IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON 23.03.2022	ORDERS PRONOUNCED ON 05.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.NO.22943 OF 2015

A.R.Kannan ... Petitioner

.Vs.

1. The Principal Secretary,
   Commissioner of Revenue Administration,
   Chepauk,
   Chennai - 600 005.

2. The Secretary to Government of Tamil Nadu,
   Revenue Department,
   Fort St. George,
   Chennai - 600 009. ... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st Respondent in connection with the impugned orders passed by him in Lr.No.Ser4(4)/36486/2012 dated 04.06.2012 and confirmed by the 2nd Respondent in his G.O.2(D)329 Revenue [Ser3(1)] department dated 26.05.2015 and quash the same and further direct the respondents to reinstate the petitioner into service.

For Petitioner : Mr.K.Venkatramani
Senior Counsel
For Mr.M.Muthuppan

For Respondents : Mr.L.S.M.Hasan Fizal
Additional Government Pleader
For R1 & R2

O R D E R

The petitioner was appointed as Junior Assistant, selected through Tamil Nadu Public Service Commission and joined service on 20.02.1997. In the year 2000, he was promoted as Assistant. While he was serving as Assistant in the Revenue Divisional Office, Tirunelveli, between 12.09.2006 and 23.03.2007, he appeared to have demanded illegal gratification of Rs.2,000/- from one C.Chellam for preparation of note towards issuance of pistol licence to the said person.

2. In respect of the above demand of illegal gratification, a trap was laid and ultimately, a criminal case was registered against the petitioner in Crime No.4 of 2007 on the file of Vigilance and Anti Corruption Department, Tirunelveli, under Section 7 of the Prevention of Corruption Act. In pursuance of the trap laid, the petitioner was also arrested and remanded to judicial custody and an amount of Rs.500/- was recovered from him. However, eventually no criminal case was initiated against him. But his case was placed before the Tribunal for disciplinary proceedings in TDP No.8 of 2007 dated 04.03.2008. The charge framed against the petitioner was that of a demand of illegal gratification of Rs.2,000/- when he was working as Assistant between 12.09.2006 and 23.03.2007.

3. The Tribunal conducted the proceedings and 6 witnesses were examined and 9 documents were marked. The Tribunal, finally, after conclusion of the proceedings, filed its report on 18.05.2010, holding the charges proved against the petitioner. The 1st respondent, through a memo dated 04.05.2011 furnished a copy of a report and in response to the same, the petitioner submitted his representation on 05.03.2012. According to the petitioner, the entire prosecution case was falsely foisted. The petitioner also pointed out certain grave infirmities in the conduct of the proceedings by the Tribunal. However, the disciplinary authority/1st respondent herein vide proceedings dated 04.06.2012, concurred with the findings of the Tribunal and imposed a penalty of compulsory retirement from service, vide proceedings dated 04.06.2012.

4. Thereafter, the petitioner preferred statutory appeal to the 2nd respondent on 30.06.2012. The 2nd respondent, however, rejected the appeal by a non-speaking order on 26.05.2015. Along with the rejection order, a copy of the advise of the Tamil Nadu Public Service Commission dated 23.02.2015, was also enclosed. Challenging the imposition of penalty of compulsory retirement, the petitioner is before this Court.

5. Mr.K.Venkatramani, the learned Senior Counsel appearing for the petitioner at the outset would submit that the Tribunal,

for disciplinary proceedings, did not follow the Discipline and Appeal Rules applicable in terms of Rule 17(b). According to him, the Tribunal has failed to substantiate its findings based on the evidence adduced before it. The Tribunal, in its report dated 18.05.2010 has simply reproduced the charge levelled against the petitioner by referring to the deposition of the witnesses and documentary evidence marked and by reproducing the written arguments of the Public Prosecutor, without substantiating how these evidences are strong enough to establish the charge against the petitioner. He would therefore, submit that the report of the TDP is a non-speaking one and bereft of any objective consideration and such report cannot be countenanced in law or on facts.

6. The Disciplinary authority, the 1st respondent herein, despite glaring defects in the conduct of the proceedings by the tribunal, overlooked the same, by concurring with the findings of the Tribunal, imposed the penalty of compulsory retirement on the petitioner.

