



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2016

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

WEB COPY

Writ Petition (MD) No.5997 of 2014

and

M.P(MD)No.1 of 2014

C.Selvaraj

... Petitioner

Vs.

The State of Tamil Nadu,
Rep by its Principal Secretary to
Government,
Department of Highways and Minor Ports,
Secretariat,
Chennai.

... Respondent

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the records relating to the impugned charge memo issued by the respondent in his proceedings in government Letter No.461/H.L.1/2012-3 dated 10.05.2013 and quash the same as illegal.

For Petitioner : Mr.M.Ajmal Khan,
Senior Counsel for M/S.AJMAL ASSOCIATES

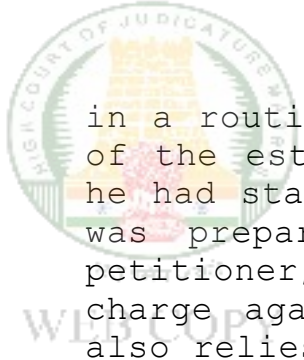
For Respondent : Mr.S.Chandrasekar,
Government Advocate.

ORDER

The petitioner who is working as a Divisional Engineer in the Department of Highways (Construction and Maintenance), has filed this writ petition, challenging a charge memo dated 10.05.2013 issued by the respondent. The said charge memo points out a deed which was done in the year 2003-2004 when the petitioner was working as Assistant Executive Engineer, District Rural Rural Development Agency, Tirunelveli in preparing an estimate for the purpose of laying metal road.

2.The allegation levelled against the petitioner was that he had split up the estimate in three counts for the purpose of avoiding technical sanction from the Superintending Engineer. According to the petitioner, he had only countersigned the estimate prepared by one Albert Raj.

3.The said charge memo was assailed by the petitioner on the ground of inordinate and unexplained delay of more than 10 years. Now, the petitioner has been promoted as Divisional Engineer and he is due to retire in a couple of months. It is further submitted that it is not possible for the petitioner to recollect what had happened in the year 2003-2004 when he had discharged his function



in a routine manner. Further, the allegation is only splitting up of the estimates. Though the petitioner does not admit the same, he had stated that he has only countersigned on the estimate that was prepared by one Albert Raj. Therefore, according to the petitioner, there is no direct allegation for clamping the said charge against him. For the above said charge, the petitioner also relies on the Government Orders in G.O.Ms.No.119 Highways and Minor Ports (HN2) Department, dated 24.10.2011 and in G.O.Ms.No.121 Highways and Minor Ports (HN2) Department, dated 24.07.2013 for splitting up of the estimates for laying single road. In such circumstances, the act of the petitioner in countersigning the estimates cannot at any stretch of imagination attract the charge memo issued by the respondent that too after passing of a decade.

4.Paragraph 4 of the counter affidavit filed by the respondent attributes the delay caused to the detailed enquiry by the Advisory Department. But there are no particulars about the date of auditing or when the respondent received the advisory report to take action against the petitioner. In the absence of any reason for the delay, it has to be treated that the respondent admitted the delay and laches on their part. No doubt, in paragraphs 6 and 7 of the counter affidavit, the respondent pointed out that the split up of estimate as done by the petitioner is permissible. However, the petitioner has violated G.O.Ms.No.286, Rural Development Department, dated 31.12.1988 and G.O.Ms.No.72, Transport Department, dated 30.01.1995.

5.Heard the submissions made by the learned counsel on either side.

6.Learned counsel for the petitioner would contend that on the date of alleged act he was employed as Assistant Executive Engineer, today he was raised at the level of Divisional Engineer. Even on the alleged date, he was not the authority to prepare estimate or split the estimate, according to him, he had only countersigned the estimate.

7.So far as the delay in initiation of disciplinary proceedings is concerned, the subject is well settled. Any disciplinary proceedings initiated belatedly would certainly prejudice the case of the delinquent employee to defend the enquiry proceedings effectively for the reason that the employee cannot remember the details of the allegations and secondly, he might not have the relevant records to defend the case. Therefore, it is expected to initiate disciplinary proceedings by the employer within a reasonable period. In the present case, the disciplinary proceedings initiated after 10 years which is without any explanation and the same would vitiate the entire disciplinary proceedings.



