IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2023

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.27437 of 2017
and
W.M.P.No.29326 of 2017

P.Ponnum Perumal .. Petitioner

/versus/

1.The Principal Secretary to Government (FAC),
Commercial Taxes & Registration (H) Department,
Fort St.George,
Chennai 600 009.

2.The Inspector General of Registration,
Office of the Inspector General of Registration,
100, Santhome High Road,
Chennai 600 004. .. Respondents

Prayer : Writ Petition has been filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records relating to the G.O.(D)No.336, Commercial Tax and Registration (H)Department, dated 19.09.2016 and consequential review order made in G.O.(D) No.344, Commercial Tax and Registration (H) Department, dated 22.08.2017 on the file of the 1st respondent and quash the same and further, direct the respondents to promote the petitioner as Assistant Inspector General of Registration.

For Petitioner :Mr.D.Veerasekaran

For Respondents : Mr.T.Chezhiyan,
Additional Government Pleader
for R1 and R2

ORDER

Based on a surprise check conducted on 08.12.2008 in the office of the Sub-Registrar at Ganapathy Sub-Registrar Office, Coimbatore District, it is alleged that some cash was found in the tapal tray of the petitioner for which the petitioner herein could not satisfactorily account for and accordingly, four charges came to be framed against him, under the charge memo dated 17.02.2011 issued by the Commissioner for Disciplinary Proceedings, Coimbatore in T.D.P. Case No.20 of 2010. The prosecution for disciplinary proceedings had examined 14 prosecution witnesses and marked 12 documents. After closure of the examination of the prosecution and defence evidence, the petitioner had filed his written statement and arguments. While charge No.1 was held as “not proved”, charge No.4 as “partially proved” and charge Nos.2 and 3 as “proved”, based on the proven charges, further explanation was called for from the petitioner herein. On 01.06.2016, the petitioner herein had given a detailed explanation seeking to exonerate him from the charges. Rejecting the further representation, the Government had passed G.O.(D)No.336, Commercial Taxes and Registration (H) Department, dated 19.09.2016, imposing the punishment of stoppage of increment for two years, with cumulative effect. As against, a review petition filed before the Government, the punishment was confirmed through G.O.(D)No.344, Commercial Taxes and Registration (H) Department, dated 22.08.2017. Challenging these two orders, the present Writ Petition has been filed.

2. The learned counsel appearing for the petitioner submitted that though he had given a detailed explanation, after charges against him were held to be proved, the disciplinary authority namely, the Government had not taken into account of the explanation and had passed an order without such consideration. He further submitted that even in the review petition, the ground raised by him has not been considered.

3. A perusal of the order of punishment dated 19.09.2016 would reveal that, though the order runs to about 7 pages, what is found therein is the extract of the charges, defence statement of the delinquent officer,

the findings of the Tribunal for disciplinary proceedings and further explanation of the delinquent officer on the findings of the Tribunal. Apart from this, the consideration finds place at the last paragraph of the order, which states that *"after careful and independent examination of the charge framed against the delinquent officer, his defence statement, findings of the tribunal for disciplinary proceedings and his further representation on the findings of the Tribunal the Government has proposed to hold the charge framed against Thiru.P.Ponnumperumal held as proved and for the proven charge, the Government have decided to impose a punishment of "stoppage of increment for two years with cumulative effect" and issue orders accordingly. The Government also orders that, this penalty is inclusive of the period spent on leave and it will affect his pension".*

4. Likewise, in the order passed in the review petition in G.O.(D)No.344, Commercial Taxes and Registration (H) Department, dated 22.08.2017, similar consideration has been made by the Government, with reference to the views of the Tamil Nadu Public Service Commission and thereafter, the following order has been passed confirming the punishment.

> "5.The Government have carefully and independently examined the review petition preferred by Thiru.P.Ponnumperumal, District Registrar with relevant records and along with the views of the Tamil Nadu Public Service Commission. Considering that the review petitioner has not put forth any valid reasons to revise the orders already issued in this regard in his review petition, the Government have decided to reject the same and to confirm the punishment of stoppage of increment for a period of two years with cumulative effect imposed on him, in the Government Order first read above and issue orders accordingly."

5. A perusal of both the orders would reveal that none of the grounds and objections raised by the petitioner in his further explanation or in the review petition have been addressed at all. While the original order of punishment passed is a mere extract from the records and in a single phrase, it is stated that, there was careful and independent examination of the materials on record. Likewise, in the order passed in the review, after extracting the views of the Tamil Nadu Public Service Commission, the Government again has stated that they have carefully and independently examined the review petition and accordingly, confirmed

the punishment and both the orders are one of non-application of mind. In view of the non-consideration of the relevant materials on record for the purpose of imposing the punishment, the orders itself cannot be sustained. However, since the orders have been now interfered with on merits of the case and on procedural irregularities, this Court is of the view that, this matter could be remitted back to the disciplinary authority to pass an appropriate order.

6. In the light of the above findings, the impugned orders in G.O.(D)No.336, Commercial Tax and Registration (H) Department, dated 19.09.2016 and consequential review order made in G.O.(D)No.344, Commercial Tax and Registration (H) Department, dated 22.08.2017, on the file of the first respondent are quashed. Consequently, the matter is remitted back to the first respondent, to pass a detailed speaking order, by giving independent finding to the objections raised by the petitioner herein in his further explanation dated 07.06.2016, after considering the further explanation submitted by the petitioner on 07.06.2016. The Government shall pass such orders, atleast within a period of eight weeks, from the date of receipt of a copy of this order.

7. Accordingly, this Writ Petition stands partly allowed. No costs. Consequently, connected Miscellaneous Petition is also closed.

08.02.2023

Speaking/Non-speaking
Index:Yes

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