

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 13.07.2020

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NO. 25094 OF 2013

J.Sathis Saravana Kumar

.. Petitioner

- Vs -

1. The State of Tamil Nadu, rep. By
The Secretary to Government
Revenue Department, Chennai - 9.
2. The Principal/Special Commissioner
& Commissioner for Revenue Administration
Ezhilagam, Chepauk, Chennai - 5. .. Respondents

Writ petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus to call for the records on the file of the 1st respondent in connection with the order passed by him in G.O. (2D) No.306, Revenue (Ser.2(1)) Dept., dated 19.6.13 and quash the same and direct the respondents to promote the petitioner to the post of Deputy Tahsildar and consequently promote him to the post of Tahsildar with effect from the date of promotion given to his juniors with all monetary and service benefits.

For Petitioner : Mr. Namasivayam

For Respondents: Mr. A.N.Thambidurai, Spl. GP

ORDER

It is the case of the petitioner that he was selected and appointed to the post of Junior Assistant on compassionate grounds and joined the service on 6.8.90. Subsequently, the petitioner was promoted to the post of Assistant in the year 1998. Though the petitioner ought to have been included in the panel for promotion to the post of Deputy Tahsildar in the year 2009, but as a charge memo u/r 17 (b) of the Tamil Nadu Civil Services (D & A) Rules (for short 'the Rules') was pending, his name was not included in the panel.

2. It is the case of the petitioner that vide G.O. Ms. No.540, Revenue Dept., dated 19.9.05 directed all the revenue

officials in the supervisory capacity to oversee the register of beneficiaries under the 'Uzhavar Padhugappu Thittam' as per the form to be maintained by the Village Administrative Officers. Pursuant to the said communication/direction, the petitioner had instructed his subordinates to maintain the said register properly as early as on 22.2.06, including the Firka in which he was holding additional charge.

3. It is the further case of the petitioner, inspite of his diligent efforts directing his subordinates to maintain the register, a charge memo dated 25.4.08 was issued to the petitioner to the effect that the said register, as evidenced in G.O. Ms. No.540 have not been maintained properly. It is the case of the petitioner that the said order was not communicated to him, but only to the Tahsildar and inspite of the same, he took diligent action and instructed his subordinates to maintain the said register as early as on 22.2.06. It is the further case of the petitioner that charge memos were issued to the Tahsildar, Village Administrative Officers as also the petitioner. It is the further case of the petitioner that the act of the petitioner is only an administrative lapse, for which charge memo could be issued only u/r 17 (a) and not u/r 17 (b).

4. The petitioner submitted his explanation to the charge memo on 15.5.08. However, not satisfied with the explanation, enquiry was ordered and the enquiry officer conducted enquiry and submitted report stating that the charge against the petitioner was not proved. However, the 1st respondent, while not accepted the findings recorded by the enquiry officer, issued a show cause notice to the petitioner asking as to why a different conclusion should not be taken contra to the view taken by the enquiry officer. Explanation dated 3.1.11 was submitted by the petitioner, but the 1st respondent, without considering the explanation in proper perspective, passed an order imposing a punishment of stoppage of increment for a period of one year without cumulative effect on the petitioner vide order dated 19.6.13. Against the said order imposing punishment, the present writ petition has been filed.

5. Learned counsel appearing for the petitioner submits that the report of the enquiry officer reveals that charge should not have been framed against the petitioner u/s 17 (b), but should have been framed only u/r 17 (a) of the Rules. Therefore, the charge itself has been framed without proper application of mind which vitiates the charge. It is the further submission of the learned counsel appearing for the petitioner that the enquiry officer, through cogent and convincing reasons has held that the charge against the petitioner has not been proved and has further gone on to state that there are many persons, higher in hierarchy than the petitioner, who are responsible for the lapse

for which the petitioner should not be penalized. However, ignoring all the materials, as reflected in the enquiry report, only with a vindictive mindset, the disciplinary authority has imposed the punishment, which has prejudiced the entire career of the petitioner and the prejudicial order of the disciplinary authority deserves to be set aside with a further direction to the respondents to grant all consequential service and monetary benefits to the petitioner.

