IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31.07.2025

CORAM

THE HON'BLE MR. JUSTICE HEMANT CHANDANGOUDAR

W.P No. 20236 of 2016
and
W.M.P. Nos. 17409 & 17410 of 2016

S. Sivakumari,
Assistant Commissioner (CT),
Audit Zone VII, Greams Road,
Chennai – 06. .. Petitioner

Vs

1.The State of Tamil Nadu,
Represented by
The Secretary to Government,
Commercial Taxes Department,
Fort St. George, Chennai – 600 009.

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

Writ petition is filed under Article 226 of Constitution of India, praying for issuance of writ of certiorari, to call for the records of the 2nd respondent's order dated 23.02.2016 in G.O.(2D) No.7, CT&R(E1) and quash the same.

For Petitioner : Mr. K. Krishnamoorthy
For Respondents : Mrs. K. Vasantha Mala,
Standing Counsel

ORDER

The captioned writ petition has been filed seeking the issuance of a writ of certiorari to quash the order dated 23.02.2016 in G.O.2D.No.7 issued by the first respondent. By the said order, the first respondent held that the charges against the petitioner were proved, and accordingly, imposed the punishment of stoppage of the next increment for three months without cumulative effect. It was further directed that the period of punishment would be exclusive of the period spent on leave by the individual and that it would not affect her pension.

2. Factual Background:

2.1 The petitioner, while serving as Assistant Commissioner (Commercial Taxes), Harbour-I Assessment Circle, Chennai, was issued a communication dated 16.08.2013, calling upon her to explain why departmental enquiry should not be initiated against her for the following charges:

> **Charge No.1:-**
>
> You, Tmt. S.Sivakumari, Assistant Commissioner (CT), Harbour-I Assessment Circle, Chennai, has failed to post-verify the place of business of the newly registered dealers Tvl. Yes Traders (TIN No.33480001331) and Tvl.Tritech (TIN No. 33800001349) and failed to carry out the standard procedure after issue of Registration Certificate. Further, you have not monitored the filing of

returns of the above dealers which lead to loss of revenue to the tune of Rs.59,43,200/- in respect of Tvl. Yes Traders and Rs.29,39,795/- in respect of Tvl. Tritech. If prompt post verification of the business place and cancellation of non-existent dealer has been done properly the above revenue loss to the State Exchequer might have been averted.

Charge No.2:-

You, Tmt. S.Sivakumari, Assistant Commissioner(CT), Harbour-I Assessment Circle, Chennai, while working in the aforesaid office has failed to properly function as Assessing Officer and thereby caused huge loss of revenue to the exchequer and by the above said lapses she has thereby violated Rule 20(I) of the Tamil Nadu Government Servants Conduct Rules, 1973.

2.2. The petitioner submitted an explanation denying the charges. As the Enquiry Officer was not satisfied with the explanation, he proceeded to conduct a departmental enquiry. After conducting the enquiry, the Enquiry Officer submitted a report stating that the first charge was partly proved and the second charge was proved. The Disciplinary Authority thereafter issued a show cause notice as to why the enquiry report should not be accepted and why penalty and punishment should not be imposed. In response, the petitioner submitted a further representation on 21.09.2015. After considering the further representation, the Disciplinary Authority passed the impugned order.

3. Learned counsel for the petitioner submitted that the impugned order passed by the first respondent is not a speaking order, as the explanation and further representation submitted by the petitioner were not considered. Therefore, the impugned order is in violation of the principles of natural justice and is not sustainable.

4. In response, the learned Standing Counsel for the respondents submitted that the first respondent, after considering the enquiry report and the explanation/further representation submitted by the petitioner, rightly concluded that the charges against the petitioner were proved, and accordingly imposed the penalty of stoppage of the next increment for three months without cumulative effect. Therefore, in the absence of any illegality or infirmity, the impugned order does not warrant interference. The learned Standing Counsel further submitted that, during the pendency of this writ petition, on similar charges, the petitioner has been suspended and a departmental enquiry is still ongoing.

5. Heard the learned counsel for the petitioner and the learned Standing Counsel for the respondents.

6. The impugned order passed by the first and second respondents reveals that the first respondent recorded the charges framed against the petitioner, the defence statement of the delinquent officer, the findings of the Enquiry Officer, the deviated views of the Government on the findings of the Enquiry Officer, and the further representation of the petitioner on the deviated views of the Government.

7. In paragraph 5 of the impugned order, respondent No.1 recorded that with regard to the revenue loss of Rs.59,43,200/- and Rs.29,39,735/- involved in Charge No.1, the Principal Secretary / Commissioner of Commercial Taxes reported that in both cases, verification of the registration files revealed that there were no entries indicating allotment of the dealers to any assessing officer by the registering authority, and the whereabouts of both dealers were unknown. The collection of Government revenue from the defaulters was considered less feasible as per the available records. However, recovery proceedings under the Revenue Recovery Act were being undertaken by the Assistant Commissioner. In view of the bleak chances of recovering the huge

revenue loss from the concerned dealers who had stopped their business operations, the Government, after careful and independent examination of the charges, the defence statement of the delinquent officer, the findings of the Enquiry Officer, the deviated views of the Government, the further representation of the delinquent officer, and all connected records, decided to hold both charges against the delinquent officer as "proved."

8. However, it is submitted that the first respondent has failed to apply his mind independently to the enquiry report, the findings recorded by the Enquiry Officer, the defence statement of the petitioner, and the further representation submitted by the petitioner in response to the show cause notice. A perusal of the impugned order reveals that it is bereft of any independent analysis or reasoning by the disciplinary authority. The first respondent has not demonstrated that the has arrived at an independent conclusion, based on a proper evaluation of the materials on record, that the charges against the petitioner stand proved.

9. It is a settled principle of law that an administrative or quasi-judicial order, particularly one imposing punishment in disciplinary proceedings, much be a speaking order. The authority is under a duty to record reasons indicating

due consideration of the enquiry report and the defence submitted by the charged officer. The requirement to assign reasons is not an empty formality. In essence, reasons are the soul of a decision, without them, the order is legally unsustainable.

10. In the present case, the impugned order passed by the first respondent does not reflect any such reasoning or independent application of mind. It does not disclose the basis on which the findings of the Enquiry Officer were accepted or how the petitioner's defence was found uncovincing. The absence of such reasoning vitiates the order, making it a non-speaking and mechanical one. Therefore, on this ground alone, the impugned order is arbitrary, violative of the principles of natural justice, and hence deserves to be quashed.

11. Accordingly, the following order is passed:

i) The Writ Petition is allowed.

ii) The impugned order dated 23.02.2016 bearing G.O.(2D) No.7 CT & R(E1), issued by the first respondent, is hereby set aside.

iii) The first respondent is at liberty to pass a fresh order after considering the further representation dated 21.09.2015 submitted by the petitioner on its own merits and in accordance with law. The order to be passed to be communicated to the petitioner within seven working days.

Consequently, connected miscellaneous petitions are closed. No costs.

31.07.2025

Index : Yes/No
Internet : Yes/No
AT

To
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HEMANT CHANDANGOUDAR, J.

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