

(2010) 12 MAD CK 0237

In the Madras High Court

Case No : Writ Petition No. 1132 of 2007 and O.A. No. 6482 of 2000

R. Nallendran

APPELLANT

Vs

The Conservator of Forests, The District Forest Officer, The
Assistant Conservator of Forests/Enquiry Officer and Ganesan

RESPONDENT

Date of Decision : 08-12-2010

Acts Referred:

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

Citation : (2010) 12 MAD CK 0237

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : R. Singaravelan, for the Appellant; S.N. Kirubanandam, Special Government Pleader (Forests) for Respondents 1-3, for the Respondent

Final Decision : Allowed

Judgement

K. Chandru, J.—Heard both sides.

2. The Petitioner was working as a Forester in Mayiladuthurai Section, Sirkali Range. He filed Original Application in O.A. No. 6482 of 2000 before the Tamil Nadu Administrative Tribunal challenging the order dated 31.05.2000 passed by the second Respondent, District Forest Officer, Thanjavur, wherein and by which, the Petitioner was imposed with the penalty of stoppage of increment for a period of ten years with cumulative effect. It is also indicated therein that the said punishing authority has taken into account the impact on such penalty on the pension to be received by the Petitioner. The Petitioner did not file any appeal against the said order to any appellate authority, but moved the Tamil Nadu Administrative Tribunal directly after getting waiver of the appeal remedy in M.A. No. 6380 of 2000.

3. The Tamil Nadu Administrative Tribunal ordered notice on 05.09.2000. Pending the Original Application, no interim order was granted. On 3 notice from the Tamil Nadu Administrative Tribunal, the first and second Respondents have filed

reply affidavit dated 23.01.2001 together with supporting documents.

4. In view of the abolition of the Tamil Nadu Administrative Tribunal, the matter stood transferred to this Court and renumbered as W.P. No. 1132 of 2007.

5. The facts leading to the filing of the case are as follows:

The Petitioner was placed under suspension by an order dated 08.09.1998. Subsequently, by an order dated 31.10.1998, a charge memo was issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. After five months of suspension, the suspension was revoked on 24.02.1999 by the competent authority. The Petitioner was also given a posting order to work at the project office at Chennai.

It appears that an Enquiry Officer was appointed to enquire into the charges levelled against the Petitioner. The said Enquiry Officer, who is the Assistant Conservator of Forests, Forest Protection Squad, Tiruchi gave a report 4 dated 15.09.1999 holding the Petitioner guilty of the charges. After affording an opportunity of making representation, the impugned order dated 31.05.2000 came to be passed.

6. It is the case of the Respondents that the Petitioner did not attend the enquiry despite several notices (as many as 8 notices) were issued to him and in the absence of the Petitioner attending the enquiry, the report was submitted to the competent authority, who imposed the punishment on the Petitioner. They have proceeded the enquiry ex-parte. In page No. 14 of the reply affidavit, it was averred as follows:

In the representation dated 18.11.98 sent by the applicant to the 3rd Respondent (Enquiry Officer), the applicant had stated that (a) he refuses the charges (b) cross examination necessary & (c) copies of all documents as per charge memo to be supplied. For this, the 3rd Respondent sent enquiry notices on 1.2.99, 15.2.99, 15.3.99, 7.5.99, 24.5.99, 22.6.99, 5.7.99 & 12.7.99 directing the applicant to attend to the enquiries & to take copies of documents that are required by the applicant. The applicant has given as many as eight chances, as stated above, to attend to the enquiries and also to take copies of documents. The applicant 5 acknowledged all the enquiry notices. But inspite of all these, the applicant never turned up; taken copies of documents and attended the enquiries. Thus, the applicant only had not co-operated with Enquiry Officer in conducting the enquiry. Hence, the Enquiry Officer has no other go other than furnishing final report exparte.

7. A perusal of the enquiry report produced by the Petitioner shows that the Enquiry Officer examined the following files produced before him:

(a) the file dated 03.07.1998 of the District Forest Officer, Thanjavur;

(b) the letter dated 04.07.1998 sent by the Forester, Sirkali;

(c) the audit report submitted by the Forester, Thiruvarur dated 30.08.1998;

(d) the special audit report dated 31.08.1998; and

(e) the Forester letter dated 02.09.1998.

