raja, J.—The petitioner, Mrs. R. Mythili, while serving as Superintendent in the office of the Regional Transport Officer, Chennai

(South), was subjected to disciplinary proceedings by issuance of a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline &

Appeal) Rules. Along with the petitioner, three others were also departmentally proceeded with. The petitioner was subjected to face the charge

memo based on the surprise check conducted at the office of the Regional Transport Officer, Chennai (South), Thiruvanmiyur, Chennai-41 on

10.9.2003 on the ground that she had allowed one Mr. Sridhar, a tout, inside the office to make entries in the goods register, permit register of "D"

Section. Since the entries for grant of permit for goods vehicle are to be written in the relevant register by D1 and D2 Assistants, they were actually

written by the said tout Mr. Sridhar and D1 and D2 Assistants had simply lent their initials in the registers on several days. It was further alleged

that the petitioner, being a Superintendent, had permitted the said tout Mr. Sridhar, an outsider, to write up the important Government registers.

Therefore, on the further allegation that she had failed to maintain the integrity and devotion to duty and thereby contravened the provisions of Rule

20 of the Tamil Nadu Government Servants Conduct Rules, 1973, she was called upon to submit her explanation as to why she should not be

proceeded with departmentally. Immediately on receipt of the said charge memo, the petitioner submitted her detailed explanation denying all the

allegations. During the pendency of the departmental proceedings, the petitioner, after having waited for three long years, came to this Court by

filing W.P. No. 22823 of 2007 seeking a direction to conduct the oral enquiry and pass final orders expeditiously, for the reason that her

promotions were unnecessarily delayed. This Court also, accepting the case of the petitioner, by order dated 5.7.2007, issued a direction to

conduct the enquiry and pass final orders within a period of three months and finally, when the department, after appointing an enquiry officer,

completed the enquiry, a report was filed by the enquiry officer holding that the only charge levelled against the petitioner was not proved.

However, the disciplinary authority, on receipt of the said report submitted by the enquiry officer, refused to accept the report of the enquiry

officer. While disagreeing with the report of the enquiry officer, deviated from the findings and rightly issued a notice to the petitioner stating that

when the petitioner herself admitted for having allowed the tout Mr. Sridhar to make entries in the relevant registers, the question of accepting the

report of the enquiry officer that the charge was held not proved, cannot be accepted. Further, after receiving the said letter of deviation of the

report of the enquiry officer, the petitioner also submitted her further representation dated 29.7.2008 by taking a stand that at no stage of the

enquiry i.e., before the enquiry officer or at the time of enquiry, she had admitted the knowledge of a person called Sridhar nor she had admitted

that she had allowed the said tout Mr. Sridhar to write entries in the Government records. It was further pleaded in her written representation that

when she had not given any such statement nor admission that she only permitted the said Mr. Sridhar to make entries, holding the charge as

proved is contrary to the rules and the principles of natural justice. Finally, the petitioner also pleaded in her written representation that on

10.9.2003, when the surprise check was conducted in the "D" section, she was not even available in the room and the said fact was also admitted

by the Cell Officer Mr. Raghupathy in his statement. Therefore, when the petitioner was absent on the crucial date viz., 10.9.2003, the charge

levelled against her that she only allowed the tout Mr. Sridhar to make entries in the relevant Government records is absolutely unwarranted.

However, the said explanation, as pleaded by the learned counsel for the petitioner, was not considered and finally, she was imposed with the

punishment of stoppage of increment for a period of two years with cumulative effect. Aggrieved by the same, the petitioner has come to this

Court.

2. The learned counsel for the petitioner, while assailing the impugned order, made twofold submissions before this Court. Firstly, it was stated that

when the charge, which was successfully faced by the petitioner, was admittedly not proved before the enquiry officer, the disciplinary authority,

deviating from the said findings of the enquiry officer, has wrongly issued a notice stating that the report of the enquiry officer cannot be accepted

on the ground that the petitioner herself had admitted the allegation of permitting the tout Mr. Sridhar to make entries in the relevant records,

particularly when the petitioner herself has explained beyond doubt that she was not even present on the crucial date. Further, when there was no

such admission made by the petitioner either before the enquiry officer or at any stage before the completion of enquiry, the disciplinary authority

erred in relying upon another statement made by one Mr. Vijayakumar stating that the petitioner therein had admitted the charge, which is

absolutely unfair and beyond the scope of charge and the evidence adduced by both the parties before the enquiry officer. Secondly, it was also

pleaded that when the co-delinquent Mr. Vijayakumar, having suffered a punishment, when he preferred a review petition before the Government,

the review petition filed by the co-delinquent Mr. Vijayakumar was allowed by giving a specific finding in favour of the said Vijayakumar holding

that this was not the charge warranting the punishment of stoppage of increment and the same should be dealt with lightly by imposing only a

warning. Therefore, when the co-delinquent Mr. Vijayakumar was exonerated by the Government in G.O. (D) No. 295 dated 9.5.2013, it is not

open to the disciplinary authority to discriminate the petitioner by imposing the major punishment of stoppage of increment for a period of two

years with cumulative effect, as this will also result in deprivation of the further promotional chances of the petitioner. On this basis, he prayed for

setting aside the impugned order.

