IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2015

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.17371 of 2007 (T)
O.A.No.3625 of 2003

I.Sahaya Antony Raj ... Petitioner

Vs.

1.Principal Commissioner and
Commissioner of Revenue Administration,
Chepauk, Chennai - 5.

2.District Revenue Officer,
Tuticorin.

3.Personal Assistant (General) to
District Collector,
Tuticorin District,
Tuticorin. ... Respondents

PRAYER: Writ Petition came to be numbered by transfer of O.A.No.3625 of 2003 on the file of the Tamil Nadu Administrative Tribunal seeking the Writ of certiorarified Mandamus to call for the records pursuant to the order passed by the first respondent in Na.Ka.No.Pani 4(3)/37816/2002, dated 07.06.2002, confirming the order of punishment passed by the third respondent in Na.Ka.No.A4/68726/97, dated 31.08.2001, and set aside the same and direct the respondent to sanction the annual increments with all consequential benefits.

For Petitioner :Mr.P.Ganesan
for M/s.V.Anantha Natarajan

For Respondents :Mr.R.Govindasamy, AGP

ORDER

The petitioner filed O.A.No.3625 of 2003 before the Tamil Nadu Administrative Tribunal seeking to quash the order passed by the first respondent / the Principal Commissioner and Commissioner of Revenue Administration, Chennai, in Na.Ka.No.Pani 4(3)/37816/2002, dated 07.06.2002, confirming the order of punishment passed by the third respondent / the Personal Assistant (General) to the District Collector, Tuticorin, in Na.Ka.No.A4/68726/97, dated 31.08.2001, and consequently, to direct the respondents to sanction the annual increments with all consequential benefits. On abolition of the Tribunal, the same was transferred to the file of this Court and re-numbered as W.P.No.17371 of 2007.

2. Learned counsel appearing for the petitioner submitted that while the petitioner was working as Special Revenue Inspector in the office of the Special Tahsildar (Adi-Dravidar Welfare) Tuticorin, he sent a representation to the Secretary to Government, Revenue Department, on 22.07.1997 and one another representation to the Secretary to Government, Adi-Dravidar Welfare Department on 05.08.1997 bringing out certain irregularities committed by the higher officials. However, without taking any action against the higher officials, the respondent issued a charge memo dated 29.08.1997, containing the following charges;

> "i. that the petitioner has forwarded representations dated 22.07.1997 and 05.08.1997 directly to the Secretary to Government, Revenue Department and Director of Adi-Dravidar & Tribal Welfare and thereby violated the District office procedure.
>
> ii. that the petitioner has used unparliamentary words in his report dated 16.07.1997 submitted to Special Tahsildar (ADW).
>
> iii. that the petitioner has made a comment against the Superintendent of Police for his act of accepting the petitions from the Villages and thereby the petitioner has violated the Rule 12(1)(i) of Government Servant Conduct Rules.
>
> iv. that the petitioner has used unparliamentary words commenting upon the Police Department in his report dated 29.08.1997 and thereby violated Rule 20(1) of the Tamilnadu Government Servants Conduct Rules."

By quoting the above charges, learned counsel further stated that the District Excise Officer was appointed as Enquiry Officer, who , in turn, held the enquiry proceedings only one day and none of the witnesses as shown in the charge memo have been examined. In the enquiry proceedings, only two witnesses were examined, namely, Mr.Neethirajan, Assistant, and Mr.Jainulabdeen, Junior Assistant, and they deposed that they were not aware of the representation made by the petitioner to the higher authorities. Finally, the Enquiry Officer submitted his report on 07.04.2000 holding that the charges levelled against the petitioner stood proved, without any discussion with regard to the charges levelled against him and without even affording sufficient opportunity to him, therefore, he contended, the findings of the enquiry officer's report are perverse and of no evidence and thus, the resultant impugned order passed by the third respondent imposing a punishment of stoppage of increment for three years with cumulative effect is liable to be set aside.

