

**G. Srinivasan Vs. the Government of Tamil Nadu, Represented by the Commissioner and Secretary to Government, Revenue Department and ors.**

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**Court :** Chennai

**Decided On :** Aug-25-1982

**Reported in :** (1983)2MLJ513

**Appellant :** G. Srinivasan

**Respondent :** The Government of Tamil Nadu, Represented by the Commissioner and Secretary to Government, Revenue D

**Judgement :**

**G. Ramanujam, J.**

1. The appellant herein who was working as Head Assistant, Taluk Office, Tiruchendur from 24th February, 1973 to 10th August, 1973, was alleged to have demanded a bribe of Rs. 100 from one Meerathambi of Kayalpatnam on 9th August, 1973 at Tiruchendur for issuing a solvency certificate in the name of the mother of Meerathambi and accepted the Bribe amount of Rs. 100 from Meerathambi on 10th August, 1973 and it was proposed to initiate proceedings against him under Sections 5(1)(a) and 5(2) of the Prevention of Corruption Act, 1947. He was also arrested by the Police on 10th August, 1973. Taking note of his arrest by the police for charges under the Prevention of Corruption Act, he was temporarily suspended from service. Later the proceedings under the Prevention

of Corruption Act were dropped as a result of which the appellant was restored to duty on 2nd September, 1974.

2. However, the Department initiated the disciplinary proceedings in relation to the same allegation of acceptance of bribe by the appellant from Meerathambi on 10th August, 1973 and a charge memo. was issued to the appellant on 14th November, 1974, wherein he was asked to give his explanation. Along with the charge memo a questionnaire was enclosed wherein the appellant was asked to state whether he wanted an enquiry in relation to the charge or a personal hearing. While submitting the explanation for the charge levelled against him, the appellant requested in the questionnaire form sent to him that he may be heard in person without an oral enquiry. The Department, however, chose to conduct an oral enquiry and at the stage of the enquiry 11 witnesses were examined on the side of the Department and 2 witnesses were examined in defence. During the enquiry the appellant was represented by counsel who not only cross-examined the witnesses produced by the Department and examined in chief the defence witnesses but also submitted his arguments at the close of the enquiry. Thereafter, the enquiry officer gave his findings on 29th December, 1975, holding that the charge framed against the appellant stood proved.

3. On receipt of the finding from the enquiry officer, the Disciplinary authority who is the Collector of Tirunelveli in this case accepted the findings of the enquiry officer and issued a show cause notice calling upon the appellant to show cause why a punishment by way of dismissal from service, should not be imposed. The appellant submitted his explanation on 19th January, 1976. After going through the findings of the enquiry officer as also the explanation furnished by the appellant, the Disciplinary authority dismissed the appellant from service by his order, dated 27th April, 1976. As against the order of dismissal the appellant filed an appeal before the Board of Revenue on 24th May, 1976. Under Rule 23 of the Tamil Nadu Civil Services (Classification Control and Appeal) Rules. The Board of Revenue has dismissed the appeal by its order, dated 4th September, 1976, merely stating as follows:

The Board has examined the appeal petition of Thiru G. Srinivasan, with connected' records. It sees no reason to interfere with the orders of the Collector of Tirunelveli. The appeal is accordingly rejected as devoid of merits.

4. As against the dismissal of the appeal by the Board of Revenue, the appellant filed a revision petition to the Government under Rule 36 of the said rules. The Government having dismissed the revision petition, the appellant approached this Court by filing a Writ Petition No. 1418 of 1978, for quashing the original order of dismissal passed by the Collector as confirmed by the Board of Revenue in appeal and by the Government in revision.

