IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE V. PARTHIBAN

W.P.No.39016 of 2015
and M.P.No.1 of 2015

S.Bharathan ... Petitioner

Vs.

1. The Secretary to Government of
   Tamil Nadu
   Commercial Taxes and Registration
   Department,
   Fort St.George, Chennai 9.

2. The Principal Secretary/Commissioner
   of Commercial Taxes,
   Chepauk, Chennai. ... Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the first respondent in its G.O(D)No.323 dated 17.08.2015 confirming the order of the second respondent in its Proc.No.EE2/28855/2013 dated 29.05.2014 and quash the same.

For Petitioner :Mr.V.Vijay Shankar

For Respondents :Mr.J.Pothiraj
Special Govt.Pleader

ORDER

The prayer in the writ petition is for issuance of a Writ of Certiorari calling for the records of the first respondent in its G.O(D)No.323, dated 17.08.2015, confirming the order of the second respondent in its Proc.No.EE2/28855/2013 dated 29.05.2014 and quash the same.

2.The petitioner was employed as Deputy Commercial Tax Officer (DCTO) under the respondent. While so, vide order dated 21.09.2012 he was transferred and posted to Tiruttani. According to the petitioner, his wife was not well and his son was appearing in the Higher Secondary examination in the following year. In the said circumstances, he had applied for leave from 22.09.2012 to 31.10.2012. According to the petitioner, in the leave application he has specifically mentioned about his wife's illness and son's preparation for the board examination. After expiry of the leave on 31.10.2012, the petitioner joined duty at Tiruttani on 01.11.2012 and worked there till 07.11.2012. However, it appears that the petitioner's wife was not keeping good health and therefore, the petitioner was once again forced to remain on leave from 08.11.2012 to 30.11.2012.

3. In the above circumstances, a charge memo was issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) containing 7 charges. All the charges pertaining to non-reporting of the petitioner for duty at Tiruttani in pursuance of his transfer order. In response to the charge memorandum dated 08.11.2012, the petitioner submitted his explanation on 07.01.2013 denying the charges. However, without accepting the explanation of the petitioner, an enquiry was conducted. In the meanwhile, during the pendency of the disciplinary action, the competent authority had issued orders on 10.12.2013 sanctioning the leave applied by the petitioner in two spells from 22.09.2012 to 30.10.2012 and from 08.11.2012 to 30.11.2012. Both the periods were treated as Earned Leave and the same was also regularised.

4. On completion of the enquiry, a report was submitted holding that all the charges against the petitioner were not proved. However, the second respondent forwarded a disagreement note by proceedings dated 25.02.2014 only with regard to charge No.2, but accepted the findings of the Enquiry Officer with respect to other six charges. In response to the disagreement note of the 2nd respondent, the petitioner submitted his explanation on 21.03.2014 once again reiterating the reason for applying for leave. The petitioner had also pointed out the fact that the leave had been sanctioned by the committee. However, it appears that the second respondent without considering the legitimate explanation of the petitioner and without considering the fact that leave had actually been sanctioned, has passed an order on 29.05.2014 holding that the charge was proved and ultimately passed the punishment of “censure” on the petitioner. Against the order of the second respondent, the petitioner preferred an appeal to the first respondent on 07.07.2014 and the appellate authority namely the first respondent herein rejected the appeal by an order dated 17.08.2015. The petitioner is therefore before this Court assailing the orders of the second respondent and first respondent dated 29.05.2014 and 17.08.2015.

5. Upon notice, Mr.J.Pothiraj, learned Special Government Pleader entered appearance and filed counter on behalf of the respondents.

6. The learned counsel for the petitioner, at the out set, submitted that the conclusion of the Disciplinary Authority in respect of the second charge cannot be sustained both in law and on facts, for the simple reason that the leave which the petitioner had availed was the subject matter of the second charge and it had been sanctioned by the competent authority by proceedings dated 10.12.2013, therefore the question of charge being framed against the petitioner does not arise at all. Therefore, he would submit that the action of the second respondent in holding the charge proved is contrary to the facts and records and the same is liable to be dismissed.

7. The learned counsel appearing for the petitioner would submit that though the order passed by the Disciplinary Authority is only a "censure", however in view of the pendency of the disciplinary action against the petitioner, his further promotion to the next higher post had been affected as his Juniors have been granted promotion to the next higher post. In any event, the learned counsel would submit that the leave which is the subject matter of the charge had been sanctioned as Earned Leave by the competent authority, subsequently.