8. In support of his contention, learned counsel for the petitioner relied on the following decisions:-

"i) In **P.V. Mahadevan Vs. M.D. Tamil Nadu Housing Board** reported in **2005(4) CTC 403**;

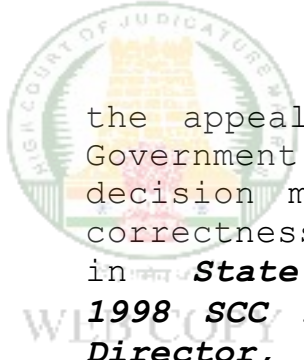
ii) In **Ranjeet Singh Vs. State of Haryana and others** reported in **2008 (3) CTC 781** and

iii) In **Tamil Nadu Housing Board Vs. R. Chakrapani** reported in **2012(6) CTC 69**"

9. The Hon'ble Supreme Court in **P.V. Mahadevan's** case has held as follows:

"Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher Government official under charges of corruption and dispute integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in the public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer."

10. In **Ranjeet Singh Vs. State of Haryana & others** reported in **2008 (3) CTC 781**, the Hon'ble Supreme Court considered the correctness of a judgment made in a second appeal, dismissing the plea that there was no substantial question of law in interfering with the judgment and decree made by the District Court, which reversed a decree passed in a suit for declaration, declaring a show cause notice issued after a delay of 7 years after concluding the departmental enquiry, as illegal. There was also a delay of 9 years in initiating disciplinary proceedings. In the above reported case, for an allegation of the year 1974, a charge memo was issued in 1983, after 9 years. The Enquiry Officer submitted his report on 01.01.1985. After a delay of nearly 7 years, the department issued a show cause notice with a copy of the report, proposing to impose a penalty. After submitting the explanation, the Government servant preferred a suit to declare a show cause notice proposing to impose a punishment as invalid. The trial Court decreed the suit holding that the action of the employer imposing punishment as illegal. The State preferred an appeal to the District Court. The first appellate Court allowed



the appeal and dismissed the suit. Aggrieved by the same, the Government servant filed a second appeal to the High Court. The decision made by the District Court was confirmed. Testing the correctness of the judgment and decree and following the decision in **State of Andhra Pradesh Vs. N. Radhakrishnan** reported in **AIR 1998 SCC 1833 : 1998 (4) SCC 154** and **P.V. Mahadevan V. Managing Director, Tamil Nadu Housing Board** reported in **2005 (4) CTC 403**, the Hon'ble Supreme Court, at paragraph 9 has held as follows:

"We have extracted the charges against the appellant. These charges did not require any detailed investigation. In view of the unexplained delay of nine years the Trial Court was justified in holding that the entire enquiry was vitiated and in declaring that the order of punishment to be null and void. The Appellate Court did not have any justifiable reason to interfere with the said finding. In the circumstance, we are of the view that the High Court ought to have interfered in the matter as the Appeal involved a substantial question of law, i.e. whether issue of charge sheet after nine years when there are no special circumstance to explain the delay vitiated the enquiry. As the matter is old and as we have already found that the delay vitiated the enquiry, no purpose will be served by remitting the matter. We propose to dispose of the Appeal on merits".

11. The Hon'ble Supreme Court reversed the judgment and decree of the High Court and the first appellate Court and consequently restored the judgment of the decree of the trial Court, setting aside the penalty.

12. This Court has also held in several cases that the delay on the part of employer after a lapse of long years will not meet the ends of justice and hence the same cannot be entertained. When a charge memo is issued after 10 years, the enquiry with respect to the same cannot be conducted in the *bona fide* manner as it would only be an empty formality. Admittedly, in this case, since there is no sufficient reason given by the respondent for the alleged delay, on the very ground itself, the charge memo has to be quashed.

13. The second limb of the argument of the learned counsel for the petitioner is that there was no direct misconduct alleged against him. The only charge alleged against the petitioner was that he had endorsed the estimate which was prepared by one Albert Raj other than that there is no serious misconduct alleged against him. It is also evident from the fact that he had been periodically promoted now to the level of Divisional Engineer.



14. In the light of the above findings, the charge memo dated 10.05.2013 issued by the respondent is quashed. The writ petition is allowed. No costs. Consequently, M.P(MD)No.1 of 2014 is closed.

WEB COPY

/True copy/

Sd/-
Assistant Registrar(RTI)

Sub Assistant Registrar
Madurai Bench of Madras High Court,
Madurai.

sms

To
The Principal Secretary to
Government,
Department of Highways and Minor Ports,
State of Tamil Nadu,
Secretariat,
Chennai.

+1 cc to M/S.AJMAL ASSOCIATES, SR No. 9822

RG.NGM-SS/AR-I 25.02.2016 5P/3C

Writ Petition (MD) No.5997 of 2014
17.02.2016