IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.02.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.11854 of 2010

J.Sagaya Arokiya Nayagi ... Petitioner

Vs

1.The Secretary to Government,
Home (Tr.II-A) Department,
Secretariat, Chennai-9.

2.The Special Commissioner and
Transport Commissioner,
Chepauk, Chennai-5. ... 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 relating to the order of the second respondent herein passed in his Proc.R.No.2906/VB1/2002 dated 20.06.2008, imposing a punishment of stoppage of increment for a period of three years with cumulative effect and the consequential order passed by the first respondent herein in G.O.(3D) No.64, Home (Tr.II-A) Department, dated 30.10.2009, confirming the punishment and quash the same and consequently, direct the respondents herein to grant all the monetary and service benefits to the petitioner withheld due to the above punishment.

For Petitioner : Mr.Ravi Shanmugam

For Respondents : Mr.T.M.Pappiah,
Special Government Pleader

O R D E R

Heard Mr.Ravi Shanmugam, learned counsel for the petitioner and Mr.T.M.Pappiah, learned Special Government Pleader appearing for the respondents.

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

"To issue a Writ of Certiorarified Mandamus, to call for the records relating to the order of the second respondent herein passed in his Proc.R.No.2906/VB1/2002 dated 20.06.2008, imposing a punishment of stoppage of increment for a period of three years with cumulative effect and the consequential order passed by the first respondent herein in G.O.(3D) No.64, Home (Tr.II-A) Department, dated 30.10.2009, confirming the punishment and quash the same and consequently, direct the respondents herein to grant all the monetary and service benefits to the petitioner withheld due to the above punishment. ”

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

The petitioner joined the service of the respondent as Typist on 20.01.1997. While serving as such, she was served with a charge memo under Rule 17(b) of the Tamil Nadu Civil Services (D & A) Rules, dated 08.11.2003, for certain acts of misconduct during the period in which she was working in the Regional Transport Office, Trichy, dated 02.01.1997 to 06.11.2002. The substance of the charge which was framed against the petitioner was she had caused a loss of Rs.1,48,244/- to the Government and also misappropriated the amounts due to the Government by tampering with the records stored in the computer.

4. An enquiry was conducted into the charges and on behalf of the petitioner, a representation was made seeking furnishing of relevant documents in order to prove her innocence. However, the documents which were required by the petitioner, were not furnished to her. On conclusion of the enquiry, the Enquiry Officer submitted a report holding that out of two charges, the first charge was not proved and the second charge was proved by the enquiry report dated 17.06.2007. Further explanation was called for from the petitioner on 27.02.2008. In response to the same, the petitioner submitted her representation on 23.11.2009. However, not satisfied with the explanation, the second respondent - disciplinary authority passed an order on 20.06.2008, imposing the punishment of stoppage of increment for three years with cumulative effect. According to the petitioner, before issuing the order of penalty, she had sought opportunity of personal hearing before the second respondent. However, her request was not granted.

5. Against the order passed by the second respondent, the petitioner preferred a statutory appeal on 14.08.2008 to the first respondent- Government. Even in the appeal, the petitioner had requested for an opportunity of personal hearing which was not given to her by the disciplinary authority. However, not considering the request, the Government passed an order on 30.10.2009 in G.O.(3D) No.64, Home (Tr.II-A) Department, confirming the punishment passed by the second respondent. The

orders of the first and the second respondents respectively are put to challenge in the present writ petition.

6. Upon notice, learned Special Government Pleader appearing for the respondents, entered appearance and counter affidavit has been filed on behalf of the respondents.

7. The learned counsel for the petitioner would contend that no proper opportunity was given to the petitioner in the conduct of the enquiry, since the crucial documents pertaining to the charges were not furnished to the petitioner. This fact is reflected in the enquiry report submitted by the Enquiry Officer, wherein, there was a clear finding that in respect of 81 cases of entries, the records were not filed, since the records were taken by the City Crime Branch Police due to criminal case filed against all the persons involved in the tampering of records.

8. The learned counsel for the petitioner would also point out that the entire findings of the Enquiry Officer were in favour of the petitioner viz., the Enquiry Officer found the petitioner's innocence and she had only committed mistake due to lack of training. The Enquiry Officer has also in his finding as held that as regards the petitioner is concerned, she produced the evidence in five cases, wherein, the amount of Rs.83,304/- was collected and remitted in the Government account. As regards the remaining amount is concerned, the records were admittedly not made available, this has resulted in the petitioner not able to prove her defence in respect of the remaining entries. While matter stood thus, despite clear finding in the conduct of the petitioner, the Enquiry Officer surprisingly has found the second charge proved, while holding the first charge not proved.

