

(2014) 06 MAD CK 0068

In the Madras High Court

Case No : W.A. No. 500 of 2012 and M.P. No. 1 of 2012

The Managing Director, Tamil Nadu Housing Board

APPELLANT

Vs

Santhanaraj

RESPONDENT

Date of Decision : 24-06-2014

Acts Referred:

Citation : (2014) 06 MAD CK 0068

Hon'ble Judges : N. Paul Vasantha Kumar, J; Meenakshi Sundaram
Sathyanarayanan, J

Bench : Division Bench

Final Decision : Partly Allowed

Judgement

M. Sathyanarayanan, J.—The official respondents in W.P. No. 46859/2002 are the appellants.

2. The respondent herein, who was formerly an Executive Engineer and Administrative Officer was visited with disciplinary proceedings and the Disciplinary Authority has recommended punishment of dismissal from service and it was placed before the Board of Directors of the Tamil Nadu Housing Board [in short "TNBH"] and after obtaining approval from the Government, he was dismissed from service, vide proceedings of the second respondent dated 19.12.2002 and he made a challenge to the said order by filing the above said writ petition, which was allowed, after contest, on 27.08.2010, setting aside the order of dismissal from service and aggrieved by the same, the present Writ Appeal is filed by the official respondents.

3. In the impugned order passed in the writ petition, the facts have been narrated in detail and in order to avoid repetition, few relevant facts necessary for the disposal of this writ appeal are narrated as under:

3.1. The respondent, while working as Executive Engineer and Administrative Officer, has faced disciplinary proceedings and it was pursuant to the earlier enquiry conducted by the Directorate of Vigilance and Anti-Corruption (DVAC)

and after approval of the charge sheet, charge memos have been issued against the respondent, who at the relevant point of time was a Superintending Engineer, Tvl.S.Eswararaj, Junior Engineer and Tvl.L.S.Sudandara Doss, Assistant Executive Engineer. It is relevant to extract the charges framed against the respondent:

CHARGE NO.1: That the said Thiru S.Santhanaraj, while functioning as Executive Engineer and Administrative Officer in Anna Nagar Division, during the period from 4.6.90 to 18.3.94 and from 4.4.96 to 2.3.99, and as a test-check measuring authority, has miserably failed to supervise and test-check then and there the work of his subordinate Thiru S.Eswararaj, Junior Engineer, in-charge of the Stores of Anna Nagar Division and detect and report immediately the grave irregularities committed by Thiru S.Eswararaj, Junior Engineer (Stores), to the Managing Director, Tamil Nadu Housing Board for taking severe disciplinary action against Thiru S.Eswararaj, Junior Engineer(Stores),-

(i) in not having brought on record and purloining of 64.890 m.t. of steel at a value of Rs.8,94,204/- received from the Tamil Nadu Steels Limited, through Delivery challans bearing No.351/13.2.92, 780/30.3.92, 1265/1.6.92, 1407/20.6.92, 1664/18.7.92, 4582/20.4.93 and 4583/20.4.93, even though the supply of steel in the said Delivery Challans was brought to his knowledge for making payment on 21.5.93 itself vide D.O. Lr.No.1/48105/61297, dated 21.5.93, and whereas he was framed minor charges under Regulation 37(a) of the Tamil Nadu Housing Board Service Regulations, 1969 against Thiru S. Eswararaj, Junior Engineer, only after a long period of more than 3 years on 12.8.96 vided Memo.No.AN1/2817/94, dated 12.8.96 and recommended only on 10.3.97 in his D.O. Lr.No.AN1/2817/94, dated 10.3.97 for taking action under Regulation 37(b) of the Tamil Nadu Housing Board Service Regulations, 1969,

(ii) in having prepared false Delivery Note bearing No.9404/14.12.94 for the issue of 7.50 M.T. of cement valued at Rs.18,352.12 to the construction of 48 HIG flats at Madhavaram and made entries in the stores ledger by himself as issued, but not authenticated by the Junior Engineer in-charge of the Rs.18,352.12, whereas Thiru S.Santhanaraj, as Executive Engineer and Administrative Officer, Anna Nagar Division, has framed minor charges under Regulation 37(a) of the Tamil Nadu Housing Board Service Regulations, 1969, against Thiru S.Eswararaj, Junior Engineer only on 12.8.96 in Memo.No.ANI/2817/94 dated 12.8.96 and recommended only on 10.3.97 in his D.O.Lr.No.2817/94 dated 10.3.97 for taking action under Regulation 37(b) of the Tamil Nadu Housing Board Service Regulations, 1969,

