IN THE HIGH COURT OF JUDICATURE AT MADRAS

| Reserved on 29.01.2020 | Delivered on 31.01.2020 |
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CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.18002 of 2019

M.Sakthivel .. Petitioner

.Vs.

1.The Principal Secretary/
Transport Commissioner,
Chepauk, Chennai-5.

2.The Additional Chief Secretary to Government,
Home(Transport-II) Department,
Fort St.George,
Chennai 600 009.

3.The Regional Transport Officer,
Tuticorin. .. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the 1st respondent in connection with the impugned orders passed by him in R.No.32331/VA2/2016 dated 08.06.2016 and confirmed by the 2nd respondent in his G.O.(D). No.500, Home Transport (IIA) Department dated 23.05.2019 and quash the same.

For Petitioner : Mr.K.Venkataramani
Senior Counsel
for Mr.M.Muthappan

For Respondents: Mr.P.S.Sivashanmugasundaram
Special Government Pleader



O R D E R

This Writ Petition has been filed challenging the order passed by the 1st respondent through his proceedings dated 08.06.2016 and the same being confirmed by the 2nd respondent by his proceedings dated 23.05.2019.

2.The petitioner entered the service of Transport Department as Junior Assistant in the year 1995. He reached the position of a Superintendent in the year 2012. Between the period from 05.02.2014 to 16.03.2014, the petitioner was assigned the additional work of the Assistant, who was incharge of 'A3' seat. After the said period, the petitioner had handed over the charge to the concerned Assistant on 17.03.2014.

3.On 24.02.2016, A Charge Memo came to be issued by the 3rd respondent against the petitioner under Rule 17(a) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. The Charge against the petitioner was that the contract carriage permit of a Omni Bus was cancelled on 31.12.2013. The petitioner as the Superintendent did not make necessary entries in the relevant records regarding the cancellation of the permit. Thereafter, tax was accepted for the Omni Bus inspite of cancellation of the permit. This collection of tax would not have happened, if the petitioner had properly made the entries in the relevant records. Therefore, the petitioner was found to be negligent in duty.

4.The petitioner gave an explanation for the said Charge Memo issued by the 3rd respondent. The 3rd respondent by his proceedings dated 29.02.2016, found that the petitioner was negligent in not making the necessary entry. However, taking into consideration the service record of the petitioner and the alleged misconduct, a warning was issued to the petitioner not to repeat such mistakes in future.

5.The petitioner was issued with one more Charge Memo on 21.09.2016, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. The Charges levelled against the petitioner was the same and the petitioner gave his explanation. An Inquiry Officer was appointed and an enquiry report was submitted. Based on the enquiry report and the explanation given by the petitioner, the 1st respondent passed an order on 08.06.2018, imposing a punishment of stoppage of increment for one year without cumulative effect.

6.The petitioner filed an appeal before the 2nd respondent and the 2nd respondent by means of proceedings dated 23.05.2019, dismissed the appeal and confirmed the order passed by the 1st respondent. Aggrieved by the same, the present Writ Petition has been filed before this Court.

7.Mr.K.Venkataramani, learned Senior Counsel appearing on behalf of the petitioner made the following submissions:

- The petitioner was already issued with a Charge Memo under Rule 17(a) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules and the same ended up with a warning Order passed by the 3rd respondent and therefore a 2nd Charge Memo cannot be issued on the very same allegations.

- The petitioner was only holding the additional charge of the Assistant of 'A3' seat and the petitioner had nothing to do with the collection of the tax since the petitioner handed over the Charge to the concerned Assistant on 17.03.2014 and the tax was collected by the Assistant. Thereafter, no proceedings were initiated against the Assistant, who collected the tax.
- The Disciplinary Authority did not consider the explanation given by the petitioner for the Charges levelled against him and without assigning any reasons, punishment has been imposed against the petitioner.
- The Appellate Authority has not considered any of the grounds raised by the petitioner and the appeal has been dismissed in a mechanical fashion.
- The petitioner has been deprived of the promotion due to the punishment imposed against him.

8.A counter affidavit has been filed on behalf of the respondents. In the counter affidavit, a stand has been taken to the effect that only due to the negligence of the petitioner in not making necessary entries in the records, the same resulted in collection of tax for an Omni Bus to which the contract carriage permit was cancelled on 31.12.2013. The further stand that has been taken in the counter is to the effect that the earlier proceedings were dropped by the 3rd respondent and therefore, the 2nd stage of the departmental proceedings was initiated by the 1st respondent under Rule 17 (a) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules and the same is in order. It is further stated that the punishment imposed against the petitioner is only a minor punishment and it is not excessive.

9.Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader appearing on behalf of the respondents, apart from reiterating the stand taken in the counter affidavit, submitted that the petitioner has absolutely no answer for not making the necessary entry in the records after the permit was cancelled for the Omni Bus. This clearly proves the negligence on the part of the petitioner. The subsequent payment of tax would not have happened, if the petitioner had made necessary entries in the official records. The learned counsel further submitted that the negligence on the part of the petitioner deserves a punishment and taking into consideration, the nature of Charge, only a minor punishment has been imposed against the petitioner and therefore, there are absolutely no grounds to interfere with the impugned proceedings of the 1st and 2nd respondents.

