



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.12.2021

CORAM

THE HONOURABLE Mr.JUSTICE V. PARTHIBAN

W.P.No.4682 of 2021

S.Venkatesh

...Petitioner

Versus

1.The Principal Secretary to Government
Commercial Taxes and Registration Department
Secretariat, Chennai -9

2. The Inspector General of Registration
No.100 Santhome High Road
Chennai-28

... Respondents

Prayers: Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the records of the 2nd respondent in his proceedings No.28799/A2/2013 dated 05.04.2019 as confirmed on appeal by the 1st respondent in G.O(D) No.242 Commercial Taxes and Registration Department dated 21.12.2020 and quash both the orders.

For Petitioner : Mr.V.Vijay Shankar

For Respondents : Mr.I.Sathish
Additional Government Pleader

O R D E R

The case of the petitioner is that he joined the Registration Department in 1985 as Junior Assistant and later, was promoted as Assistant in 1995 and as Sub-Registrar Grade II in February 2011. The petitioner was issued with a charge memorandum dated 19.06.2013 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The allegation in the charge memorandum is that while he was working as Sub-Registrar, Neelangarai, in respect of the two documents he did not accept the guideline value and referred the document under Section 47A(1) of the Indian Stamp Act. There are other allegations that he has registered one document based on the



WEB COPY

guideline value and returned the document to the concerned buyer and registered one other document, but not returned the document to the buyer nor referred the same under Section 47A(1). According to the charge memorandum, there was a ulterior motive in not returning the documents.

2. The petitioner had submitted his explanation on 23.10.2013 refuting the charges. According to him, there are two documents which were referred to under Section 47A(1) were stated to be undervalued and there was nothing wrong with the procedure adopted by the petitioner in referring the matter to the higher authorities for valuation of the stamp duty payable on the document. The action of referring the document was only intended to maximise the revenue to be generated from the registration and that cannot be the basis of the charges against him.

3. An enquiry was held notwithstanding the explanation offered by the petitioner and the Enquiry Officer vide his report dated 18.11.2014 held that the charges were not proved. However, the Disciplinary Authority, the second respondent, nearly after 3 ½ years vide memo dated 20.04.2018 proposed to disagree with the findings of the Enquiry Officer in regard to the transaction pertaining to two documents by finding that the petitioner's action were inconsistent. The petitioner has submitted his explanation on 18.12.2018 and 22.01.2019 pointing out that there was absolutely no basis for disagreement as the Enquiry Officer had considered all the materials placed on record and rendered comprehensive finding holding that the charges were not proved in the enquiry.

4. The second respondent, finally by order dated 05.04.2019, imposed a penalty of stoppage of two increments with cumulative effect. The petitioner preferred an appeal on 13.06.2019 to the first respondent and the appeal was disposed of vide G.O.Ms.No.242, Commercial Taxes and Registration Department, dated 21.12.2020 rejecting the appeal by confirming the penalty imposed on the petitioner by the Disciplinary Authority. The present writ petition is filed against the punishment order, as confirmed in appeal by the first respondent.

5. The learned counsel Mr.V.Vijay Shankar appearing for the petitioner would submit that there are several infirmities in the orders passed by both the respondents. According to him, the reference of documents under Section 47A(1) of Indian Stamp Act cannot be the basis for framing the charges at all. In fact, the learned counsel has taken this Court through the



explanation given by the writ petitioner in respect of the four transactions which formed the basis of the charge memorandum. All the four transactions have been satisfactorily explained and properly presented by the petitioner to the second respondent Disciplinary Authority. Moreover, the learned counsel also contended that the Enquiry Officer, after taking into consideration all the materials that were made available in the enquiry, had found that the charges were not established at all.

6. Unfortunately, the Disciplinary Authority, after nearly 3 ½ years, hiatus has suddenly woken up to the proceedings and proposed a Disagreement Note dated 20.04.2018 as against the Enquiry Report dated 18.11.2014. In the Disagreement Note, nothing has been stated as to how the findings of the Enquiry Officer was not valid at all. According to the learned counsel, though the Disagreement Note stated that the reasons stated in the annexure would support the Disagreement Note of the Disciplinary Authority, but in fact nothing was found in the annexure for taking a different view from the finding rendered by the Enquiry Officer. Therefore, he would submit that the Disagreement Note is completely without any basis and on such flimsy and rickety reasoning adopted by the Disciplinary Authority, the punishment ultimately imposed on the petitioner cannot be countenanced both in law and on facts.

7. Moreover, no reasons have been spelt out by the Disciplinary Authority for coming up with the Disagreement Note after a period of more than 3 years from the date of report of the Enquiry Officer on 18.11.2014. In view of the inordinate delay, the disciplinary action had been kept pending for nearly seven years affecting the career progression of the petitioner. When the petitioner immediately preferred an appeal on 13.06.2019, against penalty order dated 05.04.2019, the same came to be rejected only on 21.12.2020 after 18 months. Both the Disciplinary Authority as well as the Appellate Authority, the respondents herein, have caused enormous delay without any valid reason for not concluding the Disciplinary action promptly against the petitioner, particularly in the face of the simple charge levelled against the petitioner.

8. The learned counsel would also draw the attention of this Court to the charge memo, the explanation, the Enquiry report exonerating the petitioner from the charges. The disagreement by the Disciplinary Authority according to the learned counsel demonstrated an action intended to punish the petitioner regardless of the evidence which was available against him or not. It appeared from the Disagreement Note that



petitioner.