(iii) in having caused shortage of materials to a value of Rs.3,15,835/- as found out during the Annual Physical verification of the stores of Anna Nagar Division for the year 1993-94 conducted during 5/94 by Thiru G.Padmanabhan, Chartered Accountant and by Thiru K.Arockiaraj, Assistant Executive Engineer, resulting in monetary loss of Rs.3,15,835/- to the Tamil Nadu Housing Board, whereas Thiru S.Santhanaraj, as Executive Engineer and Administrative Officer, Anna Nagar, Tamil Nadu Housing Board Service Regulations, 1969, against Thiru S.Eswararaj,

Junior Engineer, only on 21.6.96 in Memo.No.ANI/945/93 dated 21.6.96 and recommended only on 10.3.97 in his D.O.Lr.No.ANI/2817/94, dated 10.3.97 for taking action under Regulation 37(b) of the Tamil Nadu Housing Board Service Regulations, 1969,

(iv) in having prepared false Delivery Note in No.2472/12.5.94 to cover up the shortage of materials to a value of Rs.3,04,567.60 and having made entries in the stores ledger as if issued to the work of construction of 48 HIG flats at Madhavaram without proper indent from the Junior Engineer in-charge of the work, whereas he has framed minor charges under Regulation 37(a) of the Tamil Nadu Housing Board Service Regulations, 1969 against Thiru S.Eswararaj, Junior Engineer, only on 21.6.96 in Memo No.ANI/945/93 dated 21.6.96 and recommended only on 10.3.97 in his D.O. Letter No.ANI/2817/94 dated 10.3.97 for taking action Regulation 37(b) of the Tamil Nadu Housing Board Service Regulations, 1969, and thus Thiru S.Santhanaraj, Executive Engineer and Administrative Officer, Anna Nagar Division (now Superintending Engineer (under supervision)) has violated the Rules contained in para 8(a) of the Tamil Nadu Housing Board Works Code and he is also responsible for the non-accounting of steel received from Tamil Nadu Steels Limited and also for the other shortage of Cement and Steel, causing a total monetary loss of Rs.12,28,391.12 to the Tamil Nadu Housing Board.

CHARGE No. 2: That, thus, Thiru S.Santhanaraj, Executive Engineer and Administrative Officer (now Superintending Engineer under suspension) has violated Regulation 32(A) of the Tamil Nadu Housing Board Service Regulations, 1969 and Regulation 20 of the Tamil Nadu Housing Board Officers' and Servants Conduct Regulations 1963.

3.2. The respondent, in response to the charge memo, submitted his detailed written statement denying the contents of the charge memo. Thiru V. Shanmughanathan, Joint Secretary to Government, Finance Department on other duties as Financial Adviser, Tamil Nadu Housing Board was appointed as the Enquiry Officer to enquire into the charges framed against him and after considering the oral and documentary evidences, has given a categorical finding that both the charges have not been proved. The Enquiry Report was forwarded to DVAC, Chennai and vide proceedings dated 07.02.2001, DVAC opined that the findings rendered by the Enquiry Officer, in holding that the charges framed against the respondent herein, have not been proved, are not correct and so also the findings recorded against Thiru L.S.Sudandara Doss also and therefore, requested that the findings given by the Enquiry Officer are got to be reviewed by a competent authority and the action taken in this regard may be communicated to them. Thereafter, the second respondent has opined that the findings of the Enquiry Officer in holding that the charges framed against the respondent have not been proved, are not correct and therefore, called upon him to furnish his further representation within 15 days from the date of receipt of the memo, failing which it will be presumed that there is no further

representation and the respondent, in response to the said memo dated 18.04.2002, submitted his further representation dated 24.05.2002.

3.3. The first respondent has placed the matter before the Board of Directors of TNHB and vide resolution dated 31.07.2002, it was resolved to dismiss the respondent herein, Tvl.L.S.Sundandara Doss and Tvl.Easwararaj for the reason that the charges framed against them are serious in nature and it was further resolved to recover a sum of Rs.11.06 lakhs from each of them on account of loss caused to TNHB. Housing and Urban Development Department in G.O.Ms. (1D).No.861 dated 18.12.2002 has approved the recommendation made by the Board of Directors of TNHB and thereafter, the impugned proceedings dated 19.12.2002 came to be passed, imposing the order of dismissal from service with a further order for recovery of a sum of Rs.11.06 lakhs from all the three delinquents, including the respondent. The respondent made a challenge to the said order by filing the writ petition and it was also opposed by the official respondents by filing counter.

