IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :	**29.11.2022**
PRONOUNCED ON :	**09.02.2023**

CORAM :

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

W.P.No.13232 of 2015
and W.M.P.No.25474 of 2018

M.Syed Ibrahim ... Petitioner

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary,
Commercial Taxes and Registration
(A1) Department, Secretariat, Chennai – 9.

2. Tamil Nadu Public Service Commission,
Rep. By its Secretary,
Frazer Bridge Road, VOC Nagar,
Park Town, Chennai 600 003

3.The Principal Secretary/
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai 600 005 … Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the issue of the impugned order vide in proce No.E1/24409/2008 dated 21.03.2012 passed by the 3rd respondent, G.O.(D) No.440 Commercial Taxes and

Registration (A1) Department dated 20.08.2013 and G.O.(D) No.445 dated 21.11.2014 both issued by first respondent and to quash the same and consequently direct the 1st and 3rd respondents to consider the petitioner for promotion as Commercial Tax Officer retrospectively by including his name in the panel of Commercial Tax Officer fit for promotion to the post of Commercial Tax Officer approved by the 3rd respondent on 20.05.2010 with all consequential monetary and service benefits with arrears therefor from the date of promotion of his junior, namely Thiru.K.Chandrasekar.

For Petitioner	:	Mr.T.N.Rajagopalan Assisted by Mr.B.Sivaraman
For Respondents	:	Mr.J.C.Durairaj, Additional Government Pleader
For R-2	:	No Appearance

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ORDER

The petitioner herein was imposed with three charges vide proceedings in Proce No.E1/24409/2008 dated 21.03.2012. Seeking to the same, the petitioner has filed the present writ petition and for a consequential direction to consider his name for promotion as Commercial Tax Officer retrospectively by way of inclusion of his name in the panel for Commercial Tax Officer.

2. The petitioner, while working as Assistant Commercial Tax Officer, Ponneri Assessment Circle, was charged for certain irregularities. Three charges were framed against the petitioner which would read that (i) in the issuance of Form "S" Certificates to the Government works contractor without obtaining monthly returns and tax paid particulars from the assessees. (ii) for violating the guidelines stipulated in the Government orders in G.O.(D) No.440 Commercial Taxes and Registration (A1) Department dated 20.08.2013 and G.O.(D) No.445 dated 21.11.2014 issued by the first respondent and for determining the accounts of traders whose annual turnover exceeding Rs.20 lakhs, for which the petitioner is not empowered to exercise the powers of assessment. (iii) by committing the above lapses, petitioner has failed to maintain absolute integrity and devotion to duty and conducted himself in a manner unbecoming of a Government Servant.

3. For the above said charges, disciplinary proceedings were initiated and enquiry was conducted as against the petitioner. Pursuant to the same, the third respondent, after examining the records of the disciplinary proceedings, enquiry report and the defence put up by the petitioner, awarded the punishment of

'Censure' for the proven charges by proceedings dated 21.03.2012.

4. Aggrieved by the above said penalty order dated 21.03.2012, the petitioner filed an appeal on 02.04.2012 before the first respondent but the same was rejected on 20.08.2013.

5. Thereafter, the petitioner filed a review petition on 17.10.2013 before the first respondent, which also got rejected on 25.11.2014 and the same was communicated to the petitioner on 03.02.2015.

6. In the meanwhile, the panel list which was drawn in the year 2013 did not contain the name of the petitioner for the post of Commercial Tax Officer. In view of the same, the petitioner made a representation on 23.12.2013 to the third respondent to include his name in the panel list in the year 2013. Thereafter, the third respondent passed an order on 28.01.2014 by which, the name of the petitioner was included in the panel list and the petitioner was promoted as Commercial Tax Officer.

