

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31/03/2004

CORAM

THE HON'BLE MR.JUSTICE P.D. DINAKARAN

Writ Petition No.19121 of 2003

N. Somasundaram .. Petitioner

-Vs-

1. The Board of Directors
Tamil Nadu Industrial Investment
Corporation Ltd.
rep. by its Chairman
473, Anna Salai, Nandanam
Chennai 600 035.

2. The Tamil Nadu Industrial Investment
Corporation Ltd.
rep. by its Managing Director
473, Anna Salai, Nandanam
Chennai 600 035.

3. The Managing Director, TIIC
473, Anna Salai, Nandanam
Chennai 600 035. .. Respondents

Petition under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus as stated therein.

For Petitioner : Mr.G. Masilamani, S.C.
For Mr.K. Venkatasubba Raju

For Respondent : Mr.M.J. Jaseem Mohamed

:O R D E R

Heard both sides.

2.1. By proceedings dated 29.3.2001, the third respondent, pursuant to a disciplinary action initiated against the petitioner vide charge memo dated 17.6.1999 for certain alleged misconduct, demoted the petitioner from the post of Manager to the post of Assistant Manager.

2.2. Aggrieved by the said proceedings, the petitioner preferred an

appeal before the first respondent alleging that the enquiry conducted by the enquiry officer was not proper and the same was contrary to the principles of natural justice. It was further contended that none of the charges levelled against the petitioner was proved by the Management by examining the witnesses and marking the documentary evidence through the management witnesses and therefore the petitioner was deprived of an opportunity to cross examine the management witnesses to disprove the charges and the report of the enquiry officer is based on 'no evidence'.

2.3. When the appeal preferred by the petitioner was pending, the first respondent issued a show cause notice dated 15.2.2002, proposing to enhance the punishment imposed on the petitioner namely to dismiss the petitioner from service, instead of demoting him from the post of Manager to the post of Assistant Manager, and the same was objected to by the petitioner in his reply dated 27.3.2002.

2.4. As the first respondent appellate authority kept the appeal pending for more than one year, the petitioner was constrained to move this Court in W.P.No.16678 of 2003 seeking a writ of Mandamus to forbear the respondent from enhancing the punishment, as proposed in the show cause notice dated 15.2.2002. Pending W.P.No.16678 of 2003, the first respondent, by order dated 23.6.2003 dismissed the petitioner from service. Hence, the present writ petition for a writ of Certiorarified Mandamus calling for the records of the first respondent made in its proceedings No.TIIC/Admn./DW/2003 dated 23.6.2003 and Proc.No.Admn./DW/ 2000-1 dated 29.3.2001 passed by the third respondent and to quash the same and direct the respondents to reinstate him to the post of the Manager and to pay all the attendant benefits including the back wages.

3.1. Mr.G. Masilamani, learned senior counsel appearing for the petitioner contends that

- (a) the charges framed against the petitioner are vague;
- (b) since the management failed to substantiate the charges by examining the witnesses and marking the documents through them, the petitioner was deprived of an opportunity to cross examine the witnesses both oral and documentary, to disprove the charges, which is contrary to Rule 6.17 of the service rules of the Tamil Nadu Industrial Investment Corporation Ltd. (hereinafter referred to as the 'Rules') and therefore, the report of the enquiry officer is based on no evidence and the same cannot be relied upon, as it violates the principles of natural justice. Consequently, the order of reduction of rank demoting the petitioner from the post of Manager to the post of Assistant Manager by the proceedings of the third respondent dated 29.3.2001 is unsustainable in law; and
- (c) in any event, the first respondent ought not to have issued a show cause notice dated 15.2.2002 to the petitioner proposing to dismiss the petitioner from service by enhancing the punishment of demoting the petitioner from the post of Manager to the post of Assistant Manager, when the appeal preferred by the petitioner is pending and particularly, on the ground that the report of the enquiry officer relied upon by the original authorities itself was based on 'no evidence' and violative of the principles of natural justice.

3.2. To substantiate the above contentions, Mr.G.Masilamani, learned senior counsel places reliance on the decisions of the Apex Court in
(i) Punjab National Bank v. Kunj Behari Misra reported in (1998) 7 SCC 84; and
(ii) Kumaon Mandal Vikas Nigam Ltd. v. Girija Shankar Pant reported in (2001) 1 SCC 182.

4.1. Mr. Jaseem Mohamed, learned counsel representing the respondent Corporation, unfortunately, is not in a position to produce before this Court the original records relating to the impugned enquiry to satisfy that the management examined the witnesses and marked documentary evidence relied upon by the enquiry officer, through the management witnesses in order to substantiate the charges levelled against the petitioner.

