IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30-03-2016

CORAM:

THE HONOURABLE MR. JUSTICE T. RAJA

W.P.No.21570 of 2014

K. Jayaprakash
Son of Kelappan
Assistant, Sub Registrar's Office
Gandhipuram, Coimbatore 641 027 .. Petitioner

Vs.

1. The Government of Tamil Nadu
Rep. by the Principal Secretary to Government
Commercial Taxes and Registration Department
Secretariat
Chennai 600 009.

2. The Inspector General of Registration
Chennai 600 028. .. Respondents

Writ Petition under Article 226 of the Constitution of India praying for a writ of Certiorarified mandamus calling for the records relating to proceedings Nos.54659/V1/2008-1 dated 27-11-2012 of the second respondent and (ii) G.O.(D)No.116 Commercial Taxes and Registration (K) Department dated 14-03-2014 of the first respondent to quash the same and to issue consequential directions to the respondents to include the name of the petitioner in the panel for promotion as Sub Registrar, Grade II for the year 2010-11 approved in Bo.No.11500/A3/2010 dated 25-06-2010 of the second respondent in the appropriate place therein and to promote the petitioner as such with retrospective effect from the date of promotion of his immediate junior with consequential benefits.

For Petitioner :Mr. M. Ravi

For Respondents :Mr. R. Vijayakumar, AGP
for RR1 to 2

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ORDER

Mr. K. Jayaprakash, who has suffered a departmental disciplinary proceedings initiated under the charge memo issued under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules has come to this Court by filing the writ petition, challenging the punishment imposed by the Disciplinary Authority, as confirmed by the Appellate Authority.

2. Mr. M. Ravi, learned counsel appearing for the petitioner submitted that after the petitioner was found not guilty with regard to the two charges by the Enquiry Officer, the Disciplinary Authority on receipt of the report of the Enquiry Officer issued a notice calling upon him to submit his explanation as to why the Disciplinary Authority should not differ from the findings of the Enquiry Officer who did not properly consider the deposition of Mr. R.Harikrishnan and the evidence given by Mr. T.Gnanasekar. The Show Cause Notice dated 07-05-2012 issued by the Inspector General of Registration while differing from the report of the Enquiry Officer, after careful consideration of the same has differed with the findings of the Enquiry Officer, for the reasons stated in the Annexure which says that since the Enquiry Officer has not taken into account the deposition of Mr. T. Gnanasekar, Inspector of Police and Mr. Harikrishnan, District Inspection Cell Officer. Immediately, after the receipt of the notice, learned counsel for the petitioner would submit that a detailed explanation was given, sufficiently explaining to the Disciplinary Authority to accept the report of the Enquiry Officer and not to take a differing view. The reasons cited by the petitioner clearly shows that the stand taken by the Disciplinary Authority that the deposition of both the Officers viz., Gnanasekar and Harikrishnan have not been taken into account by the Enquiry Officer was not correct since the statements of both the Officers, viz., Gnanasekar and Harikrishnan had been properly considered by the Enquiry Officer. In support of his submission, he has also brought to the notice of this Court as to how the Enquiry Officer has dealt with the deposition of the aforementioned Officers.

3. Continuing his argument Mr. M. Ravi would further submit that the differing note given by the Disciplinary Authority clearly shows that he has already prejudged the issue. Even before receiving satisfactory explanation from the petitioner, he has already come to the conclusion that both charges levelled against him, which ultimately found to be not proved, had been proved, is not correct and further, he would submit that the disciplinary authority has not only prejudged the issue, the reason given for differing from the report of the Enquiry Officer are also clearly unjustified and erroneous.