4. The learned Judge, on consideration of the materials placed before him, has found that there is no allegation as of now against the writ petitioner/respondent herein that he committed either fraud or any other illegality which resulted in loss to TNHB and negligence on his part in the performance of his duties in not effectively supervising the functions of other co-delinquents namely Tvl.L.S.Sudandara Doss and Tvl.Eswararaj. The learned Judge, on merits of the case, found that with regard to supply of steel by the Tamil Nadu Steels Corporation, it was not brought to the knowledge of the respondent during his tenure and only after the said company demanded a sum of Rs.10.23 lakhs against the credit supply of steels to the branch, it came to light that steels worth Rs.8,94,204/- had not been accounted for by Tvl.S.Eswararaj and therefore, the respondent initiated action against him and call for explanation from him on 19.04.1996 and subsequently, the respondent himself had faced disciplinary proceedings. The learned Judge also taken into consideration of the fact that between 19.03.1994 and 03.04.1996, the respondent was not at all working in Anna Nagar Division as he was elsewhere working and the alleged delinquency took place at that point of time. The learned Judge further found that the Enquiry Officer has recorded the finding that the respondent is not guilty of the charges framed against him and though it is open to the Disciplinary Authority to take a different view, for arriving at such a tentative conclusion that the findings recorded by the Enquiry Officer are not correct, he has to assign reasons based on the materials and the grounds for arriving such a conclusion and the memo dated 18.04.2002 sent by the second respondent did not contain any such reason. The learned Judge has also placed reliance upon the decisions in Punjab National Bank and Others Vs. Sh. Kunj Behari Misra, and Ram Kishan Vs. Union of India and others, , wherein it has been held that the mere fact in the final order some reasons have been given to disagree with the conclusions reached by the disciplinary authority cannot cure the defect.

5. The learned Judge further found that after the Enquiry Officer has given a finding that the charges framed against the respondent herein have not been proved, took note of the fact that the said report was forwarded by the appellants herein to DVAC, who opined that the findings recorded by the Enquiry Officer require review and however the reasons for the DVAC for reaching such conclusion have not been forwarded to the respondent and it is in violation of the principles of natural justice. The learned Judge, after reaching the above conclusion, observed that in normal course it would be proper for the Court to remand the matter back to the Disciplinary Authority to re-consider and re-appreciate all the materials placed by way of evidence by taking into consideration of the fact that the alleged delinquency took place in the year 1993 and the disciplinary proceedings were initiated in the year 1999 and the respondent's due date of retirement was on 31.05.1999 and on the date of disposal of the writ petition, he was aged about 68 years, had opined that it will not be in the interest of justice to remand the matter once again and having arrived at a finding that it is not a case of serious charges like fraud, misappropriation, embezzlement, criminal breach of trust etc., but only relate to dereliction of duty, has held that it is not a fit case to remand the matter back and therefore, allowed the writ petition and challenging the same, the present writ appeal is filed by the official respondents.

6. Mr. S. Gomathinayagam, learned Additional Advocate General appearing for the appellants would vehemently contend that admittedly the impugned order of punishment came to be set aside purely on technical grounds and therefore in all fairness, the matter should have been remanded back to the Disciplinary Authority so as to enable him to reach a tentative conclusion as he differed from the findings recorded by the Enquiry Officer and direct the Disciplinary Authority to proceed further, however it was not done so. The learned Additional Advocate General would further contend that due to the acts of the respondent and other delinquents, there was loss to the tune of Rs. 12,28,391.12 to TNHB and the said fact was taken into consideration by the Disciplinary Authority and the differing view was also communicated to the respondent and he has also submitted his explanation and it was duly placed before the Board of Directors of TNHB, wherein a resolution came to be passed, recommending dismissal from service and it was also approved by the Government and thereafter only, the impugned order of dismissal came to be passed. Therefore, it cannot be said that the principles of natural justice have been violated. The learned Additional Advocate General would also contend that disciplinary action was also initiated against other two delinquents, who were also dismissed from service and in the impugned order of dismissal it is also recommended to recover a sum of Rs.11.06 lakhs from the respondent and other delinquents and in the light of the facts and circumstances, especially causing loss to TNHB, the learned Judge ought to have dismissed the writ petition or in the alternative should have remanded the matter to the Disciplinary Authority and since it has not been done, prays for interference.

