



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.02.2020

PRONOUNCED ON : **28.02.2020**

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CORAM:

THE HONOURABLE **MR. JUSTICE M.S.RAMESH**

W.P. (MD)No.2742 of 2019

R.Sivabalan
Inspector of Internal Audit
O/o.Assistant Director of
Internal Audit Department,
Dindigul,
Dindigul District.

... Petitioner

/vs./

1.The State of Tamil Nadu,
Rep by its Additional Chief Secretary to Government
Finance (LF) Department,
Secretariat,
Chennai-9.

2.The Chief Internal Auditor and Chief Auditor
of Statutory Boards,
Integrated Office Complex for Finance Department,
4th Floor, Near Tod Hunter Nagar,
Veterinary Hospital Campus,
No.571, Anna Salai,
Nandhanam,
Chennai-35.

3.The Commissioner & Tribunal for Disciplinary
Proceedings,
Tribunal for Disciplinary Proceedings,
No.5/1B, Vinayaga Nagar,
Madurai-20.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned punishment order passed by the 1st respondent in his proceedings in G.O.(D).No.297 Finance (LF) Department dated 16.10.2018 and quash the same as illegal and consequently to direct the 1st respondent to promote the petitioner as Assistant Director of Internal Audit from the date on which his juniors got promotion with seniority and all other monetary benefits with the period that may be stipulated by this Court.



For Petitioner : Mr.M.Ajmalkhan
Senior Counsel
for M/s.Ajmal Associates

For Respondent : Mr.R.Sethuraman
Special Government Pleader

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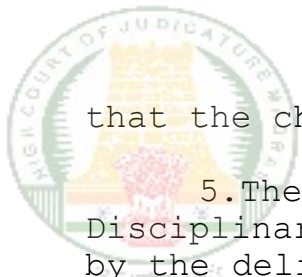
ORDER

The petitioner herein, who was working as a Inspector of Internal Audit was levelled with certain charges along with 18 others, based on which, a detailed enquiry was conducted by the Deputy Superintendent of Police, Vigilance and Anti-Corruption Department and a report was forwarded to the Director of Vigilance and Anti-Corruption Department. Thereafter, the Commissioner for disciplinary proceedings, Madurai conducted an enquiry under the provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, whereby, a final report was submitted by the third respondent, holding the charges to be "partly proved". Based on the report, the first respondent has passed the impugned order dated 16.10.2018, imposing the penalty of stoppage of increment for a period of three years with cumulative effect.

2.The learned Senior Counsel appearing for the petitioner drew attention of this Court to the various findings in the Enquiry report and endeavoured to substantiate that the impugned order was passed without proper appraisal of the findings in the enquiry. Apart from the same, the learned Senior Counsel also submitted that the order of the first respondent is a non-speaking order and therefore liable to be set aside.

3.The impugned order was perused and though the order seems to run to 7 pages, the findings of the first respondent effectively holds that the Government have carefully and independently examined the charges, findings of the Enquiry Officer, further representation of the petitioner, deviated views of the Government etc., along with connected records and thereby held the charges framed against the petitioner as proved. In this background, the punishment of stoppage of increment for a period of 3 years with cumulative effect came to be imposed. There is absolutely no findings in the impugned order as to how the Disciplinary Authority had come to the conclusion to deviate from the findings of the Enquiry Officer and held the charges to have been proved and thereby imposed the punishment.

4.Rule 18(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, provides that the order of the punishment shall state the grounds on which it is based and shall be communicated in writing to the person against whom they are passed. In the instant case, not a single finding has been rendered by the first respondent for deviating from the findings of the Enquiry Officer and holding



that the charges are proved, as well as for imposing the punishment.

5.The very purpose for which the enquiry report is sent to the Disciplinary Authority as well as the further representations made by the delinquent on the enquiry report, are for proper appraisal of the findings as well as the objections of the delinquent. Consideration of all these factors should be reflected in the order of punishment. The disciplinary authority is also required to substantiate that the punishment imposed is proportionate to the gravity of the levelled charges.

6.In the instant case, the findings rendered by the first respondent herein in paragraph No.7 of the impugned order is on a total non-application of mind. Such findings can be rendered by any Disciplinary Authority even without looking into the enquiry officer's report or the further representation of the delinquent and as such, the order itself is deemed to be a non-speaking order and therefore illegal and also in violation of the Rule 18(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

7.Though the learned counsel for the petitioner drew attention of this Court on various discrepancies in the enquiry officer's report, I do not intend to go into the same, since the matter requires to be remitted back to the first respondent for reconsideration. Any findings rendered by this Court on such factual grounds would have an adverse bearing on the proceedings, at the time of reconsideration.

8.In the light of the above observations, the impugned order dated 16.10.2018 in G.O.(MD).No.297 Finance (LF) Department, is set aside. Consequently, the matter is remitted back to the first respondent herein for a fresh consideration. The petitioner herein is at liberty to submit additional objections to the Enquiry report. On production of such further representation, if any, the first respondent herein shall consider the same and pass a speaking order, on its own merits and in accordance with law, within a period of three months from the date of receipt of a copy of this order.

9.This Writ Petition stands allowed accordingly. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Ns/sm

<https://hcservices.ecourts.gov.in/hcservices/>



To

1.The Additional Chief Secretary to Government
Finance (LF) Department,
Secretariat, Chennai-9.

2.The Chief Internal Auditor and Chief Auditor
of Statutory Boards,
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4th Floor, Near Tod Hunter Nagar,
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Tribunal for Disciplinary Proceedings,
No.5/1B, Vinayaga Nagar, Madurai-20.

+1 CC to M/s.AJMAL ASSOCIATES, (SR-9474[F] dated 02/03/2020)

Order made in
W.P. (MD)No.2742 of 2019
Dated: 28.02.2020

JMN(04.03.2020) 4P : 5C