[3219]

HIGH COURT FOR THE STATE OF TELANGANA
AT HYDERABAD
(Special Original Jurisdiction)

TUESDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND TWENTY FOUR

PRESENT

THE HONOURABLE SMT JUSTICE T.MADHAVI DEVI

WRIT PETITION NO: 20751 OF 2020

Between:

M. Srinivasa Rao, S/o M. Narasimha, Aged 50 Years, Occ. Dy. Commercial Tax Officer, O/o Dy. Commissioner of Commercial Taxes, Abids Division Hyderabad, Telangana State.

...PETITIONER

AND

1. The State of Telangana, Rep. by its Principal Secretary, to the Government Revenue Department Secretariat Saifabad, Hyderabad.
2. The Commissioner of Commercial Taxes, Government of Telangana, Nampally, Hyderabad.
3. The Principal Secretary to the Government, Revenue (Vigilance-II) Department State of Telangana, Secretariat, Saifabad, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue an appropriate Writ or Order or Direction more particularly one in the nature of Writ of Mandamus.

A) By declaring the entire action of the respondents, particularly the entire action of the 1st respondent in issuing the present impugned order in GO Rt No. 269 Rev (Vig.-II) Dept. dated 16.10.2020 imposing a penalty of stoppage of two annual grade increments without cumulative effect wherein imposing a penalty over the petitioner inspite of recommendation from the 2nd respondent herein Le, disciplinary authority by way of report dated 28.8.2016 stating that no loss of revenue caused to the State Ex-Chequer, no malafide intention of the petitioner involved and report from the Inquiry Officer dated 19.12.2017 holding that charges are held not proved against the petitioner, is as highly illegal, arbitrary, colorable exercise of power, vindictive attitude and the very exercise of such power by the 1st respondent being an appellate authority is bad in law, contrary to provisions of

TSCS (CCA) Rules of 1991 including contrary to various judicial pronouncements in the subject matter and set-a-side or quash the same

B) And Consequently, to hold that, the entire method adopted by the 1st respondent in the present issue over the petitioner by usurpting the powers of disciplinary authority and ultimately imposing punishment over the petitioner vide present impugned order in G.O.Rt No. 269 Rev (Vig.-II) Dept. dated 16.10.2020 even without taking into consideration of report of the disciplinary authority dated 28.8.2016 r/w report of the Inquiry Officer dated 19.12.2017 as well as without considering the explanation dt. 18.6.2018 of the petitioner, representations of the petitioner dt.29.6.2020 and 9.7.2020 is bad in law and contrary to the provisions of CCA Rules and further direct the respondents to reconsider the entire issue in terms of statutory Rules, CCA Rules as well as judicial pronouncements in the subject matter and on that basis consider the case of the petitioner for promotion to the post of Commercial Tax officer w.e.f. the day on which his immediate junior was promoted, with all consequential benefits.

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to suspend the operation of the present impugned order in GO Rt No. 269 Rev (Vig.-II) Dept. dated 16.10.2020 of the 1st respondent pending disposal of WP.

Counsel for the Petitioner: SRI ARVIND KUMAR KATA
Counsel for the Respondents: GP FOR SERVICES-II

The Court made the following: ORDER

THE HONOURABLE SMT JUSTICE T.MADHAVI DEVI

W.P.NO. 20751 OF 2020

ORDER:

In this writ petition, the petitioner is seeking a writ of mandamus to declare the action of the respondent No.1 in issuing the impugned order in G.O.Rt.No.269 Rev (Vig-II), Department, dated 16.10.2020 imposing a penalty of stoppage of two annual grade increments without cumulative effect in spite of the recommendation from the respondent No.2 by way of a report dated 28.08.2016 stating that there was no loss of revenue caused to the State Ex-Chequer and no malafide intention of the petitioner was involved and in spite of the report from the Inquiry Officer dated 19.12.2017 holding that the charges are not proved against the petitioner, as illegal, arbitrary, colorable exercise of power, vindictive attitude and also in exercise the power of disciplinary authority though he was an appellate authority, as illegal, arbitrary and to set aside or quash the same and direct the respondents to grant all consequential benefits including promotion to the petitioner on par with his junior and to pass such other order or orders in the interest of justice.

