
(2014) 09 MAD CK 0168
In the Madras High Court
Case No : W.P. (MD). No. 3252 of 2010

S. Venkatachalapathy

APPELLANT

Vs

The Board of Directors (Appellate Authority)

RESPONDENT

Date of Decision : 24-09-2014

Acts Referred:

Citation : (2014) 09 MAD CK 0168

Hon'ble Judges : S. Nagamuthu, J

Bench : Single Bench

Judgement

S. Nagamuthu, J.—The petitioner was the Project Officer of the Granite Quarry run by the Government at Thiruthangal in Sivagangai District. The first respondent is his employer. The Managing Director of the respondent Corporation placed him under suspension on 10.07.2001 in contemplation of certain charges. Thereafter, a charge memorandum was issued to him by the Chairman cum Managing Director of the respondent Corporation by his proceedings in R.C. No. 12628/EA1/2001, dated 19.02.2002 levelling as many as five charges. The petitioner denied all the five charges. Having not been satisfied with the explanation, the Chairman cum Managing Director appointed an Enquiry Officer to hold an enquiry into the charges. Accordingly, one Henry Robert, the Deputy Manager (Purchase) who was appointed as Enquiry Officer, held enquiry, in which the petitioner participated. Finally, the Enquiry Officer submitted a report dated 23.09.2005 holding him guilty of charges 4 and 5. He had further held that the charges 1 to 3 had not been proved. Thereafter, the petitioner was called upon to submit his further explanation in respect of the findings of the Enquiry Officer. The petitioner accordingly, submitted his explanation on 12.1.2006 disputing the findings of the Enquiry Officer under charge Nos. 4 and 5. Having rejected the same, the Chairman cum Managing Director by his proceedings in No. 12628/E1/2008 dated 22.10.2008 imposed a punishment of stoppage of annual increment for a period of five years with cumulative effect. Challenging the same, the petitioner made an appeal to the Board of Directors. The Tamil Nadu Minerals Limited, Chennai, by order in R.C. No. 12628/E1/2001, dated 20.08.2009

rejected the said appeal. Thereafter, the Deputy Manager of the respondent Corporation by his proceedings in Se.Mu. No. 12628/E1/2001, dated 28.08.2009 regularized the period of suspension as earned leave. Challenging the above punishment imposed on him, the petitioner is before this Court with the present writ petition.

2. I have heard the learned counsel appearing for the parties and I have also perused the records carefully.

3. As I have already pointed out, out of the five charges framed against the petitioner, in respect of the charges 1 to 3, the Enquiry Officer held that they had not been proved. The Disciplinary Authority has accepted the said findings in respect of the three charges. Therefore, I need not elaborate these three charges, namely charges 1 to 3. The Enquiry Officer found the petitioner guilty only under charges 4 and 5.

4. Charge No. 4, reads as follows:

"He failed to assign numbers to 26 blocks of volume 272 M3 produced during his period to the value of Rs. 40 lakhs approximately which were numbered by his successor Thiru. S. Thangapandian, P.O., on 13.07.2001 and 14.07.2001. Thus, he failed to safeguard the blocks produced deliberately. Hence, he is charged under Section 3.29 (XIV) of TAMIN CD & A Rules."

The explanation of the petitioner was that records pertaining to those Blocks were not furnished and the physical verification of the same was also not allowed. Therefore, he was unable to give any explanation to prove his innocence. Subsequently, he was allowed to look into the above particulars. Thereafter, he took the stand that the above said 26 blocks were not produced during the tenure and therefore, there was no occasion to make any marking. But the Enquiry Officer recorded a finding only in few lines, which reads as follows:

"But the delinquent officer has argued that these blocks were produced after his tenure which is not maintainable and true. The delinquent officer has failed in his duty, to assign numbers to these 26 numbers which was later numbered by his successor. Hence, this charge is proved."

5. The learned counsel appearing for the petitioner submitted that this finding of the Enquiry Officer is out of mere surmise. He further submitted that there was no evidence at all to show that these 26 blocks, as a matter of fact, were produced during the tenure of the petitioner. There was neither oral evidence nor documentary evidence that those blocks were produced during the tenure of the petitioner and that he had failed to mark the same.

6. But in the counter affidavit filed by the first respondent, it is again reiterated that the above said 26 blocks were produced during the tenure of the petitioner and petitioner deliberately failed to mark the same.

7. In view of the above, I am of the considered view that the finding of the Enquiry Officer appears to be, based on mere surmise. The finding of the Enquiry Officer in respect of charge No. 4 does not refer to either oral evidence or documentary evidence, if any. Absolutely, there is no evidence that those blocks were produced during the tenure of the petitioner. Similarly absolutely, there is no evidence to show that the petitioner failed to make marks on those blocks. As rightly contended by the learned counsel for the petitioner, neither there was any oral evidence nor was there any documentary evidence to prove that the blocks were produced during the tenure of the petitioner. Thus, the finding of the Enquiry Officer, in the absence of any evidence, is based only on mere surmise and therefore, the finding of the Enquiry Officer cannot sustain in respect of charge No. 4.

8. Charge No. 5 reads as follows:

"Being a geologist, he had violated the procedures of paint marking, paint, of the pit measurement direction of advance and recording the date of commencement of extrication at each level on the walls of the pit. This is a gross negligence in performance of his duties and responsibilities, by which he had lost control over the operation of the quarry efficiently. Hence, he is charged under Section 3.29 (XIV) of TAMIN CD & A Rules."

The defence of the petitioner is that he had given proper marking in the pit, but since there was no fencing, the earlier markings had vanished. This explanation was not accepted by the Enquiry Officer. The Enquiry Officer, without reference to oral and documentary evidence, has simply relied on the Investigation Committee's report dated 16.11.2005. Herein also, as rightly pointed by the learned counsel for the petitioner, the finding of the Enquiry Officer is merely based on surmise and so the same cannot be sustained. Since the punishment has been imposed on the petitioner based on the findings of the Enquiry Officer, which are not sustainable, the punishment imposed on the petitioner by the Disciplinary Authority deserves to be set aside.

9. The Disciplinary Authority also did not refer to any evidence including oral and documentary, if any. I do not understand as to how such a conclusion could have arrived at without holding any enquiry, without affording any opportunity to the delinquent Officer either admitting or disputing the documents or to cross-examine the witnesses, if any produced by the Management. Thus, the enquiry had been held in violation of principles of natural justice. The findings of the Enquiry Officer are arbitrary, inasmuch as the same are based on no evidence. The Disciplinary Authority also did not take notice of the same. The appellate authority has passed a non-speaking order, which does not contain any discussion at all regarding the grounds raised by the petitioner. For all these reasons, the impugned order is liable to be set aside.

10. In the normal course, while setting aside an order on such technical grounds, this Court would give liberty to hold fresh enquiry into the charges. But in this

case, I do not propose to do the same, because the alleged occurrence was of the year 2001 and the charge memorandum itself was issued in the year 2002. Now, after more than 12 years, if the petitioner is asked to face the charges in the enquiry proceedings, certainly it would not be possible for him to participate in the same effectively. At this length of time, it may not be possible for the petitioner to produce the evidence either oral or documentary to prove his innocence. Therefore, I am not inclined to give such an opportunity to the respondent to conduct fresh enquiry.

11. In the result, the writ petition is allowed and the impugned order is set aside. Consequently, connected M.P. (md). No. 1 of 2010 is closed. No costs.