6. Per contra, learned Special Government Pleader appearing for the respondents, accepted the fact that the charge has not been properly framed, further, submitted that the said lapse in no way vitiates the proceedings, as the disciplinary authority, after analysing all the materials has found that the charge has been not properly framed, accordingly, considered the whole issue and has imposed the punishment u/s 17 (a). It is the further submission of the learned Special Government Pleader that the punishment imposed u/r 17 (a) by the disciplinary authority itself speaks volumes about the thoroughness of the disciplinary authority in perusing all the materials placed before him and imposing the punishment, which reveals proper application of mind. It is the further submission of the learned Special Government Pleader that though the enquiry officer has held that there are authorities higher in the hierarchy than the petitioner and, therefore, penalizing the petitioner for the lapse would not be proper, however, it is not the finding of the enquiry officer that the petitioner is not entrusted with the task and, therefore, the petitioner also has a part in the lapse committed, which was taken into consideration by the disciplinary authority, while imposing the minor punishment. In fine, it is the submission of the learned Special Government Pleader, that the totality of the circumstances reveals proper application of mind by the concerned authority while passing the impugned order and, therefore, no interference is called for.

7. This Court gave its anxious consideration to the contentions advanced by the learned counsel appearing on either side and also perused the materials available on record.

8. It is evident from the record that initially charge has been framed u/r 17 (b) of the Rules, however, the enquiry officer has opined that the charge has been wrongly framed and it should have been framed u/r 17 (a), while giving a finding that the charge against the petitioner is not proved. The disciplinary authority, while considering the report holistically, while accepted the finding of the enquiry officer that the charge should have been framed u/r 17 (a), has however found that the enquiry officer has held that there are persons higher in hierarchy to the petitioner, who are responsible for

the lapse. The above finding of the enquiry officer only goes to show that there being persons higher in hierarchy, the petitioner need not be penalized. However, the matter that was before him was whether the petitioner has committed a lapse. This aspect has been appreciated by the disciplinary authority, who thought it fit to issue a show cause notice to the petitioner stating that the disciplinary authority is not inclined to accept the findings of the enquiry authority. It is well accepted that the disciplinary authority is vested with powers to differ with the findings rendered by the enquiry officer and in such circumstances, law warrants issuance of a fresh show cause notice calling for explanation, which has been done by the disciplinary authority.

9. On receipt of the explanation, the disciplinary authority has considered the same and keeping in mind the finding rendered by the enquiry officer that there are persons higher in hierarchy to the petitioner, who are responsible for the lapse, was of the considered view that the petitioner has also been a tool in the lapse committed, and in view of the position occupied by the petitioner, which is a lower cadre has imposed a minor punishment on the petitioner.

10. It is the case of the petitioner that the persons higher in hierarchy, like the Tahsildar were visited with more severe punishments than the petitioner and likewise the Village Administrative Officers, who were lower in rank were also visited with higher punishments. This itself clearly reveals the fact that the disciplinary authority has applied his mind to the entire facts and appreciated the materials available before him while awarding differing punishments to the various delinquents.

11. It is the contention of the learned counsel for the petitioner that the severity of the punishments awarded to the other delinquents clearly show that the lapse is attributable only to them, as held by the enquiry authority and imposing punishment on the petitioner is nothing but a vindictive action. However, this Court is not inclined to enter into the said issue, as the punishments suffered by the other individuals on the basis of different findings are not before this Court and, therefore, this Court cannot take judicial notice of those matters and dwell into the same in considering the case on hand.

12. On an overall appreciation of the entire materials available on record, this Court is of the considered view that the disciplinary authority has applied his mind to the report of the enquiry officer as also the explanation offered by the petitioner and has imposed a very minor punishment, which cannot be said to be arbitrary or unreasonable. The said punishment,

by no stretch of imagination could be held to be shocking and the conscious and disproportionate to the delinquency. Therefore, no interference is called for with the impugned order.

13. For the reasons aforesaid, this writ petition fails and the same is dismissed. However, there shall be no order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

GLN

To

1. The Secretary to Government
Revenue Department
Government of Tamil Nadu
Chennai - 9.
2. The Principal/Special Commissioner
& Commissioner for Revenue Administration
Ezhilagam, Chepauk
Chennai - 5.

+lcc to M/s. Government pleader, Sr.No.24671



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BS (CO)
GS (05/08/2020)

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