HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

W.P.No.26067 OF 2018

ORDER

This writ petition is filed seeking the following relief:

> "…to (a) call for the records pertaining to proceedings dated 3.5.2018 issued by the 1st respondent/ Government and set it aside as the same issued without jurisdiction, tainted with malice, contrary to record and contrary to CCA Rules 1999, contrary to facts and unconstitutional, besides being arbitrary and unconstitutional and (b) consequently direct the disciplinary authority to take steps in accordance with the original proceedings and to take steps on the Enquiry Officer's report (c) by issuance of Writ Of Mandamus (d) and to pass such other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

Heard Sri J.Sudheer, learned counsel appearing for the petitioner and learned Government Pleader for Services-II appearing for the respondents.

It is the case of the petitioner that he is working as Assistant Commercial Tax Officer. While so, during September, 2009, ACB Trap was laid alleging that he had demanded bribe. After noticing that the trap was not successful, the ACB has recommended the case of the petitioner to the disciplinary authority to initiate disciplinary proceedings against him. The disciplinary authority had initiated disciplinary proceedings against the petitioner and issued two charge memos on 21.01.2014. The petitioner has submitted his explanation denying the said charges. Being not satisfied with the explanation, the disciplinary authority has appointed an enquiry officer to enquire into the allegations levelled against him. The Enquiry Officer has submitted a report on 12.06.2017 stating that the charge in respect of ACB trap is not proved and in respect of the second charge, the petitioner has not submitted his annual property returns for the year 2008. Based on the report of the enquiry officer, the disciplinary authority has held that the petitioner is guilty of not furnishing the annual property returns for the year 2008. The petitioner has submitted his explanation on 25.7.2017. Thereafter, no further action has been taken by the disciplinary authority. Since the case of the petitioner was not considered for promotion to the post of Deputy Commercial Tax Officer, he has filed W.P.No.21541 of 2017 before this Court. This Court, on 3.7.2017 in WPMP No.26483 of 2017, directed the respondents to consider the case of the petitioner for promotion to the post of Deputy Commercial Tax Officer without reference to the pendency of the disciplinary proceedings. Since the respondents are not implementing the directions given by this Court in WPMP No.26483 of 2017, the petitioner has filed C.C.No.2255 of 2017.

Learned counsel appearing for the petitioner contended that the 1st respondent had issued the impugned memo dated 03.05.2018 contrary to Rule 21 (2) of the CCA Rules disagreeing with the findings of the enquiry officer and without jurisdiction. As per Rule 21 (2) of the Rules, the disciplinary authority alone is the competent authority to disagree with the findings of the enquiry officer. But, in the instant case, the disciplinary proceedings were initiated by the 2nd respondent. The 1st respondent had disagreed with the findings of the enquiry officer and came to the conclusion that the charges levelled against the petitioner were proved and directed the 2nd respondent to examine the same and pass appropriate orders. In support of his contention, he placed reliance on Rule 21 (2) of the Rules, which reads as under:

> **"Rule 21. Action on the inquiry report: (1) The disciplinary authority, if it is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold the further inquiry according to the provisions of Rule 20 as far as may be.**
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> **(2) the disciplinary authority shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority a copy of the report of the inquiring authority together with its own tentative reasons for disagreement, if any, with the findings of inquiring authority on any article of charge to the Government servant who shall**

> **be required to submit if he so desires, his written representation of submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Government servant."**

Learned Government Pleader appearing for the respondents contended that as per Rule 21 (2) of the CCA Rules, Government is the competent authority to exercise its power and hence, the 1st respondent had issued the impugned memo dated 3.5.2018. When the Government is the competent authority to impose any punishment as indicated under Rule 9 of the CCA Rules, the 1st respondent would definitely have the power even to disagree with the findings of the enquiry officer. The impugned memo is only a disagreement note to the enquiry officer's report, and hence, it is always open to the petitioner to submit his explanation. Upon receipt of such an explanation, the respondents would consider the same and pass appropriate orders in accordance with law. No prejudice is caused to the petitioner by issuance of the impugned memo dated 3.5.2018. There are no merits in the writ petition and the same is liable to be dismissed.

A perusal of Rule 21(2) of the CCA Rules indicates that the disciplinary authority alone has to disagree with the findings of the enquiry officer. The State Government itself can initiate the disciplinary proceedings against its

employees. But no power is vested with the Government to disagree with the findings of the enquiry officer. Therefore, the impugned memo dated 3.5.2018 issued by the 1st respondent disagreeing with the findings of the enquiry officer is without competence and contrary to Rule 21(2) of the CCA Rules and hence, the same is liable to be set aside.

Accordingly, the Writ Petition is allowed and the impugned memo dated 3.5.2018 is set aside. No costs.

Miscellaneous petitions, pending, if any shall stand closed.

JUSTICE ABHINAND KUMAR SHAVILI

Date: 02.12.2019
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