IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.01.2018

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THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.Nos.6963 and 7739 of 2009
&
M.P.No.1 of 2009

M.Lakshmanan ... Petitioner in both W.Ps

Vs

1.The Secretary to Government,
Revenue (Pani 22) Department,
Fort St.George, Chennai 9.

2.The Special Commissioner &
Commissioner for Revenue Administration,
Chepauk, Chennai 5. ... Respondents in both W.Ps

Prayer in W.P.No.6963 of 2009 : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the records of the 1st respondent in connection with the impugned order passed by him in G.O.(2D) No.313, Revenue (Pani 2(2) Department dated 29.07.2005 and G.O (2D) No.615, Revenue (Pani 2(2) Dept dated 12.11.2008 and quash the same.

Prayer in W.P.No.7739 of 2009 : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus, to call for the records of the 1st respondent in connection with the impugned order passed by him in G.O.2D No.484 Revenue (Ser-I) Dept dated 07.09.2006 and quash the same and direct the respondents to consider the claim of the petitioner for inclusion of his name in the list of deputy Collectors for the year 2000-01 and promote him as Deputy Collector and grant him all consequential service and monetary benefits at par with his junior and grant such other further reliefs.

For Petitioner in both the Wp's : Mr.K.Venkataramani for Mr.M.Muthappan

For Respondents in both Wp's : Mr.T.M.Pappiah, Special Govt.Pleader

COMMON ORDER

Heard Mr.K.Venkataramani, learned counsel for the petitioner and Mr.T.M.Pappiah, learned Special Government Pleader appearing for the respondents in both the writ petitions.

2. Since the issues raised in both the writ petitions are common and the same are taken up together for disposal.

3. The petitioner has approached this Court, seeking the following reliefs,

> "1. To issue a writ of Certiorari, to call for the records of the 1st respondent in connection with the impugned order passed by him in G.O.(2D) No.313, Revenue (Pani 2(2) Department dated 29.07.2005 and G.O (2D) No.615, Revenue (Pani 2(2) Dept dated 12.11.2008 and quash the same.
>
> 2. To issue a writ of Certiorarified Mandamus, to call for the records of the 1st respondent in connection with the impugned order passed by him in G.O.2D No.484 Revenue (Ser-I) Dept dated 07.09.2006 and quash the same and direct the respondents to consider the claim of the petitioner for inclusion of his name in the list of deputy Collectors for the year 2000-01 and promote him as Deputy Collector and grant him all consequential service and monetary benefits at par with his junior and grant such other further reliefs."

4. The case of the petitioner is as follows:-

The petitioner was selected as Junior Assistant through Tamil Nadu Public Service Commission (TNPSC) and appointed to service on 20.03.1974. He was promoted as Assistant on 12.09.1985 and further promoted as Tahsildar on 17.09.1998. He was due for promotion as Deputy Collector for the panel year 2000-2001. In view of the pendency of the disciplinary proceedings, his name was not considered for promotion. He was finally promoted as Deputy Collector in the panel year 2006-07 and promoted as such on 07.06.2007.

5. While in service, the petitioner was issued with the charge memo under Rule 17(b) of the Tamil Nadu Civil Services (D&A) Rules on 27.02.2003, in respect of the incident which took place when the petitioner was working as Taluk Supply Officer at Nagapattinam in 1999-2000. According to the charge memo, he failed to supervise the movement of paddy and was responsible for permitting 97 bags of discloured rice for the purpose of hulling to the hulling agents from Tamil Nadu Civil Supplies godown and other allegation in the charge memo was he did not

follow such guidelines issued in that regard. In response to the charge memo, the petitioner submitted his reply, denying the charges. However, an enquiry was conducted into the charges.

6. According to the learned senior counsel for the petitioner, no documents were marked and no witnesses were examined in the enquiry and on the basis of the statement made by the petitioner alone, the enquiry report was submitted holding the charges proved. Thereafter, a further representation was obtained from the petitioner in response to the enquiry report, on 28.08.2004 and the first respondent passed G.O.(2D) No.313 Rev.Pani 2(2) Dept, dated 29.07.2005 and imposed a punishment of stoppage of increment for the period of one year with cumulative effect. A review was preferred against the order on 16.09.2005. After a lapse of three years, the same was disposed on 12.11.2008, along with the opinion of the Tamil Nadu Public Service Commission. The review came to be rejected finally.

7. In view of the pendency of the disciplinary action from 1999-2000, final order was passed only in 2008, the petitioner could not be considered for promotion to the post of Deputy Collector for the panel year 2000-2001 onwards and was considered only for the panel year 2006-07. It appears that the petitioner had also attained the age of superannuation and retired from service in the year 2009.

8. The learned senior counsel for the petitioner, at the outset, would submit that the entire disciplinary action is vitiated by not following the detailed procedure contemplated under Rule 17(b) of of the Tamil Nadu Civil Services (D&A) Rules, since admittedly, no witnesses were examined nor documents marked. In the absence of documents and evidence, the report of the Enquiry Officer cannot be held to be valid. Therefore, on the basis of the invalid report, the impugned punishment imposed on the petitioner cannot also be countenanced in law. The learned counsel would also submit that it was not a mere penalty of stoppage of increment with cumulative effect, but the penalty has resulted in adverse consequences in respect of the petitioner's service progression. Therefore, the petitioner was made to suffer double jeopardy, stoppage of increment with cumulative effect and postponement of promotion.

9. The learned senior counsel would further submit that on the basis of the flawed enquiry report, the disciplinary authority imposed the impugned penalty. According to the learned senior counsel, the petitioner has given a valid explanation to every aspect of the charge memo, but, the explanation of the petitioner was not properly tested in the departmental enquiry.

