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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.12.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.22706 of 2016

C. Ramu ... Petitioner

Vs

1. The Secretary to Government,
Revenue (Services-2) Department,
Fort St.George, Chennai-9.

2. The Additional Chief Secretary,
Commissioner of Revenue Administration,
Disaster Management and Mitigation Department,
"Ezhilagam", Chepauk, Chennai-5.

3. The Secretary,
Tamil Nadu Public Service Commission,
Fazer Bridge Road, Chennai ... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in connection with the impugned order passed in G.O.2(D)No.106, Revenue (Ser.2(3)) Department dated 01.04.2016 and quash the same and direct the respondents to superannuate the petitioner from service and grant him all consequential service and monetary benefits.

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For petitioner ... Mr.K.Venkataramani
Senior Counsel for
Mr.M.Muthappan

For Respondents ... Mr.T.Chezhiyan
AGP
For R.1 and R.2
MrR.Bharanidharan
For R.3

O R D E R

As per the Charge Memo dated 13.04.2013, the petitioner was alleged to have demanded a sum of Rs.5,000/- on 14.09.2011 from one Kannan and accepted the same on 22.09.2011 for issuing TASMAC Bar licence to the complainant. Pending enquiry, the petitioner reached the age of superannuation on 31.03.2014 and hence, the respondents herein did not permit the petitioner to retire through an order dated 27.03.2014. As per the Enquiry Officer's Report dated 30.07.2014, the charge against the petitioner was held to be proved. In view of the proven charges, the petitioner has submitted his further representation on 25.03.2015. The representation dated 25.03.2015 was not considered by the first respondent and accordingly, through the impugned order dated 01.04.2016, the punishment of compulsory retirement was imposed on the petitioner. Challenging the same, the present writ petition has been filed.

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2. While, the learned Senior Counsel appearing for the petitioner submitted that there are certain infirmities in the oral evidence, learned Additional Government Pleader appearing for respondents 1 and 2 submitted that the evidence was properly appreciated by the Enquiry Officer and the impugned order of punishment has been imposed. The second ground raised by the learned Senior Counsel is that the order of punishment of the first respondent herein is a non-speaking order.

3. Insofar as the second ground is concerned, it is seen that after the enquiry officer's report dated 30.07.2014, the first respondent herein had communicated the Enquiry Officer's Report together with covering letter, in which, the Government have observed that the findings of the Enquiry Officer is agreeable to them. Further, in the same covering letter, the Government extended an opportunity to the petitioner herein to submit his further representation.

4. However, since the Government have extended time to the petitioner to submit his further representation and the petitioner had also submitted his further representation on 25.03.2015, this Court is of the view that the observation of the

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Government in the covering letter stating that they have agreed with the findings of the Enquiry Officer may not be given importance.

5. A perusal of the further representation of the petitioner dated 25.03.2015 would reveal that he had raised several grounds commencing from framing of charges and the conduct of the enquiry. The Government, while extracting all the charges, defence statement of the delinquent officer, findings of the Enquiry Officer and the further representation of the delinquent officer with regard to the charges, have observed that " *the Government have decided to hold the charges as proved against him and arrived at a provisional decision to impose the punishment of "Compulsory Retirement" on him for the proven charges."* In support of such claim, the Government also relied upon the view of the Tamil Nadu Public Service Commission which has been extracted in the impugned order. There is absolutely no independent finding with regard to the objection raised by the petitioner in his further representation dated 25.03.2015.

6. Mere reliance on the view of the Tamil Nadu Public Service Commission alone will not suffice for the purpose of coming to a subjective satisfaction and imposing a punishment. Rather, the Government being the disciplinary authority,

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is required to follow the procedure contemplated under Rule 17(b)(ii) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules which stipulates that when the Government is of the opinion on the basis of the evidence adduced during enquiry, that if any of the major punishment are proposed to be imposed, an opportunity to the delinquent for rendering his explanation has to be given. Thereafter, the disciplinary authority is required to take into account the further representation submitted by the delinquent, which is based on the evidence adduced during enquiry and impose the penalty accordingly.

7. In the instant case, apart from stating that the Government has accepted the findings of the Enquiry Officer with the connected records, there is no independent appraisal. As such, the procedure contemplated under Rule 17(b)(ii) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules has been clearly violated. Hence, the submission of the learned Additional Government Pleader that the impugned order is a reasoned order cannot be accepted.

8. In view of the decision taken by this Court that the impugned order is a non-speaking order, it would be appropriate to give the Government an opportunity to pass a speaking order. Hence, the first ground raised by the

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petitioner, touching upon the evidence let in the oral enquiry, does not require consideration, since the same would have a bearing on the decision to be taken by the Government, on remand.

9. In the light of the above findings, the impugned order dated 01.04.2016 passed by the first respondent is set aside and the matter is remanded back to the first respondent for re-consideration. The first respondent shall re-consider all the objections raised by the petitioner in his further representation dated 25.03.2015 and address the objections raised therein, which touches upon the evidence let in during the enquiry and pass a speaking order within a period of three months from the date of receipt of a copy of this order.

With the above direction, the writ petition stands partly allowed. No costs.

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Index: Yes
Speaking Order/Non-speaking Order
sr

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M.S.RAMESH,J.,

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