7. The main contention of the learned counsel for the petitioner is that during the pendency of the appeal, the Government has passed an order in G.O.(Ms.)No.113 dated 05.09.2011 enabling the financial limit for the Assistant Commercial Tax Officer from Rs.20,00,000/- to Rs.75,00,000/- which concludes the fact that the charges imposed on the petitioner are totally unsustainable in law and the first respondent without taking into consideration of the same, had imposed the punishment of Censure upon the petitioner. Due to the currency of punishment imposed, his name was not included in the panel drawn in the year 2013, but thereafter got promotion on 28.01.2014. He also stated that his junior Mr.K.Chandrasekaran was promoted as Commercial Officer in the year 2010 itself. Therefore, the petitioner prayed for promotion to the post of Commercial Tax Officer retrospectively from the date of promotion of his junior.

8. The learned counsel for the petitioner, in support of his contentions that censure need not be held against the petitioner, relied on the decision of this court passed in W.P.No.7892 of 2014 dated 28.04.2022.

9. Per contra, the learned Additional Government Pleader appearing for the respondents produced the Government Letter (D) No.148, dated 30.09.2021, wherein the request of the petitioner seeking for inclusion of his name in the panel of Commercial Tax Officers for the year 2010 has been rejected. It would be relevant to extract the following paragraphs:-

" 7. In this connection, I am to inform that:-

(i) as per the schedule XI under section 7(1) of the Tamil Nadu Government Servants (Conditions of Service) Act, 2016 in Part-A, item II (8), pendency of charges framed under rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules against a member of a service shall be a bar for inclusion of his name in the approved list.

(ii) As per item II (11) of the said schedule, punishment of 'censure' imposed within a period of one year prior to the crucial date shall be held against the member of service and the name shall not be considered for inclusion in the approved list.

(iii) As per item II (14) of the said schedule, the punishment of 'censure' imposed on a member of service within a period of one year preceding the crucial date shall not be held against a member of service, if the delinquency in respect of which such punishment is imposed had occurred prior to five years preceding the crucial date.

8. In the instant case, the delinquency committed by Thiru M.Syed Ibrahim while he was working as Assistant Commercial Tax

Officer is covered for the period from 19.10.2006 to 29.10.2008. Therefore, the period of delinquency is upto 29.10.2008. The charges have been framed under rule 17 (b) and the same were pending against him on the crucial date for the year 2010-2011. Therefore, he is not eligible for inclusion in the panel of Commercial Tax Officer for the year 2010-2011 on par with his immediate Junior Thiru K.Chandrasekaran as per the clause II (8) under the schedule XI of Tamil Nadu Government Servants (Conditions of Service) Act 2016.

9. Further, the disciplinary case initiated against him ended with the punishment of 'censure' by the proceedings of the Principal Secretary/ Commissioner of Commercial Taxes No.E1/24409/2008, dated 21.03.2012. The crucial date for the post of Commercial Tax Officer for the year 2013-2014 is 01.03.2013. The above said individual has been considered for inclusion in the panel of Commercial Tax Officer for the year 2013-2014. Further in proc. No.P1/9811/2013, dated 25.01.2014, the Principal Secretary/ Commissioner of Commercial Taxes had indicated that on perusal of Nomination Roll and Record Sheet of Thiru M.Syed Ibrahim, it is found that the individual is not facing any charges/punishment and he is eligible for inclusion in the temporary panel of Commercial Tax Officer for the year 2013 and therefore the name of Thiru M.Syed Ibrahim, Deputy Commercial Tax Officer is included in the temporary panel of Commercial Tax Officer for the year 2013 and he is placed above his immediate junior viz., one Tmt.S.Janaki, *Sl.No.6/2013 (Sl.No.2342/2005 in Deputy Commercial Tax Officer list and below his senior Tmt.V.Arulmozhi, Sl.No.5/2013) and Thiru M.Syed Ibrahim, Deputy Commercial Tax Officer (Sl.No.2320/2005 in Deputy Commercial Tax Officer list) is therefore assigned Sl.No.5(A)/2013 in the temporary panel of Commercial Tax Officer for the year 2013."*

10. Heard both sides and perused the records.

11. Admittedly the petitioner was issued with charge memo dated 09.11.2009 containing as many as three charges. Explanation given by the petitioner and thereafter on holding enquiry, Enquiry Officer given the findings and found the charges proved by his report dated 30.08.2011. Based on the enquiry report, proceedings of the third respondent has been passed on 21.03.2012, by awarding the punishment of Censure.

