**SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com**

**The Managing Director Vs. the Appellate Authority Under Payment**

**The Managing Director Vs. the Appellate Authority Under Payment**

**SooperKanoon Citation** : sooperkanoon.com/2112

**Court** : Chennai

**Decided On :** Nov-25-2014

**Judge** : N.Paul Vasanthakumar

**Appellant** : The Managing Director

**Respondent** : The Appellate Authority Under Payment

**Judgement** :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

17. 9.2009 C O R A M : THE HONOURABLE MR. JUSTICE K. CHANDRU W.P.No.37322 of 2006 (O.A.No.5576 of 1998) M.Gnana Ravi .. Petitioner -vs- 1.The Principal Commissioner and Commissioner of Revenue Administration, Chepauk, Chennai-600 005. 2.The District Collector, Karur District, Karur. .. Respondents PRAYER : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records of the 2nd respondent herein in Pro.Na.ka.H3/23130/97, dated 20.6.1998 and quash the same. For petitioner :: Mr.M.Ravi For respondents :: Mr.R.Neelakantan, GA *****

ORDER

The petitioner was working as a Deputy Tahsildar in the Taluk Office at Karur. He was given a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on 19.9.1997, to which, he gave his explanation on 26.11.1997. An enquiry officer was appointed to go into the charges. The Karur

District Backward Class and Minority Welfare Officer, by his report dated 19.3.1998 enquired into the charges and found the petitioner guilty of all the charges except Charge No.2. Even with reference to charge No.2, the Enquiry Officer said that the charge is of a general nature and, therefore, that cannot be held to be a charge.

2. After the receipt of the enquiry report, the petitioner was furnished with a copy of the Enquiry Report and was given a charge memo by the District Collector second respondent, dated 27.4.1998 to appear before him on 11.5.1998 for a personal hearing. The petitioner was asked to offer his explanation, if any, before the disciplinary authority. The petitioner accordingly appeared before the said authority and gave a statement. Subsequently, the enquiry was postponed to 18.5.1998. On that day, the petitioner appeared before the District Collector and gave a statement.

3. Apart from dealing with the merits of the charges, in last paragraph of the statement, it is stated that there is no witness to be examined on his side and he has nothing further to offer. On the basis of the Enquiry Report and the minutes of the enquiry as well as the personal statement given by the petitioner, the second respondent passed the order dated 20.6.1998 holding that the charges against the petitioner were severe and, therefore, he was reverted to the post of Assistant for a period of three years. The petitioner filed an appeal before the Principal Commissioner and Commissioner for Revenue Administration - the first respondent herein vide his appeal dated 29.6.1998. He also filed the Original Application bearing O.A.No.5576 of 1998 before the Tribunal.

4. The Tribunal by an order dated 17.6.1998 granted stay of reversion. According to the Tribunal, that being the enquiry or personal hearing, it is for the authority competent to impose penalty in terms of Rule 8, it is of the opinion that on the basis of the evidence adduced during an enquiry, any of the penalty should be imposed on the official. It shall, before making an order imposing such penalty, furnish to the accused officer a copy of the report of the Enquiry or personal hearing or both, as the case may be, and call upon him to submit a further representation within a reasonable time. According to the Tribunal, the copy of the

enquiry report was not furnished and, therefore, there was an infraction of Rule 17(b)(2) of the Rules. The interim stay granted by an order dated 17.7.1998 expired on 31.7.1998. Subsequently, the Tribunal extended the same till 13.8.1998 and thereafter on 27.8.1998 and 17.9.1998. The initial order dated 17.7.1998 was received by the Collector only on 27.7.1998. In the meanwhile, the petitioner was given the reversion order on 23.6.1998. The applicant was in receipt of the reversion order and consequentially passed an order on 27.6.1998. The petitioner did not join the duty and proceeded on an unearned leave on medical certificate for 15 days. Thereafter, he sought for posting in the cadre of Deputy Tahsildar. Since he has already given the reversion order and the consequential posting order, he was not restored as a Deputy Collector.

5. The petitioner filed a contempt application being C.A.No.459 of 1998 before the Tribunal. The fate of the contempt application is not disclosed by either side. The petitioner was given a charge memo, which contained as many as 10 charges and most of them are serious, viz., that he prepared the State Government seal privately and was using the round seal with the Tamil Nadu Government insigne in that seal. He also issued income certificate without providing for any certificate number and date. Similarly, he granted residential certificate and nativity certificate. He did not follow any procedure. In the certificate, outside his jurisdictional limit, he did not disclose that he was an incharge Deputy Tahsildar. The petitioner except by stating that similarly placed Deputy Tahsildars were also having privately made seal, he did not give any satisfactory reply with reference to the charges levelled against him. Therefore, after observing all the formalities, the punishment came to be imposed.

6. On notice from the Tribunal, the respondent District Collector has filed a reply affidavit, dated 16.9.1998 justifying the punishment. Going by the assertion made by the petitioner that he was not given a showcause notice and the enquiry report, it is seen from the records that the enquiry report was furnished to the petitioner and thereafter the disciplinary authority gave him a personal hearing also. The petitioner did not file any written submission with reference to the enquiry report but merely appeared before the District Collector and stated that he has no further evidence to tender before him. Even in his appeal grounds, he did not raise that

point that the report of the personal enquiry was not furnished to him.

7. In the present case, there is no such report of the personal enquiry. The petitioner's statement was recorded by the District Collector, which was an opportunity extended to him de hors the rules. In the present case, an oral enquiry was held and thereafter it is open to the disciplinary authority to offer a personal hearing or not. In the present case, even that personal hearing was given which only resulted in recording the statement of the petitioner. With reference to the showcause notice and penalty after the dispensation of 42nd Amendment, no such showcause notice is necessary. That has been made clear by the judgment of the Supreme Court in Union of India -vs- Mohd. Ramzan Khan reported in (1991) 1 SCC588 8. In view of the abolition of the Tribunal, the matter stood transferred to this Court and was re-numbered as W.P.No.37322 of 2006. Once an enquiry is held in accordance with the rules and satisfactory evidence is recorded, it is not within the province of this court to interfere with the question of penalty and the jurisdiction of this Court to judicial review such penalty is very much restricted. The Supreme Court in Praveen Bhatia -vs- Union of India reported in (2009) 4 SCC225had made this position very clear.

9. In the light of the same, the impugned order does not call for any interference and the writ petition (Original Application No.5576 of 1998) is accordingly dismissed. No costs. js 17.9.2009 Index :yes Internet:yes To 1. The Principal Commissioner and Commissioner of Revenue Administration, Chepauk, Chennai-600 005.

2. The District Collector, Karur District, Karur. K. CHANDRU, J.



**SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com**