8. On the other hand, the learned Special Government Pleader would submit that there was dereliction of duty on the part of the petitioner as Deputy Commissioner Tax Officer and therefore, the Disciplinary Authority rightly took a decision to punish the petitioner and the punishment which had been passed was only "censure" and therefore, the petitioner cannot have any legitimate grievance against such lenient view taken by the second respondent. He would further submit that the explanation offered by the petitioner for taking leave during the same period was not bonafide and therefore such explanation was rejected as being without any merit and therefore, Disciplinary Authority proceeded with its own findings in respect of the second charge and held the same proved.

9. The learned counsel for the petitioner submitted that even the appellate authority has not considered the explanation and the factum that the leave sanctioned by the competent authority in proper perspective and he has merely chosen to reject the appeal mechanically. He further submitted that the finding in the appeal by the first respondent that there was an ulterior motive on the part of the petitioner for having applied leave from 22.09.2012 to 31.10.2012, therefore, there was penalty of "censure" issued on the petitioner. Such finding is contrary to the finding of the Enquiry Officer which had been

accepted by the Disciplinary Authority. As far as the Disciplinary Authority is concerned, it is only the second charge which is held to be proved and therefore any further finding by the appellate authority with regard to the leave availed by the petitioner is contrary to records and the same cannot be either countenanced in law or on facts.

10. This Court has considered the rival submissions made by either side and perused the records.

11. There appears to be a considerable force in the contention of the learned counsel for the petitioner that in fact, the leave availed by the petitioner from 22.09.2012 to 31.10.2012 had been sanctioned by the Disciplinary Authority by proceedings dated 10.12.13 and in that event the said leave cannot be the basis of the impugned charge memo. In the said circumstances, disagreement of the Disciplinary Authority in holding the said spell of leave as one of the misconducts cannot be countenanced in law or on facts. Once the competent authority has chosen to sanction the leave to the petitioner, this Court does not see any justification on the part of the Disciplinary Authority to hold the leave availed by the petitioner as an act of misconduct and impose penalty on the petitioner.

12. As rightly contented by the learned counsel for the petitioner, the findings of the Disciplinary Authority did not consider the explanation given by the petitioner and also the fact for the leave availed by the petitioner had been subsequently sanctioned by the Authority. In fact, the Appellate Authority had rejected the appeal on certain extraneous finding, which did not form part of the enquiry report or finding of the Disciplinary Authority. This court is of the view that the order of the appellate authority rejecting the appeal preferred by the petitioner has been passed without any application of mind. The Appellate Authority has been merely guided by the opinion given by the Tamil Nadu Public Service Commission and it appears there was no independent application of mind on the part of the Appellate Authority. Further, this court has time and again referred to the legal position that the authority cannot shirk their statutory responsibility in dealing with the disciplinary matters. In this case, the Appellate Authority appears to have not taken independent view, but has been merely guided by the opinion given by TNPSC. Therefore, this Court is of the view that the Appellate Authority has abdicated its statutory responsibility cast upon him by the rules in considering the appeal. Therefore, the order passed by the Appellate Authority is also cannot be countenanced in law.

13. In any event, in the face of the fact that the leave availed by the petitioner had been sanctioned, the order passed by the Disciplinary Authority holding the second charge is proved and imposing penalty of "Censure" cannot be sustained in law. Consequently, the order passed by the Appellate Authority confirming the order of the Disciplinary Authority also cannot be sustained under these circumstances.

14. For the above said reasons, impugned orders passed by the first respondent in its G.O(D)No.323 dated 17.08.2015 confirming the order of the second respondent in its Proc.No.EE2/28855/2013 dated 29.05.2014 are set aside. It is represented that the petitioner was not considered for promotion in view of the pendency of disciplinary action and penalty imposed by the Disciplinary Authority. In these circumstances, the respondents are directed to consider the claim of the petitioner for promotion to the next higher post on par with his junior, if he was otherwise eligible.

15. With the above direction and observation, this writ petition is allowed. Consequently connected Miscellaneous Petition is also closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

dpq
To

1. The Secretary to Government of
Tamil Nadu
Commercial Taxes and Registration
Department,
Fort St.George, Chennai 9.

2. The Principal Secretary/Commissioner
of Commercial Taxes,
Chepauk, Chennai.

+1cc to Mr.V.Vijay Shankar, Advocate Sr.31007
+1cc to the Government Pleader Sr.31454 & 31321

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and M.P.No.1 of 2015

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srg 24/05/2018