7. The appellate authority too rejected the appeal of the petitioner vide his order dated 30.06.2012, by a cryptic order without modicum of application of mind. As could be seen in the appellate order, the 2nd respondent reproduced the advise of the Tamil Nadu Public Service Commission and concluded without an independent application of mind that there was no case for considering the appeal favourably and rejected the appeal filed by the petitioner. On the face of it, the appellate order is liable to be interfered with, being a non-speaking order, which is in contravention of mandate of the rule requirement.

8. According to the learned senior counsel, there are several decisions wherein this Court have consistently held that both the disciplinary as well as the appellate authorities are duty bound to consider the findings of the Enquiry Officer, whether the same are supported by material evidence or that the Enquiry Officer had followed the established procedure in the conduct of the proceedings etc. It is also incumbent upon the disciplinary authority to consider every infirmity that has been pointed out by the delinquent and must pass a reasoned order. More so, the appellate authority has to consider all the defects pointed out by the delinquent in consideration of the appeal. Failure to pass a reasoned order, the order of punishment as well as the confirmation of the same by the appellate authority would become vulnerable to interference of the Courts.

9. The learned counsel in regard to the above contention would refer to the following decisions.

(i) 2008(3) SCC 484. The learned Senior Counsel would draw the attention of this Court to paragraph 23 to 27 which are extracted hereunder.

> 23. We must also place on record that even Dr.Padia has taken us through the evidence of one of the witnesses.
>
> 24. The High Court has only noticed Para 704 of the Manual and not Para 705 thereof. Para 705 was very relevant and in any event both the provisions were required to be read together. The High Court, thus, committed a serious error in not taking into consideration Para 705 of the Manual. The approach of the High Court, in our opinion, was not entirely correct. If the safeguards are provided to avoid false implication of a railway employee, the procedures laid down therein could not have been given a complete go-by.
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> 25. It is the High Court who posed unto itself a wrong question. The onus was not upon the appellant to prove any bias against RPF, but it was for the Department to establish the charges levelled against the appellant.
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> 26. The High Court also committed a serious error in opining that sub-rule (21) of Rule 9 of the Rules was not imperative. The purpose for which the sub-rule has been framed is clear and unambiguous. The railway servant must get an opportunity to explain the circumstances appearing against him. In this case he has been denied the said opportunity.
>
> The cumulative effect of the illegalities/ irregularities was required to be taken into consideration to judge as to whether the departmental proceeding stood vitiated or not.
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> 27. For the aforementioned purpose, the manner in which the enquiry proceeding was conducted was required to be taken into consideration by the High Court. The trap was not conducted in terms of the Manual; the enquiry officer acted as a prosecutor and not as an independent quasi-judicial authority; he did not comply with Rule 9(21) of the Rules, evidently, therefore, it was not a case where the order of the Tribunal warranted interference at the hands of the High Court.

> The impugned judgment, therefore, cannot be sustained. It is set aside accordingly and that of the Tribunal restored. The appeal is allowed with costs. Counsel fee assessed at Rs 25,000.

(ii) 2006(5) SCC 88 (M.V.Bijiani vs. Union nof India (UOI) and Ors.). The learned Senior Counsel would draw the attention of this Court to paragraph 23 to 28 which are extracted hereunder.

> 23. Evidently, the evidences recorded by the enquiry officer and inferences drawn by him were not commensurate with the charges. If it was a case of misutilisation or misappropriation, the appellant should have been told thereabout specifically. Such a serious charge could not have been enquired without framing appropriate charges. The charges are otherwise vague. We have noticed hereinbefore that the High Court also proceeded on the basis that the non-maintenance of diary amounted to misutilisation of copper wire.
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> 24. Mr Verma, when questioned, submitted that the appellant might have utilised the same on unsanctioned works. If that be so, a specific charge to that effect should have been framed.
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> 25. It is true that the jurisdiction of the court in judicial review is limited. Disciplinary proceedings, however, being quasi-criminal in nature, there should be some evidence to prove the charge. Although the charges in a departmental proceeding are not required to be proved like a criminal trial i.e. beyond all reasonable doubt, we cannot lose sight of the fact that the enquiry officer performs a quasi-judicial function, who upon analysing the documents must arrive at a conclusion that there had been a preponderance of probability to prove the charges on the basis of materials on record. While doing so, he cannot take into consideration any irrelevant fact. He cannot refuse to consider the relevant facts. He cannot shift the burden of proof. He cannot reject the relevant testimony of the witnesses only on the basis of surmises and conjectures. He cannot enquire into the allegations with which the delinquent officer had not been charged with.
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> 26. The report of the enquiry officer suffers from the aforementioned vices. The orders of the

