IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 17.03.2022
ORDERS PRONOUNCED ON : 27.04.2022

CORAM :

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.NO. 24349 OF 2021

R.Sellappan ...Petitioner

Vs

1.The Government of Tamil Nadu
Represented by its Principal Secretary
Revenue and Disaster Management Department
Land Survey and Land Tax Division,
Land Survey (3(1)) Section
Fort St. George, Chennai-600009.

2.The Director,
Land Survey and Land Tax Project,
Survey House, Chepauk,
Chennai-600005

3.The Additional Director
Land Survey and Records Department
Survey House, Chepauk,
Chennai-600005. ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the third respondent herein in R.C.La. 2 / 3336 / 07 dated 23.07.2008 the order passed in appeal by the second respondent herein in R.C.Nya.2 / 23809 / 2019 (L.S) dated 16.12.2019 and the order passed in revision by the first respondent herein in GO. (1D) No. 156 Revenue and Disaster Management Department dated 12.07.2021 and quash the punishment of Censure and confer all the consequential benefits including promotion to the petitioner with due regards to petitioner seniority.

For Petitioners : Mr.R.S.Anandan

For Respondents : Mrs.R.L.Karthika, GA

ORDER

The prayer sought for in the writ petition is to call for the records relating to the third respondent herein in R.C.La.2/3336/07 dated 23.07.2008 the order passed in appeal by the second respondent herein in R.C.Nya.2/23809/2019 (L.S) dated 16.12.2019 and the order passed in revision by the first respondent herein in GO. (1D) No. 156 Revenue and Disaster Management Department dated 12.07.2021 and quash the punishment of Censure and confer all the consequential benefits including promotion to the petitioner with due regards to petitioner seniority.

2. Heard, the learned Senior Counsel appearing for the petitioner and the learned Government Advocate appearing for the respondents and perused the materials available on record.

3. The case of the petitioner is that while the petitioner was working as Deputy Inspector of Survey at Sankagiri, he was placed under suspension by invoking Rule 17(e) of Tamil Nadu Civil Service (Discipline and Appeal) Rules. The petitioner has made representation to the 2nd respondent to cancel the suspension and to reinstate into service. Subsequently, the suspension order was revoked and reinstated into service. Again served with a charge memo dated 03.04.2007 issued under Rule 17 (b) of Tamil Nadu Civil Service (Discipline and Appeal) Rules by the Assistant Director of Survey and Land Records (incharge) Salem. Though the enquiry officer held the charges not proved against the petitioner, the 3rd respondent by relying upon the report of RDO dated 19.01.2007 awarded punishment of Censure by order dated 23.07.2008. Subsequent to the punishment order, the appeal and revision petition submitted by the petitioner were rejected by the respondents. In view of the said punishment, the petitioner suffered monetary loss and promotion, hence challenging the said punishment order and subsequent rejection orders, the present writ petition is filed.

4. The learned counsel for the petitioner has submitted that the enquiry officer in his enquiry report dated 15.04.2008 has held that all the four counts of the charges are not proved. But the disciplinary authority /3rd respondent without even serving the copy of the enquiry report, had issued a memo holding that the charges are proved by relying the report of the RDO dated 19.01.2007. The said RDO was not examined as a witness in the enquiry and the said report was also not marked. The disciplinary authority/3rd respondent based on assumptions and presumptions has held the charges proved without relying on any material evidence.

5. The learned counsel for the petitioner has further submitted that the petitioner has submitted his appeal on

27.08.2008 to the Appeallte Authority, due to his illness he could not follow his appeal, which was kept pending till 11.07.2019, hence he revived his appeal on 11.07.2019, but the 2nd respondent without considering his original appeal dated 27.08.2008, has rejected the said appeal on the grounds that the petitioner has preferred appeal after 10 years, hence the order of the 2nd respondent is liable to be set aside.

