IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:26.02.2019

Coram

The Hon'ble Mr. Justice V.PARTHIBAN

W.P.No.4868 of 2011

A.Jaisankar ... Petitioner

vs.

1.The Government of Tamil Nadu,
rep.by its Secretary to Government,
Commercial Taxes and Registration Dept.,
Fort St.George,
Chennai-9.

2.The Inspector General of Registration,
Chennai-600 028 ... Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorari to call for the records pertaining to G.O.(D) No.530, Commercial Taxes and Registration Department, dated 31.12.2010 of the first respondent confirming the order of punishment bearing No.19639/A3/2006-2, dated 14.09.2009 of the second respondent and quash the same.

For Petitioner .. Mr.V.Suthakar
For Respondents ... Mr.P.P.Purushothaman,G.A. For R1 and R2

ORDER

The petitioner was working as an Assistant in the office of the District Registrar, Thiruvannamalai District. He was originally appointed as Junior Assistant on 11.01.1993. Thereafter, he was promoted as Assistant on 05.02.2001 and was initially posted at Tuticorin and subsequently transferred to Thiruvannamalai District on 30.10.2003. While he was working as Assistant in the office of the Joint II Sub Registrar Office at Thiruvannamalai District, a Charge Memo was issued under Rule 17(b) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules, vide proceedings dated 19.6.2006. In the Charge Memorandum, it was alleged that the petitioner, while working as Assistant on 05.01.2006, prepared receipts under Section 41 of the Indian Stamps Act with regard to the documents bearing

Nos.1302 of 2004 and 1986 of 2006 and thus, attempted to help one T.Udayakumar, who allegedly deleted certain receipts. The substance of the charge was that the petitioner has prepared two main receipts to help the said person.

2.In response to the Charge Memorandum, a representation was given, denying the charges. Thereafter, not satisfied with the explanation, an enquiry was conducted and the Enquiry Officer submitted his findings on 14.06.2008 holding that the charge against the petitioner was not proved. However, the Disciplinary Authority/second respondent, though appeared to have accepted the findings of the Enquiry Officer that the petitioner has not committed the misconduct, however, imposed a punishment of 'stoppage of increment for a period of one year without cumulative effect', vide order dated 14.09.2009. As against the order of the Disciplinary Authority/the second respondent herein, an appeal has been preferred by the petitioner on 30.10.2009 and the same was rejected by the first respondent on 31.12.2010. The first respondent/Government has rejected the appeal on the basis of the advice tendered by the Tamil Nadu Public Service Commission. The order of punishment, as confirmed in the appeal, is the subject matter of challenge before this Court.

3.The learned counsel Mr.V.Sudhakar appearing for the petitioner would submit that it is a case of no evidence for the reason that the Enquiry Officer had rendered a clear finding that the charge was not proved against the petitioner. In principle, the Disciplinary Authority had accepted the findings of the Enquiry Officer and observed that though the petitioner was not responsible for the deletion of receipts or substitution of the same, yet, decided to impose a penalty, which is impugned in the present writ petition. According to the learned counsel, such approach by the Disciplinary Authority was uncalled for and unwarranted and he specifically observed that the petitioner cannot be found guilty of the charge.

4.The learned counsel would further submit that the appellate authority has passed an order contrary to the service Rules, as the Appellate Authority was merely guided by the advice tendered by the Tamil Nadu Public Service Commission and summarily rejected the appeal. Therefore, the learned counsel would submit that there is an abdication of statutory responsibility cast on the appellate authority and hence, on this ground alone, the writ petition is liable to be allowed.

5.Per contra, the learned counsel appearing for the respondents would submit that although the Enquiry Officer has found the petitioner not guilty for the charge, yet there appears to be some evidence in the Departmental enquiry and on the basis of which, the Disciplinary Authority has imposed a minor penalty of 'stoppage of increment for a period of one year without cumulative effect'. Since the Disciplinary Authority has imposed only a minor penalty on the petitioner, the petitioner cannot have any legitimate cause for complaint. It is well within the power of the Disciplinary Authority to differ from the findings of the Enquiry Officer and in this case, the Disciplinary Authority though had observed, as made out by the learned counsel for the petitioner, yet found the petitioner ought to be punished for dereliction of duty. Therefore, the very order passed by the Disciplinary Authority per se not sustainable and the same is liable to be set aside.

6.As regard the Appellate Authority/the first respondent herein, the authority has considered the materials and the appeal filed by the petitioner and also taken into consideration the advice tendered by the Tamil Nadu Public Service Commission and therefore, it cannot be said that there was lack of application of mind on his part. Since the punishment ultimately imposed on the petitioner was too minor in nature, there was no necessity to pass a detailed order. In any event, the order passed by the appellate authority discloses application of mind and therefore, it cannot be gain said that the appeal was rejected summarily.

7.Heard the learned counsels for the parties and perused the materials placed on record.

8.As rightly contended by the learned counsel for the petitioner, the Enquiry Officer has found the petitioner not guilty of the charge, since no evidence was made available in the Departmental enquiry in support of the charge. Once the petitioner was exonerated of the charge, unless the Disciplinary Authority has any clinching material, as made available in the Departmental enquiry, he cannot take a different view and impose penalty upon the petitioner. In this case, the one more contention raised by the learned counsel for the petitioner is that the Disciplinary Authority himself has observed that the petitioner was not guilty of the charge and yet he found some unacceptable reason for imposing the penalty on the petitioner.

9.The Court is unable to appreciate as to the conduct of the Disciplinary Authority in imposing the penalty on the petitioner. Although it may be a minor penalty, yet, such penalty may be imposed only on proven charges and not on the basis of his own opinion disregarding the lack of evidence available against the petitioner.

10.As rightly contended by the learned counsel for the petitioner the Government/the first respondent has summarily rejected the appeal without due consideration of the appeal filed by the petitioner. Whenever an appeal is filed, in conformity with the relevant Rules, the Appellate Authority has to consider all the points and objections raised by the person concerned in the appeal and in this case, the appeal has been rejected summarily by a non-speaking order. The Courts have repeatedly held that the statutory authority cannot delegate their responsibility to any out side agency like the Tamil Nadu Public Service Commission while taking a decision in disciplinary matters. In this case, the records disclose that the appellate authority was fully guided by the Tamil Nadu Public Service Commission and therefore, there is a total lack of application of mind on the part of the appellate authority and hence, on this ground alone this Court is satisfied that the impugned order is liable to be interfered with.

11.The learned counsel for the petitioner would submit that although the punishment appears to be very minor in nature, viz., 'stoppage of increment for a period of one year without cumulative effect', yet, during the currency of the penalty, the petitioner was denied due promotion to the next higher grade, which will have a cascading effect on his entire career, including retirement and pensionary benefits.

12.For the above said reasons, this Court is of the view that the petitioner has made out a clear case for grant of relief. Therefore, the impugned G.O.(D) No.530, Commercial Taxes and Registration Department, dated 31.12.2010, passed by the first respondent confirming the order of punishment bearing No.19639/A3/2006-2, dated 14.09.2009, passed by the second respondent are hereby set aside and the writ petition stands allowed. It is made clear that in view of the impugned order being set aside, the petitioner is entitled to all other consequential attendant benefits. No costs.

s/d-
Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

msk

To

1.The Secretary to Government,
Commercial Taxes and Registration Dept.,
Fort St.George,
Chennai-9.

2.The Inspector General of Registration,
   Chennai-600 028

+1 CC to Govt. Pleader sr 18953.
+1 CC to Mr.V.Sudhakar, advocate sr 17798

W.P.No.4868 of 2011

SSD(CO)
SP(29/03/2019)