

(2010) 12 MAD CK 0269

Madras High Court

Case No: Writ Petition No. 33140 of 2004

P. Somakumaran

APPELLANT

Vs

Tamil Nadu Water Supply and
Drainage Board

RESPONDENT

Date of Decision: Dec. 22, 2010

Acts Referred:

- Tamil Nadu Water Supply and Drainage Board Employees (Discipline and Appeal) Regulations, 1972 - Regulation 9

Hon'ble Judges: P. Jyothimani, J

Bench: Single Bench

Advocate: P. Gopiraja, for the Appellant; V.P. Raju, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P. Jyothimani, J.

The writ petition challenges the order dated 18.8.2003 of the Respondent/Board, on appeal, as communicated by the Managing Director of the Respondent/Board, confirming the order of the Managing Director of the Respondent/Board dated 7.2.2002, by which a punishment of stoppage of increment for three years with cumulative effect and recovery of a sum of Rs. 18,215/-towards the proportionate loss caused to the Respondent/Board was imposed.

2.1. The Petitioner has joined in the Respondent/Board as Assistant Engineer and was subsequently promoted as Assistant Executive Engineer and posted in the Hill Area Development Project, Udthagamandalam, wherein he joined on 19.5.1986 and worked in the said place till 20.8.1987. The site in respect of the said project was stated to have been handed over on 17.5.1986 for completing the pilot water supply project to Ooty Town by April, 1987. However, as sufficient time was not given, the project had to be hurriedly carried out. During the course of the work, owing to

topography of the area, the pipes utilised for laying the pipelines have burst and the Petitioner was placed under suspension and a charge memo came to be issued on 21.11.1997 alleging certain irregularities in execution of the work.

2.2. Three charges were framed against the Petitioner, viz.,

(i)that the Petitioner failed in his duty to exercise proper check over the work of the construction of clear water sump in UWSIS, which resulted in the substandard construction of sumps resulting in profuse leakage of water as proved by the test results of Highways and Research Institute of Chennai on concrete samples collected from sumps;

(ii)that the Petitioner was responsible for non provision of air valves and water hammer devices change of class of pipes and failure of segment wise hydraulic pressure test resulting in the burst of pipes and failure of the scheme resulting in loss of Rs. 1,66,654.39 to the Board; and

(iii)that the Petitioner had made false and improper claim from temporary advance by manipulating written understanding as if surplus earth was transported from one place to another place and earth was transported from elsewhere to refill the trenches along the alignment and thereby caused huge loss to the Board.

2.3. The charges were framed after eleven years of the occurrence and the records sought by the Petitioner were not furnished. The individual charges were replied by the Petitioner by way of an explanation on 28.12.1997, stating that:

(i)with regard to the first charge, he has properly supervised the work, which can be ascertained from the minute books, and that he was not responsible for defective work and that the said charge was already dropped on 5.7.1996 itself;

(ii)with regard to the second charge, while denying the same, it was stated that the pipelines were executed at a difficult time when the Special Commissioner and Managing Director had assured to provide pilot supply before 1.4.1987, which was not adhered to, and that the area valves and other devices were not received on the site, but the Petitioner and others were directed to proceed with the work so that testing can be done at the actual time of pumping and that due to the peculiar terrain of the area pressure increased automatically when there is slight variation in temperature and due to sliding of earth, which are common; and

(iii)regarding the third charge, while denying the same, it was explained that the super check on the site at Thalaiyattimundu was conducted after five years to find out the earth dump and that the monsoon in 1986-87 was very heavy and whatever quantity of loose earth was available was also removed by local people.

2.4. In spite of the explanation, an Enquiry Officer was appointed and there was change of enquiry officer from time to time. In respect of the first charge, enquiry was conducted by one D. Chakkaravarthi, Enquiry Officer, who held that the charge

was not proved, on the basis that the work was done during the tenure of another officer, A. Appavoo. In respect of the second charge, enquiry was conducted by another Officer, S. Sellappa, who has found that even though there was urgency to complete the pilot water supply scheme and there was non provision of pressure relief system, there was irregularity in execution and that the Petitioner ought to have raised the setback during the execution and therefore, held that the said charge stood partly proved. The enquiry in respect of the third charge was conducted by another enquiry officer, P. Chakravarthy and he has also found that the prior concurrence and sanction of competent authority should have been obtained and tender should have been called for and failure to do so was an irregularity and therefore, held that the third charge also partly proved.

