

T. Sankar Vs. Tamil Nadu Pollution Control Board, Represented by Its Board of Directors and ors.

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Court : Chennai

Decided On : Apr-22-2010

Judge : T. Raja, J.

Acts : Tamil Nadu Government Servants Conduct Rules, 1973 - Rules 8 and 20; ;Tamil Nadu Pollution Control Board (Discipline and Appeal) Regulations, 1988 - Regulation 8(2); ;Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977 - Regulation 7(2)

Appeal No. : W.P. Nos. 35215 of 2004 and 3033 of 2001

Appellant : T. Sankar

Respondent : Tamil Nadu Pollution Control Board, Represented by Its Board of Directors and ors.

Advocate for Def. : R. Ramanlal, Adv. for R1 and R2 in W.P. No. 35215/2004 and for R1 to R3 in W.P. No. 3033/2001

Advocate for Pet/Ap. : Balan Haridas, Adv.

Disposition : Petition allowed

Judgement :

ORDER

T. Raja, J.

1. As the facts relating to both writ petitions are almost identical, they are disposed of by this common order.

2. The petitioner, T. Sankar, while working as Joint Manager, in the office of Joint Chief Environment Engineer, Chennai, the 2nd respondent issued a charge memo dated 27.01.1998 under Regulation 8(2) of the Tamil Nadu Pollution Control Board (Discipline and Appeal) Regulations, 1988, alleging that the petitioner was engaged in operating M/s. Chennai Automobile Pollution Control Centre in the name of his wife. On receipt of the charge memo dated 27.01.1998, the petitioner submitted his explanation dated 26.02.1998 denying the charges by answering that the business carried out by his wife, has got nothing to do with the petitioner. On receipt of the explanation to the charge memo, the 2nd respondent not being satisfied with the said explanation, nominated Dr. N. Mani, Deputy Director (Labs) as Enquiry Officer and the Enquiry Officer conducted enquiry into the charge alleged against the petitioner. After receiving a notice dated 04.05.1998 directing the petitioner to participate in the enquiry, the petitioner took part in the said enquiry and cross-examined the Board witness one, Dr. G.S. Thangaraj, Assistant Director and thereafter, the petitioner was also examined. Finally, the enquiry was concluded and thereafter, on 17.09.1998 the order of suspension was revoked by the 2nd respondent and later on, the petitioner joined duty. Whiles, on 16.11.1998, the 2nd respondent imposed the punishment of stoppage of increment with cumulative effect for three years. Aggrieved by the order of the 2nd respondent imposing the punishment of stoppage of increment for three years with cumulative effect, an appeal was filed before the 1st respondent/ Tamil Nadu Pollution Control Board, raising various grounds by questioning the manner in which the 2nd respondent had imposed the punishment, though the charge alleged was not proved in the enquiry. The 1st respondent, being convinced with the case of the petitioner, set aside the punishment imposed by the 2nd respondent by its Resolution No. 173-3-9 dated 12.08.1999. However, the 1st respondent, ordered to conduct fresh enquiry on the charge memo. In view of the above said circumstances, the 2nd respondent by his proceedings dated 15.10.1999, nominated an enquiry officer to conduct a fresh enquiry.

3. Aggrieved by the order passed by the 2nd respondent, the petitioner approached this Court in W.P. No. 641 of 2001 questioning the action of the respondents in ordering fresh enquiry. This Court by order dated 19.11.2001, upheld the portion of the order remitting the matter back to the disciplinary authority by making it clear that the direction to conduct fresh enquiry by appointing a new enquiry officer was set aside by observing that the matter being remanded to the disciplinary authority, namely, the 2nd respondent with further direction that the 2nd respondent shall give proper opportunity to the petitioner before reaching final conclusion with regard to acceptance or otherwise of the enquiry officer's report and also on the charge of misconduct levelled against the petitioner, as the 2nd respondent, after receipt of the enquiry report, has not issued the second show cause notice with regard to acceptance or otherwise of the enquiry officer's report and also the charges levelled against the petitioner before passing the final order. After the above said order passed by this Court, nothing happened.

