BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 23.10.2018

PRONOUNCED ON : 26.03.2019

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P(MD)No.15176 of 2011

T.Jambulingam ... Petitioner

Vs.

1.The State of Tamil Nadu rep. by the
Principal Secretary to Government,
Home Department,
Secretariat, Chennai -9.

2.The Special Commissioner,
Transport Commissioner,
Chennai -5. ... Respondents

PRAYER: Writ Petition has been filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the 1st respondent in G.O.(D).No.835, Home, dated 22.08.2011, confirming the order passed by the 2nd respondent in Proc.R.No.VB 1/32224/04, dated 23.11.2007 and quash the same and to direct the respondents to reinstate the petitioner in service notionally and confer all the consequential terminal benefits.

For Petitioner : Mr.V.Panneerselvam

For respondents : Mr.D.Muruganandham,
Additional Government Pleader

ORDER

This writ petition has been filed by the petitioner challenging the orders passed by the respondents dismissing him from service and for a direction to the respondents to reinstate the petitioner in service notionally and confer all the consequential terminal benefits.

2. The petitioner joined as Junior Assistant on 15.10.1973 in the Transport Department. While he was serving as Junior Assistant in the Unit Office, Mayiladuthurai, he was issued with a charge memo alleging four charges. After enquiry, the enquiry officer concluded that out of four charges, the first and second charges have been

partly proved beyond doubt to the extent of misappropriation. Based on the said finding of the enquiry officer, the second respondent / disciplinary authority dismissed the petitioner from service and the same was confirmed by the first respondent / appellate authority. As against that orders, the petitioner has come up with this writ petition.

3. The learned counsel appearing for the petitioner would submit that the petitioner was overburdened with heavy routine work and while so, the Green Tax collection was introduced by the Government and the work of collection of Green Tax, along with other taxes, was also allotted to him. The petitioner has collected Green Taxes and remitted the same into the Government account. But, he has not made entries in the A - Register, since no instruction was given to him, in this regard, by his superior officers. On compulsion during enquiry and in order to show *bona fide*, the petitioner has remitted the amount which alleged to have caused loss to the Government. But, without any valid documents and without going into the merits of the explanation given by the petitioner, the enquiry officer, on his own, has stated in his enquiry report that the petitioner himself admitted his charge during the course of oral enquiry and remitted the misappropriated amount and accordingly, the first and second charges have been partly proved to the extent of misappropriation. The disciplinary authority only based on the said report of the enquiry officer has dismissed the petitioner from service and the appellate authority has also reaffirmed the same, without going into the merits of the ground raised by the petitioner. Thus, he prayed to set aside the impugned orders.

4. The learned Additional Government Pleader appearing for the respondents submitted that during the course enquiry, the petitioner himself admitted that he has collected the tax amount, but it was not brought on record and then, recouped the loss of the Government, which shows that the charges levelled against the petitioner is proved to the extent of misappropriation and therefore, the finding of the respondents cannot be found fault with. He would further submit that since the misappropriation is a serious matter, the disciplinary authority dismissed the petitioner from service and the appellate authority also, after going through all the records, reaffirmed the same and therefore, the same need not be interfered with. Thus, he prayed to dismiss this writ petition.

5. Heard the learned counsel appearing for both sides and perused the records carefully.

6. Before going into the rival contentions, this Court is inclined to extract the charges levelled against the petitioner as under:

" **Charge No.I:-**

That Thiru.T.Jambulingam while working as Junior Assistant at Mayiladuthurai Unit Office committed the following irregularities.

A sum of Rs.8585/- which has been collected as Green Tax from the vehicle owners of 12 vehicles as detailed below has not been remitted into Government account.

1.As per Appdx.I - 4 vehicles - Rs.2525/-

Thereby he has misappropriated the amount of Rs.8585/- had resulting loss to Government Exchequer to a tune of Rs.2525 (after making subsequent remittance).

Thus, he has failed to maintain absolute integrity and devotion to duty in Government service and also conduct himself in a manner unbecoming of a Government servant.

Charge No.II:

i) On verification of tax collection register for Non-Transport vehicles (from 26.03.2004 to 10.04.2004) and other connected records it was noticed that in respect of 67 vehicles which have completed 15 years from the date of registration detailed in Appendix II for which Green Tax is due the same has not been collected along with the Annual Tax as instructed in para 4 of Transport Commissioner's Letter No.D1/86689/2003, dated 23.02.2004. In these case only annual tax has been collected. Green Tax due for these 67 vehicles works out to Rs.57000/- has not been collected.

ii) Similarly on verification of 'A' Register it was noticed that in respect of 36 non-transport vehicles (which have completed 15 years from the date of registration) for which transfer of ownership has been effected in this office, the Green Tax due viz., Rs.34,000/- has not been collected as on the date of verification viz., 13.05.2004.

