



WEB COPY

W.P.(MD) No.1727 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 24.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE M. S. RAMESH

W.P.(MD) No.1727 of 2021

and

W.M.P(MD) No.1471, 1472 and 5216 of 2021

C.Vellaichamy

...Petitioner

Vs

1.The Additional Chief Secretary,
Home (Transport-II) Department,
Secretariat, Fort St.George,
Chennai-600 009.

2.The Commissioner,
Tribunal for Disciplinary Proceedings,
Collector's Office Campus,
Nagercoil, Kanyakumari District.

3.The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Nagercoil,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records pertaining to the impugned order of the first respondent vide his proceedings in G.O(2D) No.12, Home (Transport-II) Department, dated 21.01.2021 and quash the same as arbitrary and illegal.

For Petitioner : Mr.R.Pon Karthikeyan

For Respondents : Mr.K.Chellapandian,
Additional Advocate General,
Assisted by
Mr.A.Muthukaruppan
Additional Government Pleader

O R D E R

Heard the learned counsel for the petitioner and the learned Additional Government Pleader for the respondents.



2. Pursuant to a set of charges levelled against the petitioner herein, an enquiry was conducted and the second respondent herein, had held the charges against the petitioner as "not proved". Thereafter, the Government claims to have examined the charges defence statement of the delinquent Officer and the findings of the Commissioner for Disciplinary Proceedings and had deviated from the findings of the second respondent, by holding the charges as "proved" against the petitioner. Pursuant to the deviated findings and on further representation of the petitioner on the deviated views, the first respondent claims to have 'carefully and independently' perused the records and through the impugned G.O(M2D) No.12, Home (Transport-II) Department, dated 21.01.2021, the deviated views of the government was confirmed and the charges against the petitioner was held as "proved". Accordingly, the petitioner was imposed with the punishment of 'stoppage of increment for the period of two years with cumulative effect'.

3. Initially, the petitioner herein, had filed a writ petition before this Court in W.P(MD) No.12945 of 2017, at the stage when the departmental action was pending before the first respondent, seeking for passing of final orders and this Court by its order dated 18.02.2019, had directed the first respondent to pass final orders within a period of six weeks. When the order of this Court dated 18.02.2019 was not complied within a stipulated time, the petitioner had filed another writ petition in W.P(MD) No.19780 of 2020, wherein, this Court, through its order dated 04.01.2021, had taken serious note on the lapse and had observed that the disobedience may amount to contempt and had thereby called upon the first respondent to reply to the same.

4. While the aforesaid order was passed on 04.01.2021 and the matter was directed to be listed on 21.01.2021, the present impugned order passed in G.O(M2D) No.12, Home (Transport-II) Department, dated 21.01.2021, came to be passed confirming the deviated views of the Government, as well as the punishment.

5. A perusal of the impugned order would reveal that though the first respondent herein had narrated the pleadings, findings of the Enquiry Officer, the deviated views of the Government on the findings of the Commissioner of Disciplinary proceedings, as well as the further representation made by the petitioner on the deviated views, there was no independent findings with regard to the deviated views of the Government or on the further explanation given by the petitioner. The impugned order has simply reiterated the deviated views of the Government and accordingly, the punishment of stoppage of increment for the period of two years, with cumulative effect was imposed.

6. It is settled proposition of law that when the authority has passed an order on the deviated views from the Enquiry Officer's



findings, there is a duty cast on them to substantiate the deviation. Furthermore, the very purpose for which further explanation is called for from the delinquent officer against the deviated views, is to extend him an opportunity to put forth his objections and consequently, such objection requires to be dealt with by the first respondent, before confirming the deviated views. The order impugned in the present writ petition has not ventured to address any of these aspects and since it has reiterated the Government views alone, the same could be said to be a non-speaking order, which cannot be sustained under law. Nevertheless, if the first respondent is given an opportunity to reappraise the deviated views of the Government and pass a reasoned order, by taking into account the further explanation rendered by the petitioner, the ends of justice could be secured.

7. In the light of the above observations, the impugned order in G.O(2D) No.12, on the file of the first respondent, dated 21.01.2021, is quashed and the matter is remanded back for fresh consideration of the first respondent. The first respondent herein shall take into consideration the facts of the case, Enquiry Officer's finding, the deviated views of the Government and the further explanation offered by the petitioner on the deviated views and pass a speaking order, as expeditiously as possible, in any event, within a period of twelve weeks from the date of receipt of a copy of this order.

8. This Writ Petition stands ordered accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd

ASSISTANT REGISTRAR (A.S.)

TRUE COPY

/05/2021

SUB ASSISTANT REGISTRAR (CS)

cp

NOTE:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Additional Chief Secretary,
Home (Transport-II) Department,
Secretariat, Fort St. George,
Chennai-600 009.

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



2.The Commissioner,
Tribunal for Disciplinary Proceedings,
Collector's Office Campus,
Nagercoil, Kanyakumari District.

3.The Deputy Superintendent of Police,
Vigilance and Anti Corruption,
Nagercoil,
Kanyakumari District.

1CC TO MR. PON.KARTHIKEYAN, ADVOCATE SR 13643

TR
03/05/2021
4P/5C

Order made in
W.P. (MD) No.1727 of 2021

24.03.2021

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