

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.06.2016

DELIVERED ON : 18.07.2016

CORAM:

THE HON'BLE MR.JUSTICE A.SELVAM

AND

THE HON'BLE MR.JUSTICE P.KALAIYARASAN

Writ Petition No.19707 of 2010

and

M.P.No.1 of 2010

Union of India,
rep.by its

Secretary

Ministry of Finance,

Department of Company Affairs,

Shastri Bhawan, 5th Floor,

'A' Wing, Dr.R.P.Road,

New Delhi-110 001

... Petitioner

-Vs-

1.Shri H.S.Bava

2.The Registrar,

Central Administrative Tribunal,

(Chennai Bench), Chennai

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India for issuance of a writ of certiorari to quash the order passed by the Tribunal, Chennai Bench, in O.A.No.911/2003, dated 22.10.2009.

For Petitioner : Mr.G.Rajagopalan, ASG for
M/s.M.Sundar, C.G.S.C.

For Respondents : Mr.V.Vijay Shankar for R1
R - 2 Tribunal

ORDER

(Judgment of the Court was delivered by A.SELVAM, J)

This writ petition has been directed against the order dated 22.10.2009, passed in O.A.No.911 of 2003, by the Central Administrative Tribunal, Madras Bench.

2. The first respondent herein, as petitioner, has filed O.A.No.911 of 2003, on the file of the Central Administrative Tribunal, Madras Bench, wherein, the present petitioner has been shown as sole respondent.

3. In the Original Application it is averred that the first respondent/applicant has been appointed as an Official Liquidator of M/s.Altos India Limited, by the Hon'ble High Court of Punjab and Haryana, on 18.6.1998 and he has taken charge on 3.8.1998. On 6.12.2000, a charge memo has been issued by way of levelling three charges. The Enquiry Officer has conducted enquiry and submitted his report. On the basis of his report, the first respondent/applicant has been dismissed from service. Under the said circumstances, original application has been filed.

4. The Central Administrative Tribunal, Madras Bench, after considering the rival evidence available on record, has found that there is no substantial evidence so as to encrust charge Nos.1 and 3 and ultimately found that the same are not proved. The Central Administrative Tribunal has further held that charge No.2 alone has been proved against the applicant and the same is nothing but a mere lapse on his part to inform to higher official about the alleged theft and ultimately, set aside the dismissal order and given direction to the petitioner/respondent to give minor punishment to the first respondent/applicant, by way of passing the impugned order, dated 22.10.2009. The order passed by the Central Administrative Tribunal is being challenged by way of filing the present writ petition, wherein it is prayed to issue a writ of certiorari, so as to quash the impugned order.

5. The learned counsel appearing for the writ petitioner has contended to the effect that during tenure of office of the first respondent as an Official Liquidator, a theft has been committed to an extent of Rs.1.50 crores and the same has been done only due to lapses on the part of the first respondent and consequently three charges have been framed against him and a full-fledged enquiry has been conducted, wherein, it is found that all the charges have been proved and on the basis of enquiry report, the first respondent has been dismissed from service, but the Central Administrative Tribunal,

without considering replete evidence available against the first respondent, has erroneously found that charge Nos.1 and 2 are not proved and therefore, the impugned order passed by the Central Administrative Tribunal is liable to be set aside.

6. The learned counsel appearing for the first respondent/applicant has contended that on the side of the first respondent/applicant various documents have been filed for the purpose of proving that there is no lapses on his part and the Enquiry Officer, without considering the defence taken on his side, has erroneously found that all the three charges have been proved. But the Central Administrative Tribunal, Madras Bench, has rightly found that no substantial evidence is available for the purpose of proving charge Nos.1 and 3 and ultimately set aside the dismissal order and therefore, the impugned order passed by the Central Administrative Tribunal, Madras Bench, is not liable to be interfered with.

7. It is an admitted fact that the first respondent/applicant has been appointed as an Official Liquidator on 18.6.1998 and he has taken charge on 3.8.1998. During tenure of his office, on 6.12.2000, a charge memo has been issued, wherein, three charges have been framed and consequently, an Enquiry Officer has been appointed and he conducted full-fledged enquiry and submitted his report. On the basis of his report, the first respondent/applicant has been dismissed from service on 30.07.2003.

8. It is seen from the records that on 4.9.1998, a theft has been committed in the unit of a company in liquidation at Gurgaon.

9. The main defence taken on the side of the first respondent/applicant is that after knowing the alleged theft, he contacted one Regional Director by name L.M.Gupta over phone and subsequently, the Regional Director has visited the place of theft and asked the first respondent/applicant to wait for his instruction and thereafter, various communications have become emerged and further, the first respondent/applicant has also informed to the High Court.

10. In fact, on the side of the first respondent/applicant, a typed set has been filed, which contains relevant documents, which emanated from the first respondent/applicant. In fact, this Court has perused the entire documents and ultimately found that after knowing the offence of theft, the first respondent has duly informed the person concerned. Under the said circumstances, the Court cannot come to a conclusion that only due to lapses on the part

of the first respondent/applicant, a heavy loss has occurred to the tune of Rs.1.50 Crores.

11. The Central Administrative Tribunal, Madras Bench, after considering all the documents filed on the side of the first respondent/applicant, has rightly found that charge Nos.1 and 3 have not at all been proved against the first respondent/applicant.

12. The Central Administrative Tribunal, on the basis of evidence available on record, has come to a conclusion that charge No.2 alone is proved. Charge No.2 is that there is a lapse on the part of the first respondent/applicant in giving written report to the higher authorities and to that effect sufficient evidence is available. The Central Administrative Tribunal, Madras Bench, has rightly found that charge No.2 alone has been proved and ultimately recommended to give minor punishment to the first respondent/applicant.

13. It has already been decided that absolutely there is no evidence to show that only due to lapses on the part of the first respondent/applicant, the alleged theft has been committed. Under the said circumstances, the finding given by the Central Administrative Tribunal, Madras Bench, cannot be held as incorrect with regard to charge Nos.1 and 3.

14. It has already been pointed out that with regard to charge No.2, some piece of evidence is available against the first respondent/applicant. Only on that basis, the Central Administrative Tribunal, Madras Bench, has given specific direction to the concerned authority to impose minor punishment against the first respondent/applicant. Therefore, viewing from any angle, this Court is of the view that the reasoned order passed by the Central Administrative Tribunal, does not suffer from any infirmity and altogether, the present writ petition deserves to be dismissed.

In fine, this writ petition is dismissed without cost. The impugned order passed in O.A.No.911 2003, by the Central Administrative Tribunal, Madras Bench, is confirmed. Connected miscellaneous petition is dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

msk

To

The Registrar,
Central Administrative Tribunal,
(Chennai Bench),
Chennai.

+2cc's to Mr.M.Sundar, Advocate, S.R.No.39967
+1cc to Mr.V.Vijay Shankar, Advocate, S.R.No.40457

W.P.No.19707 of 2010

VS (CO)
CA(26/07/2016)



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