4. Adding further he would submit that the disciplinary authority had committed certain factual mistakes. In support of his submission, he would contend that when the Disciplinary Authority has brushed aside the report of the Enquiry Officer on the ground that the reasons given are not sufficient to reach the conclusion that the petitioner was not found guilty, one can understand the approach adopted by the Disciplinary Authority as

reasonable. But in the present case, the factual and erroneous stand taken by the Disciplinary Authority is wrong in as much as while the Enquiry Officer in dealing with both charges have analysed the deposition of both Gnanasekar and Harikrishnan and after coming to the conclusion that the Document Writer and other land brokers have all turned hostile, the Disciplinary Authority ought not to have differed from the report of the Enquiry Officer. Adding further, he would submit that although Mr. Harikrishnan has recovered a sum of Rs.44,350/- (Rupees Forty four thousand three hundred and fifty only) from the Document Writers, i.e., from Mr. R. Chandrasekaran, (a sum Rs.4700/-), Mr. Mani (a sum of Rs.2800/-), Mr. Marudhachalam (a sum of Rs.22500/-) and Mr. M. Natarajan, (a sum of Rs.14,350/-) which are kept for the purpose of handing over to the petitioner, the aforementioned witnesses, who had turned hostile at the time of cross-examination clearly disproved the charge. Therefore, the Enquiry Officer, without taking any support whatsoever to corroborate the deposition of Gnanasekar and Harikrishnan have rightly come to the conclusion that the first charge framed against the petitioner cannot be safely proved.

5. Similarly, while dealing with the second charge that there has been a shortage of Rs.554/- during the course of Inspection, all the persons in charge of the office have contributed the money and therefore, at the time of winding up of the Inspection/raid, there was no shortage of money in the chest. Therefore, the Enquiry Officer has also found the petitioner not guilty in respect of the second charge as well. But curiously, the Disciplinary Authority without any just and reasonable incriminating evidence corroborated with sufficient document, has wrongly overturned the report of the Enquiry Officer, merely citing that the deposition of Gnanasekar and Harikrishnan were not duly considered by the Enquiry Officer. Therefore, the reasons given for dismissing the report of the Enquiry Officer are not justifiable and hence the same is liable to be set aside.

6. Adding further, he would submit that when the petitioner has suffered the order of punishment at the hands of the Disciplinary Authority, he has rightly filed an appeal emphasizing the apparent legal error committed by the Disciplinary Authority. However, the appellate authority also without giving any good reason reiterated the same findings and conclusions given by the Disciplinary Authority and has dismissed the appeal. Therefore, the impugned order passed by both the Disciplinary Authority and Appellate Authority are liable to be set aside.

7. In support of his submission, the learned counsel also placed on record a judgment of this Court in the N. Muthulakshmi Vs. The Inspector General of Registration (W.P.MD.No.11452 of

2009 dated 26-07-2011) to say that the Appellate Authority while considering this appeal has to give proper reasoning as to on what basis the order passed by the Disciplinary Authority deserves confirmation. But, in the present case, the Appellate Authority has come to the conclusion that the charges as accepted by the Disciplinary Authority required to be confirmed, hence the said approach adopted by both the Authorities are not in consonance with law, he pleaded.

(i) Adding further, he has also pressed into service yet another judgment of the Supreme Court reported in 2009 (2) SCC 570 (Roop Singh Negi Vs. Punjab National Bank and others) for the proposition that the findings of the Enquiry Officer being a quasi-judicial in nature, even if the suspicion as is well known, however high may be, can under no circumstances be held to be a substitute for legal proof.

(ii) Concluding his argument, he would contend that in the present case, all that the petitioner was legally compelled to face is a detailed enquiry on the two charges. The Enquiry Officer has rightly found the charges levelled against the petitioner were not proved. While that be the case, the Disciplinary Authority ought not to have merely brushed aside the report of the Enquiry Officer on mere surmises and this has been completely overlooked by the Appellate Authority. Therefore, the impugned orders are liable to be set aside.

8. Per contra, a detailed counter affidavit has been filed by the learned Special Government Pleader appearing for the respondents opposing the aforementioned contentions and urged that this Court should dismiss the petition.

9. The petitioner was put to two serious charges. The Enquiry Officer on completion of the enquiry submitted an erroneous report completely overlooking two important depositions given by Mr.Gnanasekar and Harikrishnan. Finding that serious and grave mistake had been committed by the Enquiry Officer, the Disciplinary Authority who is also legally entitled to differ from the findings of the Enquiry Officer, issuing a differing note has called upon the petitioner to submit his explanation as to why the report of the enquiry officer shall not be differed since the Enquiry Officer has completely failed to consider the vital evidence given by two more witnesses viz., Gnanasekar and Harikrishnan, who are the prosecution witnesses with regard to a total amount of Rs.44,350/- seized during the surprise check conducted on 05-11-2008 from the land brokers, who have been present at the time of the surprise check of the Office of the Sub Registrar, Annur viz., the petitioner for registration of documents. The whole crux of the issue is, whether the disciplinary authority can differ from the