2. Brief facts leading to the filing of the present writ petition are that the petitioner was appointed in Direct Recruitment as Assistant Commercial Tax Officer (ACTO), in the year 2001 after participation in the selection process initiated by APPSC, Hyderabad. Subsequently, he was promoted by transfer as Deputy Commercial Tax Officer (DCTO) during the year 2010. It is submitted that a charge memo dated 16.10.2015 was issued to the petitioner on the basis of the report of the Director General (Vig. & Enforcement Department), dated 04.06.2015, framing two minor charges for alleged irregularity in finalizing the assessment on 24.12.2013 for the tax period November, 2012 to October, 2013 of a particular dealer and called for the explanation from the petitioner. The petitioner, though was of the opinion that the Central Vigilance Commission or Central Government was a third party and could dictate to the disciplinary authority, submitted his explanation on 27.11.2015 and 07.05.2016 respectively, to the respondent No.2, denying the alleged charges in toto and requested to drop further action in the matter. However, the respondent No.2 being a disciplinary authority, instead of passing of orders at his level, sent a report enclosing the explanation of the petitioner to the respondent No.1 vide his letter in CCT's

Ref.No.TS/V2/221/2015, dated 28.08.2016, explaining the details of the case and requested the respondent No.1 to take a lenient view in the matter on the ground that there was no malafide intention on the part of the petitioner with regard to the charges framed and that there was no loss of revenue to the exchequer of the Government. It is submitted that the respondent No.1, without considering the said explanation of the petitioner and the report of the respondent No.2, referred the matter to the Commissioner of Inquiries, Government of Telangana, Hyderabad, to conduct a detailed inquiry into the matter and the petitioner appeared before the Commissioner of Inquiries and defended his case with all the documentary evidence and after a detailed inquiry, the Commissioner of Inquiries submitted his report on 19.12.2017 to the respondent No.1 concluding that the charges against the petitioner are not proved. In spite of the same, the respondent No.1 differed with the findings of the Commissioner of Inquiries and accordingly, issued a disagreement note calling for his explanation and also as to why a suitable penalty should not be imposed. Pursuant to the said disagreement note, the petitioner submitted his detailed explanation on 18.06.2018, ventilating his grievances and once again requested the respondent No.1 to consider the findings of the Commissioner of Inquiries and drop further action in the matter. However, the respondent No.1 did not take any action immediately thereafter and after 2½ years, upon the directions of this Court in W.P.No.13853 of 2020, dated 10.09.2020, directing the respondents to conclude the proceedings against the petitioner within three months, the respondent No.1 passed the final orders i.e., impugned order dated 16.10.2020 imposing the penalty of stoppage of two annual grade increments without cumulative effect against the petitioner. It is submitted that by virtue of the said order, the petitioner will be deprived of his legitimate promotion as CTO for a further period of two years and many of his juniors would be promoted as CTO. Thus, according to the learned counsel for the petitioner, even though there was a recommendation from the respondent No.2 to drop the proceedings and the Commissioner of Inquiries has held that the charges have not been proved, the action of the respondent No.1, even though he was an appellate authority, in imposing the punishment, is illegal, arbitrary and assumption of the powers of the disciplinary authority is accordingly discriminatory.

3. Learned counsel for the petitioner has drawn the attention of this Court to the charges levelled against the petitioner and the recommendations of the respondent No.2 and the findings of the Inquiry Officer and the disagreement note issued by the respondent No.1. He placed reliance upon the following judgments in support of his contentions.

1. Surjit Ghosh Vs. Chairman & Managing Director, United Commercial Bank and Others[1];

2. G.Murali Dhar Vs. Chairman & Managing Director, ECIL, Hyderabad[2];

3. Nagaraj Shivarao Karjagi Vs. Syndicate Bank Head Officer, Manipal and Another[3];

4. K.Bheekya Vs. The State of Telangana and Others[4];

5. N.Rama Rao Vs. The State of Telangana and Another[5].

4. Learned Government Pleader for Service-II placed reliance upon the averments made in the counter affidavit and submitted that the petitioner had passed orders in Form VAT 305, in his orders number in A.O.No.59927, dated 24.12.2013

