

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2017

CORAM

THE HON'BLE Mr.JUSTICE V.PARTHIBAN

W.P.No.31009 of 2013

S.S.Senthil Arumugam

... Petitioner

Vs.

1. The Principal Secretary to Government,
Home (Tr.II) Department,
Secretariat, Chennai 600 009.

2. The Principal Secretary/Transport
Commissioner,
Chepauk, Chennai 600 005.

... Respondents

Prayer : Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the first respondent herein in G.O.(D) No.719, Home (Tr.II) Department, dated 02.09.2013, imposing a punishment of stoppage of increment for a period of four years with cumulative effect and quash the same and consequently direct the respondents herein to grant promotion to the petitioner as Superintendent with effect from the date of promotion of immediate junior with all consequential service and monetary benefits.

For Petitioner : Mr.Ravi Shanmugam

For Respondents : Mr.M.L.Mahendran
Government Advocate

O R D E R

Heard Mr.Ravi Shanmugam, learned counsel appearing for the petitioner and Mr.M.L.Mahendran, learned Government Advocate appearing for the respondents.

2. The petitioner has approached this Court for seeking the following relief,

"To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the first respondent herein in G.O.(D) No.719, Home (Tr.II) Department, dated 02.09.2013, imposing a punishment of stoppage of increment for a period of four years with cumulative effect and quash the same and consequently direct the respondents herein to

grant promotion to the petitioner as Superintendent with effect from the date of promotion of immediate junior with all consequential service and monetary benefits. "

3. The case of the petitioner is as follows:

The petitioner was appointed as Junior Assistant in Transport Department on 28.08.2000 and was promoted as Assistant on 01.09.2004. While he was working as Junior Assistant, the officials of Vigilance and Anti Corruption Department conducted a surprise check on 10.09.2003, at the Regional Transport Office, Thanjavur, where the petitioner was employed.

4. On the basis of the inspection, a charge sheet was issued against the petitioner and few others under Rule 17(b) of the Tamil Nadu Civil Services (D&A) Rules for negligence of duty. The substance of the charge was that the petitioner failed to dispatch 9 Registration Certificate for a long period of 9 to 42 days in violation of Transport Commissioner's instruction, particularly, the Circular No.63/2003, which was admittedly issued only on 19.11.2003.

5. In response to the charge memo, the petitioner submitted his reply on 01.04.2009, denying the charges. However, an enquiry was conducted and the Enquiry Officer submitted a report on 27.08.2009, holding the charges proved. On 29.04.2010, the petitioner submitted his explanation on the enquiry report. In the explanation, the petitioner clearly stated that the vehicle owners who deposed before the departmental enquiry had not supported the charge as framed against the petitioner and therefore, the findings of the Enquiry Officer is unsupported by any evidence and cannot be relied on by the disciplinary authority for imposition of any penalty.

6. In the meanwhile, many of the petitioner's juniors were promoted as Superintendent for the year 2012-13 and the petitioner could not be considered for promotion in view of the pendency of major penalty proceedings against him. Ultimately, the petitioner was imposed with the penalty of stoppage of increment for a period of four years with cumulative effect on 02.09.2013. Since the impugned order was passed by the Government in G.O.(D) No.719, Home (Tr.II) Department, dated 02.09.2013, no further appeal is provided for. Therefore, the petitioner is before this Court, challenging the above order.

7. Upon notice, the learned Government Advocate appearing for the respondents entered appearance and filed a detailed counter affidavit.

8. The learned counsel appearing for the petitioner would submit that the charge by itself is not maintainable since the

petitioner was found to be at fault in not following the Circular No.63 of 2003, which was issued on 19.11.2003. He would submit that the vigilance inspection was conducted earlier to the issuance of the Circular i.e., on 10.09.2003 and therefore, the reliance placed by the department as found in the charge memo suffers from misapplication and non-application of mind. Moreover, he would submit that none of the vehicle owners has deposed in the enquiry in support of the charges. However strangely, the Enquiry Officer by a cryptic findings held the charges proved.

9. The learned counsel for the petitioner would draw this Court's attention to the enquiry findings, wherein the Enquiry Officer without adverting to any piece of evidence whether oral or documentary had simply held the charges proved. According to the learned counsel for the petitioner, he has been mandated to give such report regardless of the evidence. The disciplinary authority without taking into consideration that there was absolute lack of evidence in proving the charges against the petitioner, had imposed the punishment of stoppage of increment for a period of four years with cumulative effect which according to the learned counsel, will have far reaching financial implications for the petitioner for his life time. Such penalty with cumulative effect will have an adverse impact on not only during the period of employment but also after his retirement as the penalty would affect his pensionary benefits for his life time.