9. The learned counsel would submit that the first charge is a substantive charge and the second charge is also only a part of the first charge. Once the first charge is not proved, automatically, the second charge can never be held proved as against the petitioner. Moreover, the findings in respect of the tampering of records from the computer, were completely in favour of the petitioner. However, the Enquiry Officer has found the petitioner guilty of the second charge, only on the basis of presumption that the loss was caused to the Government without attributing any covert act on the part of the petitioner as if she had caused loss to the Government or misappropriated the amounts due to the Government. Therefore, the learned counsel would assail the enquiry report in respect of holding the second charge proved against the petitioner, since it a clear case of no evidence. Therefore, such finding has to be interfered with.

10. The learned counsel for the petitioner would also submit

that the disciplinary authority without affording an opportunity of personal hearing to the petitioner, has mechanically accepted the Enquiry Officer's report and passed the impugned order of penalty without considering the representation of the petitioner in proper perspective. According to him, grant of personal hearing is a part of the procedure adopted for imposing major penalty proceedings. In the absence of grant of personal hearing to the petitioner, the impugned action of the disciplinary authority stands vitiated. Further, the appellate authority viz., the Government, which passed the order, has not independently applied its mind, since, the opinion of the Tamil Nadu Public Service Commission has been routinely accepted and followed. Thereby, the Government has abdicated the statutory responsibility under the service rules. The order passed by the Government does not disclose any independent application of mind as contemplated in the rules and therefore, even on this ground, the order of the appellate authority is liable to be interfered with.

11. Per contra, learned Special Government Pleader appearing for the respondents would submit that the petitioner was given an opportunity to participate in the enquiry and the petitioner cannot have any complaint against the enquiry report, as the same Enquiry Officer held the first charge not proved against the petitioner. However, in view of the circumstantial evidence made available before the enquiry, the Enquiry Officer held the second charge proved. The learned counsel would draw the attention of this Court to certain passages found in the counter affidavit. But, this Court is not convinced about the case of the Government on any aspect, which Government has attempted to canvass before this Court.

12. On the other hand, this Court is in entirely agreement with the submissions made by the learned counsel for the petitioner that the petitioner has made out a clear case for this Court's intervention in the matter for more than one reason. Firstly, as rightly contended by the learned counsel for the petitioner that the Enquiry Officer given a finding completely in favour of the petitioner in regard to the first charge and exonerated the charge No.1. In the considered opinion of this Court, the findings rendered in respect of the first charge will also hold good for the second charge, as well. Therefore, this Court is unable to appreciate as to how and what basis the second charge was held proved by the Enquiry Officer. Therefore, this Court is in agreement with the arguments advanced by the learned counsel for the petitioner that this is a clear case of no evidence and therefore, the findings given by the Enquiry Officer in respect of the second charge, cannot be countenanced both in law and on facts and the same has to be interfered with.

13. In view of the conclusion by this Court about the findings of the Enquiry Officer, as such finding is unsupported by any evidence at all, the eventual action by the disciplinary authority of imposing the impugned penalty cannot stand the test of judicial scrutiny the same has to be interfered with. Even otherwise, as contended by the learned counsel for the petitioner that the second respondent before issuing the impugned penalty, has not given an opportunity of personal hearing as per the procedure contemplated under the Service Rules. Further contention of the learned counsel for the petitioner that the appellate authority viz., the Government has mechanically followed the dictate of the Tamil Nadu Public Service Commission, without making an independent assessment of the evidence and the representation and the appeal of the petitioner and even on this ground, this Court is of the view that the disciplinary action stood vitiated.

14. For all the above said reasons, this Court is of the considered view that the entire disciplinary action is vitiated on more than one ground as concluded by this Court in the preceding paragraph. This is a case of no evidence and therefore, the findings by the Enquiry Officer in respect of the second charge and the punishment imposed by the second respondent on such flawed finding and a non-speaking order by the appellate authority viz., the Government, cannot be countenanced in law. In such view of the matter, this Court is of the considered view that the petitioner has made out a clear case for quashing of the impugned punishment. Therefore, the impugned proceedings passed by the second respondent in Proc.R.No.2906/VB1/2002 dated 20.06.2008 and the consequential order passed by the first respondent in G.O.(3D) No.64, Home (Tr.II-A) Department, dated 30.10.2009, are hereby quashed and the respondents are directed to grant all the monetary and service benefits to the petitioner withheld due to the above punishment. The direction of this Court shall be complied with by the respondents, within a period of eight weeks from the date of receipt of a copy of this order.

15. With the above direction, the writ petition stands allowed. No costs.

Sd/-
Assistant Registrar(CS III)

//True copy//

Sub Assistant Registrar

gsk

To

1.The Secretary to Government,
   Home (Tr.II-A) Department,
   Secretariat, Chennai-9.

2.The Special Commissioner and
   Transport Commissioner,
   Chepauk, Chennai-5.

+1cc to Mr.Ravi shanmuga., Advocate SR.No.14650
+1cc to Government Pleader SR.No.15421

W.P.No.11854 of 2010

KS(CO)
GN(05/03/2018)