IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2024

CORAM

THE HON'BLE MRS. JUSTICE N.MALA

W.P.No.19900 of 2016

T.Murugesan ... Petitioner

Vs.

1. The Principal Secretary to Government,
   Home (Transport-II) Department,
   Secretariat, Chennai – 600 009.

2. The Principal Secretary/
   Transport Commissioner,
   Chepauk, Chennai – 5. ... Respondents

PRAYER: The Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records relating to impugned order of punishment of the first respondent issued in G.O.(2D) No.38, Home (Tr.II) Department dated 04.02.2016 against the petitioner and quash the same.

For Petitioner : Mr.A.Ganesan
For Respondents : Mrs.S.Anitha, SGP

ORDER

The Writ Petition has been filed challenging the order dated 04.2.2016 issued by the first respondent in G.O.(2D) No.38, Home (Tr.II) Department against the petitioner.

2. Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents.

3. The case of the petitioner is as follows:

(i) The petitioner was appointed as Junior Assistant in the Transport Department on 07.8.1992. Subsequently, he was promoted as Assistant in the year 1999 and posted in the office of the Regional Transport Office, Erode. He was working as Accountant in the cadre of Assistant in the office of the Regional Transport Office, Trichy and holding additional charge of A4 in the year 2005. On the basis of a surprise check on 25.10.2005, at the instance of the first respondent, disciplinary proceedings were instituted under Rule 9-A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules (for short "the Rules") against the officials of the Regional Transport Office, Trichy including the petitioner.

(ii) The second respondent issued a charge memo to the petitioner on 04.11.2008, under Rule 17(a) of the Rules containing two charges. The petitioner submitted his explanation to the second respondent, dissatisfied with the explanation offered by the petitioner, the second respondent appointed an Enquiry Officer to conduct enquiry on the charges levelled against the petitioner.

(iii) The Enquiry Officer, after due enquiry, held that the charges were not proved as against the petitioner and submitted his enquiry report to the second respondent in February 2011, and the same was sent to the first respondent. However, the first respondent, even after receipt of the enquiry report, did not pass the final order. Rather, the first respondent decided to disagree with the findings of the Enquiry Officer. Further, the first respondent, vide letter dated 20.6.2013, called for explanation from the petitioner with regard to the Enquiry Officer's report. In turn, the petitioner submitted his explanation to the first respondent on 09.7.2013.

(iv) But, the first respondent, even after receiving the petitioner's explanation dated 09.7.2013, did not pass order on the enquiry proceedings. Therefore the petitioner filed a writ petition in W.P.No.23453 of 2015 seeking direction to the first respondent to pass final orders on the disciplinary proceedings. This Court disposed the writ petition on 03.8.2015, directing the first respondent to pass orders on the enquiry report within a period of eight weeks from the date of receipt of copy of the order. Despite the directions of this Court, the first respondent failed to pass orders within the time stipulated by this Court.

(v) Since the first respondent kept the matter pending for three years, despite the orders of this Court in the earlier writ petition, the petitioner once again filed W.P.No.2922 of 2016, to quash the charge memo issued against the petitioner. On receipt of notice in the second writ petition, the first respondent urgently passed orders in G.O.Ms.No.38 dated 04.2.2016 against the petitioner imposing a punishment of stoppage of increment for a period of two years with cumulative effect thereby affecting the petitioner's pension and produced a copy of thesame before this Court. The W.P was accordingly disposed of on 08.2.2016. Aggrieved by the impugned order of the first respondent dated 04.2.2016, the petitioner has filed the present writ petition.

4. The respondents filed a detailed counter. The sum and substance of the counter was that the impugned order was passed fully in accordance with law and that the petitioner was in the habit of filing vexatious writ petitions against the first respondent with a *mala fide* intention. It was further stated that the delay in passing orders in the

disciplinary proceedings was neither wilful nor wanton, but only due to administrative reasons, that the punishment imposed on the petitioner was in consonance with the delinquency committed by the petitioner and therefore the impugned order did not call for any interference.

5. In support of his contentions, the learned counsel for the petitioner relied on the judgment of this Court in the case of ***P.Govindan Vs. State of Tamil Nadu reported in 2006 (1) MLJ 624.***

6. Per contra, the learned Special Government Pleader appearing for the respondents submitted that for the reasons stated in the counter affidavit, the impugned order was fair and legal and the same did not call for any interference by this Court.

7. I have carefully considered the submissions of the learned counsels on both sides and perused the materials available on record.

8. It is seen that two charges were framed against the petitioner under the charge memo dated 04.11.2008. The petitioner submitted this explanation and as the explanation submitted was not acceptable, the

second respondent appointed an enquiry officer and the enquiry officer vide his proceedings dated --/02/2011 submitted his report finding that the charges against the petitioner were not proved. Thereafter, the petitioner on 09.07.2013, submitted his further explanation to the first respondent. The first respondent vide impugned order dated 04.02.2016, imposed the punishment of stoppage of increment for the period of two years with cumulative effect, affecting the petitioner's pension. Aggrieved by the said impugned order, the petitioner has filed the present writ petition.

9. It is seen that the enquiry officer on merits framed the following points for determination:

a) Whether there was any truth in the charges that only on the instruction of the superiors the Assistant did not take follow-up action immediately after the order of the Regional Transport Authority were passed renewing those permits?

(b) Whether the charged official committed any error in having approved the office note to call for R.C. of the vehicle TN 65 5427 with particulars of payment of tax for effecting orders of renewal?

