

The Secretary To Government of Tamilnadu Vs N. Sundaravadivelu

Court: Madras High Court

Date of Decision: Nov. 18, 2014

Hon'ble Judges: P.R. Shivakumar, J; N. Paul Vasantha Kumar, J

Bench: Division Bench

Judgement

N. Paul Vasantha Kumar, J.

This writ appeal is filed against the order dated 09.1.2012 made in W.P.No. 17099 of 2007 wherein the

respondent has challenged the order of removal from service passed in G.O.Ms.43, Environment and Forests (FR.1) Department, dated

26.3.2007 with a further direction to direct the appellants to pay all attendant retiral benefits payable to the respondent on his superannuation and

continue to pay pension.

2. Brief facts in this case are that the respondent had been appointed as Forest Ranger through Tamil Nadu Public Service Commission on

01.11.1959 and after completion of training, the respondent was posted as Forest Range Officer, Periyakulam on 01.11.1961. After passing

departmental examination, the respondent made representation before the Chief Conservator of Forests and other officials about his eligibility for

promotion to the post of Assistant Conservator of Forests. Since his request was not considered, the respondent has filed W.P.No. 11575 of

1981 and the said writ petition was allowed by this Court. Aggrieved over the same, the department has filed W.A.No. 1113 of 1985 and the

same was dismissed. In August 1986, the respondent was promoted and posted as Assistant Conservator of Forests at the office of the Chief

Conservator of Forests, Chennai and thereafter, the respondent served in that cadre at various places. While he was functioning as Wildlife

Warden, the respondent was placed under suspension on 11.4.1988 vide G.O.Ms.No. 397 Forests and Fisheries Department. The said

suspension order dated 11.4.1988 was challenged by the respondent in W.P.No. 691 of 1988 and the said writ petition was allowed by this

Court on 2.5.1988. Again the respondent was placed under suspension on 04.10.1988 and the said suspension order was also challenged by the

respondent in W.P.No. 12683 of 1988 and by an interim order, the respondent rejoined duty on 13.3.1989.

3. On 14.8.1991, the respondent was served with charge memo dated 8.8.1991 containing two category of charges under Part A and Part B,

which reads thus:

“You were in charge of the post in Deputy Director Kalakad Mundanthurai Tiger Reserve from 17.11.1989 to 1.11.90. The office inspection of the

office of the Deputy Director, Ambasamudram for the period from 7.2.90 to 18.2.91 was taken on 19.2.91 by the Field Director, Project Tiger,

Tirunelveli and the result of the office inspection is most unsatisfactory for the following reasons.

PART – A

1. Serious neglect of works related to the welfare of staff by not filling nominations related to GPF, DCRG, Family Pension, Special Provident

Fund, Family Benefit Fund, Pay fixation statements etc. in Service Registers and not getting quinquennial attestation in Service Registers.

2. Large number of transfers ordered by you during March to May 1990 without completing the requisite 3 years period and without any reasons.

3. Lack of discipline in the office with you yourself leaving the station without permission.

PART-B

1. Encroachment in Mylar has been allowed by you and you have delayed the submission of encroachment return.

2. You have not taken adequate interest in finalising the Reserved Forest settlement proceedings.

3. A very long Number of files have not been attended to continuously for several months often for more than a year.

4. An exceedingly high number of offence pendency and no interest has been taken by you to reduce this pendency.

5. You exhibited a high degree of professional incompetence and financial impropriety in sanctioning a large number of dry stone masonry tree

guards under the western Ghat Development Programme scheme of regeneration of degraded hill alopes. The professional incompetence was in

the choice of regeneration sites (by choosing excellent forests instead of degraded hill alopes) and in choosing wrong technique of using stone tree

guards in dense forests and making the choice of wrong technique even more disastrous by faulty design of tree guards whereby the tree guards,

meant to protect seedlings, killed most of the plants. The financial impropriety was in sanctioning an extremely high cost of Rs.225/- for each tree

guard.

6. The Divisional Forest Note Book has been completely neglected by you.

7. Range reference maps and other maps are either not available at all or have not been posted regularly.

8. Defects pointed out in the earlier inspections notes were not rectified you.

You are responsible for the above lapses. Hence this charge.

The respondent has submitted his reply/explanation denying both the charges. In his reply, particularly, for the charge that he allowed

encroachment in Mylar and the same had not been put on notice to the Government in time, the respondent has stated that the said encroachment

was in existence even in the year 1981 and the respondent joined in the Station only in the year 1987. After enquiry, the Field Director has given

his report that there was no encroachment in the forest area, particularly in the sanctuary.

4. Thereafter, another Enquiry Officer was appointed to go into the similar charge of encroachment by issuing second charge memo dated

24.5.1995. The charge memo dated 24.5.1995 reads thus:

Thiru.NSundaravadivelu, Assistant Conservator of Forests, held the post of Wildlife Warden, Mundanthurai Sanctuary, Shencottah from 21.8.87

to 12.4.88, 15.6.88 to 6.10.88 and 14.3.89 to 31.10.89 and held the post of Deputy Director, Project Tiger, Ambasamudram from 1.11.89 to

10.11.89 and 17.11.89 to 1.11.90.

