IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2021

CORAM

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.NO.5158 OF 2017

(Through Video Conferencing)

V.Srikanth ... Petitioner

.Vs.

1. The Commissioner,
Tribunal for Disciplinary Proceedings,
Coimbatore.

2. The Secretary to Government,
Home (Transport – II) Department,
Fort St. George, Chennai – 9. ... Respondents

PRAYER:-

Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari, to call for the records of the second respondent in connection with the impugned order passed by him in G.O.(2D) No.529, Home (Transport-II) Department, dated 30.12.2016 and quash the same.

For Petitioner : Mr.K.Venkataramani
Standing Counsel
For M/s.M.Muthappan

For Respondents : Mr.L.S.M.Hasan Fizal
Government Advocate

O R D E R

This Writ Petition has been filed for issuance of a Writ of Certiorari, to call for the records of the second respondent in connection with the impugned order passed by him in G.O.(2D) No.529, Home (Transport-II) Department, dated 30.12.2016 and quash the same.

2. The petitioner was servicing as an Assistant with the Regional Transport Office at Tiruppur and was subject to disciplinary proceedings vide Charge Memo dated 13.08.2007. In the said Charge Memo, the following two charges were framed against the petitioner:-

Charge - I :

During the tenure of the petitioner as Assistant in the Regional Transport Office, Tiruppur, it has been found that Lift time tax, Registration fees and fee for reservation of Advance number for new vehicles registered during the period were not actually paid in the office. But vehicles were registered and Advance Registration numbers have been alloted, based on bogus receipts as from Regional Transport Office prepared using some cash track machine.

The petitioner has prepared the Registration Certificates of 54 new vehicles without verifying the genuineness of the fee for registration, life time tax paid as per Rule 81 of CMV Rules, TNMV Taxation Act and the fee for reservation of advance registration numbers as per rule 132 of the TNMVR 1989.

Charge – II:

Advance registration numbers were alloted based on fake government orders produced by the parties. The numbers should have been alloted only after the receipt of such orders directly from the Government without relying on the copies of Government orders submitted by the parties themselves. Non adherence to these procedures has therefore facilitated allotment of advance registration numbers based on forged Government orders.

The petitioner has thus failed to verify the genuineness of the Government Orders produced for allotment of Advance registration numbers and have entertained forged copies of the order produced by the individual themselves. This shows the petitioner's gross negligence of duty.

3. During the pendency of the aforesaid disciplinary proceedings, the parallel/collateral proceedings also initiated before the first respondent Tribunal for disciplinary

proceedings vide Charge Memo in T.D.P.CASE No.110/2008 dated 28.01.2010. The second mentioned Charge Memo dated 28.01.2010 has culminated in the impugned order of the respondent, whereby, the respondent has imposed punishment of stoppage of increment for a period of four years with cumulative effect on the petitioner.

4. In this Writ Petition, the petitioner has challenged the impugned proceedings initiated vide T.D.P.CASE No.110/2008 dated 28.01.2010 and the charge against the petitioner T.D.P.CASE No.110/2008 if translated would read as under:-

> "While working as an Assistant during the period from 19.03.2001 to 19.04.2001 (one Month), the petitioner prepared the Registration Certificate for the vehicle No.TN-39-P-5900 and TN-39-P-7755 for which a sum of Rs.5,000/- and Rs.3,000/- was collected from the owners of the vehicles, which was not credited into Government Account."

5. The case of the petitioner is that the earlier disciplinary proceedings vide Charge Memo dated 13.08.2007 has culminated in a punishment order dated 06.08.2010 of the second respondent vide G.O.(2D) No.388, Home (Tr.II) Department. This order came to be challenged before this Court in W.P.25314 of 2011. It is case of the petitioner that by an order dated 13.12.2012 in W.P.25314 of 2011, this Court had allowed the said writ petition by dropping the disciplinary proceedings by categorically concluding that the role of the petitioner as an Assistant was only clerical in nature and in preparing registration certificate and/or he is not bound to verify the documents and responsible for the collection of tax. In this connection, a reference was made to paragraph 12 to 16 of the aforesaid order which reads as under:-

