IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.11.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice KRISHNAN RAMASAMY

W.P.No.27409 of 2017

Parvathy Kailasam ..Petitioner

Vs

1.The Registrar,
Central Administrative Tribunal
Madras Bench, Chennai - 104.

2.Union of India rep. by
The Under Secretary,
Ministry of Finance,
Department of Revenue,
6th Floor, HUDCO Vishala Building,
Bhikaji Cama Place,
New Delhi - 01. ..Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorarified mandamus to call for the records of the first respondent in connection with the impugned order passed in O.A.No.862 of 2013 dated 26.10.2016 and quash the same and further direct the second respondent to pay 25% withheld monthly pension amount.

For Petitioner .. Mr.K.Venkataramani,
Sr. Counsel
for Mr.S.Sivakumar

For Respondents.. Mr.V.Chandrasekaran,
SPC for R2
R1 - Tribunal

ORDER
(Order of the Court was made by M.M.SUNDRESH, J.)

The petitioner herein was issued with a charge memo containing the following charges:

ARTICLE I:

That the said Smt.Parvathy Kailasam, Dy. Commissioner of Customs, while working as Appraiser in

Chennai Customs constructed first floor in her plot at Tambaram during the year 1989 without obtaining permission of the Department and failed to intimate the same to the Department.

ARTICLE II:

That the said Smt.Parvathy Kailasam, Dy. Commissioner of Customs, while working as Asstt. Commissioner of Central Excise, Chennai, entered into a cash transaction amounting to Rs.2.4 lakhs by borrowing the said amount from her brother's son and giving it Mr.Ramaswamy, a Real Estate promoter and repaid the amount to her relative in instalments without intimating the above transactions to the Department and without following any of the prescribed procedures and instructions.

ARTICLE - III:

That the said Smt.Parvathy Kailasam, Dy. Commissioner of Customs while working as Asstt. Commissioner of Central Excise, Chennai stood as a guarantor for Mr.Ramaswamy, a Real Estate promoter in business transaction to the tune of Rs.44 lakhs with State Bank of Hyderabad and signed an agreement of guarantee and made an endorsement on the promissory note without intimating the Department and without following any of the prescribed procedures and instructions.

ARTICLE IV:

That the said Smt.Parvathy Kailasam, Dy. Commissioner of Customs, while working as Asstt. Commissioner of Central Excise, Chennai after coming to know that a prime property valued at Rs.44 lakhs at Door No.3, Old No.7, Palayakaran Street, Kodambakkam, Chennai - 84 totalling 5715 sq.ft. was registered in her name failed to intimate the department the purchase of the said property through Smt.Parvathy Kailasam was well aware of the relevant CCS (Conduct) Rules, 1964.

ARTICLE V:

That the said Smt.Parvathy Kailasam, Dy. Commissioner of Customs, while working at Cudappah Division, Hyderabad, received a notice from the Recovery Officer, Debt Recovery Tribunal, Chennai for attachment of her salary towards the recovery of her debt to the bank and she has filed a reply for the same without intimating these transactions to the Department.

2.Thereafter an enquiry officer was appointed. The date of the charge memo was 07.07.2005 and the date of appointment of enquiry officer was 31.03.2006. The enquiry officer filed a report on 01.02.2007 holding that of the five charges, Charge Nos.2 to 5 are proved as against Charge No.1.

3.However, Union Public Service Commission (for short 'UPSC') issued a disagreement note with respect to Charge No.1. Based upon the aforesaid advice of the UPSC and after affording an opportunity touching upon all the charges, with the indication that Charge No.1 is not accepted, on the finding rendered by the enquiry officer, an order was passed imposing the penalty of withholding 25% of monthly pension otherwise admissible to the petitioner for a period of three years and further her gratuity if not required in any other case to be released. This order dated 03.05.2012 was put into challenge in O.A.No.747 of 2012.

4.The Tribunal set aside the order of punishment by the order dated 05.02.2013 and consequently remitted the matter back to the disciplinary authority with a direction that the petitioner may submit her representation along with all necessary documents on the advice of the UPSC. Incidentally, the second respondent was directed to give a personal hearing at the time of taking decision on the representation to be submitted. Accordingly, the petitioner was given the advice of the UPSC. Thereafter, a speaking order was passed, reconfirming the earlier one once again. This order was put into challenge before the Tribunal for the second time by the petitioner.