> disciplinary authority as also the Appellate Authority which are based on the said enquiry report, thus, cannot be sustained. We have also noticed the way in which the Tribunal has dealt with the matter. Upon its findings, the High Court also commented that it had not delved deep into the contentions raised by the appellant. The Tribunal also, thus, failed to discharge its functions properly.
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> 27. For the views we have taken, the impugned judgments are wholly unsustainable.
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> 28. The appeal is, therefore, allowed. The consequence of the said order would have been to remit the matter back to the disciplinary authority. We, however, do not intend to do so as the charges relate to the year 1969-70. The appellant, due to pendency of these proceedings, has suffered a lot. He is, therefore, directed to be reinstated in service, if he has not reached the age of superannuation. However, keeping in view the fact that he has not worked for a long time, we direct that he may only be paid 50% of the back wages. He is also entitled to costs of this appeal. Counsel's fee assessed at Rs 5000.

iii) Order in W.P.No.6125 of 2017 dated 27.07.2021. The learned Senior Counsel would draw the attention of this Court to paragraph 13 to 15 which are extracted hereunder.

> 13. Though this Court has rendered a finding that the Tribunal had not followed the procedure under Clause (i) of Rule 17(b) while holding the charges as proved, there was a duty cast on the disciplinary authority to appreciate the evidences adduced before the Tribunal at the time of enquiry, for the purpose of imposing the punishment. As already stated, this exercise was not adopted by the disciplinary authority. This duty of abiding by the procedure, by a disciplinary authority, is not an empty formality. In the state of Rajasthan V. MC.Saxena reported in 1998 (3) SCC 385, the Hon-ble Supreme Court in para 5 of the judgment, had held that it is a well settled principle that the disciplinary authority can disagree with the findings arrived at by the Inquiry Officer and act upon its own conclusion. Likewise, a Constitutional Bench of Five Judges in the case of Union of India Vs. H.C. Goel reported in AIR 1964 SC 364, had held

that if the disciplinary authority is not competent to appreciate the evidence of the inquiry officer and come to its own conclusions, the same would be in violation of Article 311 of the Constitution of India. While holding so, the Constitutional Bench had held that the disciplinary authority should consider the report of the inquiry officer and the evidence let therein and thereby come to an independent conclusion. In this context, the Hon-ble Supreme Court had elaborately dealt with the procedure to be adopted by the disciplinary authority, in the following manner:~

> ?7. The appellant considered the matter afresh in the light of the report received from the UPSC, but since it adhered to the conclusion which it had provisionally reached before issuing the second notice against the respondent, it requested the Commission to reconsider the matter and remitted the said matter to it on December 8, 1956, The Commission, on re~examining the matter, adhered to its earlier views and conveyed the same to the appellant on January 15, 1957. The appellant considered the whole case again and came to the conclusion that a case had been established against the respondent for his dismissal, and so, by its order passed on March 13, 1957, dismissed him from service.
>
> 8. The respondent then moved the Punjab High Court by his Writ Petition No. 201~D of 1957 for quashing the said order of dismissal, under Articles 22G and 311 of the Constitution. A learned Single Judge of the said High Court heard the matter and came to the conclusion that the respondent had not made out a case for quashing the order of dismissal passed against him. The respondent then preferred an appeal under the Letters Patent and a Division Bench of the said High Court which heard the Letters Patent Appeal has allowed the respondent-s appeal. It has held that in view of the fact that the Enquiry Officer had made a report in favour of the respondent, it was not open to the appellant to differ from his findings and inasmuch as the impugned order of dismissal was passed by the appellant as a result of its conclusion that the findings of the enquiry officer were

erroneous, the said order contravened the provisions of Article 311 of the Constitution. That is how the writ petition filed by the respondent was allowed and his dismissal set aside. The appellant then applied for a certificate to the High Court but the said application was rejected. The appellant then moved this Court for special leave and it is with the special leave granted by this Court that it has brought the present appeal before us.

