

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.30999 of 2013

A.Sundaraganesan

... 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.720, Home (Tr.II) Department, dated 02.09.2013 imposing a punishment of stoppage of increment for a period of two years without cumulative effect and quash the same and consequently direct the respondents herein to grant promotions to the petitioner such as Superintendent, Motor Vehicle Inspector (Non Technical) and Personal Assistant to Regional Transport Officer from the date of promotion of immediate junior with all consequential benefits which were due to the above punishment.

For Petitioner

:Mr.Ravi Shanmugam

For Respondents

:Mrs.P.Rose Kamalam,

Additional Government Pleader

O R D E R

Heard Mr.Ravi Shanmugam, learned counsel for the petitioner and Mrs.P.Rose Kamalam, learned Additional 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 pertaining to the order passed by the first respondent herein in G.O.(D) No.720, Home (Tr.II) Department, dated 02.09.2013 imposing a punishment of stoppage of increment for a period of two years without cumulative effect and quash the same and consequently direct the respondents herein to grant promotions to the petitioner such as Superintendent, Motor Vehicle Inspector (Non Technical) and Personal Assistant to Regional Transport Officer from the date of promotion of immediate junior with all consequential benefits which were due to the above punishment."

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

The petitioner was appointed as Junior Assistant on 24.10.1994. He was promoted as Assistant/Accountant on 18.08.1998. While he was working as Assistant/Accountant, the Officer of Vigilance and Anti-Corruption of Regional Transport Office, Thanjavur, conducted surprise inspection on 10.09.2003 and found there was some shortage of money in the cash register on 10.09.2003. In pursuance of which, a charge memo was issued on 23.08.2007, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, to the petitioner and two others viz., the Cashier as well as the Superintendent. Not satisfied with the explanation offered by the petitioner, an enquiry was conducted and in the enquiry, it appears that the petitioner had requested for perusal of certain documents and examination of crucial witnesses which was not considered by the Enquiry Officer.

4. On 27.08.2009, after conclusion of the enquiry, a report was submitted holding the charges proved. On 09.02.2010, the second respondent called for the explanation of the petitioner and in response to which, an explanation was submitted by the petitioner on 01.04.2010. Thereafter, personal hearing was afforded to the petitioner on 09.08.2011. Eventually, impugned order in G.O.(D) No.720, Home (Tr.II) Department, dated 02.09.2013 was issued imposing a punishment of stoppage of increment for a period of two years without cumulative effect. The said Government Order imposing the penalty is put to challenge in the present writ petition.

5. The learned counsel for the petitioner would at the outset submit that it is a clear case of no evidence and the findings of the Enquiry Officer is completely unsupported by any worthwhile material whatsoever. Infact, according to the learned counsel, the findings rendered by the Enquiry Officer in respect of the other two co-delinquent officers viz., The Cashier, who made entries in regard to the receipt of the cash and also the Superintendent, who was ultimately the supervising authority, were in their favour, stating that there was no misrepresentation or manipulation of records and there was only a procedural lapse. In fact, there was a clear finding saying that there was no evidence at all in establishing the factum of misrepresentation or manipulation either by the Cashier or by the Superintendent.

6. The learned counsel would submit that such finding in respect of the two other co-delinquent officers, will hold good for the petitioner as well, since he was merely a co-signatory. Moreover, when the finding of the Enquiry Officer only pointed out the fact that there was no falsification of the documents in question and the guilt of the officers was pronounced only on the basis of some procedural negligence, whether that would entail the punishment imposed on the petitioner and whether such prolonged disciplinary action which commenced from 2007 and culminated in the impugned order of penalty on 02.09.2013, is unsustainable. More particularly, when the petitioner during the pendency of the disciplinary action, was denied promotion at least for three occasions to the next higher post. He would therefore challenge that such prolonged disciplinary action not only for the right to have speedy disposal of the case, but also for the denial of due promotion at the appropriate time to the next higher post.

7. The learned counsel would also submit that there is no analysis of the evidence at all by the Enquiry Officer while holding the charges proved against the petitioner. He would draw the attention of this Court to the sketchy findings rendered by the Enquiry Officer in this regard. He would therefore submit that when the petitioner wanted to examine the crucial witnesses viz., the Cashier and the Superintendent in order to establish the fact that he was not at all involved in making of entries in the cash register, his request was denied without any valid reasons. Such denial of right of the petitioner to examine the crucial witnesses has resulted in the Enquiry Officer holding the charges proved against him and resulted in denying a valuable opportunity to the petitioner in establishing his innocence in all respects.

