IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 6 /11/2019

C O R A M

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.3008 of 2013

T.V.govindarajan ... Petitioner

Vs

1. State Express Transport Corporation
   (Tamil Nadu) Ltd.,
   Rep. by its Managing Director,
   Thiruvalluvar Illam, Pallavan Salai,
   Chennai - 600 002.

2. The General Manager (Admn.)
   State Express Transport Corporation
   (Tamil Nadu) Ltd.,
   Thiruvalluvar Illam, Pallavan Salai,
   Chennai - 600 002.

3. Metropolitan Transport Corporation
   (Chennai) Ltd.,
   Rep. by its Managing Director,
   Pallavan House, Pallavan Salai,
   Chennai - 600 002. ... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari, calling for the records relating to 2nd respondent bearing o.no.123/022485/DL6/SETC TN/2004 dated 07.07.2004 as confirmed by the 1st respondent in its order bearing K.No.56233/DL6/AVPOKA/2012 dated 10.12.2012 and to quash both the orders.

For petitioners .. Mr.K.M.Ramesh
Mr.R.P.Prathap Singh -R1 & R2

For respondents .. Mr.P.Paramasiva Doss for R3

O R D E R

The instant writ petition is filed for an issuance of Writ of Certiorari, to quash the order dated 07.07.2004, passed by the General Manager (Admn.), State Express Transport Corporation (Tamil Nadu) Ltd.,Chennai, which was confirmed by an order dated 10.12.2012, passed by the General Manager, State Express Transport Corporation (Tamil Nadu) Ltd.,Chennai.

2. The petitioner joined the service of the erstwhile Madras State Transport Department in 1965 in the clerical cadre. While the petitioner was working as Senior Superintendent Grade-II in 1995, the Pallavan Transport Corporation Ltd called for applications to fill up the vacancies in the post of Company Secretary on deputation basis. The petitioner being qualified applied for the appointment to the post. The petitioner was appointed on 26.11.1995 and he joined the post on 04.12.1995.

3. While working as Company Secretary, the petitioner was placed under suspension by an order dated 03.03.2003. On 29.03.2003, the petitioner received a show-cause notice. It is stated that a telephone was provided to one M.S.Kandavel, Financial Controller, In-charge who had installed a caller ID facility in his telephone for which telephone department had charged a sum of Rs.1200/- from July 2002 to January 2003, towards caller ID charges and another sum of Rs.394/- was billed towards excess call charges. It is stated the Financial Controller, was not entitled to caller ID facility and the petitioner who ought to have collected the said amount from M.S.Kandavel. M.S.Kandavel was not authorized to make calls over and above the norm fixed for him and the petitioner ought to have recovered the amount from him. It is stated that the amounts were recovered from M.S.Kandavel only after the petitioner was placed under suspension. It is also stated that 222nd Board meeting was held on 30.12.2002, certain details were placed before the Board meeting. The Board had not taken any decision and deferred the matter. On such occasions, when a agenda was deferred by the Board, the Company Secretary should bring out the detailed note. It is stated that the facts and figures in 222nd Board meeting and those given in the 223rd Board meeting were different. On the basis of aforementioned allegations, the following charges were framed against the petitioner:-

> "1. That Thiru. T.V.Govindarajan, Company Secretary-incharge had allowed Caller ID facility to Thiru MS.Kandavel Financial Controller incharge even though as per the existing norm the ID Caller facility is not allowed to him. Thus paid an amount of Rs.1200/- towards Caller ID calls from 7/02 to 1/03 and also failed to recover the excess call amount of Rs.394/- for the same period.
>
> 2. That Thiru. T.V.Govindarajan had furnished the details of bus shelter to the 222nd Board Meeting and when the matter was deferred and brought before the 223rd Board Meeting he had placed a deviated figures without giving any reasons for such deviation and thus mislead the Board.

> 3. That Thiru.T.V.Govindarajan had failed to scrutinise the facts and figures while submitting the Board Note to the Managing Director
>
> 4. That Thiru. T.V.Govindarajan was careless and negligence in his work which resulted in loss to the Corporation"

4. The petitioner was asked to give his explanation within seven days. The petitioner gave his explanation. The enquiry officer gave a report findings that the charges against the petitioner were proved. It is pertinent to mention here that, according to the petitioner, the Financial Controller is a superior officer and the petitioner is his subordinate and therefore, the petitioner cannot be expected to collect excess charges from the Financial Controller. He also stated that the petitioner did not approve the caller ID facility. It is further stated that the Financial Controller himself is authorized to sanction such expenditures. The petitioner therefore, could not take any action against his immediate superior officer.

5. The petitioner also stated that the note which was put in 222nd and 223rd Board meeting were not routed through him and it was directly submitted to the Managing Director. The note had been approved by the Managing Director, before it was put to the Board and the petitioner cannot make any changes once the note has been approved by the Managing Director. A copy of the report of the enquiry officer would show that none of the points raised by the petitioner had been considered. The Disciplinary Authority imposed sentence of postponement of increment for three years with cumulative effect without considering the objection of the petitioner.

6. The petitioner filed an appeal before the Appellate Authority / the General Manager (Administration). The Appellate Authority dismissed the appeal. Aggrieved by this, the instant writ petition has been filed by the petitioner.

7. Heard the counsel for the parties.

8. A perusal of the order of the enquiry officer and the order of disciplinary authority does not show that the petitioner's contention have been considered by them. The material on record would show that the petitioner had specifically stated that the petitioner could not pass a order of recovery against his immediate superior, who has the authority to sanction expenses. It is also stated specifically that the petitioner was not a person who had permitted the installation of caller ID and he could not deny the facility to his immediate superior. It is also stated specifically that once a note is approved by the Managing Director, the petitioner being a subordinate officer cannot alter the note. These facts have not been considered either by the enquiry

officer, disciplinary authority nor by the Appellate Authority.

9. This is not a case where no defence has been raised by the charge sheet officer (petitioner herein). The grounds taken by the charge sheet officer (petitioner herein), are valid and ought to have been considered by the enquiry officer and more importantly the disciplinary authority.

10. In view of the above, the order dated 07.07.2004 and the impugned order dated 10.12.2012 are set aside and the matter is send back to the disciplinary authority to consider the explanation of the petitioner and pass appropriate orders within a period of 12 weeks from the date of receipt of a copy of this order.

11. Writ Petition is allowed. No Costs.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

Pkn.

To

1. Managing Director,
State Express Transport Corporation
(Tamil Nadu) Ltd.,
Thiruvalluvar Illam, Pallavan Salai,
Chennai - 600 002.

2. The General Manager (Admn.)
State Express Transport Corporation
(Tamil Nadu) Ltd.,
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3. Metropolitan Transport Corporation
(Chennai) Ltd.,
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Chennai - 600 002.

+1cc to Mr.K.M.Ramesh, Advocate SR.No.92652

+1cc to Mr.R.P.Prathap Singh, Advocate SR.No.91993

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RSI(CO)
GMY(02/01/2020)