> II. Whether the petitioners are responsible for verification of the government documents and cash track receipts in respect of motor vehicles for the purpose of issuing registration certificates?
>
> 12. A reading of the charge memo discloses that it is stated that the petitioners are responsible for the verification of the documents and they are responsible for bringing to the notice of the head of the department regarding the irregularities as per Paras 41 and 42 of the Tamil Nadu Government Office Manual. The said charges were also reproduced in the impugned order dated 06.08.2010. It is relevant

to note that even the said provision quoted in the charge memo is not specific and definite and on the other hand, it is generally stated that it is the duty of the petitioners to bring to the notice of the head of the department regarding the irregularities. It is not stated either in the charge memo or in the counter or in the impugned orders as to how and in what manner or under what specific provision the petitioners have been entrusted with the duty of verification of the government documents and cash track receipts. On the other hand, the petitioners have come forward with a specific and definite plea to the effect that as per Circular No.38/99, only the Motor Vehicle Inspectors are responsible for the inspection of the motor vehicles and verification of the documents produced by them and thereafter, they have to issue the certificates for accepting the fees and taxes and in-turn, the duty of the cashier is to receive the fees from the owners of the motor vehicles. As far as the petitioners are concerned, it is specifically and categorically stated that they are in-charge and responsible only for preparing registration certificates. It is seen that thereafter, the certificates has to be signed by the Regional Transport Officer of the respective jurisdiction and therefore, the petitioners, who are the Assistants, have been entrusted only with the clerical work of preparation of registration papers and they are not duty bound to verify the documents or responsible for the collection of cash. In view of the same, they cannot be mulcted with the charge of failure to verify the genuineness of the documents produced by the motor vehicle owners and the cash track receipts. Therefore, on this ground also, the entire proceedings is vitiated and the impugned orders are liable to be set aside.

III. Whether the principle of natural justice is violated and whether the enquiry was conducted in a fair manner ?

13. The perusal of the Enquiry Officer's report dated 18.03.2009 makes it crystal clear that the same does not disclose any specific evidence of any witnesses to the effect that the petitioners are responsible and in-charge for

verification of government documents or for verification of cash track receipts. It is nowhere stated in the said report that any witnesses stated to the effect that the petitioners are bound to bring the irregularities before the head of the department. At the risk of repetition it is to be reiterated that the petitioners, being Assistants, are not at all responsible for verification of documents or cash track receipts and the question of bringing the alleged irregularities to the head of the department not at all arises. It is pertinent to note that the Enquiry Officer has mainly placed reliance on the special audit report but the said special audit report was not furnished to the petitioner. Apart from the said factor, it is also stated in the Enquiry Officer's report itself that the witnesses who have been examined on the side of the Government stated that they are placing reliance only on the special audit report and the same may be treated as evidence. This Court is of the considered view that the Enquiry Officer has adopted a strange procedure. It is well settled that any document or report could be placed reliance only in the event of the author of the said document or report was examined and spoken about the contents of the said report. The Disciplinary Authority cannot place its reliance solely on the findings of the Commissioner for Disciplinary proceedings and impose the punishment on the petitioners. Further, the perusal of the impugned orders passed by the first respondent discloses that the Disciplinary Authority simply incorporated the charges, explanation, findings of the Enquiry Officer's Report and straight away, merely stating that all the documents have been scrutinized and held that the charges have been proved against the petitioners without assigning any valid and specific reasons. This is not only a case of no evidence, but also a case where the disciplinary proceedings has been conducted in flagrant violation of the principles of natural justice. Therefore, on this ground also, the impugned order is liable to be set aside.

IV. Whether the punishment awarded to the petitioners are discriminatory ?

14. The fact remains that 43 persons have been served with common charge memos containing same, similar and identical charges, as framed against the petitioners herein. However, it is seen that except the petitioners and few others, most of the delinquents have been exonerated and many of the top rank officials, namely, RTOs, Motor Vehicle Inspectors and others have been allowed to retire peacefully with a cut of Rs.100/- on monthly pension for a stipulated period. It is very much evident from the counter filed by the respondents in these petitions that they have incorporated in the affidavit mentioning the names of the persons numbering 34. It is curious to note that it is stated that the said officers were also punished for the proven charges, but on the other hand, the names of every officers and the punishment awarded against them discloses that all of them have been allowed to retire peacefully with cut in monthly pension for a stipulated period and against many of them, the proceedings have been dropped and some of them have been imposed only with the punishment of Censure. It is very unfortunate to note that in spite of the said factors, only the petitioners who are working in the lower cadre as Assistants have been picked up and they have been dealt with the punishment through the impugned orders.