2.5. A copy of the report of the enquiry officers was sent to the Petitioner on 18.6.2001 to submit his explanation within seven days. The Petitioner has submitted explanation regarding charges 2 and 3, since the first charge was not proved as per the report of the enquiry officer. Regarding the second charge, the Petitioner has stated that he had to go on medical leave during the relevant point of time, viz., between 23.3.1987 to 1.4.1987 and again from 9.4.1987 to 28.4.1987 and during that period the arrangements were made for pumping the water through pipelines by providing air vents, for which the Petitioner was not responsible. In respect of the third charge, it was his case that the hill area was bound by graveyard on one side and a narrow pathway on the other side and the place itself was chosen after consultation of the Diocese of South India and calling for tenders and other estimates at that time would have caused further delay of the work and it was also stated that the contractors have done some mistake.

2.6. However, the Managing Director of the Respondent/Board has passed the impugned order dated 7.2.2002 holding that the first charge relating to substandard construction of sumps is proved; that the second charge has also been proved and a loss to the extent of Rs. 1,66,655/-was caused and after deducting the amount of Rs. 1,50,000/-which was withheld from the contractor, the balance amount of Rs. 16,655/-was to be recovered from eight accused officers, stating that an amount of Rs. 2,082/-is recoverable from the Petitioner in that regard; and that the third charge was also proved and the Petitioner was responsible for the loss of Rs. 11,78,478/-and proportionately, he was liable to pay an amount of Rs. 16,133/-, apart from imposing a punishment of stoppage of increment for three years with cumulative effect.

2.7. Aggrieved by the said order, the Petitioner has filed an appeal before the Respondent/Board on 22.2.2002. The Board has passed the impugned order dated 18.8.2003, confirming the earlier order of the Managing Director. It is against the said impugned orders, the writ petition is filed on various grounds, including that even though the enquiry officer has exonerated the Petitioner in respect of the first charge, the Respondent has held the charge proved without giving any opportunity

while differing from the views of the enquiry officer; that even in respect of second and third charges the enquiry officers have only stated partly proved and in spite of it a decision has been arrived at as if the Petitioner is responsible; that in respect of the occurrence that took place in 1986-1987, the charges were framed in the year 1997, after nearly eleven years, and that such delay has not been explained and that has caused prejudice to the Petitioner to defend himself in a proper manner; that it is due to topographical and climatic conditions there has been some erosion, which is an unforeseen act of God; and that the findings of the enquiry officers as well as the Respondent are perverse and therefore, the impugned orders are illegal.

3.1. In the counter affidavit of the Respondent, it is stated that the Petitioner was working as an Assistant Executive Engineer in Hill Area Development Project (HADP) Division, Udhagamandalam from 19.5.1986 to 20.8.1987 and he was inter alia attending the construction of sump at Parson Valley and the site for construction of Ground Level Service Reservoir (FLSR) at Finger Post was handed over on 17.5.1986. The total outlay of the scheme was Rs. 500 Lakhs.

3.2. It is stated that the supply could not be maintained due to the frequent burst of CI pipes in the conveying main, which has resulted in appointment of a Technical Committee, which found that the cause for such burst is due to the change in class of pipes laid in the transmission. The Committee also found certain defects like, inadequate provision of air valves; non-provision of break pressure tanks, surge tanks; omission of conduct hydraulic test and non-provision of anti water hammer devices, etc.

3.3. It is also stated that the execution of the scheme was also not in accordance with the design and huge amounts were spend on surplus earth. The matter was referred to the Director of Vigilance and Anti Corruption and a case was registered and Board was requested to sanction permission to prosecute the Petitioner, 18 other officers of the Respondent/Board and 10 private contractors in the court of law. The sanction was accorded on 30.7.1994 and it was based on that the Petitioner was placed under suspension on 30.7.1994. Charge sheet was filed on the file of the Chief Judicial Magistrate Court, Chennai on 23.9.1994 against the Petitioner and others and the criminal case is under trial.