Subsequently, by communication dated 13.02.2004, after a period about 2 years and 3 months, the 2nd respondent informed that it was not concurring with the findings given in the enquiry report and therefore, a second show cause notice was issued to the petitioner calling for explanation, as to why the 2nd respondent should not deviate from the findings given by the enquiry officer. Immediately, the petitioner gave his reply on 22.03.2004, stating that the report of the enquiry officer was in favour of the petitioner, saying that the charges levelled against him were not proved and that the business carried out by his wife has got nothing to do with the petitioner. The 2nd respondent differed with the findings of the enquiry officer and came to the conclusion that both the charges were proved, and by deviating from the findings of the enquiry officer, found the petitioner guilty and took a contrary stand and imposed the punishment of stoppage of increment for the three years with cumulative effect.

Aggrieved by the order of punishment, the petitioner preferred an appeal to the 1st respondent on 29.07.2004 pointing out the illegality caused to the petitioner. But, the 2nd respondent, by his communication dated 27.10.2004, informed the petitioner that the 1st respondent had examined his appeal and the same was

rejected on the ground that there was no fresh ground to reconsider the decision. Aggrieved by the order passed by the 2nd respondent, as confirmed by the 1st respondent, dated 24.06.2004 and 27.10.2004 respectively, the present writ petition has been filed on the ground that the impugned orders are illegal, arbitrary and in violation of principles of natural justice and liable to be quashed for the reasons mentioned therefore.

4. Refuting the contention, learned Counsel appearing for the respondents submits that the petitioner was directly engaged in operating M/s. Chennai Automobile Pollution Control Centre at Kilpauk, Chennai, by violating Rule 8 and Rule 20 of Tamil Nadu Government Servants Conduct Rules, 1973. A news item was published in the Indian Express dated 23.11.1997 on the title 'A Short-cut to Pollution Check', wherein it was mentioned that the Pollution Check up centre, which is run by the wife of a staff of Pollution Control Board, is issuing pollution free certificate without checking the emission levels. On verification by the Pollution Control Board, it was noticed that M/s. Chennai Automobile Pollution Control Centre located at No. 848, E.V.R. Periyar Salai, Kilpauk, Chennai, opposite to Neyveli House, is being operated by Tmt. V. Amudha, wife of the petitioner. It is further learnt that the petitioner had also attended the meeting convened by the Transport Department and Tamil Nadu Vehicle Emission Check Centre's Association. Therefore, in view of the above conduct of the petitioner in running a pollution check up centre and issuing pollution free certificate to vehicles, even without checking the emission levels, which is in violation of Rule 8 and Rule 20 of Tamil Nadu Government Servants Conduct Rules, 1973, the respondent Board issued a charge memo against the petitioner calling upon him to submit his explanation. The petitioner after receipt of the charge memo submitted his explanation dated 26.02.1998 denying the charges. An enquiry was conducted and the enquiry officer submitted his findings holding that the charges were not proved. The disciplinary authority, namely, the Chairman, differed with the findings of the enquiry officer on the ground that the presence of the petitioner in the meeting convened by the Transport Department was witnessed by the prosecution witness. Since the enquiry officer has not considered that aspect, the disciplinary authority took a different view and found the charges were proved and accordingly, awarded the punishment of stoppage of increment for three years with cumulative

effect in his proceedings dated 16.11.1998. Subsequently, the petitioner preferred an appeal against the punishment of stoppage of increment for three years and the respondent Board, namely, the Appellate Authority, decided to conduct a fresh enquiry, observing the rules and regulations and subsequently, fresh enquiry was ordered. Aggrieved by the said order to hold fresh enquiry, the petitioner filed W.P. No. 641/2001 before this Court and this Court by order dated 19.11.2001, by setting aside the order of the punishment, directed the disciplinary authority to proceed afresh from the stage of receipt of the Enquiry Officer's report and if the Disciplinary Authority wants to differ from the findings of the enquiry officer, it will have to give an opportunity to the petitioner, as to why it should not deviate from the findings of the enquiry officer and after giving such opportunity to the petitioner, it will be open for the Disciplinary Authority, namely, the 2nd respondent, to pass final order. Thereafter, the petitioner was given opportunity and not being satisfied with the explanation offered, the disciplinary authority passed the impugned order. Since the disciplinary authority has awarded the punishment of stoppage of increment for three years without cumulative effect, the petitioner preferred an appeal against the said punishment before the 1st respondent Board and the respondent Board also, by its resolution No. No. 206-2-3, dated 19.10.2004, rejected the appeal. Therefore, the present writ petition filed challenging the above said order, has no merit and accordingly, prayed for the dismissal of the present writ petition.