4.2. Even though a detailed counter affidavit was filed on behalf of the respondents submitting that ample opportunity was given to the petitioner before the enquiry officer, the specific allegation made by the petitioner that the management never examined any witness on their behalf nor marked the exhibits through the witnesses, is not disputed in the counter.

4.3. According the learned counsel for the respondent, as alleged in the counter affidavit, the first respondent is empowered to pass the impugned order enhancing the punishment imposed on the petitioner, dismissing him from service instead of demoting the petitioner from the post of Manager to the post of Assistant Manager, by exercising the power conferred under Rule 6.25(1) of the Rules, which reads as follows:

" Rule 6.25:

In the case of an appeal against an order imposing any of the penalties specified in Rule 6.15, the appellate authority shall consider whether the penalty imposed is adequate, inadequate or severe and pass orders:

- (i) confirming, enhancing, reducing or setting aside the penalty or
- (ii) remitting the case to the authority which imposed the penalty with such direction as it may deem fit in the circumstances of the case.
- (iii) Notwithstanding anything contained in the above Rules the Board is empowered to call for the records of any disciplinary authority as it deems fit for enhancement, mitigation reduction or cancellation of punishments already imposed provided that such review shall be taken only after the expiry of the period of limitation of appeals or disposal of appeals where any such appeals had been preferred by observing the procedure laid down for the disposal of disciplinary cases. "

5. I have bestowed my consideration to the submissions of both sides.

6.1. By charge memo dated 17.6.1999, a disciplinary action was initiated against the petitioner on the following charges:

"Charge 1: that he in violation of Circular No.Project/91-92/02-07 dt.11.2.1992 considered M/s. Premier Machine Tools for supply of machinery to

the borrower who is neither a manufacturer nor a standard supplier or their accredited dealers or approved supplier in the list of corporation and thereby violated rules 6.14(viii) and (xii) and 6.1(a), 6.1(b) read with 6.14(xiii) of the Service Rules of the Corporation.

Charge 2: that he recommended M/s. Premier Machine Tools for supply of machinery which resulted in over invoicing, supplying of substandard machinery etc., and thereby violated rules 6.14(viii) and (xii) and 6.1(a), 6.1(b) read with 6.14(xiii) of the Service Rules of the Corporation.

Charge 3: that he failed to note that M/s. Premier Machine Tools failed to mention about the number of dies, size, specification etc., in the proforma invoice and he also failed to assess the requirement of dies and recommended only lumpsum provision of Rs.1.00 lakh for dies and thereby violated rules 6.14(viii) and (xii) and 6.1(a), 6.1(b) read with 6.14(xiii) of the Service Rules of the Corporation.

Charge 4: that he recommended M/s. Premier Machine Tools for supply of machinery at a cost of Rs.29,18,912/- whereas the actual cost of the machinery was only Rs.4,29,000/- and thereby violated rules 6.14(viii) and (xii) and 6.1(a), 6.1(b) read with 6.14(xiii) of the Service Rules of the Corporation.

Charge 5: that he obtained the legal documents through a person who was not authorised viz., LAA even though there are LAO and Officer (Legal) in that Branch in violation of the norms of the Corporation and thereby violated rules 6.14(viii) and (xii) and 6.1(a), 6.1(b) read with 6.14(xiii) of the Service Rules of the Corporation.

Charge 6: that he approved the disbursement note put up by LAA instead of LAO violating the norms of the Corporation and thereby violated rules 6.14(viii) and (xii) and 6.1(a), 6.1(b) read with 6.14(xiii) of the Service Rules of the Corporation.

Charge 7: that he accepted bogus Encumbrance Certificate and VAO certificate from the borrower and thereby violated rules 6.14(viii) and (xii) and 6.1(a), 6.1(b) read with 6.14(xiii) of the Service Rules of the Corporation.

Charge 8: that he obtained the property in S.No.80, extending 50 cents, Srinivasapuram Village, Ayyappanthangal, Sriperumbudur Taluk, which was already sold by the mortgagor and disbursed the loan amount without collateral security and thereby put the Corporation to great loss and hardship and thereby violated rules 6.14(viii) and (xii) and 6.1(a), 6.1(b) read with 6.14(xiii) of the Service Rules of the Corporation.

Charge 9: that he failed to collect Risk Coverage Fund dues before the first disbursement as against the norms of the Corporation and thereby violated rules 6.14(viii) and (xii) and 6.1(a), 6.1(b) read with 6.14(xiii) of the Service Rules of the Corporation.