13. As a matter of fact, from the entirety of the averments contained in the counter affidavit, this Court is unable to find as to what exactly the essence of the charge against the petitioner. Although four transactions have been referred to which formed the basis of the charge memorandum, nevertheless whether the action of referring two documents suspecting undervaluation can be the basis of any allegation at all is not explained in the counter affidavit. Even in respect of the other two documents, there were hardly any motive that could be attributed to the petitioner which can be called act of misconduct at all. The only allegation that appears to be the trigger point for taking action against the petitioner was that the petitioner has caused unnecessary inconvenience to the registrants. The above statement by the respondents in the counter affidavit cannot be considered to be a valid excuse for proceeding against the petitioner with the disciplinary action at all. Nothing has been stated in the counter affidavit about any complaint being received from the parties, who registered the documents. It appears that the Disciplinary Authority has initiated the disciplinary action without any materials at all which can be considered as the basis for framing charges against the petitioner.

14. As rightly contended by the learned counsel for the petitioner, when the Enquiry Officer has exonerated the petitioner from charges, the Disciplinary Authority atleast at that stage ought to have allowed the action to rest that at that point. Unfortunately, nearly after 3 ½ years he has issued a Disagreement Note, that too. without any supportive material bolstering his Disagreement Note as against the findings of the Enquiry Officer. The Disagreement Note as could be seen does not contain any acceptable reason and it cannot be called a Disagreement Note at all. Therefore, the action of the second respondent imposing penalty on the basis of his sketchy, bald Disagreement Note cannot be countenanced both in law and on facts. On this ground alone, this writ petition is liable to be allowed.

15. Be that as it may, there are two aspects to the Disagreement Note, which can be faulted (i) there was no proper explanation for delay in coming up with the Disagreement Note after 3 ½ years delay and (ii) the explanation in the counter affidavit about so called administrative reasons such as voluminous work involved in disposing of the disciplinary proceedings can hardly be considered as proper explanation for



the delay. In the present case, it is needless to mention that charges are extremely simple and straightforward for which no special effort was required to complete the disciplinary action. In the said circumstances, the delay in recording Disagreement Note is fatal and on this short ground, the writ petition is liable to be allowed.

16. Further, even assuming that the delay could be condoned, in the Disagreement Note, without any substantial material, the view taken by the Disciplinary Authority cannot meet the requirements of law. Similarly, because there is a record of disagreement did not mean that the Disciplinary Authority can have a different view in the absence of any acceptable material in support of his disagreement. In this case, there was not a shred of material or evidence which the Disciplinary Authority seemed to rely upon in support of his Disagreement Note. Therefore, on merits as well the Disagreement Note is to be discountenanced both in law and on facts.

17.

17. Even thereafter, when the appeal was preferred immediately after the imposition of the penalty by the Disciplinary Authority on 13.06.2019 itself, the same was rejected after a period of 1 ½ years by the Appellate Authority, the first respondent herein, on 21.12.2020. There was also no explanation for disposal of the appeal with delay for such minor charges framed against the petitioner. It is possible to attribute delay in view of the advice to be taken from the Public Service Commission. However, that cannot be a reason for undue delay of 1 ½ years while disposing of the appeal filed by the petitioner in respect of the Disciplinary action faced by the petitioner in pursuance of simple charges framed against him.

18. If the entire events are cumulatively read together, the charge memorandum was issued on 19.06.2013 and the completion of disciplinary action by disposing of the appeal was on 21.12.2020 and in the bargain 7 ½ years have gone by, affecting the career progression of the petitioner. It is trite in law to hold that unexplained delay in imposition of disciplinary proceedings, that too for simple charges by itself would constitute grave prejudice to the rights of the Government servant. In fact, Courts have frowned upon unnecessary delay in concluding disciplinary proceedings.

19. On behalf of the petitioner, the decision in Government of Tamil Nadu, rep. By the Secretary to Government, Environment and Forests Department, Chennai and Another reported



in (2009) 4 MLJ 884 has been relied upon. The ratio decidendi laid down in the decision of the Court is extracted hereunder:

'I. When the inordinate delay of five years in finalising the disciplinary proceedings against the first respondent was not explained convincingly by the Department and the first respondent was seriously prejudiced due to the said delay in non-conclusion of the disciplinary proceedings, the Tribunal is justified in quashing the charge sheet issued against the first respondent'

'II. "When the Disciplinary Authority acted without applying his mind and called for fresh report examining the records behind the back of the first respondent to replace the enquiry report, said action of the Disciplinary Authority is arbitrary and violative of Article 14 of the Constitution."

20. The above ratio would squarely to be applied to the factual matrix of this case. The writ petition apart from merits could also be allowed on the ground of delay alone.

21. On the whole, this Court is of the view that the impugned orders are unsustainable and are liable to be quashed.

22. In the said circumstances, this writ petition is allowed and the proceedings of the second respondent dated 05.04.2019 bearing reference No.28799/A2/2013 and proceedings of the first respondent dated 21.12.2020 in G.O(D) No.242, Commercial Taxes and Registration Department are hereby set aside. The petitioner is also entitled to be granted all consequential benefits, like promotion, seniority including fixation of pay and allowance, which had been withheld due to the Disciplinary Action pending against him for more than 7 years period. No costs.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

gpa/mdl



To

1. The Principal Secretary to Government
Commercial Taxes and Registration Department
Secretariat, Chennai -9

2. The Inspector General of Registration
No.100 Santhome High Road
Chennai-28

+1cc to Mr.V.Vijayshankar, Advocate SR.No.65039
+1cc to the Government Pleader SR.No.64837

W.P.No.4682 of 2021

VG II(CO)
GN(04/01/2022)