

(2008) 12 MAD CK 0233

In the Madras High Court

Case No : Writ Petition No. 7984 of 2007

V. Rajendran

APPELLANT

Vs

The Government of Tamil Nadu

RESPONDENT

Date of Decision : 16-12-2008

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17, 20(1)

Citation : (2008) 12 MAD CK 0233

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : P. Anand, for Anand and Suryas, for the Appellant; Haja Naziruddeen, Spl. Govt. Pleader (Taxes), for the Respondent

Judgement

R. Banumathi, J.—Petitioner seeks Writ of Certiorarified Mandamus to quash the Proceedings of the 2nd Respondent in EE1/62002/2004 dated 30.12.2005 and the order passed by the 1st Respondent in G.O.(2D) No. 172 Commercial Taxes and Registration (A2) Dept. dated 20.11.2006 and to direct the Respondents to include the name of the Petitioner in the promotional panel of Assistant Commercial Tax Officers for the year 2003.

2. Brief facts which led to the filing of Writ Petition are as follows:

(i) Petitioner was working as Upper Division Inspector in Pethikuppam Checkpost from 11.00 A.M. on 07.07.2003 to 11.00 A.M. on 08.07.2003. On 07.07.2003 while the Petitioner was on duty at the Checkpost, he failed to make entries in the movement register in respect of vehicles passed through the Checkpost and such omission to make entries in the register then and there is the cause for loss of revenue of Salex tax due on the value of the Cold Rolled Sheets moved in from other States. When the Enforcement Wing Officials inspected the registers of intercepted vehicles, it was observed improper maintenance of registers.

(ii) Disciplinary action initiated against the Petitioner and Charge Memo under

Rule 17 (b) of Tamil Nadu Civil Services(Discipline & Appeal) Rules [for short TNCS(D&A) Rules] issued to the Petitioner on 17.07.2003. Petitioner submitted his explanation on 01.08.2003.

(iii) Assistant Commissioner (CT) (Enft), Chennai (C) was appointed as Enquiry Officer and he has submitted his enquiry report on 27.9.2004. Enquiry Officer held that all the Charges are not proved. Commissioner of Commercial Taxes has not agreed with the views of Enquiry Officer and disagreed views of the Commissioner of Commercial Taxes was communicated to the Enquiry Officer on 26.7.2005 and the same was also communicated to the Petitioner. Thereafter, further representations were obtained from the Petitioner. After examining the Charges, explanation of the Petitioner, findings of the Enquiry Officer and final report of the Enquiry Officer, it was held that Petitioner has not performed his duties diligently and with utmost good faith and thus violated Rule 20 (1) of TNCS (D&A) Rules, Disciplinary Authority / 2nd Respondent awarded punishment of stoppage of increment for one year without cumulative effect which is challenged in this Writ Petition.

(iv) Petitioner has challenged the order of Disciplinary Authority by filing appeal before the Government. By the impugned G.O. (2D) No. 172 CT & R (A2) Dept. dated 20.11.200, Government dismissed the appeal which is also subject matter of challenge in this Writ Petition.

3. Opposing the Petition, Respondents have filed counter stating that Petitioner along with other officials have subsequently inserted the movement of lorries and those entries were made only after knowing the fact that the above mentioned vehicles were intercepted by the Enforcement Wing Officials in Chennai City. It is averred that the omission of entries of movement of two vehicles is an act of deliberate negligence of duty committed by the Petitioner.

4. The gist of the Charges against the Petitioner is that Petitioner while working as Upper Division Inspector in Checkpost during the period from 11.00 A.M. on 07.7.2003 to 11.00 A.M. on 08.7.2003 along with other officials failed to make entries in respect of movement of Cold Rolled sheets in the lorries mentioned below from other States to Chennai at the time of entry into the Checkpost:

(1) Lorry No. AP 16 X 1951

Name of the Consignor : Tvl.Gayatri Enterprises, Makatpur, Giridh.

Bill No. and Date : G.E.1349/03-04 dt. 04.7.2003

Quantity : 16.540 M.T.