12. (a) Charge No.1 relates to the irregularity committed by the petitioner during the period from 19.10.2006 to 29.10.2008 and the petitioner issued Form 'S' certificate in respect of Government Works Contractors without examining the contract/purchase bills and without obtaining tax dues thereon from the

Government works contractors in Ponneri taluk. But the said charge was denied by the petitioner stating that he had verified necessary documents and received the monthly returns from all the Government Contractors.

(b) Charge No.2 relates to the assessment in respect of dealer whose annual turn over exceeds Rs.20 Lakhs. However, vide G.O.(Ms.)No.113 dated 05.09.2011, the financial limit has been increased from Rs.20 Lakhs to Rs.75 Lakhs. Therefore, this charge cannot stand as a bar.

(c) Charge No.3 reads that the petitioner committed the above said lapses and failed to maintain integrity. In view of the explanation given by the petitioner along with supporting documents, it is very clear that the petitioner has not committed any irregularity and there was no revenue loss to the Government.

(d) That apart, the punishment of Censure awarded against the petitioner was by proceedings dated 21.03.2012. The Government of Tamil Nadu issued G.O.(Ms.)No.113 Commercial Taxes and Registration (B1), even earlier by Notification dated 05.09.2011, whereby, the CTO's power in respect of exercise of his power for dealers was increased that whose total turnover not exceeding Rs.75 Lakhs. So the charges levelled against the petitioner would not stand as a bar against him for considering him for promotion. Moreover, the 3rd respondent prepared panel list for the year 2010 on 20.05.2010 for promotion to the post of Commercial Tax Officer. But the petitioner's name was not considered even at that point of time on the ground that disciplinary proceedings are pending. In view of the subsequent Notification and the flaw in the enquiry, the charges framed against the petitioner have no consequence on his promotion and therefore, the respondents ought to have considered his claim for promotion.

13. As rightly pointed out by the learned counsel for the petitioner, in the decision of this court dated 28.04.2022 passed in W.P.No.7892 of 2014, the learned Single Judge followed the principle laid down by the Full Bench judgment of this court in the case of ***The Deputy Inspector General of Police, Thanjavur Range, Thanjavur and another Vs. V.Rani*** and granted relief to the writ petitioner holding that the check period of one year in respect of the punishment "Censure" was quashed by this court in the Full Bench and the said judgment was upheld by the Hon'ble Supreme Court.

14. In fact, it is settled proposition of law that if the criteria of promotion is seniority cum merit, more weightage to be given to seniority. In that criteria, penalty of censure would not be a ground to deny promotion to the petitioner. Censure is not a bar for promotion. In the case on hand, the punishment awarded namely, censure is a minor punishment and the financial limit for the assessment has also been increased by the G.O.,. Therefore, the punishment imposed would not be a bar for promotion.

15. In view of the above discussions, the Writ Petition is allowed. The impugned orders dated 21.03.2012 and 21.11.2014 are quashed. The respondents are directed to include the petitioner's name in the panel of promotion with retrospective effect to the post of Commercial Tax Officer with all consequential monetary and service benefits with arrears therefor from the date of promotion of his junior, namely Thiru K.Chandrasekar. Such exercise shall be completed within a period of eight(08) weeks from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petition is closed.

09.02.2023

Index : Yes/No

Speaking Order : Yes/No
Neutral citation : Yes/No
sts/nvsri

Note: Issue order copy on or before 22/2/2023.

To:

1.The Secretary,
Commercial Taxes and Registration
(A1) Department, Secretariat, Chennai – 9.

2. The Secretary,
Tamil Nadu Public Service Commission,
Frazer Bridge Road, VOC Nagar,
Park Town, Chennai 600 003.

3.The Principal Secretary/
Commissioner of Commercial Taxes,
Ezhilagam, Chepauk, Chennai 600 005

J.NISHA BANU, J.,

sts/nvsri

W.P.No.13232 of 2015

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