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1 AIR 1995 SC 1053
2 1996 (1) ALD 897
3 AIR 1991 SC 1507
4 W.P.No.26067 of 2018, dt.02.12.2019
5 W.P.Nos.27689 & 27718 of 2021, dt.11.11.2021

in the case of M/s.Sai Srinivasa Bottles Private Limited, Nagole, Hyderabad, allowed ineligible input tax credit of Rs.10,45,703/- based on the list furnished by the dealer on their own TIN number mentioning different dealers names and without verifying the original Tax Invoices. It is submitted that the petitioner, being the quasi-judicial authority, has not taken any precaution and failed to cross-verify the purchases and simply allowed the input tax credit claimed by the dealer on the list furnished by them on their own TIN numbers while mentioning different dealers names illegally and it is against the conditions of the Government issued in the Government Memo No.26784/CT.II(1)/2012-8, dated 10.07.2013, resulting in a loss of revenue to a tune of Rs.10,45,703/- to the State exchequer. It is submitted that as per the Vigilance scheme, the V & E department has the power to enquire into any complaint of corruption, misconduct, lack of integrity, or other kinds of malpractices or misdemeanor on the part of a public servant and he referred to Rule 12 of CCA & Conduct Rules to submit that the Government has jurisdiction to take any action against the members of the State Services. It is further submitted that the Government has requested the Commissioner (CT) to initiate disciplinary action against the petitioner on the recommendations made in the V & E report by following due procedure and therefore, the Government examined the report submitted by the Commissioner (CT) in detail and decided to entrust the case to the Commissioner of Inquiries. It is further submitted that after going through the inquiry report, the disciplinary authority, i.e., the Government has decided to pass a disagreement note and thereafter, after giving the petitioner reasonable opportunity of hearing, has passed the impugned order vide G.O.Rt.No.269, dated 16.10.2020 imposing of penalty of stoppage of two annual grate increments without cumulative effect. It is submitted that it is a minor penalty and therefore, it does not require a detailed enquiry under Rule 20 of CCS (CCA) Rules. Further, it is submitted that the appeal against the order of the disciplinary authority does not lie with the respondent No.1, but it lies before the Government under the grounds mentioned therein and therefore, the petitioner has not been denied an opportunity of appeal before the respondent No.1. Further, as regards the delay in disposing of the appeal, it is submitted that it was due to the pendency of judicial proceedings before the Administrative Tribunal and this Court and is not because of any reason attributable to the respondents. Therefore, he submitted that the writ petition is liable to be dismissed. The learned government pleader for the respondents thus supported the impugned order.

5. Having regard to the rival contentions and the material on record, this Court finds that as per U.O.Note No.11107/Ser.C/99, dated 01.03.1999, the Government of Andhra Pradesh, General Administration (Ser.C) Department, has issued instructions that in all disciplinary cases, a final decision on the enquiry report shall be taken by the concerned disciplinary authority alone and in consultation with the Andhra Pradesh Vigilance Commission/Andhra Pradesh Public Service Commission whenever it is necessary as per rules and they shall not seek the views/remarks of the Heads of Departments on the reports of the Enquiry Officer. Further, it is noticed that the respondent No.2 has gone into the report of the Vigilance and Enforcement and after verifying the same, it is observed that the petitioner has passed the assessment order allowing the ineligible input tax credit from the November, 2012 to October, 2013 in the case of M/s.Sai Srinivasa Bottles Private Limited and against the same, the revision orders have been passed by the DC (CT), Saroornagar division, dated 28.04.2016 and in accordance therewith, the CTO Saroornagar has passed

effectual orders vide orders in TIN No.28739217498, dated 30.04.2016 in A.O.No.22931 and raised the VAT demand of Rs.43,46,835/- for the above tax period and the dealer has paid an amount of Rs.31,19,417/- and the balance amount of Rs.12,27,418/- has been adjusted towards ITC as on 31.12.2013 and therefore, there is no loss of revenue to the exchequer of the Government. From the above, it is noticed that the respondent No.2 has only considered the order passed by the petitioner, which has been revised by the DC and the mistake or error which has been committed by the petitioner has been revised, but he was also suggested a lenient view against the petitioner. As seen from the inquiry report of the Commissioner of Inquiries, it has been observed that it was the Enquiry Officer, who conducted the preliminary enquiry, had not looked into the important crucial documents, due to which a report was given in an improper manner. Further, from the disagreement note, it is noticed that the Government has not given any reason for disagreeing with the findings of the Enquiry Officer. It is thus observed that the Government has decided to disagree with the inquiry report and has decided to issue a show cause to the petitioner. It is observed that the Government has held that the charge officer failed to check whether the TIN number pertains to the Self TIN number or the selling dealer number and that he has mentioned the self TIN number instead of the selling dealer TIN number, which is a gross violation. There is no comment about the findings of the Commissioner of Inquiries that the Enquiry Officer has failed to consider the important documents before submitting his inquiry report. Therefore, this Court is of the opinion that disagreement factors have not been taken and have not been properly communicated to the petitioner. Even though the punishment of withholding of two annual grade increments without cumulative effect is a minor penalty, the respondents ought to have conducted a detailed enquiry into the same as required under Rule 20 of CCS (CCA) Rules.