9. The first question which calls for our decision is whether it was competent to the appellant to take a different view on the evidence adduced against the respondent and proceed on the basis that the conclusions of fact recorded by the enquiry officer were unsound and erroneous. If it is held that the appellant was precluded from differing from the conclusions of the enquiry officer, then, of course, the subsequent steps taken by the appellant would be inconsistent with Article 311 of the Constitution. On the other hand, if the competence of the appellant to differ from the conclusions of the enquiry officer cannot be seriously questioned, then the argument that the appellant contravened Article 311 when it issued the second notice against the respondent cannot succeed.

10. Article 311 consists of two sub~articles and their effect is no longer in doubt. The question about the safeguards provided to the public servants in the matter of their dismissal, removal or reduction in rank by the Constitutional provision contained in Article 311, has been examined by this court on several occasions. It is now well settled that a public servant who is entitled to the protection of Article 311 must get two opportunity to defend himself. He must have a clear notice of the charge which he is called upon to meet before the departmental enquiry commences, and after he gets such notice and is given the opportunity to offer his explanation, the enquiry must be conducted according to the rules and consistently with the requirements of natural justice. At the end of the enquiry, the enquiry officer

appreciates the evidence, records his conclusions and submits his report to the Government concerned. That is the first stage of the enquiry, and this stage can validly begin only after charge has been served on the delinquent public servant.

11. After the report is received by the Government, the Government is entitled to consider the report and the evidence led against the delinquent public servant. The Government may agree with the report or may differ, either wholly or partially, from the conclusions recorded in the report. If the report makes findings in favour of the public servant, and the Government agrees with the said findings, nothing more remains to be done, and the public servant who may have been suspended is entitled to reinstatement and consequential reliefs. If the report makes findings in favour of the public servant and the Government disagree with the said findings and holds that the charges framed against the public servant are prima facie proved, the Government should decide provisionally what punishment should be imposed on the public servant and proceed to issue a second notice against him in that behalf. If the enquiry officer makes findings, some of which are in favour of the public servant and some against him the Government is entitled to consider the whole matter and if it holds that some or all the charges framed against the public servant are, in is opinion, prima facie established against him, the also the Government has to decide provisionally what punishment should be imposed on the public servant and give him notice accordingly, It would thus be seen that the object of the second notice is to enable the public servant to satisfy the Government on both the counts, one that he is innocent of the charges framed against him and the other that even if the charges are held proved against him, the punishment proposed to be inflicted upon him is unduly severe. This position under Article 311 of the Constitution is substantially similar to the position which governed the public servants under Section 240 of the Government of India Act, 1935. The scope and effect of the provisions of Section

240 of the Government of India Act 1935, as well as the scope and effect of Article 311 of the Constitution have been considered by judicial decisions on several occasions and it is unnecessary to deal with this point in detail, vide The Secretary of State for India v. I.M. Lal , High Commissioner for India and High Commissioner for Pakistan And. I.M. Lal and Khem Chand v. Union of India.

