IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2017

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.Nos.31516, 31517, 31518 and 31519 of 2016

G.Arunachalam .. Petitioner in W.P.No.31516 of 2016

A.Anbu Ganesan .. Petitioner in W.P.No.31517 of 2016

N.Balu .. Petitioner in W.P.No.31518 of 2016

T.Ravichandran .. Petitioner in W.P.No.31519 of 2016

vs.

The Additional Chief Secretary/Commissioner
Commercial Taxes,
Chepauk, Chennai-05. .. Respondent in all W.Ps.

Common Prayer: Writ Petitions filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records of the respondent in connection with the impugned order passed by him in Proc.No.EE2/10652/2014 dated 20.07.2016 and quash the same and further direct the respondent to treat the stay period as duty with all service and monetary benefits.

For Petitioner in all W.Ps. : Mr.S.Sivakumar

For Respondent in all W.Ps. : Mr.S.Kanmani Annamalai Additional Govt. Pleader (Taxes)

COMMON ORDER

By consent, all these writ petitions are taken up for final disposal.

W.P.No.31516 of 2016

2. The petitioner was directly recruited as Deputy Commercial Tax Officer through the Tamil Nadu Public Service Commission and joined duty on 19.12.2012 as Assistant

Commissioner (Commercial Tax, Enforcement), Cuddalore and he claims that his service is meritorious. The petitioner, on completion of nine months training, was posted as Deputy Commercial Tax Officer (DCTO) at Kottakuppam checkpost and he served there for a period of 18 days from 05.01.014 to 23.01.2014 and thereafter, again reported to the parent unit on 24.01.2014. The petitioner would state that to his shock and surprise, the third respondent has passed an order dated 07.04.2014 transferring him from Vellore Division to Trichy Division and challenging the order of transfer, the petitioner has filed W.P.No.11123 of 2014 and the order of transfer was stayed by this Court and in the meanwhile, the petitioner was also issued with a charge memo dated 30.04.2014 alleging that while he was serving as DCTO at Kottakuppam check-post has accepted the transit passes surrendered by the persons in-charge of vehicles related to movement of oil to Puducherry State without actual movement of vehicle with goods and the said act has been done with the connivance of dealers and thereby caused revenue loss to the Government to the tune of Rs.3,65,257/-. The writ petition filed by the petitioner challenging the order of transfer was disposed of with certain directions and he has also joined in the transferred post and thereafter, submitted his explanation to the charge memo. The Assistant Commissioner (CT), Enforcement, Vellore was appointed as the Enquiry Officer and after inquiry, it was found that the charges framed against the petitioners are not proved and the Enquiry Report was placed before the Disciplinary Authority, namely the respondent. The Disciplinary Authority has recorded reasons for disagreeing with the findings of the Enquiry Officer by taking into consideration, verification of the vehicular movement recorded at Anumanthai Toll Plaza at the East Coast Road and other materials and held that the charges framed against the petitioner had been proved and imposed the punishment of stoppage of increment for a period of one year without cumulative effect, vide impugned order dated 20.07.2016. The petitioner, challenging the legality of the same, has filed this writ petition.

W.P.No.31517 of 2016

3. The petitioner joined the services of the respondent Department as Junior Assistant on 11.02.1999 through Tamil Nadu Public Service Commission and promoted as Assistant in the year 2006 and subsequently, on merit and seniority, he was promoted as Deputy Commercial Tax Officer in the year 2013 and he claims that his service is meritorious. The petitioner was subsequently promoted as Deputy Commercial Tax Officer (DCTO) and posted at Kottakuppam checkpost on 23.06.2013 and however, to his shock and surprise, the third respondent has passed an order dated 07.04.2014 transferring him from Vellore Division to

Trichy Division and challenging the order of transfer, the petitioner has filed W.P.No.11124 of 2014 and the order of transfer was stayed by this Court and in the meanwhile, the petitioner was also issued with a charge memo dated 30.04.2014 alleging that while he was serving as DCTO at Kottakuppam check-post, has accepted the transit passes surrendered by persons in-charge of vehicles related to movement of oil to Puducherry State without actual movement of vehicle with goods and the said act has been done with the connivance of dealers and thereby caused revenue loss to the Government to the tune of Rs.3,15,758/-. The writ petition filed by the petitioner challenging the order of transfer was disposed of with certain directions and he has also joined in the transferred post and thereafter, submitted his explanation to the charge memo. The Assistant Commissioner (CT), Enforcement, Vellore was appointed as the Enquiry Officer and after inquiry, it was found that the charges framed against the petitioners are not proved and the Enquiry Report was placed before the Disciplinary Authority, namely the respondent. The Disciplinary Authority has recorded reasons for disagreeing with the findings of the Enquiry Officer by taking into consideration verification of the vehicular movement recorded at Anumanthai Toll Plaza at the East Coast Road and other materials and held that the charges framed against the petitioner had been proved and imposed the punishment of stoppage of increment for a period of one year without cumulative effect, vide impugned order dated 20.07.2016. The petitioner, challenging the legality of the same, has filed this writ petition.