6. In the case of **Nagaraj Shivarao Karjagi** (*cited supra*), the Hon'ble Supreme Court has held as under:

> *"19. The corresponding new bank referred to in Section 8 has been defined under Section 2(f) of the Act to mean a banking company specified in column 1 of the First Schedule of the Act and includes the Syndicate Bank. Section 8 empowers the Government to issue directions in regard to matters of policy but there cannot be any uniform policy with regard to different disciplinary matters and much less there could be any policy in awarding punishment to the delinquent officers in different cases. The punishment to be imposed whether minor or major depends upon the nature of every*

case and the gravity of the misconduct proved. The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer. (See: De Smith's Judicial Review of Administrative Action, Fourth Edition, p. 309). The impugned directive of the Ministry of Finance is, therefore, wholly without jurisdiction and plainly contrary to the statutory Regulations governing disciplinary matters."

7. Further, in the case of **K.Bheekya Vs. The State of Telangana and Others** (*cited supra*), the learned single judge has observed as under:

> *"A perusal of Rule 21(2) of the CCA Rules indicates that the disciplinary authority alone has to disagree with the findings of the enquiry officer. The State Government itself can initiate the disciplinary proceedings against its employees. But no power is vested with the Government to disagree with the findings of the enquiry officer. Therefore, the impugned memo dated 3.5.2018 issued by the 1st respondent disagreeing with the findings of the enquiry officer is without competence and contrary to Rule 21(2) of the CCA Rules and hence, the same is liable to be set aside."*

8. Further, in **N.Rama Rao** (*cited supra*), the learned single judge has observed as under:

"6. Learned counsel for the petitioners has contended that the enquiry officer has held that the charges are not proved and gave a specific finding that the charges leveled against all the delinquent officers were not found guilty of the said charge. But strangely, the disciplinary authority had imposed a major punishment vide proceedings dt.07-08-2021 wherein the penalty of stoppage of two increments with cumulative effect is imposed on the petitioners which is contrary to the law laid down by the Hon'ble Supreme Court reported in ***Lav Nigam v. Chairman and Managing Director, I.T.I. Limited*** *reported in* ***AIRONLINE 2006 SC 343****, wherein the Supreme Court has held as under:*

> *"The conclusion of the High Court was contrary to the consistent view taken by this Court that in case the disciplinary authority differs with the view taken by the inquiry officer, he is bound to give a notice setting out his tentative conclusions to the appellant. It is only after hearing the appellant that the disciplinary authority would at all arrive at a final finding of guilt. Thereafter, the employee would again have to be served with a notice relating to the punishment proposed."*

9. In view of the same, this Court is also satisfied that the Government has not issued a proper disagreement note and the disciplinary authority, as well as the appellate authority, have not considered the contentions of the petitioner in proper perspective but have decided that the petitioner has committed misconduct and has imposed punishment. This Court is therefore satisfied that the punishment is not justified in this matter. Accordingly, the Writ Petition is allowed and the

respondents are therefore directed to pass appropriate orders of promotion to the petitioner on par with his juniors and also grant all consequential benefits to the petitioner expeditiously, preferably within a period of two (2) months from the date of receipt of a copy of this order.

10. Accordingly the writ petition is allowed. There shall be no order as to costs.

11. Miscellaneous petitions, if any, pending in this writ petition, shall stand closed.

SD/- K. AMMAJI
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To

1. The Principal Secretary, to the Government Revenue Department Secretariat Saifabad, Hyderabad, State of Telangana.
2. The Commissioner of Commercial Taxes, Government of Telangana, Nampally, Hyderabad.
3. The Principal Secretary to the Government, Revenue (Vigilance-II) Department State of Telangana, Secretariat, Saifabad, Hyderabad.
4. One CC to SRI ARVIND KUMAR KATA, Advocate [OPUC]
5. Two CCs to GP FOR SERVICES-II, High Court for the State of Telangana, at Hyderabad. [OUT]
6. Two CD Copies

PSK.
GJP

HIGH COURT

DATED:31/12/2024

ORDER

WP.No.20751 of 2020

HIGH COURT FOR THE STATE OF TELANGANA
28 FEB 2025
★ DESPATCHED ★

ALLOWING THE WRIT PETITION
WITHOUT COSTS

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13/2/25
9 copies.