Value : Rs. 2,78,665/-

(2) Lorry No. AP 16 7V 1247

Name of the Consignor : Tvl.Gayatri Enterprises, Makatpur, Giridh. Quantity : 76.110 M.T.

Value : Rs. 2,60,482/-

5. Petitioner along with other officials has subsequently inserted the movement of the above said lorries in Sl. No. 148 on 07.7.2003 as last entry for that date and in Sl. No. 4 on 08.7.2003 as last entry in the page. In respect of lorry No. AP 16 7V 1247, quantity of the material has been wrongly mentioned as 76.110 M.Ts. These entries are said to have been made only after knowing the fact that the above mentioned vehicles were intercepted by the Enforcement Wing Officials in Chennai City.

6. When the vehicle was not entered in the movement register, it amounts to omission and would cause revenue loss to the State. Suppression of details relating to vehicles and when the same entries are inserted after interception after crossing the Checkpost, such action is nothing but tampering the records with ulterior motive.

7. Enquiry Officer held that the Charges are not proved. Disciplinary Authority disagreed with the findings of the Enquiry Officer. Enquiry report was sent and stating that Disciplinary Authority is disagreeing with the findings of the Enquiry Officer, explanation was called for from the Writ Petitioner.

8. Mr. P.Anand, learned Counsel for the Writ Petitioner forcibly contended that when the Enquiry Officer has held that Charges are not proved and when the Disciplinary Authority has disagreed with the views of the Enquiry Officer, the Authority ought to have furnished the copy of enquiry report. It was further argued that the Disciplinary Authority has not stated any reason for disagreeing with the findings of the Enquiry Officer.

9. Main contention of the Petitioner is that no reasons were stated in the show cause notice as to why and how Disciplinary Authority disagreed with the views of the Enquiry Officer and while disagreeing with the views of the Enquiry Officer, Disciplinary Authority ought to have stated the reasons. On behalf of the Petitioner, it was mainly contended that no enquiry report was furnished to the Petitioner along with show cause notice. Drawing Court's attention to Rule 17 (b) of TNCS (D & A) Rules, it was submitted that before making an order imposing penalty, it is the incumbent on the Disciplinary Authority to furnish copy of enquiry report calling upon the delinquent to submit his further representation and in this case, there no enquiry report was furnished to the Petitioner.

10. By perusal of the show cause notice issued by the Disciplinary Authority, it is seen that copy of the enquiry report dated 27.5.2004 drawn up by the Asst. Commissioner (CT), Enforcement Central was enclosed. If really, the Petitioner had not received the enquiry report, Petitioner could have very well sought for copy of enquiry report.

11. In Managing Director, Electronic Corporation of India Vs. B. Karunakar, , the Hon''ble Supreme Court was called upon to consider the effect of non-supply of the Enquiry Officer's report to the delinquent.

12. Holding that it was incumbent on the delinquent employee to show prejudice and that non-supply of report of the Enquiry Officer to the delinquent employee would not by itself make the order of punishment null and void or non est, in B.Karunakar case, the Hon''ble Supreme Court held as follows:

31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short-cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment.

13. Referring to B. Karunakar case, in Haryana Financial Corporation and Another Vs. Kailash Chandra Ahuja, , the Hon''ble Supreme Court has held as under:

21. From the ratio laid down in B. Karunakar it is explicitly clear that the doctrine of natural justice requires supply of a copy of the inquiry officer's report to the delinquent if such inquiry officer is other than the disciplinary authority. It is also clear that non-supply of report of the inquiry officer is in the breach of natural justice. But it is equally clear that failure to supply a report of the inquiry officer to the delinquent employee would not ipso facto result in the proceedings being declared null and void and the order of punishment non est and ineffective. It is for the delinquent employee to plead and prove that non-supply of such report had caused prejudice and resulted in miscarriage of justice. If he is unable to satisfy the court on that point, the order of punishment cannot automatically be set aside.

14. In the present case, enquiry report is said to have been enclosed along with the show cause notice issued by the Disciplinary Authority. Contention of the Writ Petitioner is that he has not received the Enquiry Officer's report which had resulted in violation of natural justice and therefore, the order is liable to be quashed.

