IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2023

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THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.9696 of 2022 and
W.M.P.No.9430 of 2022

N.A.Puviyarasu,
S/o Arumugam,
Cooperative Audit Officer,
106, East Street, Nehru Nagar,
Sathyamangalam (T.K),
Erode (D.T)-638402. ... Petitioner

Versus

1.The Principal Secretary to Government,
Finance (Cooperative Audit) Department,
Secretariat,
Chennai – 600 009.

2.The Director of Cooperative Audit,
Chennai – 600 035.

3.The Assistant Director Cooperative Audit,
Tiruppur. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ or Direction specifically Writ in the nature of Writ of Certiorari calling for the records relating to the order passed by the first respondent made in G.O.(D)No.302, Finance (Cooperative Audit) dated 22.12.2021 and quash the same.

For Petitioner	:	Mr.L.P.Shanmugasundaram
For Respondents	:	Mr.P.Baladhandayutham, Special Government Pleader

ORDER

Challenge has been made against the impugned order, dated 22.12.2021 in G.O.(D)No.302, Finance (Cooperative Audit) passed by the 1st respondent/appellate authority confirming the punishment imposed by the 2nd respondent/disciplinary authority i.e., stoppage of increment for a period of six months without cumulative effect.

2.The case of the Writ Petitioner is that the petitioner was issued with charge memo, dated 28.01.2019 framing two charges for omitting certain receipts and accounts in the final audit. The 2nd respondent/disciplinary authority after giving opportunity and on receipt of the explanation of the petitioner, has imposed punishment of stoppage of increments for a period of six months without cumulative effect, *vide* order, dated 18.01.2021. Aggrieved on the same, the petitioner has preferred an appeal before the 1st respondent/appellate authority on 06.02.2021. The appellate authority after obtaining views from the Tamil Nadu Public Service Commission, confirmed the punishment imposed by the disciplinary authority. Challenging the same, the present Writ Petition has been filed.

3.The prayer in the Writ Petition is only to set aside the order of the appellate authority on the ground that the views of the Tamil Nadu Public Service Commission has not been served on the petitioner nor personal hearing has been conducted.

4.The learned counsel appearing for the petitioner submitted that the views of the Tamil Nadu Public Service Commission has not been served on the petitioner, which is a clear violation of Principle of Natural Justice.

5.Whereas the learned Special Government Pleader appearing for the respondents submitted that the charges infact are very serious in nature and there is a procedural lapse on the part of the petitioner in the final audit which has been found out later. He further submitted that infact, the punishment imposed by the disciplinary authority is very lenient and therefore, opposed this Writ Petition.

6.I have heard the submissions made on both sides and perused the entire materials.

7.Though the procedural lapses alleged against the petitioner is serious in nature, the fact remains that the disciplinary authority after giving opportunity to the petitioner has concluded the departmental enquiry and imposed very minimum punishment i.e., stoppage of increment for a period of six months without cumulative effect, however, the 1st respondent/appellate authority has confirmed the punishment merely on the basis of the views obtained from the Tamil Nadu Public Service Commission. It is relevant to note that no views of the Tamil Nadu Public Service Commission whatsoever given to the petitioner even before confirming the punishment of the 2nd respondent/disciplinary authority.

8.In such view of the matter, this Court is of the view that to satisfy the Principle of Natural Justice, it is but proper to furnish the views of the Tamil Nadu Public Service Commission to the petitioner/delinquent officer. In this case, it has not been done.

9.This Court in the case of "***Union of India represented by the Secretary to Government of India, Ministry of Defence, Department of Revenue (Central Board of Excise and Customs), New Delhi and another Versus The Registrar, Central Administrative Tribunal, Chennai and***

another reported in ***(2005) 2 M.L.J 154***" citing the decision of the Hon'ble Apex Court (***State Bank of India Versus D.C.Aggarwal*** reported in ***A.I.R 1993 S.C 1997***) had held that it is proper to supply the copy of the views of the commission to the delinquent officer and he is entitled to a copy of the advise before imposition of punishment. The relevant portion is as follows:

> "*6.In this regard, reliance was placed on the judgment of the Supreme Court in the case of State Bank of India vs. D.C. Aggarwal reported in AIR 1993 SC 1997. This judgment was rendered after the 42nd amendment to Constitution, which came into force on 3.01.1977. The question posed before the Supreme Court is, whether the disciplinary authority while imposing punishment, major or minor, can act on material which is neither supplied nor shown to the delinquent. In that case, the report of the Chief Vigilance Commissioner has not been supplied to the delinquent. After considering the same, the Supreme Court has held,*
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> > "*4. ... Law on natural justice is so well settled from series of decisions of this Court that it leaves one bewildered, at times, that such bodies like State Bank of India, who are assisted by hierarchy of law officers, commit such basic and fundamental procedural errors that courts are left with no option except to set aside such orders. Imposition of punishment to an employee, on material which is not only not supplied but not disclosed to him, has not been countenanced by this Court. Procedural*

fairness is as much essence of right and liberty as the substantive law itself."

In the light of the principle laid down in the above case, irrespective of Rule 17 of the CCS (Conduct) Rules, inasmuch as the disciplinary authority relied on the advice of the UPSC before imposition of punishment, it is but proper to supply copy of the said report to the delinquent before passing an order of punishment. Accordingly, we hold that the applicant was entitled to a copy of UPSC advice before imposition of punishment. This has been rightly found by the Tribunal."

10.In the light of the principle laid down in the above decisions, this Court is of the view that the 1st respondent/appellate authority has simply confirmed the order of punishment imposed by the 2nd respondent/disciplinary authority, without furnishing the views of the Tamil Nadu Public Service Commission and the same is in violation of Principle of Natural Justice.

11.Accordingly, the impugned order, dated 22.12.2021 in G.O.(D)No.302, Finance (Cooperative Audit) passed by the 1st respondent is set aside and the matter is remitted back to the 1st respondent/appellate authority to give a copy of the views of the Tamil Nadu Public Service

Commission to the petitioner and thereafter, pass orders on merits and in accordance with law, after giving personal hearing. Such exercise shall be completed within a period of four months from the date of receipt of a copy of this order.

12.With the above directions, this Writ Petition stands allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

29.08.2023

Index : Yes/No
Internet: Yes/No
Neutral Citation: Yes/No
Speaking Order/Non-Speaking Order

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To

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Finance (Cooperative Audit) Department,
Secretariat,
Chennai – 600 009.

2.The Director of Cooperative Audit,
Chennai – 600 035.

N.SATHISH KUMAR, J.

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3.The Assistant Director Cooperative Audit,
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