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Court : Chennai

Decided On : Aug-10-2010

Judge : T.Raja, J.

Appeal No. : W.P.No.40845 of 2006(T) (O.A.No.2890 of 2000)

Appellant : M.Kulandaivelu

Respondent : The Deputy Director of Fire Service, and anr.

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

Advocate for Pet/Ap. : Mr.R.S.Anandan, Adv.

Judgement :

1. The petitioner M.Kulandaivelu challenged the impugned order imposing punishment of censure passed by the second respondent the Divisional Fire Officer, Ramnad Division, Ramnad District on the file of the Tamil Nadu Administrative Tribunal.
2. Learned counsel appearing for the petitioner would submit that the order imposing punishment of censure is in total violation of principles of natural justice for two reasons. Firstly, the petitioner had already given complaint on 26.4.1999 against the very same second respondent making serious allegation of demanding Rs.1000/= from the petitioner. Even prior to that complaint dated 26.4.1999, the petitioner had made two more complaints one on 11.11.1998 and another on 17.11.1998. By keeping in mind the complaints made by the petitioner, disciplinary

proceedings under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, was initiated only to wreak vengeance against the petitioner. Secondly, the imposition of the punishment of censure also is based on the statements recorded from other people without furnishing a copy of the said statements and hence the order imposing the punishment of censure is in violation of principles of natural justice. He further argued that whenever the disciplinary authority relies upon any material, the said material relied upon against the delinquent, should be furnished to him or the person from whom the statements were obtained should be made available to be cross-examined by the petitioner. Since the above said procedures have not been followed, the order imposing the punishment of censure cannot stand the test of reasonableness. On that basis, he prayed for setting aside of the impugned order.

3. Heard the counsel for both sides. No counter affidavit was filed by the respondents.

4. The petitioner was issued with charge memo under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules calling upon him to explain as to why he should not be proceeded against for the three charges stated therein. Immediately thereafter, the petitioner submitted his detailed explanation denying all the three charges. The disciplinary proceeding initiated against the petitioner is under section 17(a). The disciplinary authority, on receipt of the explanation offered by the petitioner, by relying upon the minutes drawn by the Enquiry Officer, imposed the punishment of censure against the petitioner. Indeed, the second respondent, before passing the final order on the charges, conducted an enquiry by examining two witnesses viz., Annadurai, Fireman 6255 and M.Naganathan Fireman 2431 on 4.8.1999. After recording their statements, the second respondent, relying upon their statements, passed the impugned order, but, the abovesaid two witnesses were admittedly examined by the second respondent not in the presence of the petitioner. That apart, the statements received from the abovesaid two witnesses, viz., Annadurai Fireman 6255 and M.Naganathan Fireman 2431 were not even furnished to the petitioner nor were the witnesses made available to enable the petitioner to cross-examine them. Therefore, the imposition of punishment based on the statements given by the abovesaid two

Firemen were being behind the back of the petitioner, as rightly pointed out by the learned counsel appearing for the petitioner, the same has to be construed as a serious violation of the principles of natural justice.

5. Though the impugned order imposing punishment of censure has been passed as a result of enquiry conducted under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, yet, the disciplinary authority is bound to furnish all the materials to the delinquent so as to enable him to put forth his objections to the show cause notice. Admittedly, the materials which were relied upon by the respondents have not been furnished to the petitioner.

6. The impugned punishment was passed by the second respondent/the Divisional Fire Officer, Ramnad Division, Ramnad, who was indisposed against the petitioner, because the petitioner did not act on the basis of the request of the second respondent in collecting an alleged sum of Rs.1000/= from the owner of the haystack, on the day the fire service team went to extinguish the fire caught on the haystack.

7. In this connection, when the petitioner made a number of complaints dated 26.4.1999, 11.11.1998, etc., against the very same second respondent making serious allegation of demanding Rs.1000/= through the petitioner, to be collected from the owner of haystack, the second respondent should not have imposed the punishment of censure against the petitioner under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Apart from that, the petitioner made two more complaints one on 11.11.1998 and another complaint on 17.11.1998, alleging that the second respondent asked the petitioner to collect Rs.1000/= from the owner of haystack for having extinguished the fire caught on the haystack. When there were complaints made against the respondent by the petitioner even before the initiation of disciplinary proceedings against the petitioner before this court, the initiation of the disciplinary proceedings under Rule 17(a) and consequent imposition of the punishment of censure by the second respondent is nothing but, a clear case of mala fide, motivated and biased one, which are against the principles of natural justice. On that count also, the punishment imposed against the petitioner is liable to be set aside.

8. The second respondent/the Divisional Fire Officer, has chosen to examine some witnesses by conducting an enquiry upon the charges issued under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The principles of natural justice requires that such witnesses have to be examined in the presence of the delinquent petitioner herein to enable the delinquent to cross-examine the witnesses, in order to bring out the trueness of the statement. But, in the present case, no such procedure was followed. Consequently the impugned order came to be passed.

9. Further, the learned counsel for the petitioner has taken a stand before this court that out of two witnesses examined by the second respondent, one M.Naganathan, Fireman 2431, was not a party deputed for extinguishing the fire accident on the relevant date. Further, both the witnesses, as per the impugned order, have not stated anything against the petitioner and also on the charges leveled against the petitioner. Therefore, it was submitted that whenever any charge is framed, the burden to prove the same lies on the prosecution side and the delinquent need not disprove the same. Only after proving the charges by the prosecution side, the delinquent needs to disprove the same. But, in the present case, none of the charges is proved as per the impugned order. Therefore, there is no valid reason given by the disciplinary authority to come to a conclusion for imposing a punishment of warning against the petitioner. In the absence of any such evidences or documents, the impugned order imposing the punishment of warning is certainly liable to be set aside and accordingly, the same is set aside, on the ground that there was no basis for imposition of even the punishment of warning against the petitioner.

10. Therefore, this court is of the considered opinion that there is a clear violation of the principles of natural justice. In that view of the matter, the writ petition is allowed setting aside the order of imposing punishment of censure. No costs.

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