15. At this juncture, it is relevant to refer to the decision of the Hon'ble Apex Court in Man Singh v. State of Haryana and Others reported in (2008) 8 MLJ 518 (SC). The Hon'ble Apex Court in the said decision has held as hereunder:

> "Any act of the repository of power whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair minded authority could ever have made it. The concept of equality as enshrined in Article 14 of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the

matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of 'fair-play' and reasonableness. There should be no discrimination between the appellant and HC Vijay Pal as regards the criteria of punishment of similar nature in departmental proceedings. The appellant and HC Vijay Pal were both similarly situated, in fact, HC Vijay Pal was the real culprit who, besides departmental proceedings, was an accused in the excise case filed against him by the Excise Staff of Andhra Pradesh for violating the Excise Prohibition Orders operating in the State. The appellant authority exonerated HC Vijay Pal mainly on the ground of his acquittal by the criminal Court in the Excise case and after exoneration, he has been promoted to the higher post, whereas the appeal and the revision filed by the appellant against the order of punishment have been rejected on technical ground that he has not exercised proper and effective control over HC Vijay Pal at the time of commission of the Excise offence by him in the State of Andhra Pradesh.

In the backdrop of the above-mentioned facts and circumstances of the case, the order of the disciplinary authority imposing punishment upon the appellant for exhibiting slackness in the discharge of duties during his visit to Hyderabad when HC Vijay Pal was found involved in Excise offence, as also the orders of the appellate and revisional authorities confirming the said order are unfair, arbitrary, unreasonable, unjustified and also against the doctrine of equality. The appellant deserves to be treated equally in the matter of departmental punishment initiated against him for the acts of omissions and commissions vis-a-vis HC Vijay Pal, the driver of the vehicle."

The principle laid down by the Hon'ble Apex Court in the decision cited supra is squarely applicable to the facts of the instant case as in this case also, as already pointed out, there is a clear discrimination in awarding punishment to the petitioners and to the other delinquents and as such, there is a clear violation of the concept of equality, as enshrined in Article 14 of the Constitution of India. Therefore, the disciplinary proceedings is vitiated and the impugned orders are liable to be set aside on this ground also.

16. In view of the aforesaid reasons, these writ petitions are allowed and the impugned orders passed by the second respondent in G.O.(2D) Nos.388, 395 and 394, Home (Transport-II) Department dated 06.08.2010 respectively in these petitions are hereby set aside. No costs.

6. The learned counsel for the petitioner submits that for the same offence, the parallel proceedings which came to be initiated after 9 years of the alleged offence were even otherwise delayed. In this connection, following decisions of the Hon'ble Supreme Court and that of this Court were invited:-

i. State of Andhra Pradesh Vs. N.Radhakrishnan, (1998) 4 SCC 154.

ii. M.Elangovan Vs. The Trichy District Central Co-op Bank Ltd., order dated 10.03.2006 of this Court in W.P.Nos.10694 & 10695 of 2005.

iii. Government of A.P and others Vs. V.Appala Swamy, (2007) 14 SCC 49.

iv. K.Kumaran Vs. The State of Tamil Nadu and others, order dated 15.06.2007 of this Court in W.P.No.3653 of 2006.

v. The Chief Electrical Service Engineer and others Vs. The Registrar and another, order dated 17.01.2018 of this Court in W.P.No.10963 of 2013.

7. The learned counsel for the petitioner further submits that the role of the petitioner being limited for preparation of registration certificates, the petitioner cannot be found guilty. That apart, the order of this Court in W.P.25314 of 2011 was implemented by order in G.O.(D) No.1069, Home (Tr-II) Department, dated 20.12.2013. He further submits that guidelines have been issued by the Government of Tamil Nadu in Circular No.38/99, bearing reference No.340431 EM 99, dated 20.05.1999, wherein, the role of the Cashier and that of Motor Vehicle Inspector to inspect the vehicle while registering is specified. It is further submitted that nowhere even as per the regulations, the petitioner was concerned with the either collection of tax/fees or verification of the records, based on which, the registration certifications that have to be prepared by the petitioner were in a clerical capacity.

