IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

W.P.No.20881 of 2013

K.Dhakshanamoorthy .. Petitioner

Vs.

1. State of Tamil Nadu,
   Rep. by its Secretary,
   Commercial Taxes & Registration Department,
   Fort St.George, Chennai-600009.

2. The Commissioner of Commercial Taxes,
   Chepauk, Chennai – 5. .. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus calling for the records relating to the second respondent's proceedings No.EE2/28127/2006, dated 06.02.2009, as confirmed by the first respondent's order in G.O.(D) No.293, Commercial Taxes & Registration (A1) Department, dated 13.06.2013, to quash the same and to consequently direct the respondents to extend all benefits both arrears and revision of pension and pension fixation thereto including promotion on par with his junior.

For Petitioner : Ms.N.R.Jasmine Padma

For Respondents: Mr.Prathap Singh
Additional Government Pleader

O R D E R

Writ petition has been filed challenging the order of punishment.

2. According to the petitioner, he was appointed as Junior Assistant in the Commercial Taxes Department in the year 1982. After various promotions, he retired from service as Deputy Commercial Tax Officer (DCTO) on 30.06.2013. While, he was working as Assistant Commercial Tax Officer (ACTO), a disciplinary proceeding was initiated against him in the year 2006, levelling as many as six charges, which are as follows:

"Charge No.1 :

That the said Thiru K.Dakshinamoorthy, while working as Assistant Commercial Tax Officer, Kottakuppam Checkpost at Keelputhupattu had utilized one Ambassador Car TN-50-7997 and one private person said to be its Driver viz., Thiru.Kumar for checking the vehicles which was confirmed during the surprise check by the Deputy Commissioner (CT) (Enf), Trichy Division on 21.10.2005.

Charge No.2:

That Thiru K.Dakshinamoorthy, Assistant Commercial Tax Officer, Kottakuppam checkpost at Keelputhupattu had checked vehicles with the assistance of a private person said to be a driver viz. Thiru.Kumar by utilizing one Ambassador Car No.TN-50-7997 in diversion route but the same was not reflected in his diary as confirmed during confidential enquiry.

Charge No.3:

That during surprise check by the Deputy Commissioner (CT)(Enf), Trichy Division on 21.10.2005, Thiru.K.Dakshinamoorthy, Assistant Commercial Tax Officer, Kottakuppam Checkpost at Keelputhupattu, had retained 14 bills and 2 delivery notes in respect of vehicles which were passing through the checkpost but affixed seal only in 4 bills and kept separately the remaining 10 bills and two delivery notes without seal.

Charge No.4:

That Thiru K.Dakshinamoorthy, Assistant Commercial Tax Officer, Kottakuppam Checkpost at Keelputhupattu had defective eye sight and therefore he cannot carry out his duties effectively to safeguard the Government revenue as seen from the Confidential Report received from the Assistant Commissioner (Enf), Villupuram.

Charge No.5:

Thiru K.Dakshinamoorthy, Assistant Commercial Tax Officer, Kottakuppam Checkpost at Keelputhupattu had booked offenses in 25 cases in the name of the drivers without ascertaining the names of the consignees or consignors deviating the instructions issued by the Deputy Commissioner (CT) (Enf), Trichy Division in Rc.5281/2004/A3, dated 08.07.2004, thereby he had failed to identify the dealers who indulged in evasion of tax, so as to enable the Department to take action against such dealers.

Charge No.6:

That Thiru.K.Dakshinamoorthy, Assistant Commercial Tax Officer, Kottakuppam checkpost at Keelputhupattu was therefore failed to discharge his duties with absolute integrity and devotion and thereby acted in a manner unbecoming of a Government Servant in violation of Rule 20(1) of the TNGSC Rules, 1973."

3. Thereafter, disciplinary enquiry was conducted by the Commercial Tax Officer (CTO) (Enf), Kumbakonam. After enquiry, the Enquiry Officer held that the first charge has been partially proved, and the remaining five charges were not proved. However, the Disciplinary Authority, the second respondent herein, disagreed with the said findings of the Enquiry Officer and by an order dated 06.02.2009, held that all the charges remain proved and imposed a punishment of stoppage of increment for four years with cumulative effect. Aggrieved over the same, the petitioner filed an appeal before the first respondent. The first respondent, however dismissed the appeal by an order dated 13.06.2013. Now, challenging the same, present writ petition has been filed.

