

(2009) 12 MAD CK 0196

Madras High Court

Case No: Writ Petition No. 5637 of 2003

Sadhasivam S.

APPELLANT

Vs

Managing Director, Tamil Nadu
State Transport Corporation
Limited, Villupuram Division-1
and Another

RESPONDENT

Date of Decision: Dec. 4, 2009

Citation: (2010) 3 LLJ 635

Hon'ble Judges: N. Kirubakaran, J

Bench: Single Bench

Advocate: R. Asaithambi, for the Appellant; G. Munirathinam, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

N. Kirubakaran, J.

The petitioner challenged the punishment order dated January 22, 2003 inflicted on him pursuant to the domestic enquiry conducted by the first respondent. The case of the petitioner is that he was appointed as Junior Assistant on February 13, 1990 and he was promoted as an Assistant in 1996 in the first respondent Corporation. He was placed under suspension with effect from September 15, 2001 along with four employees pending charges by an order dated September 15, 2001.

2. The charge memo dated December 15, 2001 was issued to the petitioner and he submitted his explanation on December 19, 2001 denying the charges. Not satisfied with the explanation given by the petitioner, the first respondent appointed an inquiry officer. The inquiry officer conducted an inquiry and found that the charges levelled against the petitioner workman was not proved. The said inquiry report was submitted by the inquiry officer on February 27, 2002. The first respondent sent a show cause notice to the petitioner saying that the findings of the inquiry officer

was not proper and took a decision to punish the petitioner for the said charges and asked for petitioner's explanation. The petitioner submitted his explanation on July 30, 2002 and again the first respondent in his letter dated August 10, 2002 issued another show cause notice giving the details of the punishment which was replied by the petitioner on August 19, 2002. Subsequently, the first respondent passed the impugned order reducing petitioner's salary from Rs. 4,530/- to 3,460/-per month for a period of three years and treated the entire suspension period as eligible leave and that there would be no increments for a period of three years and a sum of Rs. 19,000/-would be the recovered from the salary towards the alleged loss caused to the first respondent corporation.

3. The petitioner made an appeal to the second respondent on September 5, 2002 and for the disposal of the said appeal, he filed W.P. No. 36919/2002, and got an order directing the second respondent to dispose of the appeal within a period of three months. The said appeal was disposed of by the second respondent confirming the order of the first respondent with the slight modification in it. Though the first respondent ordered reduction of the petitioner's pay for a period of three years, the second respondent reduced the petitioner's salary for one year and in other aspects the order was confirmed. Challenging the said order, the petitioner filed the present writ petition.

4. Mr. R. Asaithambi, learned Counsel appearing for the petitioner challenged the impugned order on various grounds stating that the loss of 40 moffusil ticket books was not caused due to the petitioner and infact they were given to the conductors of the Corporation and the amount collected from the tickets under the ticket books was paid to the first respondent Corporation and there was no loss to the Corporation and therefore the impugned order is illegal. He further submitted that the inquiry officer rightly held that the charges levelled against the petitioner were not proved, whereas the punishing authority saying that the finding of inquiry officer was not proper, gave the second show cause notice and imposed the punishment. He also submitted that when the punishing authority disagreed with the findings of the inquiry officer, the punishing authority should not only give the second snow cause notice alone with the points of disagreement with that of inquiry officer but the petitioner has to be given an opportunity of personal hearing also.

5. Mr. G. Munirathinam, learned Counsel for the respondent submitted that though the inquiry officer gave his findings stating that the charges levelled against the petitioner were not proved, on the contrary, disagreeing with the findings of the inquiry officer, the first respondent punishing gave the second show cause notice. After following the due procedure only the punishment was imposed and therefore, the same need not be interfered with.

6. Mr. Asaithambi learned Counsel for the petitioner referred to the judgment of the Hon"ble Supreme Court in [Yoginath D. Bagde Vs. State of Maharashtra and Another,](#) wherein it is held that when the disciplinary authority disagrees with the findings of

the inquiry Officer, an opportunity of hearing has to be given to the delinquent officer. Mr. Munirathinam learned Counsel for the respondent is also in agreement, with the argument put forth by the learned Counsel for the petitioner as the said submission is supported by judgment of the Hon"ble Supreme Court judgment.

7. A perusal of the proceedings shows that the inquiry officer exonerated the petitioner from all charges as they were not proved against the petitioner. It is well settled law that the disciplinary authority may or may not agree with the findings of the inquiry officer. When the disciplinary authority is not in agreement with the findings of the inquiry officer, it is the duty of the disciplinary authority to give a second show cause notice giving the details as to how he does not agree with findings of the inquiry officer along with the findings of the inquiry officer. Apart from that, when the findings are sought to be reversed as per the judgment of the Hon"ble Supreme Court the petitioner has to be given an opportunity of hearing. A Constitution Bench of the Hon"ble Supreme Court in the decision [Managing Director, ECIL, Hyderabad, Vs. Karunakar, etc. etc.](#), held that personal opportunity has to be given to the officer, if the punishing authority disagrees with the findings of the Enquiry Officer. In this case, the said opportunity is lacking and hence, the punishment orders passed by the first respondent and confirmed by the second respondent are liable to be set aside.

8. In view of setting aside the impugned orders all the benefits which were denied to the petitioner are restored. However, it is open to the authority to proceed with the matter afresh after giving due opportunity to the petitioner showing all the documents which are sought to be relied upon against the petitioner.

9. In view of the same, the above writ petition is allowed. Consequently, connected miscellaneous petition is closed. No costs.