15. Learned Counsel for the Petitioner contended that if really the lorries were intercepted, the Enforcement Wing Officials should have been cited as witness in

the Charge Memo to prove the Charge and no such Enforcement Wing Officials were cited in the Charge Memo as witnesses. It was further submitted that the intercepted vehicles driver should have been produced in the enquiry to prove the guilt of the Charge. It was further argued that if such evidence has been produced, Petitioner would have cross examined them and proved his innocence in the enquiry. It was further argued that in the absence of any evidence that entries have been made subsequent to the interception of lorries by the Enforcement Wing Officials at Chennai, the Charge cannot be said to be proved.

16. Contending that in cases of departmental enquiries, jurisdiction of the High Court is very limited and if the domestic enquiry is vitiated because of non-observance of principles of natural justice or when findings is based on no evidence, High Court would certainly interfere, learned Counsel for the Petitioner placed reliance upon AIR 1965 SC 140 (State of Madras v. G. Sundaram).

17. The disciplinary authority is the sole Judge of facts. Where appeal is presented, the appellate authority has coextensive power to re-appreciate the evidence or the nature of punishment. In a Disciplinary Enquiry, the strict proof of legal evidence and findings on that evidence are not relevant.

18. Adequacy or inadequacy of evidence is not permitted to be canvassed before the High Court. Based on the entries in the Register, Disciplinary Authority have arrived at the conclusion that entries were inserted subsequent to the interception of the vehicle and it cannot be said to be based on no evidence or perverse. Exercising jurisdiction under Article 226 of Constitution, adequacy or inadequacy of evidence cannot be gone into.

19. Mr. Haja Naziruddeen, learned Spl. Govt. Pleader (Taxes) has drawn Court's attention to the explanation of the Petitioner (dated 01.8.2003) wherein he has admitted the omission of entry of two bills and subsequent insertion. According to the Petitioner, those subsequent entries and alterations were made in good faith.

20. Main contention of the Petitioner is that for disagreeing with the views of the Enquiry Officer, the Disciplinary Authority has not stated any reasons. As pointed out earlier, in his explanation dated 01.8.2003, Petitioner has admitted the omission and subsequent insertion and alteration. In such facts and circumstances not stating reasons for disagreeing could not have caused any prejudice to the Petitioner.

21. Learned Counsel for the Petitioner nextly contended that appeal was referred to TNPSC for its opinion and obtained its views and the views are relied on for rejecting the appeal and therefore views of TNPSC ought to have been communicated to the Petitioner.

22. Learned Counsel for the Respondents contended that obtaining opinion of TNPSC is only procedural and therefore, it was not incumbent upon the department to furnish the views of TNPSC to the Petitioner. As pointed out by the

learned Counsel for the Respondents that obtaining of views of TNPSC is only procedural aspect before deciding the punishment of any appeal Petition. Government may or may not accept the views of TNPSC. As the views of TNPSC is only advisory, furnishing of views of TNPSC to the Petitioner was not necessitated.

23. Learned Counsel for the Petitioner further contended that omissions are bound to occur while making entries. It was further submitted that when subsequently the entries have been made by necessary insertion, no malafide could be attributed to the Petitioner. Undisputedly, the said vehicles passed through the Checkpost on 07.7.2003, Petitioner being on duty in one of the Checkpost failed to make necessary entries. In the register relating to the vehicles that passed through the Checkpost then and there, any failure to make entries in the register relating to the vehicles would have resulted in loss of revenue to the Government had the vehicles were not intercepted by the Enforcement Wing Officials. Only if the vehicles were subsequently intercepted by the Enforcement Wing Officials, entries were found inserted in a different ink.

24. Since omission of entries of movement of two vehicles as and when they entered into the Checkpost is an act of deliberate negligence of duty committed by the Petitioner, Disciplinary Authority was justified in disagreeing with the findings of the Enquiry Officer.