6. According to the learned counsel for the petitioner, when the disciplinary authority disagree with the views of the enquiry officer, a dissenting note should be issued by stating reasons for disagreeing with the enquiry officer's report. But in this case, though the disciplinary authority has disagreed with the views of the enquiry officer, no reasons have been stated and simply initiated the disciplinary proceedings based on the report of the RDO. Therefore, in the absence of any material evidence to prove the charge, the findings of the disciplinary authority is perverse and the same is liable to be set aside.

7. Counter affidavit is filed by the respondents. The learned Government Advocate in support of the statement made in the counter affidavit, has submitted that the enquiry officer simply held the charges not proved, hence the 3rd respondent vide memo dated 02.07.2008 requested the petitioner to submit his explanation within a period of 15 days. The petitioner has submitted his explanation on 15.07.2008. after considering the explanation of the petitioner, the 3rd respondent has passed orders, imposing punishment of 'censure'. Subsequently, the appeal preferred by the petitioner on 11.07.2019 before the 2nd respondent was rejected on the ground that the petitioner had preferred appeal belatedly after a period of 10 years. The revision petition filed before the 1st respondent was also rejected vie G.O. (1D) No. 156, dated 12.07.2021 as there was no new points to substantiate his claim.

8. According to the learned Government Advocate, the report of the enquiry officer is intended to assist the disciplinary authority in coming to a conclusion about the guilt the Government servant. Its findings or recommendations are advisory in nature and are not binding on the disciplinary authority who can disagree with them and come to its own assessment of the evidence forming part of the record of enquiry. On receipt of the report from the enquiry officer, the disciplinary authority/3rd respondent after carefully considering the same and obtaining explanation from the petitioner, has imposed the punishment of censure. Therefore there is no violation as contended by the learned counsel for the petitioner.

9. Admittedly, based on the allegation that the petitioner being a Taluk Deputy Inspector of Survey in the Taluk Office,

Sankari had failed to make arrangements for the field inspection of the Zonal Officer for Salem District and the Secretary to the Government, Transport Department on 19.01.2007 inspite of previous intimation of the visit, the petitioner was placed under suspension by invoking Rule 17(e) of Tamil Nadu Civil Service (Discipline and Appeal) Rules. The petitioner has made representation to the 2nd respondent to cancel the suspension and to reinstate into service. Subsequently, the suspension order was revoked and reinstated into service. Again the petitioner was served with a charge memo dated 03.04.2007 issued under Rule 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Rules by the Assistant Director of Survey and Land Records (incharge) Salem. Though the enquiry officer held the charges not proved against the petitioner, the 3rd respondent by relying upon the report of RDO dated 19.01.2007 awarded punishment of Censure by order dated 23.07.2008. Subsequent to the punishment order, the appeal and revision petition submitted by the petitioner were rejected by the respondents.

10. The main contention of the petitioner is that when the disciplinary authority disagrees with the view of the enquiry officer, a dissenting note should be issued by stating the reasons for such disagreement. But in the present case, without stating any reason , the disciplinary authority/3rd respondent had disagreed with the views of the enquiry officers and by simply relying upon the report of the RDO, dated 19.01.2007, initiated the disciplinary action by impugned proceedings dated 23.07.2008 on this ground the impugned order is liable to be set aside.

11. In this context, it is useful to refer to the decision of the Hon'ble Supreme Court in Punjab National Bank & Others Vs.Kunj Behari Misra reported in (1998) 7 SCC 84, wherein it has been held as follows:

> "19. The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof whenever the disciplinary authority disagrees with the inquiry authority on any article of charge then before it records its own findings on such charge, it must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the inquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favorable conclusion of the inquiry officer. The principles of natural justice, as we have already observed, require the authority, which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of

misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.”

