

**R. Pitchandi Vs The Principal Chief Conservator of Forest, Office at
Panagal Buildings, Saidapet, Chennai 600 015, The Conservator of Forest,
Vellore Range, Vellore District And The District Forest Officer,
Thiruvannamalai, Thiruvannamalai District**

Court: Madras High Court

Date of Decision: Sept. 23, 2011

Acts Referred: Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 Rule 17(a)

Hon'ble Judges: K.N. Basha, J

Bench: Single Bench

Advocate: Mr. S. Mani, for the Appellant; Mr. N. Inbanathan Govt. Advocate (Forests), for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Mr. Justice K.N.Basha

1. The Petitioner has come forward with this petition seeking for the relief of quashing the order passed by the first Respondent in Se.Mu.Aanai.

No. A.A2/29499/2009 dated 27.06.2010 and consequently, directing the Respondents to give promotion to the Petitioner as Forester on par with

his juniors.

2. The case of the Petitioner is that the Petitioner joined as a Watcher in the Forest Department in the year 1986 through the employment exchange

and he was promoted as Forest Guard on 10.06.1988. On 05.11.2007, a charge memo was issued to the Petitioner by the third Respondent

under Rule 17(a) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, containing single charge against the Petitioner and two others.

Subsequently, an enquiry was conducted and the Enquiry Officer submitted his report dated 07.05.2008 holding that the allegations of conspiracy

is not proved but the charge of dereliction to duty proved against the Petitioner. The Petitioner submitted a detailed explanation to the Enquiry

Officer's report on 28.07.2008. The disciplinary authority imposed a punishment of stoppage of increment for a period of six months with

cumulative effect, as per its proceedings dated 15.09.2008. Thereafter, the Petitioner preferred an appeal to the Appellate Authority on

23.12.2008, but the Appellate Authority dismissed the said appeal as per its order dated 28.01.2009. The Petitioner has also filed a revision

before the first Respondent against the order of the Appellate Authority on 18.03.2009. As the same was not disposed of, the Petitioner preferred

a writ petition in W.P. No. 9842/2010 and this Court by the order dated 05.05.2010, directed the first Respondent to dispose of the revision

preferred by the Petitioner, as expeditiously as possible. Pursuant to the order of this Court, the Petitioner was called for personal hearing and

thereafter, the impugned order dated 27.06.2010 was passed by the first Respondent enhancing the punishment by imposing a punishment of

stoppage of increment for two years without cumulative effect. Being aggrieved against the said order, the Petitioner has been constrained to

approach this Court with the above said prayer.

3. Mr. S. Mani, learned counsel appearing for the Petitioner contended that along with the Petitioner two other delinquents have been subjected to

departmental proceedings and all the delinquents have been found not guilty in respect of the charges, but only the Petitioner and one other co-

delinquent have been awarded with the punishment of stoppage of increment. It is contended that the Disciplinary Authority exonerated the first

co-delinquent from all the charges and as far as the Petitioner is concerned, he has been imposed with the punishment of stoppage of increment for

a period of two years without cumulative effect and the second co-delinquent has been awarded with the punishment of stoppage of increment for

six months without cumulative effect. It is further contended that there is disparity in respect of awarding punishment to the Petitioner and to the

other co-delinquents, as one co-delinquent was totally exonerated and the petitioner and the other co-delinquent has been awarded with the

punishment of stoppage of increment, resulting in grave prejudice to the Petitioner. The Learned Counsel for the Petitioner submitted that there

should not be any different treatment for one delinquent and other co-delinquent. In support of such contention, the Learned Counsel for the

Petitioner placed reliance on the following decisions:

(1) M. Raghavelu Vs. Govt. of A. P. and Anr., (1997) 10 SCC 779 .

(2) Bongaigaon Refinery and P.C. Ltd. and Others Vs. Girish Chandra Sarmah, .

(3) N. Nandagopalan Vs. The Secretary to Government Personnel and Administration Reforms (Q) Department, .

4. Per contra, Mr. P.S. Sivashanmugasundaram, learned Additional Government Pleader contended that there is no infirmity or illegality in the

impugned order passed by the Respondents. It is contended that the Petitioner as well as one other co-delinquent have been awarded with the

punishment of stoppage of increment, but another co-delinquent was exonerated from the charges. It is submitted that only on the basis of the

merits of the case, the respective delinquents have been awarded with the said punishment and as such, there is no illegality in passing the impugned

order. It is further contended that the issue is relating to forest protection in which the Forest Guard is responsible for the beat and he is answerable

for any lapses. Therefore, it is contended that the punishment awarded by the first Respondent cannot be stated to be excessive punishment.

5. This Court carefully considered the rival contentions put forward by either side and perused the entire materials available on record including the

impugned order.

6. The fact remains that the Disciplinary Authority has held that the charges were not proved against the Petitioner and other delinquents. However,

the Disciplinary Authority awarded the punishment to the Petitioner and the second co-delinquent as stated above and insofar as the first co-

delinquent is concerned, he has been totally exonerated from the charges. Therefore, it is crystal clear that different yardstick was adopted in

respect of the Petitioner and the second co-delinquent than that of the first co-delinquent and it would certainly amount to discrimination in

awarding punishment to the petitioner and other co-delinquents. The learned counsel for the petitioner has rightly placed reliance on the decision of

the Hon"ble Apex Court in M. Raghavelu Vs. Govt. of A. P. and Anr., (1997) 10 SCC 779 . The Hon"ble Apex Court in the said decision has

held as hereunder:

5. The argument of the learned counsel for the appellant is that if the persons directly in charge of the construction work were found not guilty of

the charge framed, the Appellant, who was indirectly in charge of the work, cannot be punished for similar charge levelled against him. We find

force in the argument of the learned counsel for the Appellant and we do not think that the argument of the Learned Counsel for the Respondent

that the enquiry officer in this particular case has gone into the merits and has given different finding should be accepted. As pointed out earlier, on

the basis of the same set of evidence the officers who were directly in charge of the construction work were exonerated of the charge and we see

no reason to pick out the Appellant along for finding him guilty of the charge.

The Learned Counsel for the Petitioner has also rightly placed reliance on the decision of this Court in N. Nandagopalan Vs. The Secretary to

Government Personnel and Administration Reforms (Q) Department, , wherein a learned Single Judge of this Court has held as hereunder:

9. It is well settled in law that if employees are involved in the same incident, the Department should proceed against all or should not proceed

against none. There is no discretion to proceed against some of employees and no action against the other employees, since they are identically

placed and their involvement being identical. In the instruction submitted by the Government Advocate, it is not stated as to how the Petitioner's

involvement is not similar to other 28 persons. In the absence of such distinct feature, the proceedings conducted by the Respondent against the

Petitioner and imposing punishment on the basis of the charge is illegal and hence the impugned order is set aside.

The principles laid down by the Hon"ble Apex Court and this Court in the decisions cited supra are squarely applicable to the facts of the instant

case as in this case also, as already pointed out earlier, there is a discrimination in respect of awarding punishment between the Petitioner and other

co-delinquents.

7. In view of the aforesaid reasons, this Court is of the considered view that as the first co-delinquent has been totally exonerated from the charges,

the same benefit should be given to the Petitioner also. Accordingly, this Court is constrained to set aside the impugned order passed by the first

Respondent dated 27.06.2010 in proceedings Se.Mu.Aanai. No. A.A2/29499/2009. Consequently, the first Respondent herein is hereby directed

to give promotion to the Petitioner as Forester, if the Petitioner is otherwise eligible and entitled for such promotion.

8. With the above direction, the writ petition is allowed. No costs.