25. In the Checkpost, Petitioner was on duty only for entry of movement of vehicles in the concerned register. Failure to make entries of movement of vehicles would certainly cause revenue loss to the Government. Having regard to the gravity of Charges and the subsequent entries made thereon, the quantum of punishment imposed on the Petitioner cannot be said to be excessive or disproportionate.

26. Main grievance of the Petitioner is that non-inclusion of his name in the Panel for promotion as Assistant Commercial Tax Officers [ACTOs] for the year 2003. Learned Counsel for the Petitioner contended that Petitioner was eligible and qualified for the post of ACTO in the year 1990 itself and Petitioner has reached his seniority for inclusion in the panel in the year 2003 itself. It was therefore contended that crucial date for inclusion of the Petitioner's name is 2003 year panel i.e. 01.4.2003. It was mainly argued that because of the administrative delay, panel for the year 2003 was released only in the year 2006. It was further argued that punishment of stoppage of increment for one year without cumulative effect was imposed only on 30.12.2005 and therefore, name of the Petitioner should have been included for promotion in the panel 2003 itself i.e. 01.4.2003. Learned Counsel for the Petitioner contended that Petitioner was due for promotion for the year 2003 and the Petitioner's name was not deliberately considered in the list of ACTO for 2004-2005. Learned Counsel for the Petitioner has drawn the Court's attention to (i) G.O.Ms. No. 368 P&AR Dept. dated 18.10.1993; (ii) Letter Ms. No. 248 P&AR dated 20.10.1997 and (iii) Letter No. 25165/S/98-1 dated 10.6.1998. Since, Charges under Rule 17 (b) of TNGS

(D&A) Rules were pending against the Petitioner, his name was not included in the temporary list of ACTOs for the year 2003. As the disciplinary proceeding was pending, his name was not included in the list of ACTOs for 2004-2005. As per the instruction issued by the Government Letter in G.O.Ms. No. 248 P & AR (S) Dept. dated 20.10.1997 an employee is identified for promotion on a crucial date, any lapse before drawal of panel will have to be a bar for inclusion in the panel during pendency of charges.

27. As per the above Government letter, during currency of punishment Petitioner was not eligible for promotion. The relevant portion of the said letter reads as under:

3. Currency of Punishment:

Whenever an officer is undergoing a punishment and there is currency of punishment on the crucial date the name should be passed over at the time of first consideration irrespective of the time of occurrence of irregularity. If the currency of that punishment continues at the time of subsequent consideration, for the next panel then the name may be included in the panel, on the basis that a name should not be passed over for the second time on account of the same punishment.

28. Since, the disciplinary proceedings under Rule 17 (b) of TNCS (D&A) Rules was pending, Petitioner's name was not considered in the list of ACTOs for 2004-2005 as per the above said Government letter. Disciplinary Authority has awarded impugned punishment on 30.12.2005. Petitioner was due for increment on 01.7.2006. Therefore, stoppage of punishment of increment commenced on 01.7.2006 and the currency of punishment was completed by the end of June 2007.

29. It is stated that the cut of date for preparation of panel of ACTOs is 1st April of every year. When the panel was prepared (as on 01.4.2006), the disciplinary proceedings under Rule 17 (b) was pending against the Petitioner Panel for the year 2006 (1.4.2006), was prepared Petitioner was under currency of punishment. Since, Petitioner's currency of punishment would be over by the end of June 2007, it would be appropriate to direct the Respondents to include the name of the Petitioner in the panel of ACTOs for 2007 (cut off date 01.04.2007) and defer the promotion till the completion of currency of punishment.

30. In the result, confirming the impugned punishment awarded to the Petitioner by the Disciplinary Authority and by the Appellate Authority, the Writ Petition is disposed of with the following direction:

? Name of the Petitioner shall be included in the panel of ACTOs 2007 as the last in the list.

? Promotion of the Petitioner shall be deferred till the completion of currency of punishment.

? It is further directed that Petitioner shall be notionally promoted as and when he was due for promotion after June 2007 and place him in such seniority as the case may be.

? Respondents are directed to give promotion to the Petitioner within a period of six weeks from the date of receipt of copy of this order.