IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.3001 of 2009 and
M.P.No.2 of 2009

S.Ramar ... Petitioner

Vs

1. The State of Tamilnadu
rep. by the Secretary to Government,
Revenue Department,
Secretariat, Chennai-9.

2. The Special Commissioner &
Commissioner of Treasury and
Accounts Department,
Panagal Building,
Saidapet, Chennai-15. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the 1st respondent in connection with the order passed by him in G.O. (2D) No.641, (Revenue (Pani6(1)) Department, dated 26.11.2008 and quash the same and direct the respondents to give all monetary and service benefits including the due promotion.

For Petitioner : Mr.V.Bhiman

For Respondents : Mr.K.Ravikumar, AGP

O R D E R

The present Writ Petition is directed against the impugned order in G.O. (2D) No.641, (Revenue (Pani6(1)) Department, dated 26.11.2008 passed by the 1st respondent, thereby imposing a punishment of stoppage of increment for one year without cumulative effect with a specific direction that the same should not affect the pensionary benefits of the petitioner.

2. Learned Counsel appearing for the petitioner submitted that when the petitioner was serving as Assistant in Indian Made Foreign Service Depot, Coimbatore (South), during his tenure, he

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was issued with a Charge Memo under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules levelling the following two charges, namely,

''Charge No.I

That the said Thiru S.Ramar, formerly Assistant, IMPS Depott, Coimbatore (South) has placed the 277 broken bottles of Monitor Brandy 180 ml., 310 broken bottles of Monitor Whisky 180 ml., and 157 broken bottles of other IMFL items in regular IMFL good packages with malafide intention of manipulating the stocks for personal gains.

Charge No.II :

That the said Thiru S.Ramar, formerly Assistant, IMFS Depott, Coimbatore (South), failed to recover the breakages amount from loadmen then and there and let to accumulate the value of breakages amount to the extent of Rs.31,540/-''.

On receipt of the same, the petitioner gave a detailed explanation on 03.12.2004 refuting both the charges levelled against him categorically and unequivocally stating that he was no way responsible to anyone of the charges. When he has submitted his explanation in December, 2004 itself, no action was taken thereof. Thereafter, the petitioner has sent a reminder on 11.10.2006 and a further representation on 21.05.2007 for consideration of his name for promotion to the post of Superintendent/Sub Treasury Officer. Again, there was no response.

3. The learned Counsel for the petitioner further submitted that therefore, the petitioner came to this Court by filing W.P.No.21513/2007 seeking to issue a Writ of Mandamus, directing the respondents to pass orders on his explanation dated 03.12.2004 and the reminder dated 11.10.2006 and also for consideration of his name for promotion. This Court by order dated 25.06.2007, considering the limited prayer, directed the respondents 1 and 2 therein to pass final orders in one way or other against the charge memo issued to the petitioner dated 15.07.2004. Pursuant to the order passed by this Court, an enquiry was conducted and the Enquiry Officer after going through the nature of allegations levelled against the petitioner held that the Charge No.I was not established, however, while giving finding on the Charge No.II held that the petitioner was guilty of the Charge No.II. Based on the report of the Enquiry Officer, the Disciplinary Authority, after furnishing a copy thereof, calling for explanation and accepting the further representation, passed the impugned order dated 26.11.2008 without showing any application of mind as to how he considered the Charge No.II on the basis of the report of the Enquiry Officer, also his explanation and further representation

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given by the petitioner to the report of the Enquiry Officer. Therefore, the impugned order passed being a non-speaking order, the same is liable to be set aside, it is pleaded.

4. Again coming to the merits of the second charge, it is stated that when the petitioner was charge sheeted that he has caused a loss of Rs.31,540/-, admittedly, the said amount which was valued for breakages of the bottles accumulated from 16.12.2000 to 08.06.2001, was remitted by the Khalasis themselves on 19.06.2001 and 20.06.2001 respectively. It was only after the verification of the Senior Regional Manager, Tamil Nadu State Marketing Corporation, Coimbatore, it is stated that there was a delay of six months in making the remittance that cannot be accepted. When Charge No.II speaks that there was a loss of Rs.31,540/- and that the said amount was Deposited already, there is no question of loss to the Government. Therefore, the punishment imposed against the petitioner in the impugned order is liable to go. Again, it is stated that in view of the punishment suffered by the petitioner, he was forced to loose the further avenue of promotion and this apart, the petitioner is also facing the threat of loosing the pensionary benefits also.