10. Moreover, the learned counsel for the petitioner would submit that in view of the pendency of the disciplinary action, the petitioner's promotion to the next higher post of Superintendent was withheld when his juniors were promoted for the year 2012-13. He would further submit that the order passed by the disciplinary authority on the basis of the perverse findings by the Enquiry Officer is completely unjust and unreasonable and the same cannot stand the test of judicial scrutiny. According to him, as per the Rules, the disciplinary authority who was exercising quasi judicial power, has to apply his mind to all the aspects of the case and without due appreciation of the fact that there was absolutely no evidence against the petitioner, had mechanically accepted the findings and imposed the impugned penalty. Moreover, the disciplinary authority had also not taken into consideration that even assuming there was a some kind of negligence on the part of the petitioner, such negligence simpliciter cannot be a basis for any departmental action. In the said circumstances, the order passed by the disciplinary authority is liable to be interfered with.

11. The learned counsel appearing for the respondents would contend that the punishment imposed on the petitioner was on the basis of proved misconduct and therefore the same does not call for any interference from this Court. The learned counsel appearing for the petitioner would also rely

on the decision of the Hon'ble Supreme Court of India, in the case of Inspector Prem Chand Vs. Govt. of NCT of Delhi and others, reported in (2007) 4 SCC 566. The Hon'ble Supreme Court has held in the said decision that the disciplinary authority not recording any finding of fact that the delinquent Police Inspector was guilty of an unlawful behaviour in relation to discharge of his duties in service, such error of judgment or negligence simpliciter is not misconduct.

12. By applying the above decision, in the instant case there was no recording of fact that the petitioner was guilty of any unlawful behaviour in discharge of duties. It has to be seen that other than the Circular No.63 of 2003, dated 19.11.2003, no other material had been relied on by the department for establishing a charge against the petitioner. As stated above, the circular was issued only after the inspection conducted in the office where the petitioner was employed on 10.09.2003 and therefore, the charge under any circumstances cannot be held to be established with reference to any instructions issued by the department. From the charge sheet, it is seen that it was only the Circular which was cited as a document for the purpose of establishing the charge other than the oral evidence to be tendered by the vehicle owners. In the said circumstances, the charges itself was not made out calling for any disciplinary action.

13. The learned counsel would also rely on the decision of Hon'ble Supreme Court of India, in the case of Kuldeep Singh Vs. Commissioner of Police and others, reported in (1999) 2 SCC 10, wherein the Hon'ble Supreme Court of India as held that in disciplinary matters, the Court can interfere therewith if the same is based on no evidence or is such as could not be reached by an ordinary prudent man or is perverse or is made at the dictates of a superior authority. In the instant case, without any discussion or analysis of the evidence, the Enquiry Officer rendered a finding holding the charges proved.

14. This Court is in agreement with the contention put forth by the learned counsel for the petitioner that the charge memo itself suffers from legal infirmity from relying on the Circular No.63 of 2003, dated 19.11.2003, which was issued much after the inspection conducted on 10.09.2003. No other document has been relied on in the charge memo for establishing the charge against the petitioner with reference to any rules or instructions for dispatching registration certificate of the vehicle owners. Moreover, the findings by the Enquiry Officer is clearly without any basis as the Enquiry Officer has not drawn reference to any evidence or materials placed before him for rendering such a finding. From the findings, it would be safely concluded that the same is not only baseless but also is perverse as no valid reason given to such conclusion.

15. Further, the disciplinary authority again imposing a penalty on the basis of such perverse findings is contrary to the rules and also it discloses no independent application of mind on the part of the disciplinary authority while imposing the impugned penalty. The disciplinary authority's order on the basis of the flawed charge memo and perverse findings cannot be countenanced both in law and on facts.

16. For the above reasons, the disciplinary action initiated and which culminated in imposition of impugned penalty has to go in lock, stock and barrel. Therefore, the impugned order dated 02.09.2013 is set aside. Subsequently, the respondents are directed to pass orders by restoring the pay of the petitioner as it stood before imposition of the penalty and also consider the petitioner for promotion to the next higher post from the date his juniors came to be promoted with all attendant benefits. This direction shall be complied with by the respondents within a period of two months from the date of receipt of a copy of this order.

17. With the above direction, the writ petition is allowed. No costs.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

gsk

To

1. The Principal Secretary to Government,
Home (Tr.II) Department,
Secretariat, Chennai 600 009.

2. The Principal Secretary/Transport
Commissioner,
Chepauk, Chennai 600 005.

+1cc to Mr.Ravi Shanmugam, Advocate, S.R.No.68236
+1cc to the Government Pleader, S.R.No.69472

W.P.No.31009 of 2013

GMR(CO)
CA(13/10/2017)