5. In the writ petition the appellant has put forward mainly three grounds of attack. One was that the enquiry officer, though conducted an oral enquiry in relation to the charge in the presence of the appellant, had not given an opportunity of personal hearing to the appellant as required by him in the questionnaire form annexed to his explanation to the charge memo, and this is contrary to Rule 17(1)(b) of the rules which is mandatory, and as such the order of dismissal should be taken to have been vitiated for that reason. The second ground of attack is that in the appeal filed by the appellant as against the order of dismissal to the Board of Revenue, the appellate authority has not passed any reasoned order to indicate how it dealt with the appeal and, therefore, the order passed by the appellate authority dismissing the appeal should be taken to be in contravention of Rule 23, which contains the power of the appellate authority and provides the mode of disposal of that appeal. The third ground of attack is that the State Government before whom the appellant filed a revision petition has not chosen to consult the Tamil Nadu Public Service Commission as required under Rule 36 read with Rule 18(1)(a) of the Tamil Nadu Public Service Commission Regulations, 1954 and therefore the order of the Government is bad. All these three grounds of attack have been rejected by Mohan, J., who had dismissed the writ petition. According to the learned Judge since the enquiry officer conducted an oral enquiry and the appellant had an effective opportunity of cross-examining the witnesses adduced by the department and of examining his own defence witnesses with the help of a counsel and the matter was also argued by the counsel, it cannot be said that there was non-compliance with Rule 17(1)(b) of the Civil Services (Classification,

Control and Appeal) Rules as contended by the appellant. On the second question the learned judge has held that according to the recent trend of opinion since the appellate order merely affirmed the order of the original authority, the appellate order need not give any reason and as such in this case the order of the Board of Revenue rejecting the appellant's appeal could be sustained. Coming to the third ground, the learned Judge held that it is not mandatory for the Government to have consultation with the Tamil Nadu Public Service Commission before they passed final orders in the revision petition. In that view the writ petition came to be dismissed.

6. In this appeal filed by the appellant the same contentions as were urged in the writ petition have been reiterated. After hearing the counsel at length, we are inclined to agree with the learned Judge on the first question that the order of dismissal is not vitiated for the reason that the appellant was not personally heard as requested by him in the questionnaire form submitted by him along with his explanation to the charge memo. It is true in the questionnaire form attached to his explanation the appellant has asked for only a personal hearing without an oral enquiry. But, in this case the enquiry officer has chosen to conduct an enquiry, examine 11 witnesses on behalf of the Department and two witnesses on behalf of the defence.

7. Rule 17(1)(b) enables the enquiry officer to conduct an enquiry even if the delinquent officer does not want an enquiry. After the examination of witnesses adduced on either side at the enquiry in the presence of the appellant and his advocate who had cross-examined the witnesses adduced by the Department and examined in chief the defence witnesses the advocate also addressed arguments before the enquiry officer on the question whether the evidence adduced and the documents available made out the charge levelled against the appellant or not. It is only thereafter the enquiry officer proceeded to give his findings on the charge after considering the evidence adduced by the parties at the enquiry, both oral and documentary and the arguments advanced by the defence counsel. The appellant does not question the oral enquiry as having been vitiated for any reason, his only contention being that in, addition to the oral enquiry conducted he should have been personally heard as requested by him in the questionnaire form and as that

has not been done, the finding rendered by the enquiry officer should be taken to be vitiated. As already stated, the appellant had the assistance of an advocate and he not only cross-examined the witnesses adduced on the side of the department and examined in chief the defence witnesses but also argued the case on merits before the enquiry officer. One can expect that the counsel who appeared for the appellant at the enquiry and argued the case would have dealt with all the relevant points which are helpful for the defence and what all the appellant wished (to represent at the personal hearing would have been urged by the counsel at the time of arguments. When counsel has appeared for the appellant at the enquiry before the enquiry officer, the counsel should be taken to have acted as the mouthpiece of the appellant and would have submitted in his arguments whatever the appellant could have said. Thus, though Rule 17(1)(b) contemplates oral enquiry as well as personal hearing, in cases where the delinquent officer particularly asked for a personal hearing as in this case, since the appellant has been represented by counsel and the counsel has been heard in full at the enquiry it should be taken the appellant has been heard in person through his counsel. Thus, we find Rule 17(1)(b) has been fully satisfied in this case. We are not inclined to agree with the learned Counsel for the appellant that even after hearing, the arguments of the counsel at the oral enquiry, the enquiry officer should have heard the appellant in person so as to satisfy Rule 17(1)(b). Hearing a counsel is hearing a party and therefore once the counsel is heard in full, it is as if the party has been heard in person. One other factor that should be taken note of in this connection is this. Even assuming that Rule 17(1)(b) is not literally satisfied as pointed out by the learned Counsel for the appellant, in that the appellant has not been actually heard in person by the enquiry officer, that cannot be taken advantage of by the appellant to have the order of dismissal set aside on the ground of non-compliance with the rule unless the appellant shows that prejudice has been caused to him, thereby. In this case, as already stated, the appellant through his counsel cross-examined the witnesses produced by the department and examined the defence witnesses and also represented his case to the enquiry officer. What further material he would have given if a personal hearing is given has not been pointed out by the learned Counsel and what is the prejudice that has been caused in hearing the appellant's counsel and not hearing the appellant