8. Therefore, the learned counsel would submit that in the absence of any discussion about any evidence let in, in the enquiry, the findings rendered against the petitioner cannot be sustained both in law and on facts. The learned counsel would also submit that the eventual order by the Government dated 02.09.2013, imposing the impugned penalty did not disclose anything specific detail in regard to the evidence which was available on record for establishing the charge against the petitioner.

9. The learned counsel for the petitioner would further draw the attention of this Court to the non-speaking order passed by the first respondent dated 02.09.2013, wherein, the authority has merely incorporated the charge memo and explanation of the petitioner and concluded the charge as proved. Such casual approach by the disciplinary authority, cannot be countenanced in law, since the duties cast upon the authority to consider every legitimate aspect of the issue in terms of the service regulations and is expected to pass a detailed order. In this case, the authority has not taken into consideration any of the relevant factors and the impugned penalty order is completely bereft of any such consideration on the part of the disciplinary authority. Therefore, he would submit that on this ground itself, the impugned penalty has to be set aside.

10. Upon notice, learned Additional Government Pleader appearing for the respondents, entered appearance and filed a detailed counter affidavit.

11. The learned Additional Government Pleader appearing for the respondents would submit that the petitioner was given due opportunity to participate in the departmental enquiry and after proving charges, the impugned punishment was imposed. In fact, the punishment imposed was only a minor penalty, taking into consideration the role of the petitioner in the charge framed against him as well as other co-delinquent officers. Therefore, it is not for the petitioner to challenge such minor penalty, considering the fact of seriousness of the charge framed against him.

12. This Court has considered the rival submissions of the learned counsel on both sides and perused the materials and pleadings placed on record. From the records, it is clear that it is a case of no evidence at all as there was absolutely no analysis of evidence which was made available in the enquiry by the Enquiry Officer. It appears that the Enquiry Officer has unilaterally come to the conclusion on the basis of his own opinion that the charge was proved against the petitioner, without any supportive material made available in the enquiry.

13. Moreover, as rightly contended by the learned counsel for the petitioner that the same Enquiry Officer has given a finding in favour of the other two delinquent officers viz., the Cashier and the Superintendent, stating that there was neither misrepresentation nor manipulation of records as there was absolutely no evidence. Once such clear finding is given by the Enquiry Officer, such finding automatically holds good for the petitioner also, since as like the Superintendent and Cashier, the petitioner is also a co-signatory of the cash register. In the absence of any misrepresentation or manipulation of records, this Court does not see how the charge can be sustained, since the charge was framed against the petitioner for falsification of accounts.

14. From the disciplinary proceedings and from the Enquiry Officer's finding, this Court does not see any iota of evidence which can be said to be remotely available for establishing the charge against the petitioner. Therefore, as rightly contended by the learned counsel for the petitioner that it is a clear case of no evidence and therefore, the findings rendered by the Enquiry Officer is only presumptive and does not have any supporting material evidence. In such view of the matter, the findings rendered by the Enquiry Officer is clearly unsustainable. Therefore, the same is liable to be set aside.

15. The other aspect of the issue is whether the order of the disciplinary authority viz., the first respondent, can be sustained on the basis of the such flawed findings. Once the findings is said to be completely flawed and unsustainable, the eventual order of punishment by the disciplinary authority has to be discountenanced as being unsustainable. Further, the disciplinary authority without appreciating the lacunae in the conduct of the enquiry or its finding has miserably overlooked the same, and imposed the penalty by a non-speaking order. Therefore, de hors the flawed findings, the order of the disciplinary authority by itself is found to be unsustainable and therefore, the same has to be set aside even on this ground alone. It is the duty of the disciplinary authority to address each and every aspect of the conduct of the enquiry and to see whether the principles of natural justice have been followed in all respects and whether the Enquiry Officer has followed the mandatory procedure as laid down in the Service Rules. In the absence of such consideration, this Court does not see as to how the ultimate action initiated by the disciplinary authority can be sustained.

16. For the above said reasons, this Court has no hesitation in allowing the writ petition. The impugned order passed by the first respondent in G.O.(D) No.720, Home (Tr.II) Department, dated 02.09.2013, is hereby set aside. There shall be a consequential direction to the respondents to consider and grant promotion to the petitioner to the higher post at the appropriate time, if he is otherwise eligible during the period when the promotion was denied to him because of the pendency of the disciplinary action. The consequential order 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, the writ petition stands 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.

+lcc to Mr.Ravi Shanmugam, Advocate, S.R.No.42476.

+lcc to the Government Pleader, S.R.No.42758

BM 25/07/2018

W.P.No.30999 of 2013

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