12. These reported decisions would show that it has never been suggested that the findings recorded by the enquiry officer conclude the matter and that the Government which appoints the enquiry officers and directs the enquiry is bound by the said findings and must act on the basis that the said findings are final and cannot be reopened. The High Court has, however, held that there are certain observations made by the Federal Court in the case of I.M. Lal , and by this Court in the case of Khem Chand which support the respondents contention that the appellant was bound by the findings recorded by the enquiry officer in his favour in the present enquiry proceedings. Before referring to these observations, it is relevant to examine this contention on principle. It is obvious that the enquiry officer held the enquiry against the respondent as a delegate of the appellant. That indeed is the character which the enquiry officer inevitably occupies when he holds a departmental enquiry at the instance of the Government. The object of the enquiry is plain. It is to enable the Government to hold an investigation into the charges framed against a delinquent public servant, so that the Government can, in due course, consider the evidence adduced and decide whether the said charges are proved or not. The interposition of the enquiry which is held by a duly appointed enquiry officer does not alter the true legal position that the charges are framed by the Government and it is the Government which is empowered to impose punishment on the delinquent public servant. Therefore, on principle, it is difficult to see how the respondent is justified in contending that the findings recorded by the

enquiry officer bind the appellant in the present case.

13. If the contention raised by the respondent were to be upheld, it would lead to illogical and almost fantastic results. If the enquiry officer makes findings against the public servant, on the respondent-s contention the Government can never re~examine the matter, so that even if the Government were satisfied that the findings against the public servant were erroneous, it must proceed on the basis that the public servant is guilty and impose some punishment on him. It is obvious that this proposition is entirely inconsistent with the Constitutional rights of the appellant which is the appointing authority and which has the power to impose the punishment on the respondent.

14. Similarly, if the enquiry officer makes findings in favour of the public servant, on the respondent-s case that is final and however illogical, erroneous or unsound the said findings may be, the appellant is powerless and must act on the basis that the public servant is innocent. That again is a very anomalous position and it ignores the true Constitutional rights of the appellant and the character of the enquiry officer and the scope of his enquiry.

15. Sometimes, several charges are framed and findings are recorded by the enquiry officer in respect of them. In such cases, Government may accept some findings and may reject others, and it has naturally to proceed to take the next step in the light of its own conclusions. Such a case arose before this Court in State of Assam v. Bimil Kumar Pandit . Dealing with the requirements which the second notice must satisfy in such a case, this Court has held that the said notice must indicate to the public servant clearly the grounds on which the Government provisionally intends to act in imposing the proposed punishment specified in the notice.

16. Besides, it would be apparent that if the respondent-s argument is valid, then the

> second notice would serve very little purpose. If, at that stage, the Government is bound to accept the findings of the enquiry officer, the opportunity which is intended to be given to the public servant to show cause not only against the proposed punishment but also against the findings recorded against him, would be defeated, because on the respondent-s case Government cannot alter the said findings. In our opinion, the contention raised by the respondent is patently unsound and must be rejected.?

> 14. In the light of the aforesaid extract and the observations made by this Court, it would be appropriate to remit the matter back to the authority/second respondent herein for reconsidering the original punishment, rather than remitting it to the Tribunal for reconsidering its final opinion on the charges.

> 15. In the light of the above observations, the impugned order passed by the second respondent herein in G.O.No.501, dated 09.12.2016 is set aside and the matter is remitted back to the second respondent for reconsideration. The petitioner is also granted liberty to give another explanation to the Inquiry Officer's Report, atleast within a period of 15 days from the date of receipt of a copy of this order. On receipt of such an explanation or in the absence of any explanation, the second respondent herein, shall reconsider the TDP report, dated 28.02.2011, in its proper perspective and in accordance with the procedure contemplated under Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and render a detailed speaking order, after consideration of the oral and material evidences, together with the written plea of the petitioner and further explanations rendered by him, within a period of three months.

> 16. The Writ Petition is ordered accordingly. There shall be no orders as to costs.

10. According to the learned Senior Counsel, the above decisions would point to the legal position that it is imperative on the part of the authorities to pass reasoned orders and also the Enquiry Officer is bound to follow proper procedure and also evaluate the evidentary value as the same establish the charges against the delinquent or not. In this

case, the Tribunal, for disciplinary proceedings, failed to follow the procedure and failed to establish the charges. Further, the disciplinary authority as well as the appellate authority failed to address the infirmities pointed out by the petitioner in proper perspective. Therefore, the entire proceedings culminated in imposition of penalty stood vitiated.

