BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 13.04.2022
DELIVERED ON : 17.06.2022
CORAM
THE HONOURABLE MRS.JUSTICE S.SRIMATHY
W.P.(MD)No.9176 of 2015

R.Ramaraj ... Petitioner

Vs

1.The Director General of Vigilance,
Directorate General Grievance,
First and Second Floor,
Samrat Hotel,
Kautilaya Marg,
Chanakyapuri,
New Delhi - 110 021.

2.The Chief Commissioner of Central Excise,
Coimbatore Zone,
6/7, ATD, Race Course,
Coimbatore - 18.

3.The Commissioner of Central Excise,
Tractor Road,
NGO 'A' Colony,
Tirunelveli - 627 007. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, to call for the records relating to the impugned proceedings of the second respondent in Appeal No.3 of 2015 in File No.C.No.II/39/65/2014-Vig (CCO) dated 27.01.2015 confirming the order of the third respondent in No.05/2014 in File No. C.No.II/10-A/03/2011-Vig dated 08.08.2014 and to quash the same.

For Petitioner : Mr.K.Sivabalan
For Respondents : Mr.S.Ragaventhre,
Central Government Counsel.

O R D E R

This Writ Petition has been filed to quash the impugned order in Appeal No.3 of 2015 in File No. C. No. II/39/65/2014-Vig (CCO) dated 27.01.2015 confirming the order of the third respondent in order in original No.05/2014 in File No. C.No.II/10-A/03/2011-Vig dated 08.08.2014.

2. The brief facts of the case are that the petitioner

was appointed as Inspector of Central Excise in the year 1982 and had served for more than 15 years as Inspector, then the petitioner was promoted as Superintendent in the year 1997. A charge memo dated 07.10.2011 was issued under Rule 14 of CCS (CCA) Rules, 1965. A charge against the petitioner is that the petitioner has failed to verify the element of unjust enrichment thereby failed to maintain devotion to duty in the final processing of a refund claim of Rs.8,77,636/- filed by M/s. Sechem Private Limited while functioning as Superintendent of Central Excise, Technical in the year 2008. The petitioner submitted his reply dated 31.10.2011. Thereafter, an enquiry officer was appointed, wherein, the report states that the charge against the petitioner was neither made out nor proved. Thereafter, the third respondent vide letter dated 11.10.2012 has called for an explanation on the enquiry report. However, the said letter is not stating any reasons for deviating from the enquiry report. The petitioner submitted his explanation on 12.10.2012. Thereafter, the third respondent has not passed any order for more than one year. In the meanwhile, the third respondent vide letter dated 17.10.2012 had requested the first respondent to give second stage advice. The third respondent concurred with the enquiry report but the third respondent did not pass any final order. Therefore, the petitioner filed Writ Petition in W.P.No.2668 of 2014 directing the respondents to pass final orders in disciplinary proceedings and this Court vide order dated 21.03.2014 dispose the Writ Petition by directing the respondent to pass orders. In the meanwhile, the third respondent had passed an impugned order whereby the major penalty was imposed by reducing three stages in the basic pay for a period of one year with effect from 01.09.2014. The said order was passed based on the advice of the first respondent dated 05.06.2014 whereby the first respondent advised the third respondent to impose major penalty. Aggrieved over the penalty, the petitioner preferred a statutory appeal to the second respondent and the same was dismissed. The said two orders are challenged in this Writ Petition.

3. The second and third respondents had filed a counter stating that the Writ Petition is not maintainable since the petitioner has an alternative remedy by filing the revision petition against the order in appeal. The petitioner has not filed any petition before the Central Administrative Tribunal. Since there are two alternative remedies, hence the present Writ Petition is not maintainable. The contention of the respondents is that the present case against the petitioner was a vigilance case and therefore the second stage of advice was obtained from the Director General of Vigilance, New Delhi. The third respondent after taking into consideration, the advice of the Director General of Vigilance has passed an order independently by taking into consideration all the relevant facts. Thereafter, the petitioner has preferred an appeal and a well reasoned order was passed. The disciplinary proceedings were initiated for the lapses committed by the petitioner in processing the refund claim. Hence the charge memo dated 07.10.2011

was issued and the proceedings were conducted as per law by granting natural justice and other procedural formalities. Therefore, there is no infirmity in the impugned order. Hence prayed to reject the Writ Petition.

4. Heard Mr.K.Sivabalan, learned counsel for the petitioner and mr.S.Ragaventhre, learned Central Government Standing Counsel for the respondents and peruse the records.

5. It is seen from the records that the enquiry officer has filed a detailed report stating that the charge against the petitioner was not made out and not proved. The third respondent is the authority to take disciplinary action and the third respondent has not recorded any reasons for deviating from the enquiry report. The third respondent has sought the second stage advise from the Director General of Vigilance. The third respondent has mechanically sought second stage advise from the Directorate of Vigilance before recording the reasons for deviating from the enquiry report. If the enquiry report states that the charges were not proved, then the third respondent is bound to record reasons if he wants to deviate from the findings of the enquiry report. Moreover, the second stage advice was taken mechanically by the third respondent and the punishment imposed on the petitioner is disproportionate.

6. Therefore, this Court is of the considered opinion that for the reasons stated above, the impugned order is liable to be interfered with. Therefore, this Court is inclined to set aside the impugned order. Hence the impugned order is set aside and the Writ Petition is allowed.

7. With the above observations, this Writ Petition is allowed. There shall be no order as to costs.

Sd/-

Assistant Registrar(P&A)

// True Copy //

/07/2022

Sub Assistant Registrar(CS)

Nsr

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

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+1 CC to M/s.K. SIVABALAN, Advocate (SR-26370[F] dated 17/06/2022)

W.P.(MD)No.9176 of 2015
17.06.2022

SRK(CO)
KB(01.07.2022) 4P 5C