5. A detailed counter affidavit has been filed by the respondents.

6. Meeting the above arguments, the learned Additional Government Pleader appearing for the respondents 1 and 2 submitted that a Charge Memo containing two charges was issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules against the petitioner. When the enquiry officer took over the enquiry, on completion of the same he has submitted a report holding in favour of the petitioner in respect of Charge No.I that the same was not proved, however, while dealing with the second charge that there was a loss of Rs.31,540/- caused to the Government, accepted the said charge and has given a categorical finding that the petitioner was responsible for the loss of Rs.31,540/-.

7. While answering to the contentions made by the learned Counsel for the petitioner that there was no loss caused since the Khalasis had remitted the said amount on 19.06.2001 and 20.06.2001, relying on the stand taken in the counter affidavit in paragraph 18, it is stated that when the petitioner was serving as an Assistant in Indian Made Foreign Service Depot, Coimbatore (South), during his tenure, he was responsible for the loss relating to the breakages of bottles in the Depot, when he was transferred to Beer Godown from 15.02.2001 as per the orders of the Senior Regional Manager, Tamil Nadu State Marketing Corporation Limited, Coimbatore vide Proceedings

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No.Rc.4464/2000/A1 dated 15.02.2001. The Senior Regional Manager, Tamil Nadu State Marketing Corporation, Coimbatore, in his report dated 13.6.2001 has stated that 666 broken bottles were accumulated from 16.12.2000. Hence, there was sufficient evidence to support the charge that he allowed the accumulation of the value of breakages to the extent of Rs.31540/-. On this score, the claim made by the petitioner that there was no loss caused was rightly considered and a finding has been given that there was a delay of six months in the remittance by the Khalasis on 19.06.2001 and 20.06.2001 that was also only after verification of the Senior Regional Manager, Tamil Nadu State Marketing Corporation, Coimbatore. Therefore, when there was a delay of 6 months in remittance, there was also a loss of Rs.31540/- to the Tamil Nadu State Marketing Corporation for a period of six months.

8. This Court also fully agrees with the submission made by the learned Additional Government Pleader appearing for the respondents.

9. When the petitioner was charged with two charges, fortunately, he was able to explain how the Charge No.I cannot be put against him and the Enquiry Officer also found the explanation offered by the petitioner and freed the petitioner from Charge No.I. While coming to the second charge, namely, there was a loss of Rs.31,540/- to the Tamil Nadu State Marketing Corporation, since the petitioner while serving at the relevant period of time as Depot Assistant in IMFS Depot, Coimbatore (South), he was responsible for the godown relating to the breakages. In his explanation to the Charge Memo he has pleaded that he was transferred to Beer Godown from 15.2.2001 as per the order passed by the Senior Regional Manager, Tamil Nadu State Marketing Corporation in Rc.4464/2000/A1 dated 15.02.2001. Therefore, sufficient evidence was available to frame a charge against the petitioner that he had allowed to accumulate the breakages to the value of Rs.31,540/-. Therefore, the Enquiry Officer has rightly found the petitioner responsible for the loss of Rs.31,540/-, accepting the Enquiry Officer's Report and also considering the explanation offered by the petitioner and the Disciplinary Authority has rightly imposed only a minor punishment of stoppage of increment for one year without cumulative effect and the said order also speaks very clear that the said order cannot affect the future pensionary benefits of the petitioner.

10. Coming to the further argument that the impugned order is not a speaking one, this Court is of the view that the petitioner was found fault with the 2nd charge that he has been responsible for causing loss of Rs.31,540/- for not collecting the breakages value from the Khalasis. The Disciplinary

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Authority, while finding that the explanation given by the petitioner to the second charge was not acceptable, has passed the impugned order imposing the punishment of stoppage of increment for one year without cumulative effect. A perusal of the impugned order shows that the Disciplinary Authority could have given more reasons, but that does not mean that the Officer who is agreeing with the report of the Enquiry Officer should pass orders with several pages. In the present case, the Disciplinary Authority has given his reasons that he has agreed with the report of the enquiry officer and thereupon imposed only a minor punishment of stoppage of increment for one year without cumulative effect and with further direction that this punishment will not affect his pension, therefore, I do not find any merit in the Writ Petition.

11. In the result, the writ petition fails and the same is accordingly dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar(CCC)

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Sub-Assistant Registrar

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To
1. The Secretary to Government,
State of Tamilnadu,
Revenue Department,
Secretariat, Chennai-9.

2. The Special Commissioner &
Commissioner of Treasury and
Accounts Department,
Panagal Building,
Saidapet, Chennai-15.

+1 CC to Mr.V.Bhiman, Advocate sr 34490.
+1 CC to Govt. Pleader sr 35354.

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W.P.No.3001 of 2009

MR(CO)
SP(27/05/2019)

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