Unless the proper evidence is let in in the departmental enquiry and proper materials are placed for consideration, the charge cannot held to be established. In the instant case, according to the learned senior counsel, there has been a whole sale violation of the mandatory procedure contemplated in the service rules and therefore, the entire disciplinary action has to be set aside, as being invalid and void.

10. Upon notice, learned Special Government Pleader appearing for the respondents entered appearance and filed a detailed counter affidavit. The learned Special Government Pleader would submit that the charge framed against the petitioner has held to be proved in the enquiry and therefore, the punishment was imposed on the petitioner and the punishment cannot held to be unduly harsh, in the teeth of the serious allegations against the petitioner. In view of the opinion obtained from the TNPSC, there was some delay in disposing of the review application by the Government. In any case, such delay has not caused any prejudice to the petitioner.

11. The learned senior counsel for the petitioner would also draw the attention of this Court to an order passed by this Court in W.P.No.25272 of 2012 on 26.07.2017. This Court in similar circumstances, has allowed the writ petition by setting aside the disciplinary action on the ground that no proper procedure was followed, in terms of the service regulations. The learned counsel would also draw the attention of this Court to paragraph 6 and 10 of the order, which are reproduced below:-

> "6. Mr.S.Venkataraman, learned counsel appearing for the petitioner would strongly contend that there was no proper enquiry as contemplated under the sub clause 4 of chapter V of Tamil Nadu Civil Supplies Corporation Employees Service Regulations, 1989. He would draw the attention of the Court to the specific provision and would contend that elaborate procedure is contemplated under the Rules and no such procedure has been followed. He would also draw this Court's attention to the order passed by the disciplinary authority dated 25.03.2011 stating that such an order is contrary to the regulations and cannot be countenanced in law.
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> 10. Learned counsel for the petitioner would also rely on another order passed by the Division Bench dated 01.07.2009 in W.A.No.736 of 2008. The Division Bench has held in the said decision that though the charge memo was issued and the enquiry officer was appointed, no witnesses were examined and no documents were marked. The delinquent employee was questioned by the enquiry officer and the order of penalty was imposed on the basis of the finding. Such an enquiry

cannot be considered to be in compliance with the procedure requiring for a detailed enquiry before imposition of major penalty. Learned counsel further relies on the decision of the Division Bench dated 08.10.2010 in W.A.(MD) No.130 of 2010, in which the Division Bench has observed on the similar lines as stated above in the other Division Bench matters."

12. This Court has given its anxious consideration to the rival submissions of the learned counsel and perused the materials and pleadings placed on record. It is trite in law to hold that non conforming of the mandatory procedure contemplated in the service regulations, vitiates the entire disciplinary action and any punishment imposed on the basis of such disciplinary action, cannot be countenanced both in law and on facts. In the instant case, as rightly contended by the learned senior counsel that no semblance of procedure had been followed while imposing the impugned penalty on the petitioner. The enquiry report was submitted only on the basis of the statement obtained from the petitioner. Thereafter, the punishment came to be imposed on the basis of such flawed enquiry report.

13. This Court while considering the similar circumstances, has interfered with the disciplinary action in the aforementioned writ petition. As far as this case is concerned, it is not only the penalty of stoppage of increment for a period of one year with cumulative effect, but, also postponement of valuable promotion as Deputy Collector from the year 2000-2001. Such an adverse impact on the career of the petitioner would have far reaching service and financial implications on the petitioner throughout his life.

14. As rightly contended by the learned senior counsel for the petitioner that protracted disciplinary action during 1999-2000, the petitioner was made to suffer a loss of promotion when his juniors were promoted as Deputy Collector for the panel year 2000-01. This Court is in full agreement with the submission of the learned senior counsel that the respondent's action in not following the mandatory procedure, has vitiated the entire disciplinary action and therefore, it is a fit case for interfering with the order of penalty imposed on the petitioner vide G.O.(2D) No.313 Rev.Pani 2(2) Dept, dated 29.07.2005.

15. Upon consideration of the facts and circumstances which are mandated above, this Court has no hesitation to set aside the impugned orders in G.O.(2D) No.313, Revenue (Pani 2(2) Department dated 29.07.2005 and G.O.(2D) No.615, Revenue (Pani 2 (2) Dept dated 12.11.2008 and G.O.(2D) No.484 Revenue (Ser-I) Dept dated 07.09.2006 and subsequently, the respondents are

directed to restore the position of the petitioner as stood before the imposition of the impugned penalty with all consequential benefits.

16. In view of the above writ petition in W.P.No.6963 of 2009 being allowed, the other writ petition in W.P.No.7739 of 2009 is also allowed to the extent that there shall be a direction to the respondents to consider the claim of the petitioner for promotion as Deputy Collector with effect from the date when his juniors were considered on notional basis. In view of the fact that the petitioner already attained the age of superannuation and retired from service in the year 2009, grant him all further benefits as per his entitlement, including recalculation of pension etc. The consequential orders shall be passed by the respondents within a period of eight weeks from the date of receipt of a copy of this order.

17. With the above direction, both the writ petitions are allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True copy//

Sub Assistant Registrar

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To

1.The Secretary to Government,
Revenue (Pani 22) Department,
Fort St.George, Chennai 9.

2.The Special Commissioner &
Commissioner for Revenue Administration,
Chepauk, Chennai 5.

+2cc to Mr.Muthappan, Advocate SR.No.1625, 1626
+1cc to Government Pleader SR.No.1118

W.P.Nos.6963 and 7739 of 2009

MPA(CO)
GN(14/02/2018)