3. It is further contended by the learned counsel for the petitioner that aggrieved by the above said order of the third respondent, when appeal was preferred, the first respondent also confirmed the above said order. While assailing the order passed by the first respondent, learned counsel contended that when there was an allegation that the petitioner had used unparliamentary words against Mr.Sanjeev, District Adi-Dravidar Welfare Officer, Tuticorin, the first respondent gone beyond the scope of the charges levelled against him and thereby given an irrelevant finding without there-being any evidence whatsoever and that shows that the first respondent has also not applied his mind while passing the order. Therefore, for all the above said reasons, he pleaded for quashing the impugned orders passed by the respondents.

4. Learned Additional Government Pleader appearing for the respondents, by filing a detailed counter affidavit, submitted that though the petitioner was issued with a charge memo dated 29.08.1997, he has not even offered his explanation to the charges and thereafter, the Enquiry Officer, after perusing the materials placed before him, submitted his report dated 07.04.2000 holding that the charges levelled against him stood proved. In the enquiry proceedings, the petitioner sought permission to enquire and cross-examine the then Superintendent of Police, then Collector and other higher officials, which was totally unwarranted and irrelevant. Thereafter, the third respondent, on receipt of the enquiry report, imposed a punishment of stoppage of increment for three years with cumulative effect. As against that, when the petitioner preferred an appeal before the second respondent, the same was also dismissed and aggrieved by the same, he preferred a revision before the first respondent, who, in turn, vide his proceedings dated 07.06.2002, dismissed the revision petition, holding that there were no valid grounds to interfere with the punishment imposed against him. Therefore, the impugned order passed by the third respondent as confirmed by the first respondent need not be interfered with by this Court, he pleaded.

5. But, this Court is unable to accept the above said contention of the learned Additional Government Pleader, for the reasons stated below;

(i) firstly, in the charge memo dated 29.08.1997 issued against the petitioner, it is specifically mentioned the names of the witnesses to be examined by the department to prove the charges, along with six other documents. But, curiously, neither three witnesses nor six documents as shown in the annexure were examined or produced. Apart from the above, it can be seen from the enquiry report that the Enquiry Officer has not analysed the charges and there is no discussion at all with each and every charges and the same was rendered without reference to any evidence.

(ii) secondly, when there was an allegation that he used unparliamentary words against one Mr.Sanjeev, District Adi-Dravidar Welfare Officer, Tuticorin, the said official was not even brought before the enquiry officer. On mere reading of the report submitted by the Enquiry Officer, it does not show anything as to whether any relief has been given either in favour of the petitioner or in favour of the department. While that being so, it is not known as to how the disciplinary authority has come to the conclusion that the charges levelled against the petitioner were found to be proved.

(iii) thirdly, the report of the Enquiry Officer also shows that it is bereft of any discussion on the charges. Though these infirmities have been specifically put-forth by the petitioner in his written representation dated 19.05.2002, the disciplinary authority, ignoring the written representation of the petitioner on the report of the enquiry officer, wrongly imposed a major punishment of stoppage of increment for three years with cumulative effect. Again, aggrieved by the same, when the petitioner preferred an appeal before the first respondent, the first respondent also has committed serious mistake in not giving any finding whatsoever on the appeal and he has mechanically confirmed the erroneous order passed by the disciplinary authority.

6. Though the learned Additional Government Pleader contended that the petitioner has not submitted his explanation on receipt of the charge memo, the Enquiry Officer in his report specifically stated that the petitioner has submitted his explanation, therefore, it is not fair on the part of the learned Additional Government Pleader to raise such contention.

7. Thus, for all the reasons stated above, the impugned orders passed by the respondents are liable to be set aside and accordingly, the same is set aside. Consequently, the writ petition stands allowed. No Costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Commissioner and
Commissioner of Revenue Administration,
Chepauk, Chennai - 5.

2.The District Revenue Officer,
Tuticorin.

3.The Personal Assistant (General) to
District Collector,
Tuticorin District,
Tuticorin.

1 cc to Mr. V.Anantha Natarajan,Advocate, SR.No.5540/15
1 cc to Government Pleader,Sr.No5113/15

W.P.No.17371 of 2007

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pmk.12.3.2015