in person has also not been explained. In this case no attempt has been made by the appellant to show any prejudice in this regard. In this view of the matter we hold that the proceedings before the enquiry officer and the finding rendered by him on the basis of such enquiry are not vitiated by violation of Rule 17(1)(b) of the rules as contended by the learned Counsel for the appellant.

8. Coming to the second question as to whether the Board of Revenue has acted in accordance with Rule 23 of the Tamil Nadu Civil. Services (Classification, Control and Appeal) Rules, we feel that the Board of Revenue has not kept in mind the requisites necessary, under Rule 23. The order of the Hoard of Revenue dismissing the appeal has been extracted above. The order does not give any reason as to why it confirmed the order of dismissal except saying that it did not see any reason to interfere with the order of the Collector. We are of the view that having regard to the language used in Rule 23. the dismissal of the appeal by the Hoard of Revenue is not a proper disposal as contemplated by Rule 23. Rule 23 provides as to what the appellate authority should do while considering the appeal filed by a delinquent officer against the penalty imposed on him. Rule 23(1) gives a mandate to the appellate authority to consider: (a) whether the facts on which the order was passed have been established; (b) whether the facts established afford sufficient ground for taking action; and (c) whether the penalty is excessive, adequate or inadequate. Thus it is clear: from a perusal of Rule 23 that the appellate authority is enjoined to consider whether the facts on which the order of dismissal was passed had been established and the facts established afford sufficient grounds for taking action and whether the penalty is excessive or adequate . Rule 23 directs the appellate authority to consider certain matters before passing the appellate order. The order of the appellate authority must therefore ex fade show that the matters referred to in Rule 23 have been considered by the appellate authority before it passed its order. In this case, the order of the appellate authority merely says that it sees no reason to interfere with the order of the Collector and it does not indicate that it took all the matters referred to in Rule 23 into consideration before rejecting the appeal. Obviously, the appellate authority the Board of Revenue in this: case, appears to have overlooked the criteria referred to in Rule 23, as otherwise, it would have at least referred to the relevant matters contained in Rule 23 in its order. Dealing with this

ground of attack, Mohan, J., has stated that according to the recent trend of opinion, if the appellate authority confirms the order in appeal, the appellate authority need not give reasons. It may be that in a case where there is no statutory provision dealing with the exercise of power by the appellate authority we have to fall back to the general principle as to whether the appellate authority is found to give reasons for his affirmation of the order of dismissal; but where the power of the appellate authority is circumscribed by a statutory provision such as Rule 23 as in this case, the appellate authority should act within the confines of that rule and he cannot pass an order arbitrarily without considering the matters referred to in Rule 23. We are therefore of the view that the order of the Board of Revenue, dated 4th September, 1976, stands vitiated for violation of Rule 23. On this ground, the order of the Board of Revenue which confirms the order of dismissal passed against the appellant will stand quashed and the Board of Revenue has to pass a fresh order on the appeal filed by the appellant which should be treated as pending.

9. As the Government order merely confirmed the order of the Board of Revenue and as we have quashed the order of the Board it will also stand set aside. It is therefore unnecessary for us to go into' the third question as to whether the Government while acting in revision is bound to consult the Tamil Nadu Public Service Commission under Rule 36 of the Tamil Nadu Public Service Commission Regulation.

10. The writ appeal and the writ petition are therefore partly allowed and the order of the Board of Revenue, dated 4th September, 1976, and that of the Government in G.O. Ms. No. 1755 (Revenue), dated 12th September, 1977, will stand quashed. The Board of Revenue is at liberty to pass fresh orders in the appeal in accordance with law. There will be no order as to costs.