4. Heard the learned counsel appearing for the parties and also perused the records carefully.

5. So far as the charges leveled against the petitioner is concerned, the first charge was that while the petitioner was posted as Assistant Commercial Tax Officer, Kottakuppam Checkpost at Keelputhupattu, he had utilized one Ambassador car bearing Reg.No.TN-50-7997, and also engaged the driver of the said Ambassador car, one Mr.Kumar, in checking the vehicles, and that, it was also confirmed during the surprise check conducted by the Deputy Commissioner (Commercial Taxes), (Enforcement) Trichy Division on 21.10.2005. For the above said charge, the petitioner during enquiry has given an explanation that, the said car belongs to his brother Manivannan, and there was a Hon'ble Minister programme, in that area, and number of cars were parked in that place, and he has nothing to do with the same. The Enquiry Officer held that since the car belongs to petitioner's brother, therefore he cannot disown his connection

with the car. The Enquiry Officer has also held that, a surprise inspection has been conducted based on an anonymous complaint given by one Mr.Chinnaiyan, and notice was sent to the said complainant's address and it was found that there was no such person available in that address, therefore it is only an anonymous complaint. Further, the Enquiry Officer has held that as the car belongs to the petitioner's brother, the petitioner cannot deny any connection with the car. Hence, he has held that the first charge is partly proved.

6. So far as the second charge namely that the petitioner has checked vehicles with the assistance of a private person, said to be a driver viz., Mr.Kumar, by utilizing one Ambassador Car No.TN-50-7997, in diversion route, and the same was not reflected in his diary, and it has been confirmed during the confidential enquiry. The Enquiry Officer held that no checking was conducted in Chennai - Pondicherry highway and there is no diversion route in that area and there is no occasion for the petitioner to conduct such vehicle inspection in the diverted route and held that the said charge is not proved.

7. The third charge relates to a surprise check conducted by the Deputy Commissioner (Commercial Taxes) (Enforcement) Trichy Division, on 21.10.2005. The allegation is that the petitioner had retained 14 bills and 2 delivery notes in respect of vehicles which were passing through the checkpost, but affixed seal only in 4 bills and kept the remaining 10 bills and two delivery notes separately without affixing the seal. For that charge, the Enquiry Officer has held that on the date of inspection, the concerned person who was in-charge of affixing seal was on leave and the petitioner engaged the Computer Assistant to help him, due to oversight, the seal may not be affixed on the bills and therefore there is no deliberate intention on his part and also there is no revenue loss to the State. Accepting the same, the Enquiry Officer held that the said charge against the petitioner is not proved.

8. The fourth charge is that, the petitioner had defective eyesight and therefore he cannot carry out his duties effectively to safeguard the Government revenue, as seen from the confidential report received from the Assistant Commissioner (Enforcement), Villupuram. The Enquiry Officer after enquiry held that the petitioner's eyesight was perfectly alright. On the day of enquiry, he came alone to the place of enquiry situated at the second floor of the Kumbakonnam Commercial Taxes Office and he has also signed all the documents in his presence. Hence, there is no proof that he has poor eyesight and therefore the Enquiry Officer has held that the said charge is also not proved.

9. The fifth charge is that the petitioner has booked

offenses in 25 cases in the name of the drivers without ascertaining the names of the consignees or the consignors deviating the instructions issued by the Deputy Commissioner, thereby he failed to identify the dealers who indulged in evasion of tax, so as to enable the department to take action against such dealers. For the above said charge, the Enquiry Officer held that for the said consignments no bill was available with the name of the consignor or consignee. However, penalty was imposed for these consignments and charges were framed against the drivers and penalty was also collected from them and there is no revenue loss to the Government, therefore the Enquiry Officer has held that the said charge is not proved.

10. So far as the sixth charge is concerned, it is a general charge that he failed to discharge his duties with absolute integrity and devotion and thereby acted in a manner unbecoming of a Government Servant in violation of Rule 20(1) of the Tamil Nadu Government Servants' Conduct Rules, 1973. Since many of the charges are not proved, the Enquiry Officer held that this charge is also not proved.

11. However, the Disciplinary Authority disagreed with the said findings of the Enquiry Officer and held that all the charge were proved. On a perusal of the order passed by the Disciplinary Authority, it can be seen that the Disciplinary Authority without assigning any reason whatsoever has simply held that some of the charges were not refuted by the petitioner and therefore he came to the conclusion that all the charges are proved. So far as the Charge No.1 is concerned, the reason given by the Disciplinary Authority is as follows:

> “The findings of the Deputy Commissioner (CT)(Enf), Trichy on surprise check on 21.10.2005, is not rebutted by the Charged Official with concrete evidence. Hence, the charge No.1 is held as proved.”

But the above finding of the Disciplinary Authority is not correct because the charge against the petitioner is that he has engaged a private car driven one Mr.Kumar and for which he was not authroised. In the enquiry, the petitioner has stated that the car belongs to his brother, but he denied any connection with the car. Even assuming that the petitioner has used his brother's car, it cannot be held that the petitioner has committed any irregularity and even assuming that during surprise check the car was found parked near the checking area, in the absence of any other further evidence against the petitioner to show that he has used the car for any unlawful purpose, the said charge is only illusory one and that it cannot be a reason to hold that the petitioner has committed any irregularity.