Charge 10: that he failed to note that the cost of the machinery at the time

of disbursement was escalated to the tune of Rs.1.68 lakhs i.e. from Rs.28,18,912/- (as per the scheme) to Rs.30,87,432/- within 2 months from the date of original quotation without any reason and thereby violated rules 6.14(viii) and (xii) and 6.1(a), 6.1(b) read with 6.14(xiii) of the Service Rules of the Corporation.

Charge 11: that he released contingency provision to the machinery supplier without any justification/explanation for the cost escalation and thereby violated rules 6.14(viii) and (xii) and 6.1(a), 6.1(b) read with 6.14(xiii) of the Service Rules of the Corporation.

Charge 12: that he failed to obtain insurance policy for the machinery before disbursement of the loan as per the norms of the Corporation and thereby violated rules 6.14(viii) and (xii) and 6.1(a), 6.1(b) read with 6.14(xiii) of the Service Rules of the Corporation.

Charge 13: that he failed to note that the machinery supplier had supplied dies for cycle components and that the dies supplied by the supplier were not relevant for this scheme and without ascertaining these facts he had recommended the disbursement of the loan amount to the borrower and thereby violated rules 6.14(viii) and (xii) and 6.1(a), 6.1(b) read with 6.14(xiii) of the Service Rules of the Corporation.

Charge 14: that he enclosed the borrower's margin money cheque of Rs.1,10,000/- along with the commitment letter to the machinery supplier M/s. Premier Machine Tools and handed over the same to the borrower himself instead of sending the same directly to the machinery supplier by RPAD in violation of Circular No.1 dt.14.11.84 of the Operation Department, and MD D.O. letter dt.26.12.86 and thereby violated rules 6.14(viii) and (xii) and 6.1(a), 6.1(b) read with 6.14(xiii) of the Service Rules of the Corporation.

Charge 15: that he disbursed a sum of Rs.5,53,432/- towards SBL, whereas the borrower was eligible only for Rs.4,85,289/- i.e. 85% of the eligible SBL amount in violation of the norms of the Corporation and thereby violated rules 6.14(viii) and (xii) and 6.1(a), 6.1(b) read with 6.14(xiii) of the Service Rules of the Corporation.

GENERAL

Charge 16: that he in furtherance of the conspiracy to defraud the Corporation hatched with Thiru S.Sivasubramanian, Assistant Branch Manager, Thiru S.Rajagopal, Manager, Thiru Gunaseelan Abraham, Officer (F) and Thiru L.Jagannathan, LAA, the borrower, supplier, panel valuer and to unduly and illegally enrich himself and others had indulged the above lapses/irregularities and thereby violated rules 6.14(viii) and (xii) and 6.1(a), 6.1(b) read with 6.14(xiii) of the Service Rules of the Corporation.

Charge 17: that his conduct as above is unbecoming of an employee of a financial institution and thereby violated rules 6.14(viii) and (xii) and 6.1(a), 6.1(b) read with 6.14(xiii) of the Service Rules of the Corporation."

6.2. There cannot be any other second opinion that the charges

levelled against the petitioner are serious in nature, inasmuch as the Corporation would otherwise suffer substantial loss.

6.3. The core contention made on behalf of the petitioner is that the petitioner was not responsible for any loss alleged to have been sustained by the Corporation and there is no material evidence to show that the petitioner was responsible either for the alleged loss either directly or indirectly.

6.4. Mr.G.Masilamani, learned Senior Counsel secondly contended that the enquiry conducted by the enquiry officer is contrary to Rule 6.1 7 of the Service Rules of the Corporation and also in violation to the principles of natural justice. Mr.G.Masilamani, learned senior counsel for the petitioner also invited my attention to paragraph 2 of the enquiry report dated 6.4.2000, which reads as follows:

"2. The undersigned conducted the enquiry in respect of Thiru N. Somasundaram (EC) in pursuance of proceedings in M.D. cited above. The EC was issued Charge Memo on 17.6.99. The Management appointed Thiru K.Subash, General Manager (SD) as EO on 15.10.99. The undersigned was appointed as EO for Thiru N.Somasundaram, Manager, one of the employees charged in the charge memo referred above. The undersigned conducted ten hearings. The Management Representative submitted as many as 58 exhibits. In response to the enquiry, the EC called for a number of documents/records some of which were not produced by the MR as these were considered not relevant to the enquiry. MR submitted his written arguments at the hearing held on 29.2.2000. The EC submitted his written arguments only at the hearing held on 31.3.2000. The undersigned has perused the relevant documents and the findings of the enquiry under each charge are given in the following paragraphs."
(emphasis supplied)

6.5. It is apparent on the face of the report that the management did not examine any witness on their behalf nor marked any documentary evidence as exhibits. Unless the documentary evidence relied upon by the management to substantiate the charges are marked through the management witnesses, it is needless to say that the petitioner could not have any occasion to disprove the charges by way of cross examination.

