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Court : Chennai

Decided On : Aug-27-2010

Judge : T.Raja, J.

Acts : Administrative Tribunal Act - Section 19

Appeal No. : W.P.No.40847 of 2006 (T) O.A.No.2953 of 2000

Appellant : M.Karuppasamy.

Respondent : The Director of Rural Development, and anr.

Advocate for Def. : Mr.S.Gopinathan, Adv.

Advocate for Pet/Ap. : Mr.P.Rajendran, Adv.

Judgement :

1. The writ petitioner was appointed as record clerk in the office of Panchayat Union at Kovilpatti on 25.04.1962. Subsequently, he was promoted to the post of Junior Assistant with effect from 25.04.1962. While so, he applied for leave with effect from 04.06.1963. As he was unauthorisedly absent for duty, without any leave application and prior permission of the Panchayat Union Commissioner from 04.06.1963 onwards, i.e., for more than 11 months, he was ousted from service.

2. Aggrieved by the said order, he preferred an appeal to give a direction to the first respondent, the Director of Rural Development, Saidapet, Chennai to appoint the petitioner. After perusing the materials, the 1st respondent granted an Interim

order of stay of operation of the impugned order. As a result, the petitioner was reinstated in service. Subsequently, he was also joined duty on 04.02.1972. Later on, the first respondent in his proceedings No.F.3/185446/70 dated 12.04.1972 allowed the said appeal setting aside the ousting order asking the Panchayat Union Commissioner to restore the petitioner forthwith in his original position. In the light of the said order, the petitioner was re-appointed as Junior Assistant by the Panchayat Union commissioner, Kovilpatti in A.1/887/74 (2) dated 28.02.1974.

3.After sometime, he submitted his representation seeking regularisation of the period of non-duty occurred between 08.05.1964 and 03.02.1972 and the same was forwarded to the Government through the respondents. The Government in its letter No.14758/E3/81-5, dated 12.11.1981 directed that the disciplinary action to be taken against the petitioner for his unauthorised absence. Once again, the charge was created against the petitioner under the Rules of appointment and Panchayat Union Employees. Therefore, the Panchayat Union Commissioner issued final order in his proceedings No.A1/2247/89/ dated 12.08.1989 on the charges framed against the petitioner imposing the punishment of stoppage of increment for one year without cumulative effect. Once again, the proposal was sent to the first respondent for regularisation and the Government in his letter No.17328/E4/90-16, dated 03.08.1993 further instructed to take disciplinary action against the petitioner under the provisions of Tamilnadu Central Services, Rules by the second respondent as the petitioner was a Government servant and the Government servant cannot be proceeded against the rules under the Panchayat Union Council Establishment Rules.

4.Under these circumstances, four charges under Rule 17 (b) of the Tamil Nadu Civil Service {in short,TNCS (CCA Rules)} were framed by the 2nd respondent, District Collector, Tuticorin, by issuing charge memo No.VA.2/2545/93 dated 01.11.1994 under Rule 17 (b) of TNCS (CCA) Rules, by cancelling the previous charges framed by the Panchayat Union Commissioner.

5.Again, the 2nd respondent, District Collector, Tuticorin in his proceedings dated 12.04.1999 passed a final order, based on the enquiry report and the records available on the charges framed against the petitioner, imposing the punishment of

stoppage of increment for one year without cumulative effect. Later on, the petitioner was permitted to retire from service from 30.04.1999, by the proceedings of the Collector, Thothukudi, in V14/98114/98 dated 28.04.1999.

6. Aggrieved by the said order, challenging the final order issued by the 2nd respondent, who imposed the above said punishment, the petitioner filed Original Application on the file of Tamil Nadu Administrative Tribunal.

7. The learned counsel for the petitioner briefly submitted the present impugned order imposing the punishment of stoppage of increment for one year without cumulative effect on the same set of enquiry report and records available on the charges framed against the petitioner by the previous Panchayat Union Commissioner, Kovilpatti, cannot be a basis for imposing the said punishment, without holding fresh enquiry independently by the District Collector, Tuticorin, by resorting to Rules 17 (b) TNCS (CCA Rules). On that basis, prayed for setting aside the impugned order.

8. Per contra, the Additional Government Pleader appearing for respondents was not able to reply whether the respondent herein, while imposing the present impugned order of punishment of stoppage of increment for one year without cumulative effect, had conducted any enquiry by giving reasonable opportunity to the petitioner. Though the learned Additional Government Pleader submitted that no enquiry is required, since the District Collector is entitled to proceed on the basis of the enquiry report and available record on the earlier charges framed against the petitioner, for imposition of punishment of stoppage of increment for one year, this Court is not inclined to accept his contention for the simple reason that when the Government has subsequently instructed the disciplinary action to be taken against the petitioner for his unauthorised absence, on the ground that the petitioner was a government servant and as he was wrongly proceeded against under the Provisions of the Panchayat Union Council Establishment Rules.