10.This Court has carefully considered the submissions made on either side and the materials available on record.

11.The petitioner was working as a Superintendent of the Regional Transport Office at Thoothukudi. At that point of time, the contract carriage permit in respect of an Omni Bus was cancelled on 31.12.2013. The Charge against the petitioner is that he did not enter the cancellation of permit entries in the office records/register. As a result of the same, tax was received on three occasions for the Omni Bus to which the permit was cancelled.

12.A Charge Memo came to be issued against the petitioner under Rule 17(a) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, by the 3rd respondent. The petitioner submitted his explanation and the 3rd respondent passed an order on 29.02.2016, exonerating the petitioner with a severe warning, after taking into consideration, the service records of the petitioner and the nature of allegation made against the petitioner.

13.If the State Government or the head of the Department or the Appellate Authority is not satisfied with the conclusion arrived at by the 3rd respondent, they have been given wide powers under Rule 36 of the Tamil Nadu Civil Services (Discipline & Appeal) Rules to confirm, modify or to set aside the Order or remit the case to the same authority by even calling for the records on their own motion (Suo-motu). It is to be borne in mind that this power was not exercised in the present case and the Order passed by the 3rd respondent on 29.02.2016, has become final.

14.For the very same set of allegations, one more Charge Memo came to be issued against the petitioner by the 3rd respondent on 21.09.2016, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. Except for the fact that this Charge Memo was given in English, the sum and substance of the Charge against the petitioner was exactly the same as found in the 1st Charge Memo that was issued on 24.02.2016, under Rule 17(a) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. Therefore, the very maintainability of the 2nd Charge Memo becomes questionable in the present case. Once, the earlier proceedings has reached finality and it was not set aside or modified, the 2nd Charge Memo ought not to have been issued to the petitioner on the same set of allegations. The 2nd Charge Memo ultimately resulted in the petitioner going through the same grind and this time it resulted in a minor punishment. If the 2nd Charge Memo itself is not maintainable, the subsequent proceedings of the 1st respondent dated 08.06.2018 and the Order passed in the appeal by the 2nd respondent on 23.05.2019, also gets vitiated since they are the consequence of the 2nd Charge Memo, which has been held to be bad.

15.The petitioner has given a detailed explanation for the Charge framed against him and has also given a further explanation after the enquiry report was furnished to him.

The 1st respondent while passing the order dated 08.06.2018, has not given any reasons as to why he is not accepting the explanation of the petitioner and the punishment has been straightway imposed. For better appreciation, the only finding available in the Order passed by the 1st respondent is extracted hereunder:

CONCLUSION OF DISCIPLINARY AUTHORITY:

> I have examined carefully and independently the charges framed against you, findings of the Inquiry Officer and further representation along with connected records and concluded that the charges are held as "Proved".
>
> Therefore, for the proven charges, I the Transport Commissioner order for imposition of punishment of "Stoppage of increment for one year without cumulative effect" upon the individual Thiru.M.Sakthivel, Superintendent, Regional Transport Office, Thoothukudi now Sankarankoil.
>
> If, Thiru.M.Sakthivel, Superintendent, Regional Transport Office, Thoothukudi now Sankarankoil desires to make an appeal against this order, he may prefer an appeal before the Secretary to Government, Chennai-9 within 60 days from the date of receipt of copy of this order.

16.The petitioner has also taken several grounds in the appeal that was filed before the 2nd respondent. The 2nd respondent has taken the views of the Tamil Nadu Public Service Commission which has opined that there is a lack of care of the petitioner towards his duty even though there is no revenue loss to the Government. Therefore, the TNPSC has recommended for the confirmation of the punishment imposed against the petitioner. Based on this opinion, the 2nd respondent has dismissed the appeal and confirmed the orders of the 1st respondent.



17.In the considered view of this Court, the Orders passed by the respondents suffers from illegality since it is not supported by any reasons and the explanation given by the petitioner was not even taken into consideration and there is no finding as to why the explanation given by the petitioner was not acceptable. This Court went through this exercise, inspite of finding that the 2nd Charge Memo was not maintainable, since this Court wanted to satisfy itself even on merits of the case.

18.In the result, this Court has no hesitation to interfere with the impugned Order passed by the 1st respondent in his proceedings dated 08.06.2016 and as confirmed by the 2nd respondent in his proceedings dated 23.05.2019 and both the Orders are hereby quashed. This Writ Petition is accordingly allowed. No costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

KP

To

1.The Principal Secretary/
Transport Commissioner,
Chepauk, Chennai-5.

2.The Additional Chief Secretary to Government,
Home(Transport-II) Department,
Fort St.George,
Chennai 600 009.

3.The Regional Transport Officer,
Tuticorin.

+1cc to Mr.M.Muthappan, Advocate, S.R.No. 7972
+1cc to the Government Pleader, S.R.No. 8118

W.P.No.18002 of 2019

SR(CO)
GN(26/02/2020)