

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 11-07-2018

CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.10537 of 2012

K.Sivakumar

.. Petitioner

versus

1. The Secretary to Government,
Revenue Department,
Secretariat,
Chennai-09.

2. The Principal Secretary and
Commissioner of Revenue Administration,
Chepauk, Chennai-5.

3. The District Collector,
Erode District.

.. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, to call for the records relating to the 3rd respondent in his proceedings No. N.K. 48731/2008/A4 dt 30.5.09 and to quash the same and consequently quash the proceedings of the 2nd respondent dt 23.4.10 vide proceedings N.K. No. Service 4(1)/ 52149/2009 and the 1st respondent dt 28.9.11 vide G.O.(1D) No.292 and direct the 2nd respondent to accord the benefits of promotion applicable to the petitioner.

For Petitioner : Mr. S.Vijayakumar

For Respondents : Mrs.P.Rosekamalam, AGP

ORDER

The petitioner has approached this Court, seeking the following relief:

"To issue of Writ of Certiorarified Mandamus, to call for the records relating to the 3rd respondent in his proceedings No. N.K. 48731/2008/A4 dated 30.5.09 and to quash the same and consequently quash the proceedings of the 2nd respondent dated 23.4.10 vide proceedings N.K. No. Service 4(1)/ 52149/2009 and the 1st respondent

dated 28.9.11 vide G.O.(1D) No.292 and direct the 2nd respondent to accord the benefits of promotion applicable to the petitioner."

2. The petitioner joined in the Revenue Department as Junior Assistant on 27.1.1982 recruited through Tamil Nadu Public Service Commission. He was promoted as Assistant on 7.6.1991. While he was working as Assistant, a charge memorandum was issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, which culminated in to the imposition of penalty of removal from service. Against the order of removal, the petitioner had approached this Court in W.P.No.2822 of 2007. This Court, by order dated 14.7.2008, set aside the punishment and remanded the matter back to the authority to conduct the enquiry afresh. Thereafter, a fresh enquiry was conducted and out of two charges framed, the first charge was held proved and second charge was held not proved. On the basis of the enquiry findings which were accepted by the Disciplinary Authority, a punishment of reversion of the petitioner from the post of Assistant to the post of Junior Assistant for a period of three years was imposed vide proceedings dated 30.5.2009.

3. As against the order passed by the Disciplinary Authority, an appeal was preferred before the second respondent on 24.07.2009 and since no order came to be passed in the appeal, the petitioner approached this Court in W.P.No.2498 of 2010. This Court, by order dated 15.2.2010 disposed of the writ petition, directing the second respondent to pass orders on the appeal preferred by the petitioner within a stipulated time. In pursuance of the said direction, the second respondent disposed of the appeal on 23.4.2010, rejecting the same, thereby confirming the punishment awarded by the Disciplinary Authority, against which, a revision was filed by the petitioner before the first respondent on 24.6.2010. However, no action was taken in the said revision petition by the authority.

4. In these circumstances, the petitioner was constrained to approach this Court yet again in W.P.No.26886 of 2010. This Court, by order dated 26.11.2010 while disposing of the said writ petition, directed the first respondent to dispose of the revision petition, within a stipulated time. Ultimately, the first respondent passed order dated 28.9.2011 confirming the order of the Disciplinary Authority. The order of punishment reverting the petitioner from the post of Assistant to the post of Junior Assistant for a period of three years as confirmed in the appeal and revision, is under challenge in the present Writ Petition.