7. Per contra, Mr.V.Raghavachari, learned counsel appearing for the respondent would vehemently contend that even assuming if not admitting that the charges framed against the respondent are sustainable, the allegations mainly pertain to lack of effective supervision and the respondent only found that Mr.S.Eswararaj has not properly accounted the supply of steel and he only initiated appropriate proceedings against him and surprisingly he was also proceeded as if he has caused loss to TNHB. It is the further submission of the learned counsel appearing for the respondent that the Disciplinary Authority having not chosen to accept the findings recorded by the Enquiry Officer, has to record his findings as to the grounds for deviating from the conclusion reached by the Enquiry Officer, based on proper appreciation of materials and though it was pointed out by the respondent in his explanation to the charge memo dated 18.04.2002, it was not considered in proper perspective and the Board of Directors of TNHB as well as the Government, without proper application of mind, had chosen to impose the major punishment of dismissal from service at the fag end of his career while he was working as Superintending Engineer and the learned Judge on a proper consideration of facts and by placing reliance on the decisions of the Hon'ble Supreme Court of India and further taking into consideration the age of the respondent, thought fit not to remand the matter once again to the Disciplinary Authority and since the reasons have been assigned on a thorough consideration of the entire materials, this Court may not interfere with the same and hence, prays for dismissal of the writ appeal.

8. This Court paid its best attention to the rival submissions and perused the materials placed before this Court in the form of typed set of documents.

9. A perusal of the materials placed before this Court would indicate that TNHB, in the letter dated 24.07.1997, addressed to the Principal Secretary to Government, Housing and Urban Development Department, has found some delinquency on the part of Tvl.S.Eswararaj for not having accounted the supply of steel and therefore suggested that it may be enquired by the Directorate of Vigilance and Anti-Corruption (DVAC) and accordingly, DVAC has conducted the enquiry and in the interregnum, the respondent was suspended from service on 27.05.1999 as per FR 56(1)(c) and Regulation 28(A) of the Tamil Nadu Housing Board Regulations, 1969. DVAC has ultimately opined that departmental action has to be initiated against all the delinquents, including the respondent and the respondent has submitted his written statement. The second respondent, not satisfied with the written statement submitted by the respondent, has appointed an Enquiry Officer, who, on the basis of oral and documentary evidence let in before him, held that the charges framed against the respondent were not proved. The second respondent, in his memo dated 18.04.2002, took a dissenting view and prior to that, the report was sent to DVAC for their opinion, who opined that the findings rendered by the Enquiry Officer are not correct and may got to be reviewed by a competent authority and thereafter only, the memo dated 08.04.2002 was served on the respondent.

10. Admittedly, the Disciplinary Authority is competent to initiate disciplinary proceedings and is also entitled to take a different view from that of the findings recorded by the Enquiry Officer and it is not clear as to why the Enquiry Report was forwarded to DVAC for their opinion, who opined that the findings recorded by the Enquiry Officer may got to be reviewed by a competent Authority. Thus, the Disciplinary Authority has abdicated a part of his functions to DVAC.

11. Be that as it may, the memo dated 18.04.2002 sent by the second appellant herein to the respondent would disclose that the grounds and materials on which the second appellant has chosen to differ from the findings recorded by the Enquiry Officer have not at all been disclosed. A perusal of the said memo would also disclose that the allegations pertaining to the respondent herein are in respect of not making effective supervision of the work of the subordinates. It is very pertinent to point out at this juncture that the delinquency on the part of Tvl.S.Eswararaj was detected only by the respondent, who called upon him to explain his conduct and thereafter only, disciplinary proceedings against all the three officials came to be initiated.

12. The learned Judge has recorded the finding that there are no findings anywhere by the Disciplinary Authority either in the proceedings dated 18.4.2002 or in the final order dated 19.12.2002 that the materials available on record by way of evidence have proved the guilt as against the respondent and is liable of punishment and opined that it is a case where the punishment imposed was based on materials.

13. A perusal of the impugned proceedings dated 19.12.2002 would clearly disclose that the findings rendered by the Enquiry Officer that the respondent herein are not guilty of charges has been referred to DVAC, who, in their letter bearing No. DE/125/HB/97/CSU3 dated 3.12.2001, had opined that the Enquiry Officer should consider the evidence of the witnesses Tvl.S.Gomathinayagam, Work Assistant, Tamil Nadu Housing Board, Tvl.N.Balasubramanian, Manager (Marketing), V.Jayaraman, Assistant Plant Engineer and R.RAdhakrishnan, Contractor and without giving credence to their testimonies, the Enquiry Officer erroneously held that the charges had not been proved. It is further stated in the said letter that it is the duty of the respondent/accused No.3 to super check the receipt of materials, measurement recorded by accused No.1, who is working under him for the receipt of the materials received in Anna Nagar Division and the stand taken by him that he is not held responsible for the loss, as the measurement books were not produced before him by accused No.1, is not correct, as he is expected to monitor the work of his subordinates and therefore, suggested that the findings recorded by the Enquiry Officer in respect of accused No.2 Tvl.L.Sundandra Doss and accused No.3/respondent herein are not correct and it is reviewed by the competent authority and thereafter only the dissenting view was taken.