3. In reply, a counter affidavit has been filed by the respondent. The learned Additional Government Pleader for the respondent, by producing the

additional document, stated that when the petitioner and three others were tried for an identical charge, one Mr. Vijayakumar, during the course of

enquiry, had admitted the allegation that he only permitted the said tout Mr. Sridhar to make entries in the relevant register. When the said Mr.

Vijayakumar, who was also one of the co-delinquents, had admitted the allegation, it goes without saying that the petitioner, being a

Superintendent, should be held responsible for the charge. Therefore, the disciplinary authority has rightly deviated from the findings of the enquiry

officer and imposed the punishment of stoppage of increment for a period of two years with cumulative effect. When the case of the petitioner is

standing on a different footing than the said Mr. Vijayakumar for the reason that the petitioner was serving as Superintendent and the said Mr.

Vijayakumar was serving only as Assistant, the petitioner, in all fairness, should not compare her with the said Mr. Vijayakumar. Therefore, the

benefit of exoneration of the charge against the said Mr. Vijayakumar by the Government cannot be extended to the petitioner, as the petitioner

should be held responsible for having allowed an outsider to make entries in the official registers. This Court is not able to subscribe to the

argument advanced by the learned Additional Government Pleader for the respondent for two reasons. Firstly, when the petitioner was proceeded

departmentally under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, she had submitted her explanation. Being

dissatisfied with the explanation offered by the petitioner, the disciplinary authority appointed an enquiry officer, who found her not guilty in respect

of the sole charge. However, when the enquiry officer submitted a report before the disciplinary authority, the disciplinary authority, after finding

that there was an admission made by one of the co-delinquents Mr. Vijayakumar, who was also tried along with the petitioner in a common

enquiry, deviated from the findings of the enquiry officer and thereupon the petitioner was also issued with a further notice calling upon her to

submit her explanation as to why the disciplinary authority should not hold the charge as proved or refuse to accept the report of the enquiry

officer. At that stage, the petitioner submitted her detailed representation requesting the disciplinary authority to consider her case on two grounds.

Firstly, it is the case of the petitioner that at no point of time, either before the enquiry or after the enquiry, she has made any admission that she

allowed the tout Mr. Sridhar to make entries. Secondly, it was also pleaded explicitly in her written representation dated 29.7.2008 in regard to

the admission made by the said Mr. Vijayakumar that the said Mr. Sridhar was allowed to make entries, cannot be put against the petitioner, as

she was not even available on the crucial date when the surprise check was conducted viz., on 10.9.2003. Unfortunately, this was not even

properly looked into by the disciplinary authority. Further, as alleged by the disciplinary authority in her deviating note, there is no admission made

by the petitioner even in the documents relied on by the respondent nor she has signed any document admitting the fact that she allowed the tout

Mr. Sridhar to make entries in the official register. Therefore, when the only finding upon which the disciplinary authority deviated from the enquiry

officer's finding clearly shows that the petitioner has not admitted anywhere either before the enquiry officer or after the completion of the enquiry

proceeding as to the allowing of the tout Mr. Sridhar to make entries in the official register, it is too far for the respondent to stretch the allegation

made against the petitioner that she has admitted the allegation. That apart, when the co-delinquent Mr. Vijayakumar was also imposed with a

similar punishment, the Government, after accepting the review petition, has clearly set aside the order holding that the nature of charge levelled

against the said Mr. Vijayakumar and three others should not have been taken as so serious to impose the punishment of stoppage of increment for

a period of two years with cumulative effect. Moreover, when the findings of the enquiry officer have shown that the sole charge is not proved,

wrongly holding that the petitioner had made her admission that she allowed Mr. Sridhar to make entries, without there being any evidence

therefor, is untenable. This aspect has not been considered properly, hence, the impugned order is liable to be interfered with. Accordingly, the

impugned order is set aside and the writ petition is allowed. However, there shall be no order as to costs.