9. Therefore, the 2nd respondent, District Collector, proceeded against the petitioner by issuing fresh charges under the provisions of Tamilnadu Central Government Service TNCS (CCA Rules). The petitioner submitted his explanation on 21.09.95. After rejecting his explanation, enquiry officer was appointed. On

completion of the enquiry, the enquiry officer submitted his report. After sending a copy of the enquiry officer's report, the petitioner submitted his further explanation. The 2nd respondent based on the enquiry officer's report and other valuable records, passed final order.

10. Prime facie, it is a case where the impugned punishment of stoppage of increment for one year without cumulative effect has been imposed without following any of the provisions of TNCS (CCA Rules) as directed by the Government in letter dated 17328/E4/90 -16 dated 03.08.1993. The petitioner was subjected to disciplinary proceedings for his unauthorised absence from 04.06.1963, i.e., for about 11 months, by following the disciplinary proceedings against the petitioner, under the Panchayat Union Council Establishment Rules, finally, he was ousted from service. His appeal also came to be allowed by the Appellate Authority/the Director of Rural Development, by setting aside the ousting order. Thereafter, the petitioner was re-appointed as Junior Assistant only in the office of the Panchayat Union, Kovilpatti.

11. After the petitioner's reinstatement in service as Junior Assistant by the 1st respondent, the Government in its letter No.14758/E3/81-5, dated 12.11.81, had instructed to initiate disciplinary action against the petitioner for his absent from 04.06.1963 onwards, i.e., for more than 11 months. Based on the instructions of the Government, the Panchayat Union Commissioner, Kovilpatti framed charges against the petitioner under the rules relating to Panchayat Union Council Establishment. But, the Government directed that the disciplinary action should be taken against the petitioner under the Provisions of TNCS (CCA) Rules, as the petitioner is a Government servant. On that basis, the 2nd respondent framed four charges against the petitioner under Rule 17(b) of TNCS Rules in his charge memo No.V2/2545/93, dated 01.11.94 cancelling previous charges framed by the Panchayat Union Commissioner, Kovilpatti. The enquiry officer, on completion of the enquiry, submitted his report stating that the charges framed against the petitioner were not proved. Disagreeing with the report of the enquiry officer, the 2nd respondent, who is the disciplinary authority, has issued final order, imposing the punishment of stoppage of increment for one year without cumulative effect in his proceedings dated 12.04.99. After submission of the report of the enquiry

officer, holding that no charge was proved against the petitioner, the disciplinary/2nd respondent herein, without even giving notice to the petitioner, offering tentative reasons and disagreeing with the findings of the enquiry officer, found him guilty and also imposed the punishment of stoppage of increment for one year without cumulative effect. Now, the question to be decided is whether the procedure followed by the Disciplinary Authority in imposing the impugned punishment, without issuing notice, while differing with the report of the enquiry officer, is legally valid or not. The answer in affirmative is given by the Hon'ble Apex Court in the following judgment.

12. The Hon'ble Apex Court also in the case of LAV NIGAM v. CHAIRMAN & MD, ITI LTD. AND ANOTHER reported in (2006) 9 SCC 440 has held that in case the disciplinary authority differs with the view taken by the enquiry officer, he is bound to give a notice setting out his tentative conclusions to the delinquent. It is only after hearing the delinquent that the disciplinary authority would at all arrive at a final finding of guilt. Thereafter, the delinquent employee would again have to be served with a notice relating to the punishment proposed.

13. In yet another judgment, the Apex Court also followed the same view in the case of PUNJAB NATIONAL BANK AND OTHERS v. KUNJ BEHARI MISRA reported in (1998) 7 SCC 84. Therefore, the ratio enunciated by the Apex Court in the above mentioned reported judgments clearly indicates that the principles of natural justice would demand that the authority which proposes to decide against the delinquent officer must give him a hearing. When the enquiry officer holds the charges to be proved, then that report has to be given to the delinquent officer, who can make a representation before the disciplinary authority takes further action, which may be prejudicial to the delinquent officer. When, like in the present case, the enquiry report is in favour of the delinquent employee, but the disciplinary authority proposes to differ with such conclusions, then that authority which is deciding against the delinquent officer must give him an opportunity of being heard for otherwise, he would be condemned unheard, because, in departmental proceedings, what is of ultimate importance is the finding of the disciplinary authority. When the disciplinary authority refuses to accept the findings of the enquiry officer and differs with the view of the enquiry officer and proposes

to come to a different conclusion, there is no reason as to why an opportunity of hearing should not be granted. It will be most unfair and unjustifiable to deny notice by the enquiry officer, where the charged employee succeeds before the enquiry officer and the delinquent employee, who succeeded before the enquiry officer, is again punished by the disciplinary authority without an opportunity to represent before the disciplinary authority before final findings on the charges are recorded. Therefore, the principles of natural justice, as I have already observed, require the disciplinary authority who 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.

14. In view of the principles enunciated by the Apex Court in the above mentioned judgments, this Court, while setting aside the impugned order, allows the writ petition. No Costs.

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