5. Heard the learned Counsel appearing on either side and perused the materials available on record.

6. It is trite law that the disciplinary authority is always entitled to take a different view from the findings of the enquiry officer. Therefore, this Court has no hesitation to hold that the 2nd respondent is entitled to differ from the findings of the enquiry officer.

7. The Apex Court in *Punjab National Bank v. Kunj Behari Misra* : (1998) 7 SCC 84 has considered Regulation 7(2) of the Punjab National Bank Officer Employees' (Discipline and Appeal) Regulations, 1977. The Regulation itself did not provide for the giving of any notice before the disciplinary authority differed with the view of

the enquiry officer. The Apex Court held:

The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

This Court also, in a number of judgments, has held that the disciplinary authority has to issue a second show cause notice calling upon further explanation from the delinquent employee as to why the disciplinary authority should not deviate from the findings of the enquiry officer. In the present case, the disciplinary authority has given second show cause notice as to how the enquiry officer's findings should not be reconsidered, in view of the evidence proving the guilt of the delinquent officer.

8. The question for consideration is whether the petitioner has violated Rule 8 and Rule 20 of Tamil Nadu Government Servants Conduct Rules, 1973, for running a pollution check up centre in the name of his wife and issuing pollution certificate to vehicles without checking the emission levels.

9. When there was a show cause notice issued by the respondents alleging that the petitioner's wife was running a pollution check up centre in the name of M/s. Chennai Automobile Pollution Control Centre at Kilpauk, nobody can say that running business by the wife of a Government servant is in violation of Rule 8 and Rule 20 of Tamil Nadu Government Servants Conduct Rules, 1973. But, the case of the petitioner herein is that the petitioner is said to have directly participated in

the business. But, unfortunately, the enquiry officer has submitted a report not holding guilty of the charges. At this juncture, it has to be seen whether the disciplinary authority has rightly deviated from the findings of the enquiry officer on the basis of materials proving the charges levelled against the petitioner. The evidence recorded by the enquiry officer has not been considered for implicating the petitioner in running the pollution check up centre. Therefore, the disciplinary authority taking a different view by differing with the findings of the enquiry officer, that too, without any material evidence proving the participation of the petitioner in the business run by his wife in the name of M/s.Chennai Automobile Pollution Control Centre, Kilpauk, cannot be accepted. Therefore, the punishment imposed by the 2nd respondent as confirmed by the 1st respondent, cannot stand the scrutiny of the Court, for the simple reason that the findings recorded by the enquiry officer, holding the petitioner not guilty of the charges levelled against him is based on evidence, whereas, the disciplinary authority, while differing with the findings of the enquiry officer, has not indicated what are the evidences that are against the petitioner for imposing punishment. When there is no evidence proving the charges levelled against the petitioner to show that the petitioner took part in the business of his wife, it is not open to the disciplinary authority to take a different view without any material evidence available on record and therefore, the impugned order is liable to be set aside.

10. Therefore, the punishment of stoppage of increment for three years without cumulative effect is unsustainable in law and accordingly, the impugned order passed by the 2nd respondent as confirmed by the 1st respondent, is not only illegal, arbitrary, but contrary to the evidence produced before the enquiry officer. Accordingly, the impugned order challenged herein is set aside and the W.P. No. 35215 of 2004 is allowed.

11. As regards W.P. No. 3033 of 2001 is concerned, in view of allowing W.P. No. 35215 of 2004, it is incumbent on the part of the respondents to consider his case for promotion to the post of Additional Manager from the date his immediate junior was promoted. Accordingly, the impugned orders are quashed with further direction to the respondents to promote the petitioner to the post of Additional Manager from the date when his immediate junior was promoted, by including his

name in the panel. Consequently, W.P. No. 3033 of 2001 is also allowed. No Costs. Consequently, connected miscellaneous petitions are allowed.

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