5. Shri S.Vijayakumar, learned counsel appearing for the petitioner would submit that the enquiry finding was in favour of the petitioner since at one place, the Enquiry Officer himself found that there was no material evidence to establish to what extent the petitioner was involved in the irregularities. When such doubt was raised by the Enquiry Officer himself, the ultimate findings holding the first charge proved against the petitioner ought not to be relied upon by the Disciplinary Authority for imposition of major penalty of reversion in rank. According to the learned counsel, all the three authorities, viz., Disciplinary Authority, Appellate Authority and the revisional authority have not taken into consideration the lack of evidence against the petitioner and imposed very severe penalty of reversion to the lower post for a period of three years. According to the learned counsel, there was no independent application of mind at least on the part of the revisional authority who merely acted by the opinion given by the Service Commission. Therefore, the revisional authority has abdicated his statutory responsibility. He would further submit that in respect of others who are also involved in the so-called irregularities had been spared and only the petitioner was made a scape goat. Even otherwise, he would submit that the punishment imposed on the petitioner was too harsh in the circumstances of the case.

6. Upon notice, Mrs.P.Rosekamalam, learned Addl.Govt.Pleader entered appearance for the respondents and filed a detailed counter affidavit.

7. The learned Addl.Govt.Pleader would submit that the charge framed against the petitioner was too serious in nature for which, he was originally removed from service. Subsequently, by taking a lenient view, the order of reversion was passed that too for a specific period, i.e. for three years. It is not open to the petitioner to rely upon an isolated statement made by the Enquiry Officer in regard to involvement of the petitioner in the irregularities. She would submit that ultimately, the findings of the Enquiry Officer in regard to the first charge is on the basis of the material evidence available in the enquiry and the Disciplinary Authority has rightly accepted the findings in respect of first charge and imposed the penalty. The Appellate Authority as well as revisional authority have independently applied their minds on the materials available and confirmed the penalty and the same cannot be faulted with.

8. This Court has considered the rival submissions, perused the materials and pleadings placed on record.

9. As rightly contended by the learned Addl.Govt.Pleader, the charge framed against the petitioner, particularly, charge

No.1 is very serious in nature, namely, commission of offence of forgery and fraud in respect of several documents while the petitioner was discharging his duties as Assistant. The enquiry was, in fact, conducted afresh after intervention of this Court in the earlier round of litigation and on the basis of opportunity afforded to the petitioner, the finding was rendered holding that the first charge was proved against the petitioner. It is not open to the petitioner to find fault with the enquiry findings since the very same Enquiry Officer has found charge No.2 was not proved. Therefore, finding fault with the enquiry report by the petitioner, cannot be countenanced both in law and on facts. Further, the Disciplinary Authority, after taking into consideration of the evidence that was made available in the enquiry, had accepted the findings as it is and imposed the penalty of reversion of the petitioner from the rank of Assistant to the rank of Junior Assistant. In fact, as rightly contended on behalf of the respondents, a lenient view was taken by the Disciplinary Authority in the face of very serious charge which was held proved in the departmental enquiry. In fact, the petitioner had suffered reversion only for a limited period of three years for very serious misconduct committed by him. The Appellate and Revisional Authorities have taken into consideration the over all circumstances while confirming the order of penalty by rejecting the appeal as well as revision. This Court does not find any infirmity in the orders passed by the three authorities. On the other hand, this Court is in entire agreement with the submissions made on behalf of the Government that ultimately the punishment imposed on the petitioner was on the basis of lenient view taken by the authorities and therefore, the petitioner cannot be allowed to assail the order of punishment as if the punishment was disproportionate to the gravity of the mis-conduct committed by him. In fact, the petitioner must appreciate that earlier, he was removed from service and only on this Court's intervention, the matter was remanded back for fresh enquiry. Therefore, the petitioner cannot be allowed to assail the lesser penalty imposed on him particularly considering the severity of the charges framed against him which were held proved.

10. For the above said reasons, this Court does not find any merit in the Writ Petition. Accordingly, the Writ Petition is dismissed as devoid of merits. No costs.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

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To

1. The Secretary to Government,
Revenue Department,
Secretariat,
Chennai-09.

2. The Principal Secretary and
Commissioner of Revenue Administration,
Chepauk, Chennai-5.

3. The District Collector,
Erode District.

+1 CC to Mr.S. Vijayakumar, Advocate sr 45186.

+1 CC to Govt. Pleader sr 45758

W.P.No.10537 of 2012

SR(CO)
SP(25/09/2018)



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