3.4. It was in 1996 the Government has directed the Board to initiate departmental disciplinary action and recover the pecuniary loss caused to the Board and it was as per the government order, the said three charges were framed against the Petitioner as per Regulation 9(b) of the Tamil Nadu Water Supply and Drainage Board Employees' (Discipline and Appeal) Regulations, 1972 on 21.11.1997. The Petitioner has submitted his explanation denying the charges, specifically stating that in respect of first charge, the Board has already dropped the charge on 5.7.1996.

3.5. An enquiry was conducted and the Enquiry Officer has held that the first charge has not been proved, while the second and third charges are partly proved. The finding of the enquiry officer was communicated to the Petitioner for further written statement and the Petitioner has also made a submission for dropping the charges. Since the charges were relating to officers of various ranks, the disciplinary proceedings were placed before the Board for its consideration on 28.1.2002 and the Board, in its resolution dated 28.1.2002, has decided and come to a conclusion as follows:

a) Regarding Charge No. 1, the Board noted that for the charge relating to the substandard constitution of sumps, the only plea of Thiru P. Somakumaran, Assistant Executive Engineer is that he had already been charged by the Board in 1992 for the same work and the charges were dropped. It was however noted that the test conducted subsequently by the Highways Research Institute of Chennai on concrete samples collected from the sumps that the cement mix was not as per specification viz. 1:1 1/2:3. The Enquiry Officer has held that the accused officer had failed in his duties of exercising proper check over the construction of sump which resulted in profuse leakage of water. Hence, this charge has to be considered as a fresh one based on fresh evidence and to be held as proved.

thereby itself deciding that the charge stood proved on fresh evidence. In respect of the second charge, the Board found that there was a monetary loss caused to the extent of Rs. 1,66,655/-and a proportionate amount of Rs. 2,082/-was directed to be recovered from the Petitioner. In respect of the third charge, it was found that the total loss was Rs. 11,78,478/-and directed the recovery of an amount of Rs. 16,133/-from the Petitioner, in addition to imposing the punishment of stoppage of increment for three years with cumulative effect on the Petitioner. The appeal preferred against the said order came to be rejected on 18.8.2003.

3.6. It is also stated that the principles of natural justice have been followed and the Petitioner was permitted to peruse the records before furnishing his reply to the charges. The criminal case is under trial and the delay is due to the pendency of the criminal case and many persons are involved in the misconduct.

4. On a reference to the counter affidavit and the impugned orders, it is clear that as against the three charges, the enquiry officer has exonerated the Petitioner in respect of the first charge, which is admitted, as it is seen in the counter affidavit itself. However, it is not the case of the Respondent/Board that in respect of the said charge when the Enquiry Officer has given a report exonerating the Petitioner, the Board has given another opportunity to the Petitioner with an intention to differ from the views of the Enquiry Officer. However, the disciplinary authority without even expressing any opinion about differing from the report of the enquiry officer, has straight away come to a conclusion that the said charge stood proved on the basis of certain fresh evidence.

5. The law is well settled that when such fresh evidence was going to be considered by the disciplinary authority in spite of the report of the enquiry officer in favour of the delinquent, the natural justice contemplates an opportunity to be given by expressing the views of the disciplinary authority to differ from the report of the enquiry officer based on various materials. The said onus is more when the disciplinary authority decides to impose punishment on fresh evidence. Admittedly, whatever fresh evidence available was not communicated to the Petitioner and therefore, it is clear that in respect of the first charge, the decision taken by the Respondent is totally perverse and not acceptable.

6. In respect of the second and third charges, it is seen that the report of the enquiry officer shows that a conclusion has been arrived at that the said charges are partly proved. It is also relevant to point out at this juncture that even though one charge memo was issued consisting of three charges, different enquiry officers were appointed in respect of each of the charges. Even in respect of the second and third charges, the original authority, which has given the following finding:

Charge 2: The Board noted that it was the duty of the filed officers to have insisted for the provision of air valves and water hammer devices in the pipes that were laid to withstand the pressure and to prevent burst of pipes which ultimately resulted in the failure of the scheme. Hence the charge stands proved. The loss caused due to this is Rs. 1,66,655/-and has to be borne by the Accused Officers. The Board however noted that a sum of Rs. 1,50,000/-withheld from the contractor is available which could offset the loss. The balance of Rs. 16,655/-may be recovered from the 8 Accused Officers involved in this charge. The amount relating to Thiru P. Somakumaran, Assistant Executive Engineer is Rs. 2082/-.