Details of Green Tax

1.As per Appendix II - 67 vehicles - Rs.57000/-

2.As per Appendix III - 36 vehicles - Rs.34,000/-

Total 103 Rs.91,000/-

Thus, it proves his irregular practice grossly neglecting the procedure in the collection of tax for his personal gain and abusing his official position.

Hence, the Government Exchequer caused a loss of revenue to a tune of Rs.91,000/-.

Charge No.III:

He has collected an amount of Rs.8585/- as Green Tax from 12 Nos. of non transport vehicles as per list I and without remitting the same into Government account he has made bogus and false entries in the relevant Registration Certificate and handed over to its owner's concerned. Also in respect of 8 vehicles from out of the above 12 vehicles, he has subsequently made further entries for having remitted Green Tax scoring the earlier entries.

Thus, actuated by ulterior motive and by abusing his official position and authority, he has falsified and tampered the Government records such as Registration Certificate, etc.

Thus, he has conducted himself in a manner unbecoming of a Government servant.

Charge No.IV

He has in collusion and conspiracy with Thiru.S.Gunasekaran, Superintendent made bogus entries in the Registration Certificates of the vehicles.

Thereby he has with the evil intention has incurred loss to the Government Exchequer. Thus, he has conducted himself in a manner unbecoming of a Government servant."

7. The enquiry officer, after enquiry, has held that first two charges are partly proved to the extent of misappropriation and the 3rd and 4th charges are not proved. Upholding the report of the enquiry officer, 2nd respondent, the disciplinary authority has passed the order dismissing the petitioner from service and it was, subsequently, reaffirmed by the appellate authority viz., the first respondent, without any discussions.

8. As per the first charge, the petitioner was alleged to have not remitted the Green Tax to the tune of Rs.8,585/- which has been collected from the owners of 12 vehicles and thereby, he misappropriated a sum of Rs.8,585/- and as the petitioner, subsequently, remitted a sum of Rs.6060/-, the petitioner has caused loss of Rs.2525/- to the Government Exchequer. It is seen that the charge Nos.1, 3 and 4 are in respect of one and the same incident and they interrelated to each other. The charge Nos.1, 3 and 4 are relating to misappropriation, tampering with records and conspiracy respectively. As stated earlier, the enquiry officer and the respondents have categorically found that the charges relating to tampering with records and conspiracy have not been proved, but misappropriation alone has been proved.

9. According to the petitioner, he has already collected Green Tax from the owners of the said vehicles and remitted the same into the Government account and had they properly verified all the registers and cash track registers, they could find them and that as the petitioner had not been given proper guidance, he failed to make relevant entry in "A" Register. It is seen that both the respondents have not considered above submissions of the petitioner and they have simply rejected all the submissions of the petitioner merely stating that they are not acceptable.

10. Further, the Enquiry Officer had come to the conclusion that the charge of misappropriation has been proved merely stating that the petitioner has accepted his guilt during the oral enquiry and remitted the misappropriated amount. Without there being any valid evidence, the oral admission stated to be made by the petitioner cannot be accepted. On the other hand, in paragraph No.3 of the impugned order of the second respondent itself, it is stated that at the instruction of the Court order, the petitioner has deposited a sum of Rs.50,000/- into the Government Account. Therefore, the finding of the respondents in respect of the first charge cannot be accepted.

11. As per the second charge, the petitioner was alleged to have been not collected the Green Tax from about 103 vehicles and the same caused loss to the tune of Rs.91,000/- to the Government. Even according to the respondents, the petitioner subsequently remitted the due tax in the Government account. Merely because the petitioner remitted the due tax amount, it cannot be concluded that he misappropriated the said amount and therefore, he remitted the same. The non-collection of the tax and non-making entries in the relevant registers would amount to only derelictions of duty and not misappropriation as concluded by the enquiry officer and the respondents. Further, the petitioner also fairly admitted that due to pressure of work and no proper guidance regarding the maintenance of 'A' Register and collection of green tax, he could not collect and make entries in the relevant registers. Therefore, the charge that can be taken as proved is "dereliction of duty" and not "misappropriation". Though this Court is of the view that it would

be appropriate to impose one increment cut without cumulative effect for the said charge as punishment, considering the sufferings undergone by the petitioner for these longs years and the escalation of prices, this Court is not inclined to impose any punishment for the said charge.

12. In view of the above, this Writ Petition is allowed and the impugned orders passed by the first and second respondents are set aside and the respondents are directed to notionally reinstate the petitioner in service with backwages and confer all the terminal benefits, in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar()

To

1.The Principal Secretary to Government,
Home Department,
Secretariat, Chennai -9.

2.The Special Commissioner,
Transport Commissioner, Chennai -5.

+1. C.C. To Mr.V.Panneerselvam Advocate SR.No.57002

order made in
W.P(MD)No.15176 of 2011
26.03.2019

TK/SAR- /09.04.2019/6P/4C