W.P.No.31518 of 2016

4. The petitioner was directly recruited as Deputy Commercial Tax Officer through the Tamil Nadu Public Service Commission and joined duty on 26.12.2012 as Commercial Tax Officer, Pattukottai-I and he claims that his service is meritorious. The petitioner, on completion of nine months training, was posted as Deputy Commercial Tax Officer (DCTO) at Kottakuppam checkpost on 13.08.2013 and while serving so, to his shock and surprise, the third respondent has passed an order dated 07.04.2014 transferring him from Vellore Division to Trichy Division and challenging the order of transfer, the petitioner has filed W.P.No.11122 of 2014 and the order of transfer was stayed by this Court and in the meanwhile, the petitioner was also issued with a charge memo dated 30.04.2014 alleging that while he was serving as DCTO at Kottakuppam check-post, has accepted the transit passes surrendered by persons in-charge of vehicles related to movement of oil to Puducherry State without actual movement of vehicle with goods and the said act has been done with the connivance of dealers and thereby caused revenue loss to the Government to the tune of Rs.19,80,182/-. The writ petition filed by the petitioner

challenging the order of transfer was disposed of with certain directions and he has also joined in the transferred post and thereafter, submitted his explanation to the charge memo. The Assistant Commissioner (CT), Enforcement, Vellore was appointed as the Enquiry Officer and after inquiry, it was found that the charges framed against the petitioners are not proved and the Enquiry Report was placed before the Disciplinary Authority, namely the respondent. The Disciplinary Authority has recorded reasons for disagreeing with the findings of the Enquiry Officer by taking into consideration verification of the vehicular movement recorded at Anumanthai Toll Plaza at the East Coast Road and other materials and held that the charges framed against the petitioner had been proved and imposed the punishment of stoppage of increment for a period of one year without cumulative effect, vide impugned order dated 20.07.2016. The petitioner, challenging the legality of the same, has filed this writ petition.

W.P.No.31519 of 2016

5. The petitioner joined the services of the respondent as Junior Assistant on 12.02.1999 through Tamil Nadu Public Service Commission and promoted as Assistant in the year 2006 and subsequently, on merit and seniority, he was promoted as Deputy Commercial Tax Officer in the year 2011 and he claims that his service is meritorious. The petitioner was promoted as Deputy Commercial Tax Officer (DCTO) and posted at Kottakuppam checkpost on 22.06.2012 and while serving so, to his shock and surprise, the third respondent has passed an order dated 07.04.2014 transferring him from Vellore Division to Trichy Division and challenging the order of transfer, the petitioner has filed W.P.No.11121 of 2014 and the order of transfer was stayed by this Court and in the meanwhile, the petitioner was also issued with a charge memo dated 30.04.2014 alleging that while he was serving as DCTO at Kottakuppam check-post, has accepted the transit passes surrendered by persons in-charge of vehicles related to movement of oil to Puducherry State without actual movement of vehicle with goods and the said act has been done with the connivance of dealers and thereby caused revenue loss to the Government to the tune of Rs.2,55,275/-. The writ petition filed by the petitioner challenging the order of transfer was disposed of with certain directions and he has also joined in the transferred post and thereafter, submitted his explanation to the charge memo. The Assistant Commissioner (CT), Enforcement, Vellore was appointed as the Enquiry Officer and after inquiry, it was found that the charges framed against the petitioners are not proved and the Enquiry Report was placed before the Disciplinary Authority, namely the respondent. The Disciplinary Authority has recorded reasons for disagreeing with the findings of the Enquiry Officer by taking into consideration verification of the vehicular movement recorded at Anumanthai

Toll Plaza at the East Coast Road and other materials and held that the charges framed against the petitioner had been proved and imposed the punishment of stoppage of increment for a period of one year without cumulative effect, vide impugned order dated 20.07.2016. The petitioner, challenging the legality of the same, has filed this writ petition.

6. Mr.S.Sivakumar, learned counsel appearing for the petitioners would submit that if the respondent/Disciplinary Authority differs with the view taken by the Inquiry Officer, it is bound to give a notice setting out tentative conclusion to the employee/delinquent and only after putting the delinquent on notice, the Disciplinary Authority shall arrive at a finding of guilt and thereafter, the delinquent would again have to be served with a notice relating to the punishment imposed. However, the well established principle has been given a complete go-by and it is also against the dictum laid down by the Hon'ble Supreme Court in Lav Nigam v. Chairman & MD. ITI LTD. and another [(2006) 9 SCC 440]. It is the further submission of the learned counsel appearing for the petitioners that the Disciplinary Authority, in the impugned order, has placed reliance upon the details, the details of which have not been disclosed in the order and also drawn the attention of this Court to the Enquiry Officer's report and would submit that admittedly, no oral evidence was let in and no document was marked and as such, the reliance placed by the Disciplinary Authority on certain documents without furnishing copy to the petitioners also vitiates the impugned orders of punishment and prays for interference.