Charge 3: The Accused Officer is responsible for the preparation and passing of the manipulated written understandings as if surplus earth was transported from one place to another place and earth was transported from elsewhere, and so he is responsible for the loss of Rs. 11,78,478/-. The entire expenditure was made through temporary advance without any approval of the competent authorities. Hence the charge stands proved. The proportionate amount of the loss relating to Thiru P. Somakumaran is Rs. 16,133/-. For the proven charges the penalty of stoppage of increment for three years with cumulative effect be imposed on Thiru P. Somakumaran, Assistant Executive Engineer (under suspension). The proportionate amount of the loss incurred by the Board amounting to Rs. 18,215/-be recovered from him.,

has not chosen to take note of the fact that even the report of the enquiry officer in respect of those charges was that the charges were partly proved. This can only be stated as a total non application of mind on the part of the disciplinary authority. It is unfortunate that the Appellate Authority, which is the Board, has also not chosen to take note of the said vital factors while confirming the order of punishment passed by the disciplinary authority.

7. Apart from the above said basic lacuna in the decision making process by the disciplinary authority and the appellate authority, the vital issue that has to be considered is about the long delay. In respect of the occurrence stated to have been taken place in 1986-1987, the Respondent/ Board has framed charges only on 21.11.1997. There is no proper explanation for such delay of eleven years. In the criminal case itself the charge sheet was filed only on 23.9.1994 and admittedly, the criminal trial is till pending as on date, which is more than 16 years from the date of filing of the charge, while the complaint was given in the year 1988 by way of registration of the first information report. Pendency of criminal case or criminal investigation was certainly not a bar for the disciplinary proceedings to commence. Strangely, the counter affidavit gives a reason for framing the charge in the year 1997 as that it was only as per the government's direction in the letter dated 4.12.1996 to take disciplinary action, the Board has woken up for the first time to think of taking disciplinary action against the Petitioner and others. The reason given in the counter affidavit in this regard, which is clinching, is as follows:

Further, the Government in their Lr.(D) No. 743/MA&WS/ME.IV Department, dated 4.12.1996 and in Lr. No. 36191/ME.IV(2)/95-6, dated 3.12.1996 remitted a case against 21 Tamilnadu Water Supply and Drainage Board officials for the irregularities committed in the execution of works related to Udamandalam Water Supply Improvement Scheme (UWSIS) and directed the Board to initiate departmental disciplinary action and also to recover the pecuniary loss caused to the Board from the persons responsible. The loss incurred to the Board, as per the Government Report is Rs. 14,77,962/-.

Therefore, there is absolutely no reason adduced for such a long delay of eleven years for framing the charges in the disciplinary proceeding against the Petitioner.

8. It has been a well settled legal proposition in series of judgments of the Supreme Court from [The State of Madhya Pradesh Vs. Bani Singh and another](#), , [State of Andhra Pradesh Vs. N. Radhakishan](#), , and [P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board](#), that the unexplained delay in initiating disciplinary action would cause prejudice to the delinquent/Government servant not only due to the reason that after such a long lapse of time it would be humanly impracticable for a person to remember the minute details about the incident that took place much earlier so as to defend himself in an appropriate manner, but also on the ground that conducting of the disciplinary proceedings after such long lapse of time would demoralize the government servant and their functioning and therefore, it involves public interest.

9. While considering the delay of eleven years in issuing of charge memo, which was not explained by the authority, I have held in G. Adavan v. The Government of Tamil Nadu and Anr. 2010 (2) CLT 689 that such delay has a tendency of causing disrepute to public service and prejudice to the delinquent. I have also taken a similar view in M. Elangovan v. The Trichy District Central Cooperative Bank Ltd. 2006 (2) CTC 635.

In such view of the matter, I am of the considered view that not only the procedure followed in the disciplinary proceedings, but also the delay vitiates the entire proceedings and accordingly, the writ petition stands allowed and the impugned orders stand set aside. In the meantime, if the Petitioner has retired from service, the Respondent shall pay all the monetary and other benefits due to him, including the re-fixation of the pension, and pass appropriate orders within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, W.P.M.P. No. 40070 of 2004 is closed.