

(2013) 02 MAD CK 0025

In the Madras High Court

Case No : W.A. No. 711 of 2011 and MP. No. 1 of 2011

Santhanam

APPELLANT

Vs

Managing Director, Chennai Petroleum Corporation Ltd. and
Another

RESPONDENT

Date of Decision : 20-02-2013

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2013) 4 MLJ 253

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

Bench : Division Bench

**Advocate : V. Babu, for the Appellant; S. Sanjay Mohan for S.
Ramasubramaniam, for the Respondent**

Judgement

M. Jaichandren, J.—This writ appeal has been filed against the order of the learned single Judge, dated 19.12.2009, made in W.P. No.

30051 of 2007. The appellant in the present writ appeal was the petitioner in the writ petition. The writ petition had been filed by the appellant to

quash the award of the Central Government Industrial Tribunal, Chennai, dated 18.12.2006, made in I.D. No. 1 of 2006, and for a consequential

direction to the management of the Chennai Petroleum Corporation Limited, Chennai, the first respondent in the said writ petition, to restore the

cadre of the appellant, from Grade-III to Grade-V, with consequential promotion.

2. It had been stated that the appellant is a former Army man, with an unblemished record of service. He had been appointed as a Yardman in the

first respondent corporation, on 20.3.1985. The first respondent Corporation is a company owned by the Government of India and therefore, it is

a "State", as defined under Article 12 of the Constitution of India. The service of

the petitioner had been confirmed, on 21.9.1985. After he had been given training in fire fighting, he had been transferred to the Fire and Safety Section of the Manufacturing Department of the first respondent Corporation. In the Fire and Safety Section of the first respondent Corporation, he was carrying on certain works treating dry chemical powders.

Due to the nature of the work he was doing, his health had deteriorated. Therefore, he was transferred from the Fire and Safety Section of the first respondent corporation to another Section, on medical advice. Thus, he had been transferred to the Invoice Cell, from 6.2.1995. Thereafter, he had been transferred to the Maintenance Department, from 17.8.1997. While so, a charge sheet had been served on him, on 9.10.1997, stating that he had tampered with the records and had caused serious loss to the company. The appellant had submitted his explanation, on 27.10.1997, denying the charges. However, instead of dropping the charges levelled against him, the first respondent Corporation had issued another charge sheet, dated 4.2.1997, with regard to the same occurrence. The appellant had submitted his explanation to the second charge sheet, on 8.1.1998.

3. It had been further stated that an enquiry officer had been appointed and an enquiry had been conducted without following the principles of natural justice. The enquiry officer had submitted his report, on 3.7.1998, stating that the charges levelled against the appellant had been proved. Based on the said enquiry report, the disciplinary authority had imposed a punishment of reduction of two grades from Grade-V to Grade-III on 18.1.1999, without issuing any show cause notice to him before imposing the penalty.

4. Challenging the order of punishment, the appellant had preferred an appeal, before the first respondent, on 10.2.1999. The said appeal had been rejected by the first respondent, on 6.9.2002, after a lapse of nearly 3 1/2 years. Against the rejection of the appeal, by the first respondent, the appellant had made a complaint, (Conciliation Proceedings) to the Regional Labour Commissioner, Chennai. The conciliation proceedings had ended in failure. Therefore, he had raised an Industrial Dispute before the second respondent Industrial Tribunal, in I.D. No. 1 of 2006. The said Industrial Dispute had been dismissed, by the second respondent Tribunal, on 18.12.2006.

5. Challenging the dismissal of the Industrial Dispute by the second respondent Industrial Tribunal, the appellant had preferred a writ petition

before this Court, under Article 226 of the Constitution of India, stating that the penalty imposed by the disciplinary authority is bad in law, as it

was in violation of the principles of natural justice.

6. The management of the first respondent Corporation had filed a counter stating that the first respondent is a public sector undertaking having a

factory at Manali, where it is manufacturing various petroleum products. It is also engaged in the processing of refining crude oil. It had been further

stated that the appellant had joined the first respondent Corporation, on 21.3.1985, as a Yardman, and he had held various positions in the said

Corporation. At the time of the degradation from Grade-V to Grade-III, he was working as a shift operator in the Invoice Cell. While so, on

4.2.1995, when he was working in the evening shift, he had prepared a weighment slip for the vehicle bearing registration No. KA-05-6666, for

product LNHVI to Indian Additives Limited (IAL). The said weighment slip had showed the net weight of the product as 9000 kilograms.

7. It had also been stated that one Munusamy, who was working along with the appellant in the Invoice Cell, had prepared a weighment slip

showing the net weight of the said product as 11030 kilograms. The difference in net weight of the said product prepared by the appellant and

Munusamy was 2000 kilograms. Due to the fabrication of the weighment slip, the first respondent corporation had suffered a loss of 2000

kilograms of LNHVI product. As such, the act of the appellant in preparing the fabricated weighment slip amounts to misconduct, as per the

Certified Standing Orders of the first respondent Corporation. Since the explanation submitted by Santhanam and Munusamy, against whom

charge sheets had been issued, was not satisfactory, a joint enquiry had been ordered, vide notice, dated 7.11.1997.