7. Per contra, Mr.S.Kanmani Annamalai, learned Additional Government Pleader (Taxes) has drawn the attention of this Court to the counter affidavit filed by the respondent in these writ petitions and would submit that the Disciplinary Authority, after due and proper application of mind to the entire materials, thought fit to disagree with the findings of the Enquiry Officer and cogently recorded reasons as to why he differed from the views of the Enquiry Officer and after taking into consideration all the material facts, has rightly reached the conclusion of imposing punishment and the discretion exercised by the Disciplinary Authority in the matter of awarding punishment may not be interfered with by this Court in exercise of it's jurisdiction under Article 226 of the Constitution of India and prays for dismissal of these writ petitions.

8. This Court has considered the rival submissions and also perused the entire materials placed before it.

9. A perusal of the charge memo issued to the petitioners would disclose that as per Annexure-III viz., details received from Assistant Commissioner (CT), Puzhal Checkpost, Chennai in Pdl.No.1/2014 dated 21.03.2014 taken from Toll Gate at Anumanthai East Coast Road, Chennai in respect of vehicle transporting oil from Chennai to Pondicherry from 19.11.2013 to 22.02.2014, has been relied upon and no witnesses have been examined. A perusal of the report of the Enquiry Officer would disclose that not even the documents mentioned in the Annexure-III to the charge memo has been marked and no witnesses have been examined and the Enquiry Officer, on an appraisal of the materials placed, has reached the conclusion that the charges framed against the petitioner are not proved and submitted the same to the Disciplinary Authority/respondent.

10. The Disciplinary Authority, on going through the Enquiry Officer's Report, has disagreed with the findings and recorded reasons that no prudent business man except tax evaders can pay toll for not using the road infrastructure and therefore, it is proved beyond doubt that the evaders were indulged in tax evasion by creating records to substantiate that the goods were moved to Pondicherry to suppress the fact that the goods were sold within Tamil Nadu because lower rate prevailed in Pondicherry at the relevant point of time. The Disciplinary Authority further recorded the fact that though the evidences let in by the Department is circumstantial, it is proved that all the records were fabricated to avoid payment of tax at 5% in Tamil Nadu as against 1% prevailing at Pondicherry at the relevant point.

11. Admittedly, no documents were marked and no oral evidence was let in. However, the Disciplinary Authority, in the reasons cited, has mentioned about the creation of records and also that the evidences let in by the Department is circumstantial in nature. In the considered opinion of the Court, in the absence of any oral and documentary evidence, such a conclusion reached by the Disciplinary Authority is wholly unsustainable.

12. In Lav Nigam v. Chairman & MD, ITI Ltd. and another [(2006) 9 SCC 440], it has been held that in case the Disciplinary Authority differs with the view taken by the Inquiry Officer, he is bound to give a notice setting out his tentative conclusions to the delinquent and only after hearing the delinquent, the Disciplinary Authority shall arrive at a final finding of guilt and thereafter, the employee/delinquent would again have to be served with a notice relating to the punishment proposed. Admittedly, the said procedure has been given a complete go-by by the respondent/Disciplinary Authority.

13. It is brought to the knowledge of this Court by the learned counsel appearing for the petitioners that three of the Office Assistants have also been proceeded with on the same set of allegations and though the Enquiry Officer has also reached the conclusion that the charges framed against them are not proved, the Disciplinary Authority has also chosen to accept the said finding and did not proceed further. In the considered opinion of the Court, the procedure adopted by the Disciplinary Authority is contrary to the dictum laid down by the Hon'ble Supreme Court in Lav Nigam v. Chairman & MD, ITI Ltd. and another [(2006) 9 SCC 440]. That apart, the Disciplinary Authority has placed reliance upon certain records, the details of which have not been disclosed in the impugned order and the reasons assigned in the impugned order are also based upon surmises and conjectures.

14. It is pertinent to point out at this juncture that though the Disciplinary Authority has recorded the finding that the officials have colluded with the tax evaders, the details of the tax evaders and the action taken against him have not been disclosed. In the considered opinion of the Court, the findings recorded by the Disciplinary Authority in the impugned orders are based upon no evidence and as such, the impugned orders warrants interference.

15. In the result, these Writ Petition are allowed and the impugned orders of the respondent in Proc.No.EE2/10652/2014 dated 20.07.2016 are set aside and the respondent is directed to treat the period in which interim orders of stay passed in W.P.Nos.11121 to 11125 of 2014, are in force, as duty period with all service and monetary benefits and pass appropriate orders in accordance with law within a period of six weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jvm

To
The Additional Chief Secretary/Commissioner
Commercial Taxes,
Chepauk, Chennai-05.

+4cc to Mr.S. Sivakumar, Advocate, S.R.No.936
+1cc to the Government Pleader, S.R.No.1162

VGI(CO)
md(11/01/2017)

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