8. That apart, the learned senior counsel appearing for the petitioner submits that TDP report dated 30.03.2012 merely adopted the finding of the enquiry officer even though there are no direct evidences against the petitioner in the alleged collection of Rs.8,000/-. He further submits that about 46 employees from the Regional Transport Office, Tiruppur were subjected to the disciplinary proceedings earlier in respect of registration of 54 vehicles during 2001 which included two vehicle. He also submits that earlier charges in Charge Memo dated 13.08.2007 which culminated in order dated 06.08.2014 in G.O.(2D) No.388, Home (Tr.II) Department was ultimately quashed by this Court vide its order dated 13.12.2012 in W.P.No.25314 of 2011.

9. The learned senior counsel for the petitioner further submits that after the order was passed by this Court, further representation was also sent by the petitioner to the enquiry officer on 14.08.2013 and additional two other representations dated 20.07.2015 and 15.12.2015 were also sent by the petitioner which were ignored by the respondents while passing the impugned order dated 30.12.2016.

10. Defending the impugned order of the second respondent, the learned Government Advocate submits that the impugned order was well considered order and therefore requires no interference. He further submits that the charges in the earlier Charge Memo dated 13.08.2007 and the charges in T.D.P.CASE.No.110/2018 dated 28.01.2010 were different and nothing precluded the Department further from proceeding with the fresh charges which culminated in the impugned order dated 30.12.2016 of the second respondent.

11. The learned Government Advocate for the respondents further submits that all the submissions of the petitioner have

been also considered in the impugned order and in this background, the impugned order passed are liable to be upheld.

12. I have heard the learned senior counsel for the petitioner and the learned Government Advocate for the respondents. I have perused all the documents which were filed by the petitioner along with this Writ Petition.

13. The charges that have been framed against the petitioner in T.D.P.CASE.No.110/2018 dated 28.01.2010 and the charges that were framed in the Charge Memo dated 13.08.2007 do not arise from different set of facts delinquency. The role of an Assistant has been unlined by this Court by an order dated 13.12.2012 in W.P.No.25314 of 2011 which has been extracted above. This order has also been accepted by the respondents and implemented on 20.12.2013 vide G.O.(D) No.1069, Home (Tr-II) Department.

14. That apart, the receipt of collection of amounts and the registration of motor vehicles is vested with the Motor Vehicle Inspector as per the guidelines issued by the Government dated 20.05.1999 in Circular No.38/99 bearing reference No.340431 EM 99. This aspect also had been noted by this Court on the earlier occasion.

15. The charges issued in the earlier proceedings indeed subsumed the charges in the subsequent proceedings in Charge Memo in T.D.P.CASE.No.110/2018 dated 28.01.2010. After the order came to be passed in W.P.No.25314 of 2011 on 13.12.2012 and after its acceptance and implementation vide G.O.(D) No.1069 Home (Transport - II) Department dated 20.12.2013, the disciplinary authorities, namely the respondents herein ought to have dropped the proceedings instead of confirming the same.

16. The impugned order merely records that the charges framed against the petitioner, his defence statement, finding of the first respondent for disciplinary proceedings and further representation of the petitioner on the findings of the commissioner for disciplinary proceedings were categorically and individually examined along with the connected records. The impugned order merely states that on perusal of the records, charges in T.D.P.CASE.No.110/2018 dated 28.01.2010 and charges in Charge Memo dated 13.08.2007 are different and not the same. Though the charges are different, they arise out of same delinquency.

17. The impugned order which records that the petitioner shall be punished with stoppage of increment for a period of four years with cumulative effect shows that its has been passed in a mechanical manner without examining the charges in the

earlier round and the charges framed against the petitioner in the second round of proceedings which has been culminated in the impugned order.

18. The charges that were framed against the petitioner in the first round were wide. They subsumed the subsequent charges in T.D.P.CASE.No.110/2018 dated 28.01.2010 which has culminated in the impugned order. Since the punishment awarded in the earlier disciplinary proceedings has been dropped by the respondent by way of acceptance of the order of this Court in W.P.25314 of 2011, dated 13.12.2012, the disciplinary proceedings which was culminated in the impugned order also should have been dropped by the respondent.

19. In the light of the above discussion, this Writ Petition stands allowed with consequential relief to the petitioner. No cost.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner,
Tribunal for Disciplinary Proceedings,
Coimbatore.

2. The Secretary to Government,
Home (Transport - II) Department,
Fort St. George,
Chennai - 9.

+1cc to M/s.M.Muthappan, Advocate, S.R.No.37994
+1cc to the Government Pleader, S.R.No.38013

W.P.NO.5158 OF 2017

NK(CO)
PBS/26/08/2021