11. After notice, Mr.L.S.M.Hasan Fizal, the learned Additional Government Pleader entered appearance for the respondents and a counter affidavit has been filed. In the counter affidavit, the facts of the case have been reiterated. According to the counter affidavit, it was on the basis of the advise by Vigilance Commission, the matter was placed before the Tribunal for disciplinary proceedings. In the disciplinary proceedings, the petitioner was given full opportunity to cross examine the prosecution witness. The copy of the findings was also served on the petitioner on 04.05.2011 to submit his explanation only after following the elaborate procedure as contemplated in the rules, the finding was rendered holding the charge proved and the punishment was imposed.

12. Therefore, there is no cause for complaint at all by the petitioner against the procedure adopted by the authority. The Tamil Nadu Public Service Commission was approached in the matter and on taking advice from the Commission, the Appellate Authority, by independently appreciating the appeal with reference to the records has chosen to reject the appeal. The entire disciplinary proceedings against the petitioner had been conducted fairly in terms of the procedure contemplated for the conduct of such proceedings and the contention alleging violation of the procedure and lack of evidence is not sustainable.

13. The learned Additional Government Pleader reiterated the above facts and submitted that the charge against the petitioner being extremely severe of demanding illegal gratification, the penalty of compulsory retirement, as a matter of fact, was leniently imposed. Normally, in such case, the punishment of dismissal or removal from service alone would be imposed, however, the authority has taken a lenient view in the matter. He would therefore submit that the writ petition is devoid of merits and liable to be dismissed.

14. This Court, considered the submission of Mr.K.Venkatramani, the learned Senior Counsel for the petitioner and Mr.L.S.M.Hasan Fizal, the learned Additional Government Pleader for the respondents, perused the materials, pleadings and the case laws cited on behalf of the petitioner.

15. This Court, particularly, finds after going through the records that various lacunae pointed out by the petitioner in the conduct of the enquiry and absence of material evidence adduced before the Tribunal, have not been considered by the Disciplinary authority, in particular, the procedure followed by TDP, with reference to the Tamil Nadu Civil Service (Discipline and Appeal) Rules. The disciplinary authority appeared to have overlooked and failed to appreciate the infirmities in the conduct of the enquiry by the Tribunal, the basis of the findings by the Tribunal, as to the availability of strong evidence against the petitioner at all. From the order of the Disciplinary authority, no such consideration could be inferred.

16. Further, when the petitioner pointed out complete lack of evidence in establishing the charges against the petitioner and the report of TDP was not supported by evidence, the disciplinary authority ought to have referred to the evidence and re-enforced the conclusion reached by the TDP in order to refute the allegations of lack of evidence by the petitioner. However, the disciplinary authority appeared to have overlooked the objection on the crucial aspect and perfunctorily accepted the report as a matter of course and imposed the penalty of compulsory retirement from service vide his order dated 04.06.2012.

17. The appellate order, on the other hand, is shockingly cryptic, which under no circumstances, can be countenanced in law. Rule 23 of the Tamil Civil Services (Discipline and Appeal) Rules provide for consideration of appeal by the appellate authority. The Rule reads as follows:

> 23. (1) In the case of an appeal against an order imposing any penalty specified in rule 8 or 9, the appellate authority shall consider--
>
> (a) whether the facts on which the order was based have been established;
>
> (b) whether the facts established afford sufficient ground for taking action; and
>
> (c) whether the penalty is excessive, adequate or inadequate and pass orders- -
>
> (i) confirming, enhancing, reducing, or setting aside the penalty; or
>
> (ii) remitting the case to the authority which imposed the penalty or to any other authority with

such direction as it may deem fit in the circumstances of the case ;

Provided that --

(i) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (iv), (v)(c) , (vi), (vii) and (viii) of Rule 8 and an inquiry under sub-rule (b) of Rule 17 has not already been held in the case, the appellate authority shall, subject to the provisions of sub-rule (c) of Rule 17, itself hold such inquiry or direct that such inquiry be held in accordance with the provisions of sub-rule (b) of Rule 17 and thereafter, on a consideration of the proceedings of such inquiry make such orders as it may deem fit;

(ii) if the enhanced penalty which the appellate authority proposes to impose is one of the penalties specified in clauses (iv), (v)(c), (vi), (vii) and (viii) of rule 8 and an inquiry under sub-rule (b) of rule 17 has already been held in the case, the appellate authority shall , after giving the appellant a reasonable opportunity of making representation against the penalty proposed on the basis of the evidence adduced during the enquiry, make such orders as it may deem fit ; and

(iii) no order imposing an enhanced penalty shall be made in any other case unless the appellant has been given a reasonable opportunity, as far as may be in accordance with the provisions of sub-rule (a) of rule 17 of making representation against such enhanced penalty.