8. It had also been stated that certain other irregularities had also been noticed in the activities of the appellant, while he was employed in the

Invoice Cell, which had caused serious loss to the first respondent Corporation. It has been further stated that the enquiry officer had conducted

the enquiry following the principles of natural justice. The appellant had been given sufficient opportunity to putforth his case. The enquiry officer

had submitted his findings, dated 3.7.1998, holding that the charges levelled against the appellant had been proved. Based on the findings of the enquiry officer, the first respondent Corporation had decided to impose the punishment of degradation from Grade-V to Grade-III. Accordingly, the first respondent Corporation had issued a letter, dated 18.1.1999, degrading the appellant from Grade-V to Grade-III, while reserving its right to recover an amount of Rs. 24,000/- towards the loss incurred by the first respondent Corporation, due to the misconduct committed by the appellant.

9. It had been further stated that the main contention raised on behalf of the appellant is that the enquiry conducted, in respect of the charges levelled against him, and the disciplinary proceedings were in violation of Order 40.2 and 40.5 of the Standing Orders of the first respondent corporation. However, it is stated on behalf of the first respondent Corporation that the punishment of degradation had been issued against the appellant, only after a proper enquiry had been conducted by following the procedures established by law and by following the principles of natural justice.

10. Taking into consideration the rival contentions raised on behalf of the appellant, as well as the first respondent Corporation, the labour Court had rejected the Industrial Dispute raised on behalf of the appellant holding that the penalty imposed on the appellant was fair and proper, as it had been imposed on him after following the procedures established by law and the principles of natural justice. The appellant had challenged the award passed by the second respondent Labour Court, dated 18.12.2006, made in I.D. No. 1 of 2006, by way of a writ petition, in W.P. No.

30051 of 2007. This Court, after considering the contentions raised on behalf of the parties concerned and on a perusal of the records available and on considering the decisions cited by the learned counsels appearing on either side, had found that the co-delinquents had been awarded the punishment of grade reduction from Grade-IV to Grade-III, while the petitioner had been awarded the grade reduction from Grade-V to Grade-III.

11. It had been further found that a sum of Rs. 16,000/- had been ordered to be recovered from each of the co-delinquent towards the loss

suffered by the first respondent Corporation. A sum of Rs. 24,000/- was ordered to be recovered from the appellant for the same misconduct. In

such circumstances, this Court had passed an order, dated 19.12.2009, in W.P. No. 30051 of 2007, altering the punishment on the appellant, as

grade reduction from Grade-V to Grade-IV and ordered a recovery of a sum of Rs. 16,000/-, as in the case of the co-delinquents. Accordingly,

the disciplinary authority had been directed to pass such an order reducing the punishment imposed on the appellant and to recover the reduced

amount, as per the order passed by this Court, on 19.12.2009.

12. The present writ appeal had been filed by the appellant challenging the order passed by the learned single Judge, dated 19.12.2009, in W.P.

No. 30051 of 2007.

13. The main contention of the learned counsel appearing on behalf of the appellant is that the procedures established by law had not been

followed by the enquiry officer, while conducting the enquiry, in respect of the charges levelled against the appellant. Further, the enquiry officer

had not followed the principles of natural justice and therefore, the enquiry conducted by the enquiry officer is bad in the eye of law. He had further

submitted that the enquiry and the disciplinary proceedings initiated against the petitioner are in clear violation of Order 40.2. and 40.5 of the

Standing Orders of the first respondent corporation.

14. The learned counsel had further submitted that a second show cause notice ought to have been issued to the appellant before he had been

imposed with the punishment of reduction in grade, from Grade-V to Grade III, as per the Standing Order 40.2 and 40.5 of the first respondent

Corporation. Therefore, the enquiry and the disciplinary proceedings had against the appellant are bad in the eye of law.

15. Per contra, the learned counsel appearing on behalf of the first respondent Corporation had stated that the Standing Orders of the first

respondent Corporation do not provide for the issuance of a second show cause notice before issuing the order imposing the penalty. The

necessary enquiry notice had been issued to the appellant for conducting the enquiry. Thereafter, the enquiry had been conducted, as per the

procedures established by law. Based on the findings of the enquiry officer, the first respondent Corporation had imposed the punishment of

reduction in grade, from Grade-V to Grade-III, on the appellant and had also passed an order to recover the amount of Rs. 24,000/- from the appellant, for the loss caused to the first respondent Corporation, due to the misconduct of the appellant. However, this Court had altered the punishment imposed on the petitioner, as reduction from Grade-V to Grade-IV and to recover an amount of Rs. 16,000/- for the loss due to the misconduct of the employee. As such, the appeal filed by the appellant is devoid of merits. Accordingly, it is liable to be dismissed. In view of the submissions made by the learned counsels appearing for the appellant, as well as the first respondent Corporation, and on a perusal of the records available, it is clear that there is no provision in the Standing Orders of the first respondent Corporation for the issuance of a second show cause notice before imposing a punishment on its employees. Further, the appellant has not been in a position to show that the enquiry had been conducted by the enquiry officer, based on the charges levelled against him, without following the procedures established by law and without adhering to the principles of natural justice. While so, it would not be open to the appellant to contend that the order passed by the learned single Judge of this Court, dated 19.12.2009, made in W.P. No. 30051 of 2007, reducing the punishment to that of reduction of grade from Grade-V to Grade-IV and for the recovery of an amount of Rs. 16,000/-, is unsustainable in the eye of law. The appellant has not shown sufficient cause or reason for this Court to interfere with the order passed by the learned single Judge of this Court, dated 19.12.2009, in W.P. No. 30051 of 2007. As such, the writ appeal is devoid of merits. Accordingly, the writ appeal stands dismissed, confirming the order, dated 19.12.2009, made in W.P. No. 30051 of 2007. No costs. Consequently, connected M.P. Nos. 1 and 2 of 2011 are closed.