While he was functioning as Wildlife Warden, Mundanthurai Sanctuary, Shencottah, Thiru.S.Thiagarajan, Ranger, Papanasam, in his letter dated

22.9.89 informed Thiru N.Sundaravadively, Wildlife Warden, Shencottah that he had allotted 20 acres of forest lands for cultivation near Mylar as

directed by Thiru N.Sundaravadively, Wildlife Warden on 10.9.89. He further stated that he had surveyed the area and allotted 1 1/2 acres to

each of 7 families for cultivation. On 1.11.1989 the post of Wildlife Warden, Shencottah, was redesignated as Deputy Director, Project Tiger,

Ambasamudram. Again Thiru S.Thiagarajan, Ranger in his ref. No. 119/90 dated 13.3.90 sent a report to Thiru N.Sundaravadivelu, then the

Deputy Director, Project Tiger, Ambasamudram, stating that he had allotted forest lands to 7 families in Mylar best as orally instructed by the then

Wildlife Warden on 10.9.89. Thiru N.Sundaravadively, Deputy Director Project Tiger in turn submitted a report in his No. 5696/90 D dated

26.4.90 to the Conservator of Forests, Rajapalayam based on the report of the Ranger referred to above, admitting that he as the then Wildlife

Warden had orally permitted this illegal transfer of forest land on 10.9.89. It may be mentioned here that the post of Wildlife Warden was renamed

as Deputy Director Project Tiger with effect from 1.11.89 and that Thiru N.Sundaravadivelu who was the Wildlife Warden on 10.9.89 functioned

as Deputy Director subsequently. From the above it is clear that Thiru N.Sundaravadively, in connivance with Thiru S.Thiagarajan, Ranger,

Papanasam, illegally transferred 20 acres of forest land on the bank of the river Tambirabarani near Mylar for cultivation without authority and in

violation of the Forest Conservation Act, 1980. Hence the charge.â€

For the said charge memo, the respondent has submitted his explanation. Enquiry Officer was appointed to conduct enquiry, as stated supra. In the

meanwhile, the respondent reached the age of superannuation on 30.6.1995 and on 12.7.1995, the respondent was served with suspension order

stating that the respondent was suspended on 30.6.1995. Thereafter, ex parte enquiry was conducted and on 26.3.2007, the first appellant passed

an order holding that the charge levelled against the respondent is proved and imposed punishment of removal from service. Challenging the same,

the respondent has filed the writ petition (W.P.No. 17099 of 2007) with the above said prayer.

5. The writ petition is opposed by the appellants by filing counter affidavit, reiterating the reasons stated in the impugned G.O.Ms.No. 43 dated

26.3.2007 to justify awarding of punishment of removal from service.

6. Heard Mr.M.K.Subramanian, learned Special Government Pleader (Forests) appearing for the appellants and Mr.N.Rajavadevelu, learned

counsel appearing for the respondent and perused the materials available on record.

7. It is seen from the records that the respondent was proceeded under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules

for the alleged charge that he had illegally diverted 20 acres of forest land on the banks of Tamirabarani near Mylar for cultivation without authority

and in violation of Forest Conservation Act, 1980 in connivance with one S.Thiagarajan, the then Ranger Papanasam Range. The said allegation

was denied by the respondent by stating that the encroachments were made in the said 20 acres of forest land from 1981 onwards and he joined in

the said Station only in the year 1987 as Wildlife Warden. The first appellant/Government has not accepted the said reasoning/explanation by

stating that even after the respondent's joining, he failed to take action. During the first enquiry, charges were not proved and if the Disciplinary

Authority was not convinced with the findings, could have differed with the findings and should have proceeded further. Instead, second charge

memo was issued containing one charge, which was not proved during the first enquiry. The said procedures adopted by the appellants are illegal.

8. On merits also, the charge being that the respondent had illegally diverted 20 acres of forest land on the banks of Tamiraparani near Mylar for

cultivation without authority and in violation of the Forest Conservation Act, 1980 and the contention of the respondent that he joined only in the

year 1987 as Wildlife Warden and his predecessors allowed the encroachments in the year 1981 onwards, which was accepted by the

Government, basis of charge itself is goes. In the Government Order, contrary to the charge framed, a different reason is stated to the effect that

the respondent failed to take steps to remove the encroachments. For the said reason also the order is vitiated.

9. The learned single Judge, noticing the said facts such as issuing second charge memo for the very same set of allegation and the delay in

completing the proceedings, and also having regard to the fact that the respondent retired on 30.6.1995, has allowed the writ petition.

10. Even though the delay in completing the proceeding may not be a good reason to interfere with the order, on the ground of vagueness in the

charge framed and the charge that the respondent had illegally diverted 20 acres of forest land on the banks of Tamirabarani for cultivation, without

authority, having not been established by the appellants, and the said fact also having been accepted by the first appellant/Government, in the light

of the fact that the respondent joined in the Station only in the year 1987, and encroachments were made in the year 1981 onwards, we are unable

to find any reason to uphold the order of the first appellant/Government in G.O.Ms. No. 43 Environment and Forests (FR.1) Department, dated

26.3.2007, which was rightly set aside by the learned single Judge and there is no merit in this writ appeal.

11. In the result, the writ appeal is dismissed. The appellants are directed to settle the retirement benefits payable to the respondent treating him as

retired from service on 30.6.1995, within a period of eight weeks from the date of receipt of a copy of this order. No costs.