14. This Court in the earlier paragraphs has observed that the Disciplinary Authority has abdicated a part of his functions to DVAC, as the perusal of the

impugned order would also disclose that there is no independent application of mind on the part of the second respondent while passing the order of dismissal from service and the recovery of Rs.11.06 lakhs from the respondent. As per the charge memo, the respondent, by his acts, said to have caused loss to the tune of Rs. 12,28,391/- and according to the learned Additional Advocate General, interest has been calculated on the said amount and therefore, a sum of Rs.33.18 lakhs was ordered to be recovered proportionately from all the three delinquent officers and therefore, the recovery of a sum of Rs.11.06 lakhs was ordered to be recovered from the respondent. As already pointed out above, there is no independent application of mind on the part of the second respondent while communicating the dissenting note dated 18.04.2002 and the impugned order would also disclose that reliance was mainly placed upon the letter of DVAC dated 03.12.2001.

15. This Court, under the normal circumstances, ought to have remanded to the matter to the Disciplinary Authority to take into consideration the explanation submitted by the respondent herein to the dissenting note dated 18.04.2002 and proceed afresh. But the fact remains that at the time of filing the writ petition, the respondent was aged about 61 years and now he is aged about 73 years and therefore, taking into consideration the age of the writ petitioner and that remanding the matter to the Disciplinary Authority to proceed afresh by considering the explanation to the dissenting note will not meet the ends of justice.

16. Regulation No.32 of the Tamil Nadu State Housing Board Service Regulations, 1969 speaks about nature of penalties and it is as follows:

- (1) Censure
- (2) Fine
- (3) Withholding of increment with or without cumulative effect.
- (4) Debarring from promotion
- (5) Recovery from pay of the whole to any part of pecuniary loss caused to the Board by negligence or breach of orders.
- (6) Reduction to a lower post or to a lower stage in the time-scale.
- (7) Compulsory retirement
- (8) Removal from service
- (9) Dismissal from service.

17. As per the charge memo all the three delinquent officers, on account of their conduct, caused loss to the tune of Rs. 12,28,391/- to TNHB and according to the learned Additional Advocate General, interest on the said amount was calculated and thereafter, a sum of Rs.33.18 lakhs was arrived and a decision was taken to recover it proportionately and therefore, a sum of Rs.11.06 lakhs

was ordered to be recovered from the respondent herein apart from the order dismissing from service. It was also brought to the knowledge of this Court by the learned Additional Advocate General that so far as other two delinquents are concerned, who have also been dismissed from service, proportionate amount is yet to be recovered from them and the only remedy, if any, is to institute a civil suit. However, it is to be noted at this juncture that the impugned order of dismissal and recovery came to be passed as early as on 19.12.2002, steps are yet to be taken to recover the said amount by initiating appropriate recovery proceedings against the said delinquents.

18. This Court, in the light of the above facts and circumstances, especially the age of the respondent and more importantly remanding to the Disciplinary Authority will not serve any purpose at this distant point of time, is inclined to modify the punishment of dismissal from service to one of recovery of 1/3rd of Rs.12,28,391/- from the respondent/writ petitioner.

19. In the result, this Writ Appeal is partly allowed and the order dated 27.08.2010 made in W.P. No. 46859/2002 is modified as follows:

(a) The order of dismissal from service dated 19.12.2002 is set aside and instead the respondent shall pay a sum of Rs. 4,09,463/-, being 1/3rd of Rs. 12,28,391/- to the appellants or in the alternative, the appellants shall calculate the terminal benefits due and payable to the respondent/writ petitioner on account of setting aside the order of dismissal from service and after deducting the above said amount, shall pay the balance amount due and payable to the respondent/writ petitioner within the stipulated time as per clause (b).

(b) The respondent/writ petitioner is not entitled to any arrears of salary on account of setting aside the order of dismissal from service passed against him, however the period between the date of suspension and date of dismissal shall be treated as service notionally for the settlement of terminal and other attendant benefits and the appellants are directed to confer the same to the respondent/writ petitioner within a period of eight weeks from the date of receipt of a copy of this order.

No costs. Consequently, the connected miscellaneous petition is closed.