10. The enquiry officer on the assessment of the evidence on point (A) on the basis of the evidence of A.Khader Mohideen, former Deputy

Transport Commissioner, found that the sectional staff who were facing charges kept the applications pending without taking follow-up action only on the instructions of the superior officers as the draft scheme was pending and not deliberately.

11. The enquiry officer on the assessment of the evidence on point (B) found that the mere payment of tax in the office was not sufficient to effect the orders of the Regional Transport Authority for renewal. It was incumbent on the part of the vehicle owner to produce the R.C of the vehicle along with valid F.C., I.C., Pollution under control certificate and current tax as envisaged in Rule 194, of Tamil Nadu Motor Vehicle Rules, for effecting renewal on the permit. The Enquiry Officer found that the charged official did not commit any error and his action in putting up a memo on 26.10.2005, calling for the R.C did not suffer any illegality.

12. The enquiry officer on the basis of his aforesaid findings, submitted his report in February, 2011. The 1st respondent on receipt of the enquiry Officer's report sent a letter on 20.06.2013 to the petitioner calling for his explanation to the enquiry officer's report. The letter dated

20.06.2013 and the annexure appended thereto of the first respondent read as follows:

LETTER

> 1. *I am directed to enclose a copy of the report of the Enquiry Officer appointed to enquire into the charges framed against you in the reference first cited.*
>
> 2. *The report of the Enquiry Officer was considered carefully and the Government have decided to disagree with the findings of the Enquiry Officer for the reasons detailed in the annexure to this letter and hold the charge as proved.*
>
> 3. *You are here given an opportunity of making further representation.*
>
> 4. *If you fail to submit your further representation within the days from the date of receipt of this letter, it will be presumed that you have no representation to make and further action will be taken on the merits of the case.*

ANNEXURE:

The relevant portion of the annexure accompanying the letter dated 20.06.2013 is as follows:

Reason for disagreement:

"The enquiry officer has arrived at an

erroneous findings quite in deviation of the admitted documentary evidence. There is no documentary evidence to indicate that the superior officer instructed to keep the files pending and the other limb of the charge pertaining to the false recording made by the charged officer No.3 about the payment of tax and it stands exhibited and proved by the oral and documentary evidence. But, the Enquiry Officer has irrelevantly considered and observed that the mere payment of the tax would not suffice to effect renewal. Therefore, the findings of the Enquiry Officer are not acceptable and hence the charge is held as "proved".

13. As rightly contended by the learned counsel for the petitioner, the first respondent predetermined the issue even while calling for explanation to the enquiry officer's report by stating that the findings of the enquiry officer were not accepted and that the Government decided to hold the charges as proved. This clearly shows that even at the show cause notice stage the first respondent had prematurely concluded against the petitioner. The pre-emption on the conclusion by the 1st respondent makes the notice an empty formality and the purpose of the same is lost. When the enquiry officer found favour with the petitioner, the respondent

ought to have given the petitioner a reasonable opportunity to sustain the same. By predetermining the issue the 1st respondent deprived the petitioner the valuable right to sustain the order in his favour and so the impugned order which is passed in pursuance of the letter and Annexure dated 20.06.2013 cannot be sustained and hence the same is set aside.

14. My above view is fortified by the Judgment of this Court in the case of Govindan.P Vs. State reported in 2006(1) MLJ 694. The Division Bench of this Court held as follows:

> *".....6.The Supreme Court in MANU/SC/0531/1998: (1998)IILLJ809SC in the case of Punjab National Bank and Others Vs. Kunj Behari Misra and others held that in a departmental proceedings, what is of ultimate importance is a finding of the disciplinary authority. In the context of such seriousness, the Supreme Court held that principles of natural justice would demand that the disciplinary authority, which is deciding against the delinquent officer, must give an opportunity to rebut the view taken, differing from that of the enquiry*

officer. It further held that whenever the disciplinary authority disagreed with the enquiry authority, then, it must record its tentative reasons for such disagreement and give the delinquent officer an opportunity to represent, before it records its findings. The judgment of the Supreme Court applies in all force o the case on hand, considering the fact that the first respondent's notice dated 11.5.2001 is silent on the reasons for taking a difference view from that of the enquiry officer. As submitted by the learned counsel for the petitioner, it seemed to carry a conclusion, premature that all five charges are held as proved. With such pre-emption on the conclusion, the very purpose of issuing a notice appears to be an empty formality. The purpose of issuing a notice is for enabling the delinquent officer an opportunity to persuade the disciplinary authority to accept the findings of the enquiry officer. Hence, effectiveness of an opportunity is an absolute necessity, which must be patent even on the face of reading the notice, so that it would enable the delinquent officer to *counter all the allegations, before the disciplinary authority takes further action, which may be prejudicial to the delinquent officer. The recording of a conclusion even at the notice stage is premature to give an impression to a delinquent officer that the entire exercise is a mere ritual before the ultimate order is passed. In the light of the facts found by the enquiry officer and the total absence of any material disclosed to form the bas for a different conclusion, we are constrained to accept the plea of the petitioner to set aside the order dated 11.05.2001.*

15. In the light of the above discussions, I find merit in the writ petition and hence the same is allowed.

16. Accordingly, the Writ Petition is allowed. There shall be no order as to costs.

22.10.2024

Index : Yes/No

Neutral Citation : Yes/No
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To

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   Home (Transport-II) Department,
   Secretariat, Chennai – 600 009.
2. The Principal Secretary/
   Transport Commissioner,
   Chepauk, Chennai – 5.

N.MALA , J

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