6.6. As held by the Apex Court in Sayeedur Rehman v. State of Bihar, (1973) 3 SCC 333, the requirement of fair hearing is mandatory to comply with the rule of justice and the compliance of the doctrine of principles of justice is integral part of the administrative jurisprudence and any deviation from the same requires interference by this Court in order to avoid miscarriage of justice.

6.7. The discretion conferred on the enquiry officer in arriving at the findings in the capacity as the sole judge of the facts should be exercised in accordance with the rules of reasons and justice, but not

according to his own private opinion, nor in accordance with humour. Otherwise, it is arbitrary, vague and fanciful, but not legal and regular.

6.8. In this regard, it is apt to refer Rule 6.17 of the Service Rules of the Corporation, which reads as follows:

"Rule 6.17:

In every case where it is proposed to impose on a member of a service under the Corporation any of the penalties specified in items (i) to (x) in Rule 6.15 the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged, together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He/She shall be required within a reasonable time, to put in a written statement of his/her defence and to state whether he/she desires an oral enquiry. The enquiry shall be held if such an enquiry is desired by the person charged or is directed by the authority concerned. At that enquiry oral evidence shall be heard as to such of the allegations as are not admitted and the person charged shall be entitled to cross-examine the witnesses called, as he/ she may wish, provided that the Officer conducting the enquiry, may, for special and sufficient reasons to be recorded in writing refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and on statement of the findings and the grounds thereof. "

(emphasis supplied)

6.9. In the instant case, unfortunately, no material is available before this Court to show whether the management witnesses were examined or the management produced any documentary evidence and marked the same as exhibits through such witnesses to substantiate the charges in question as provided under Rule 6.17 of the Service Rules of the Corporation. Therefore, the petitioner was deprived of the opportunity to disprove the charges made against him.

6.10. The Apex Court in *Kumaon Mandal Vikas Nigam Ltd. v. Girija Shankar Pant*, 2001 1 SCC 182 held that where no oral evidence was taken, the question of cross examination would not arise and consequently, the delinquent is deprived of an opportunity to disprove the charges, which attracts the doctrine of natural justice, which is an integral part of the administrative jurisprudence. As already observed, the enquiry conducted by the enquiry officer is contrary to the prescribed under Rule 6.17 of the Service Rules of the Corporation, as the management failed to adduce oral evidence and mark the documentary evidence as exhibits and there is no material evidence to show that the enquiry officer recorded the evidence of the management witnesses. Hence, the requirement of fair hearing envisaged under Rule 6.17 of the Rules referred to above has not been complied with. Therefore, the findings of the enquiry officer is based on no evidence.

6.11. While exercising the power of judicial review under Article 22 6 of the Constitution of India, this Court is not concerned as to the adequacy

or inadequacy of the evidence relied upon by the enquiry officer, where it is found that the recorded findings of the enquiry officer are based on no evidence or the findings are fully perverse or legally untenable, such findings of the enquiry officer shocks the judicial conscience of the Court, vide Apparel Export Promotion Council v. A.K.Chopra, (1999) 1 SCC 759.

6.12. I am also impressed with the next contention advanced by Mr. Masilamani, learned Senior Counsel, viz., when the disciplinary authority propose to take a different opinion than that of the enquiry officer and the appellate authority still propose to take a further different opinion from that of the disciplinary authority, even though the appellate authority is empowered under Rule 6.25(1) of the Rules to enhance the punishment while deciding on the adequacy or inadequacy of severeness of the punishment, such findings of the enquiry officer and that of the disciplinary authority are sought to interfered with by using such power, as the mere show cause notice to enhance the punishment itself would not be a sufficient compliance to the principles of natural justice, in the absence of any fair and reasonable opportunity to the delinquent, to vary from the findings arrived at by the disciplinary authority for imposing a lesser punishment, which otherwise would be a gross violation of the principles of natural justice, as held in Punjab National Bank v. Kunj Behari Misra reported in (1998) 7 SCC 84.

7. For all these reasons, I am inclined to set aside the impugned disciplinary action initiated against the petitioner, with a direction to the respondents to reinstate the petitioner in service in the capacity of Manager, by passing appropriate orders within thirty days from the date of a copy of this order, of course, leaving the matter to the respondents as to the further course of action.

The writ petition is allowed. No costs.

Index : Yes

Internet : Yes

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