reasonable findings reached by the Enquiry Officer in respect of charge No.1 and also charge No.2. Let me consider whether the approach of the Enquiry Officer is correct or otherwise. In respect of Charge No.1, it has been the stand of the disciplinary authority that the Enquiry Officer has not considered the statements of the prosecution witnesses, who have clearly deposed before them that an amount of Rs.44,350/- was seized during the surprise check on 05-11-2008. As per the deposition of prosecution witnesses, this amount was seized from the land brokers and public who were present at the time of surprise check and that the said amount was kept by them to be given to the Registering Officer, namely, the petitioner for registration of the documents. However, the witnesses have turned hostile during the enquiry by stating that the amount was not kept for the purpose of registration of documents. Since these witnesses are all land brokers regularly visiting the Office of Sub-Registrar for the purpose of registration the Disciplinary Authority has rightly come to the conclusion that they have altered their stand to safeguard the interest of the petitioner, otherwise they will be put to problem in future while coming for registration of other documents. Therefore, applying the principles of preponderance of probability in the stand taken by the witnesses who ultimately turned hostile, bearing in mind that the seized amount was only an illegal gratification to be given to the petitioner as a favour for registration of the documents, the disciplinary authority has rightly deviated from the findings of the enquiry officer. Therefore, this Court fully agrees with the finding given by the Disciplinary Authority that the first charge has been established.

10. Secondly, when the physical raid was undertaken on 05-11-2008, which lasted till 10:30 p.m., there is no possibility to collect the deposit amount, thereafter. This also has not been property answered by the Enquiry Officer. On the other hand, the Enquiry Officer in his report submitted that when it was found that the official cash balance was running shortage, the Officers, who were present at the time of raid have come forward to make good the loss. So this explanation also was rightly rejected by the Disciplinary Authority and on further appeal, the Appellate Authority has rightly accepted the reasoning given by the Disciplinary Authority. Therefore, no error whatsoever can be found, hence, this Court fully agrees with the submissions made by the learned Special Government Pleader.

11. At the risk of repetition, it may be mentioned that when the Enquiry Officer has given a finding that a sum of Rs.554/-(Rupees Five hundred and fifty four only) being a short collection made on the same day after the raid and remitted into

the Government account on the next day and therefore, the charge cannot be proved, the Disciplinary Authority has rightly overturned this finding on the ground that it is totally unacceptable, since the surprise check lasted till 10:30 p.m., on 05-11-2008, therefore, there is no possibility to collect deficit amount from the parties after the time, because even if it is collected after the surprise check, it will not absolve the petitioner from the delinquency, since it is evident that there was a short collection at the time of surprise check. Hence this finding of the Disciplinary Authority is perfectly correct from the findings of the Enquiry Officer.

12. As a matter of fact, when the two important witnesses, viz., Mr. Gnanasekar and Mr. Harikrishnan were part of the surprise inspection/raid conducted in the office of the petitioner on 05-11-2008, both of them in their joint effort have recovered a sum of Rs.44,350/- from the various persons namely, Mr. R. Chandrasekaran, Mr. Mani, Mr. Marudhachalam and Mr. M. Natarajan. The collection of these money and their natural deposition would really show that these amounts were kept by them for the purpose of handing over the same to the petitioner for the purpose of registration of the document. Therefore, the Disciplinary Authority has rightly accepted the proposition of preponderance of probability. Therefore, this Court does not find any merit in this writ petition and the same is dismissed.

13. However, costs made easy. Connected M.P.Nos.1 and 2 of 2014 are also dismissed.
glp

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1. The Principal Secretary to Government,
The Government of Tamil Nadu,
Commercial Taxes and Registration Department,
Secretariat, Chennai 600 009.

2. The Inspector General of Registration,
Chennai 600 028.

+ 1 cc to Mr.M.Ravi, Advocate Sr 20366
+ 1 cc to The Govt.Pleader, Sr 20160

KR/2/6/16 W.P.No.21570 of 2014