

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.08.2016

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM
AND
THE HON'BLE MR.JUSTICE P.KALAIYARASAN

Writ Petn.No.33303 of 2013
and
M.P.No.1 of 2013

- 1.Union of India,
rep.by the Secretary,
Ministry of Communication and
Information Technology,
Electronics Niketan,
No.6, CGO Complex,
Lodhi Road,
New Delhi 110 003
 - 2.The Director of Postal Services,
O/o.the Postmaster-General,
Central Region, TN,
Tiruchirappalli-620 001
 - 3.The Superintendent of Post Offices,
Srirangam Division,
Srirangam,
Tiruchirappalli-620 006
- Petitioners

vs.

- 1.M.Duraisamy
 - 3.The Registrar,
Central Administrative Tribunal,
High Court Campus,
Chennai-600 104
- ... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorari calling for the records relating to the impugned order dated 26.3.2013 of the Central Administrative Tribunal, Chennai Bench in O.A.No.357 of 2012 and quash the same being devoid of merits.

For Petitioners : Mr.V.Venkatesan

For Respondents : Mr.B.Kumaraswamy for
Mr.R.Gokulakrishnan for R1

ORDER

(Order of the Court was made by A.SELVAM, J)

This writ petition has been filed under Article 226 of the Constitution of India, praying to issue a writ of certiorari, calling for the records relating to the order dated 26.3.2013, passed in Original Application No.357 of 2012, by the Central Administrative Tribunal, Madras Bench and quash the same.

2. The first respondent herein, as applicant, has filed Original Application No.357 of 2012, on the file of the Central Administrative Tribunal, Madras Bench, wherein, the present appellants have been shown as respondents.

3. In the Original Application it is averred that the applicant has served as a Sub-Post Master in Perambalur and during tenure of his service he has been served with a charge memo, whereby it is stated that he defalcated a sum of Rs.16 lakhs. Further it is averred in the original application that against the applicant, a domestic enquiry has been contemplated as per proper Sections of law and ultimately found that the charge against him has been proved. The Disciplinary Authority, on the basis of enquiry report, has removed the applicant from service. The punishment given by the Disciplinary Authority is highly excessive. Further it is averred in the original application that the applicant has remitted the entire alleged defalcated amount together with interest. Under the said circumstances, the present Original Application has been filed for getting the relief sought therein.

4. The Central Administrative Tribunal, Madras Bench, after considering the rival contentions put forth on either side, has partly allowed the Original Application No.357 of 2012 and thereby modified the punishment to an extent of 'compulsory retirement' and the same is being challenged in the present writ petition.

5. The learned counsel appearing for the writ petitioners have repleatedly contended that since the first respondent/applicant has defalcated Rs.16 lakhs, a proper domestic enquiry has been conducted, wherein he has been found guilty and on the basis of enquiry report, final order has been

passed and thereby he has been removed from service, but the Central Administrative Tribunal, even though it is not having power to make interference with the quantum of punishment, has erroneously passed the impugned order and under the said circumstances, the order passed by the Central Administrative Tribunal, Madras Bench, is liable to be quashed.

6. Per contra, the learned counsel appearing for the first respondent/applicant has contended that the first respondent/applicant has faced a charge on the basis that he has defalcated Rs.16 lakhs. Further, he has paid the entire amount together with interest. Since the first respondent/applicant has done 39 years of unblemished service and earlier no punishment has been awarded against him, the Central Administrative Tribunal has taken a lenient view in awarding punishment by way of passing the impugned order and the same does not call for any interference.

7. It is an admitted fact that the Disciplinary Authority has removed the first respondent/applicant from service. It is also equally an admitted fact that the Central Administrative Tribunal has modified the punishment and awarded the punishment of 'compulsory retirement'.

8. In paragraph No.7 of the impugned order it has been specifically stated that the first respondent/applicant has served 39 years and during his tenure of office, no punishment has been awarded against him.

9. Considering the fact that the first respondent/applicant has served 39 years and during that period he has not been awarded any punishment, this Court is of the view that the reasons given by the Central Administrative Tribunal, for modifying the punishment, is proper.

10. The learned counsel appearing for the petitioners has drawn the attention of this Court to the decision of the Hon'ble Supreme Court reported in 1994(2) S.C.T.250 (State Bank of India vs. Samarendra Kishore Endow) wherein, the Hon'ble Supreme Court has held that the High Court is not having discretion under Article 226 of the Constitution of India to substitute punishment and penalty, which has already been imposed. However, in paragraph No.15, it is observed that the Court can very well make interference in respect of penalty if the same has been imposed in excessive or in arbitrary manner.

11. In the instant case, as pointed out earlier, the first respondent/applicant has put in 39 years of unblemished service and during that period, no punishment has been awarded

against him. However, he committed defalcation to the tune of Rs.16 lakhs and the said amount together with interest has been remitted subsequently.

12. Considering the long service of the first respondent/applicant and also considering the fact that the entire amount together with interest has been recovered from him, the Central Administrative Tribunal has rightly modified the punishment. In view of the discussion made earlier, this Court has not found any error or illegality in the order passed by the Central Administrative Tribunal and altogether the present writ petition deserves to be dismissed.

In fine, this writ petition is dismissed without cost and the order passed in O.A.No.357 of 2012, by the Central Administrative Tribunal, Madras Bench, is confirmed. Connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

msk

To

The Registrar,
The Central Administrative Tribunal,
Madras Bench,
Chennai-600 104

1 cc to Mr.R.Gokulakrishnan, Advocate, sr.49169
1 cc to Mr.V.Venkatesan, Advocate, sr.48997

gj co
kra 20.09.2016

W.P.No.33303 of 2013

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