5.The Tribunal after going through the materials available on record was pleased to dismiss the Original Application. While doing so, the Tribunal went into the merits and held that it is factually proved that the petitioner has not disclosed the factum of purchase. Similarly, it was held that Charge Nos.2 to 5 are also borne out by the records and therefore proved. Challenging the same, the present writ petition is filed.

6.Learned senior counsel appearing for the petitioner made two legal submissions. One is with respect to the delay which has occasioned from the date of framing the charges and even prior to that till the date of completion of enquiry. The second submission is with respect to the procedure to be adopted when the disciplinary authority issued a disagreement note on the finding given by the enquiry officer with respect to Charge No.1. Learned senior counsel submits that there is no proper explanation for the delay and there is a clear non-compliance of the procedure that is required to be followed. Incidentally, one more submission has been made on the order of the Tribunal that it has wrongly taken into consideration the past conduct of the petitioner culminating in a punishment, as approved by the Tribunal on an earlier occasion. To buttress his submissions, learned senior counsel has made reliance upon the following decisions:

(i) P.V.Mahadevan Vs. M.D., Tamil Nadu Housing Board (2005 (4) CTC 403)

(ii) Lav Nigam Vs. Chairman & M.D., ITI Ltd., and Another ((2006) 9 SCC 440)

7.Learned counsel appearing for the second respondent would submit that due procedure has been followed. The order passed is a speaking one. Factually, it is not in dispute that the petitioner did not disclose the factum of purchase of immovable property. The fact that non-disclosure would be in violation of the rules governing is also not disputed. There is no inordinate delay. Since the charge is to the effect that the petitioner has suppressed the factum of purchase of immovable property, there is no delay in initiation of disciplinary proceedings. Chronological events starting from 07.07.2005 would show that there is no delay. The matter was remitted by the order of the Tribunal and therefore, the question of delay cannot be put against the second respondent. The same analogy would apply for the contention that proper procedure has been followed while disagreeing with the finding of the enquiry officer. The decisions are to be seen contextually and therefore they do not have an application to the case on hand. Inasmuch as the past conduct and earlier punishment was not the basis of the present case culminating in the order passed by the second respondent, notwithstanding the Tribunal taking note of it, no interference is called for. Hence the learned counsel prayed for dismissal of the writ petition.

8.In the case on hand, the charge is to the effect that the petitioner has not informed the factum of purchase. Though it has been stated that the purchase and the alleged violation happened some time before, the second respondent is not supposed to know of the same. In fact, the charges are to the effect that the petitioner did not disclose while committing the violation with particular reference to the factum of purchase. The question of delay cannot be termed as that of law as it is one of prudence and practice to be adopted and considered on the facts of each case. That is the reason why the Tribunal did not allow the earlier Original Application on the ground of delay. The same analogy will apply to the second issue sought to be raised. Admittedly, the directions of the Tribunal in O.A.No.747 of 2012 dated 05.02.2013 have been complied with. The petitioner has been given the advice of the UPSC and thereafter proceeded with. Similarly, personal hearing was also given. Therefore, the two decisions relied upon by the learned senior counsel appearing for the petitioner are not applicable to the case on hand.

9.Learned senior counsel appearing for the petitioner has contended that the Tribunal has misdirected itself by taking note of the earlier case involving the petitioner. We are of the view that the said observation of the Tribunal is irrelevant for deciding the matter. The question before the Tribunal was as to whether the order passed by the second respondent is sustainable or not. The Tribunal having felt that the order is perfectly in order, nonetheless proceeded to deal with the past conduct of the petitioner. Law is quite settled, a judicial forum is not expected to go into the quantum of punishment unless it shocks the conscience. In the case of hand, all the five charges against the petitioner have been proved. After all, a report of the enquiry officer is nothing more than a piece of evidence to be appreciated by the disciplinary authority which has been done after following the due procedure as directed by the Tribunal. Thus looking from any perspective, we do not find any merit in the writ petition. Accordingly, the writ petition stands dismissed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To
1.The Registrar,
Central Administrative Tribunal
Madras Bench, Chennai - 104.

2.The Under Secretary,Union of India
Ministry of Finance,
Department of Revenue,
6th Floor, HUDCO Vishala Building,
Bhikaji Cama Place,
New Delhi - 01.

+1 CC to Mr.V.Chandrasekaran, Advocate sr 79093.
+1 CC to Mr.S.Sivakumar, Advocate sr 79039.

W.P.No.27409 of 2017

SAI(CO)
SP(17/12/2018)