12. In M.Muthu Anand Vs. Principal Secretary and Secretary to Government, Home (Transport) Department, Chennai reported in (2011) 6 MLJ 122, this Court held as follows:

> “16. At this juncture, it is pertinent to point out that when the Disciplinary Authority takes the assistance of an enquiry officer to conduct the enquiry into the charges and if any findings adverse to the interests of the charged official are recorded, then he has to be furnished with a copy of the enquiry officer's report, so as to enable him to make his further representation, on the findings of the enquiry officer, to the disciplinary authority and at that stage, when the Disciplinary Authority acknowledges the further representation, then he has to apply his mind and consider as to whether, the facts on the basis of which, disciplinary action has been taken, have been established, whether the charged official has been provided with sufficient opportunity to defend the disciplinary proceedings, whether the procedure contemplated under the rules have been followed, whether there is sufficient ground to proceed further with the disciplinary proceedings, and then, he can record his final findings on the charges to remit the matter to the enquiry officer to rectify any procedural defect noticed with regard to the above aspects. But if the enquiry officer records the findings in favour of the delinquent officer, holding that the charges as not proved, with or without any recommendation for exoneration and if the Disciplinary Authority disagrees with those findings, then, it is mandatory on the part of the Disciplinary Authority to form a tentative opinion for disagreeing with the findings of the enquiry officer. But if the Disciplinary Authority, instead of recording a tentative opinion with reasons, for disagreement, proceeds to hold him guilty of the charges and thereafter, issue notice to the charged official, then it is nothing but a post-decisional hearing. It should also be borne in mind that principles of natural justice require that before the disciplinary authority records his final finding on the charges, he has to examine various aspects stated supra. But, without examining the same, if the Disciplinary Authority arrives at a final finding on the charges as proved, and thereafter, call upon the charged official to offer his further representation on the finding and

also on the procedural aspects, then it is only an empty formality, for the reason, there is not only a post decisional hearing on the findings, but it is also on the procedural aspect. In the case on hand, the Disciplinary Authority has not only recorded his reasons for disagreeing with the findings of the enquiry officer, but has also arrived at the conclusion, holding the charges as proved."

13. A perusal of the impugned punishment order issued by the 3rd respondent/Disciplinary Authority, dated 23.07.2008 would disclose that no reasons have been assigned for disagreeing with the views taken by the enquriy officer and simply stated that since the District Collector has initiated disciplinary action by suspending the petitioner from service, he issued order of punishment of 'censure' to the petitioner and further directed the petitioner to submit his explanations, if any, within 60 days from the date of receipt of the said letter. Therefore, it is clear that the disciplinary authority/3rd respondent without giving any reason for disagreement with the enquiry report, has issued order of punishment. Hence, on this sole ground and in the light of decisions cited supra, the impugned punishment order is liable to be quashed. Consequently, the rejection orders passed by the 1st & 2nd respondent on the Appeal and Mercy petition are also liable to be dismissed.

14. Considering the above facts and circumstances and keeping in mind the ratio laid down in the above judgments, this Court has no hesitation to hold that the impugned order of punishment passed by the 3rd respondent as well as the rejection orders passed by the first respondent & 2nd respondent warrant interference and are liable to be quashed.

15. In the result, this Writ Petition is allowed and the proceedings of the 3rd respondent in R.C.La. 2 / 3336 / 07 dated 23.07.2008, the order passed in appeal by the second respondent herein in R.C.Nya.2 / 23809 / 2019 (L.S) dated 16.12.2019 and the order passed in revision by the first respondent herein in GO. (1D) No. 156 Revenue and Disaster Management Department dated 12.07.2021 are quashed and the respondents are directed to grant notional promotion to the petitioner and confer all consequential service and monetary benefits. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Principal Secretary
Revenue and Disaster Management Department
Land Survey and Land Tax Division,
Land Survey (3(1)) Section
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2.The Director,
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Survey House, Chepauk,
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3.The Additional Director
Land Survey and Records Department
Survey House, Chepauk,
Chennai-600005.

+1cc to Mr.R.S.Anandan, Advocate Sr.No.28823

W.P.No.24349 of 2021

SR(CO)
RVM(27/05/2022)