12. So far as Charge No.2 is concerned, the Disciplinary Authority has held as follows:

> "The fact findings of the Deputy Commissioner (CT) (Enf), Trichy during surprise check on 21.10.2005 is not rebutted by the charged official. Hence, the Charge No.2 is held as proved."

On a perusal of the records, it could be seen that it is alleged that the petitioner has engaged one Mr.Kumar, Driver of the ambassador car, while checking. This allegation was totally denied by the petitioner and the Enquiry Officer after considering the entire materials has come to the conclusion that the said charge is not proved but the Disciplinary Authority has simply held that he has not refuted the charge and therefore held that the said charge is proved. The findings of the Disciplinary Authority is not supported by any material whatsoever and it is without any reason.

13. So far as the third charge is concerned, the Disciplinary Authority has given the following reason for his disagreement with the Enquiry Officer:

> "This charge has arisen out of factual verification by the Deputy Commissioner (CT) (Enf), Trichy during his surprise check on 21.10.2005. Hence, the explanation of the charged official cannot be accepted. Hence, the Charge No.3 is held as proved."

The Disciplinary Authority has disagreed with the findings of the Enquiry Officer only based on the Inspection Report of the Deputy Commissioner, Trichy. But he has not considered the other materials and also the findings of the Enquiry Officer and without giving any valid reason whatsoever, he has simply held that the said charge has been proved.

14. So far as the Charge No.4 is concerned, the reason given by the Disciplinary Authority for his disagreement with the Enquiry Officer is as follows:

> "The delinquent official has poor eyesight, he cannot carry out his duties effectively. Hence, the Charge No.4 is held as proved."

The charge relating to poor eyesight was based on a confidential report. But that confidential report was not served on the petitioner and the Enquiry Officer has held that absolutely there is no material whatsoever to show that the petitioner has poor eyesight. Hence, the charge itself is very vague and the findings of the Disciplinary Authority is not supported by any materials.

15. So far as the fifth charge is concerned, the reason

given by the Disciplinary Authority for his disagreement with the Enquiry Officer is as follows:

> "The Delinquent official has booked offenses in 25 cases in the name of Lorry Driver without identifying the consignor or consignee, which is against the circular instructions of the Deputy Commissioner (CT) (Enf), Trichy. Hence, the Charge No.5 is held as proved."

A clear finding has been given by the Enquiry Officer that in all these 25 cases no bill was available with the drivers to find out who are the consignor or the consignee. Further, penalty was imposed on the drivers and penalty was also paid by them and therefore there is no revenue loss to the State. In the above circumstances, the Enquiry Officer held that the charge is not proved. However, the Disciplinary Authority has held that the charge has been proved without any reason whatsoever.

16. So far as Charge No.6, is concerned, the reason given by the Disciplinary Authority for his disagreement with the Enquiry Officer is as follows:

> "In as much as Charges 1 to 5 are held proved, Charge No.6 is a corollary to the above charge hence, charge 6 is also held proved. Hence, the Charge No.6 is held as proved."

It is well settled law that, if the Disciplinary Authority not agreed with the findings of the Enquiry Officer, he has to give valid reasons for the disagreement. But in the instant case, the Disciplinary Authority without giving any valid reason whatsoever for his disagreement with the findings of the Enquiry Officer has simply stated that all the charges were proved. It is not maintainable in the eye of law.

17. That apart, when an appeal is filed before the Appellate Authority, the first respondent herein, the Appellate Authority without giving any reason whatsoever in a cryptic nonspeaking order dismissed the appeal holding that in the petitioner's explanation and further representation he has not put forth any valid reason and the Disciplinary Authority has taken a very correct decision and awarded the right punishment and there is no reason to interfere with the said order.

18. In the appeal, the petitioner has raised various grounds but the Appellate Authority instead of considering all these grounds raised, without giving any valid reason simply accepted the decision of the Disciplinary Authority. Thus, the order

passed by the respondents 1 and 2 are not valid in the eye of law and they are liable to be set aside and accordingly set aside.

19. In the result, the writ petition stands allowed and consequently, the impugned orders are hereby set aside. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,
    Commercial Taxes & Registration Department,
    Fort St.George, Chennai-600009.

2. The Commissioner of Commercial Taxes,
    Chepauk, Chennai - 5.

+1cc to Mr.L.Chandra Kumar, Advocate, S.R.No. 19698
+1cc to the Special Government Pleader (Taxes), S.R.No. 19658

W.P.No.20881 of 2013

RLD(CO)
GN(01/07/2020)