(2) Any error or defect in the procedure followed in imposing a penalty may be disregarded by the appellate authority if such authority considers, for reasons to be recorded in writing, that error or defect was not material and has neither cause injustice to the person concerned nor affected the decision of the case.

18. The conspectus of the above rule position would mandate the appellate authority to consider every aspect of the disciplinary proceedings initiated against the delinquent concerned. The above sub-clauses are self-explanatory which need not be elaborated herein. In the face of such requirement of

comprehensive consideration by the appellate authority, in this case, the 2nd Respondent appellate authority has disposed of the appeal as under.

> The Government have again examined the case with connected records along with the view of the commission. After careful and independent examination, the Government decided to reject the appeal of Thiru A.R.Kannan, formerly Assistant, Revenue Divisional Office, Tirunelveli District and issue orders accordingly.

19. The above conclusion was recorded after reproducing the view of the Tamil Nadu Public Service Commission in para 4, as according to the Commission, the appeal needed to be rejected, being devoid of merits.

20. From the above conclusion of the appellate authority, this Court can safely assume that the appellate authority was entirely dictated by the views of the Tamil Nadu Public Service Commission to reject the appeal. The appellate authority appeared to have abdicated his statutory responsibility as conferred upon him under the rules, and followed the advice by the Commission dutifully. The Courts have held that the appellate authority or any other authority under the rules cannot surrender their discretion in favour of the third party agency. In this case, it appears that the appellate authority has been fully influenced and guided by the views of the Tamil Nadu Public Service Commission. On this ground alone, the disciplinary proceedings can be stated to be vitiated.

21. Moreover, incorporating cliched expressions like "careful and independent examination" in the order, cannot persuade the Court to hold that there was an independent application of mind on the part of the appellate authority. Such expressions are inane and empty without substance and have to be rejected forthwith. Such insouciant and complacent expression is a traversity of exercise of quasi-judicial power conferred upon the appellate authority under the rules. Such summary and cursory disposal of the appeal is directly in contravention of the mandate of the rule and therefore, the same cannot be countenanced in law.

22. The decisions as relied on by the learned senior counsel would also support the contention of the learned counsel for the petitioner. The imposition of penalty on the petitioner without adopting proper procedure and without proper application of mind, cannot be held to be sustainable in law.

23. For all the above stated reasons, the order passed by the 1st respondent in Lr.No.Ser4(4)/36486/2012 dated 04.06.2012 and confirmed by the 2nd respondent in G.O.2(D)329, Revenue [Ser3(1)] Department, dated 26.05.2015 are hereby set aside and the matter is remitted to the 1st Respondent/disciplinary authorty for fresh consideration of the petitioner's representation against the enquiry findings of the TDP.

24. The disciplinary authority/1st respondent herein, is directed to address every legitimate objection raised by the petitioner against the report of TDP dated 18.05.2010 and pass a reasoned order.

25. It is also clarified that it is open to the petitioner to submit any further representation to the TDP report and on such representation being submitted expeditiously, the disciplinary authority may consider the same before passing final orders in the matter.

26. The Writ Petition is allowed to the extent indicated above. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vsi

To

1. The Principal Secretary,
Commissioner of Revenue Administration,
Chepauk,
Chennai - 600 005.

2. The Secretary to Government of Tamil Nadu,
Revenue Department,
Fort St. George,
Chennai - 600 009.

+1cc to Mr.M.Muthuppan, Advocate, S.R.No.22889
+1cc to the Government Pleader, S.R.No.23402

W.P.NO.22943 OF 2015

SVI(CO)
PBS/12/04/2022