8. With reference to the examination of the defence side, it was recorded as "nil" and it was stated that the accused Officer did not turn up for enquiry, even after repeated reminders. But a perusal of the enquiry report shows that no one was examined and the Enquiry Officer, on the basis of the 6 files available before him, made the findings. In fact, in page No. 5 of the enquiry report, he also stated that apart from looking into the audit report, he referred to a statement dated 30.08.1998 given by the Forest lease holder by name S. Ramalingam. There was nothing to show that departmental witnesses were examined. The said S. Ramalingam was also not examined. Therefore, the entire exercise done by the Respondents was on the basis of the ex-parte enquiry by the Enquiry Officer and the second Respondent simply accepted the said report without reference to the legal requirement of conducting such enquiry.

9. Though in the reply affidavit at page No. 16 it was stated that the Enquiry Officer initiated the proceedings as per Rules and based upon the Enquiry Officer's report and based on the gravity of the charges, the punishment came to be rendered. There is no such proof that the Enquiry Officer ever adhered to the rules. It must be stated that even in the ex-parte enquiry, there must be a legal evidence let in.

10. This context as to what is the requirement of enquiry by the department came to be considered by the Supreme Court in its judgment in State of Uttaranchal and Others Vs. Kharak Singh, . In para 7 15, the Supreme Court had observed as follows:

15. From the above decisions, the following principles would emerge:

(i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

(ii) If an officer is a witness to any of the incidents which is the subject-matter of the enquiry or if the enquiry was initiated on a report of an officer, then in all fairness he should not be the enquiry officer. If the said position becomes known after the appointment of the enquiry officer, during the enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

(iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged and give an opportunity to him to cross-examine the witnesses of the employer. Only thereafter, the workman/delinquent be asked whether he wants to lead any evidence and asked to give any explanation about the evidence led against him.

(iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy of the enquiry report and all connected materials relied on by the enquiry officer to enable him

to offer his views, if any.

11. In that very same case, after laying down the minimum norms for conducting enquiry, the Supreme Court, in para 17, held as follows:

17... No witnesses were examined. Apparently there was not even a presenting officer. A perusal of the report shows that the enquiry officer himself inspected the areas in the forest and after taking note of certain alleged deficiencies secured some answers from the delinquent by putting some questions. It is clear that the enquiry officer himself has acted as the investigator, prosecutor and judge. Such a procedure is opposed to principles of natural justice and has been frowned upon by this Court.

12. The present circumstances almost similar to the circumstances pointed out by the Supreme Court. In such cases, the Supreme Court, in paras 19 9 and 20, held as follows:

19. As pointed out above, awarding appropriate punishment is the exclusive jurisdiction of the punishing/disciplinary authority and it depends upon the nature and gravity of the proved charge/charges and other attended circumstances. It is clear from the materials, the officer, who inspected and noted the shortfall of trees, himself conducted the enquiry, arrived at a conclusion holding the charges proved and also strongly recommended severe punishment of dismissal from service. The entire action and the course adopted by the enquiry officer cannot be accepted and is contrary to the well-known principles enunciated by this Court.

20. A reading of the enquiry report also shows that the Respondent herein was not furnished with the required documents. The Department's witnesses were not examined in his presence. Though the Respondent who was the writ Petitioner specifically stated so in the affidavit before the High Court in the writ proceedings, those averments were specifically controverted in the replyaffidavit filed by the Department. Mere denial for the sake of denial is not an answer to the specific allegations made in the affidavit. Likewise, there is no evidence to show that after submission of the report by the enquiry 10 officer to the disciplinary authority, the Respondent herein was furnished with the copy of the said report along with all the relied upon documents. When all these infirmities were specifically pleaded and brought to the notice of the appellate authority (i.e. Forest Conservator), he rejected the same but has not pointed out the relevant materials from the records of the enquiry officer and disciplinary authority to support his decision. Hence, the appellate authority has also committed an error in dismissing the appeal of the Respondent.

13. In the light of the above factual matrix and the legal precedents cited above, the impugned order is liable to be set aside and accordingly, the same is set aside and the writ petition is allowed. However, liberty is given to the Respondents 1 to 3 to conduct enquiry in accordance with the statutory rules and principles of natural justice, as pointed out by the Supreme Court. No costs.