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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:05.04.2016

CORAM :

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

Writ Petition (MD) Nos.6656 and 6657 of 2016

and

W.M.P(MD)Nos.5766 and 5767 of 2016

V.Paul Jeba Gnanadhas

... Petitioner in both W.Ps.

Vs.

1.The Managing Director,
TN Tourism Development,
Corporation Limited,
Tourism Complex,
No.2, Wallajah Road,
Chennai 600 002.

2.The Project Engineer,
TN Tourism Development,
Corporation Limited,
Tourism Complex,
No.2, Wallajah Road,
Chennai 600 002.

3.The Regional Manager,
Office of the Regional Manager,
Hotel Tamil Nadu,
Madurai 625 001.

4.The Deputy Manager (Administration),
TN Tourism Development,
Corporation Limited,
Tourism Complex,
No.2, Wallajah Road,
Chennai 600 002.

... Respondents in both W.Ps

Prayer in W.P.(MD)No.6656 of 2016: 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 No. 0194/A1/2016 dated 05.03.2016 and quash the same.

Prayer in W.P.(MD)No.6657 of 2016: 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 proceedings No.194/A1/2016-2 dated 14.01.2016 (signed by the respondent Deputy Manager) placing the petitioner under suspension and quash the same.

For Petitioner
in both petitions

: Mr.Isaac Mohanlal,
Senior Counsel for
Mr.T.Cibi Chakraborty

For Respondents
in both petitions

: Mr.G.Muthukannan,
Government Advocate.

ORDER

The petitioner is Assistant Executive Engineer (Civil) with the first respondent Corporation. He was served with the proceedings of the first respondent dated 14.01.2016 placing him under suspension until further orders which is impugned in W.P(MD)No.6657 of 2016.

2. According to the petitioner, the order of suspension did not mention any reason and no charges were annexed to the said order. The petitioner was further directed to be in Madurai during the period of suspension and he is directed not to leave the headquarters without permission. Nevertheless he has been paid the subsistence allowance and dearness allowance as admissible under Tamil Nadu Tourism Development Corporation Employees Disciplinary Proceedings, Punishment and Appeal Regulations, 1988. Pursuant to the said order of suspension, the first respondent had issued charge memo dated 05.03.2016 which is impugned in W.P(MD)No.6656 of 2016. The said charge memo is now challenged by the petitioner on the ground that the charges levelled against the petitioner are vexatious and without any basis.

3. Learned Senior Counsel appearing for the petitioner contended that the charges are as vague as possible and bereft of even the basic details. Further, the charges alleged do not refer the date and time and the allegations are not specific. As the allegations are vague and unclear, it is impossible for any reasonable person to give an explanation in response to the same. As the charges are framed maliciously against the petitioner, the same is liable to be quashed.

4. In support of his contention, learned Senior Counsel pointed out Regulation 5(3) of the Tamil Nadu Tourism Development Corporation Employees Disciplinary Proceedings, Punishment and Appeal Regulations, 1988. Regulation 5(3) contemplates procedure for awarding penalties both minor and major penalties. The major penalty under Regulation 5(3)(b) is applicable to the petitioner. Therefore, the Regulation specifically mandates that the charges which shall be communicated to the person charged together with the statement of allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. After furnishing the above mentioned statement, it is for the delinquent employee to furnish his written statement in defence.

5. In the case on hand, it is pointed out that the charge memo dated 05.03.2016 though lists out five charges, they are without any basis as they do not furnish date and time or even the precise misdeed alleged to have been committed by the petitioner.

6. In support of his contention, learned Senior Counsel also relied upon a decision of the Supreme Court reported in **1970 (3) SCC 548 (Surath Chandra Chakrabarty Vs. State of West Bengal)** wherein the Supreme Court has held as follows:

"The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the allegations on which each charge is



based and any other circumstance which it is proposed to be taken into consideration in passing orders has also to be stated. This rule embodies a principle which is one of the basic contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him".

7.Quoting the above paragraph, it is contended that when the allegations are so vague which are not capable of being understood by a delinquent person, he could not defend himself effectively. That apart, the charge memo is not accompanied by the statement of allegations and the documents the respondent may rely upon for the purpose of the charges. The non furnishing of the statement of allegations or reasons along with the charge memo would amount to denial of proper and reasonable opportunity of defending himself.

8.It is further submitted by the learned Senior Counsel appearing for the petitioner that the impugned order is signed by the Deputy Manager of the Corporation who is inferior in rank to the petitioner himself. Though the impugned order gives out the name of the Managing Director, it has been signed only by the Deputy Manager on his behalf and served on the petitioner. Therefore, according to the petitioner, even the impugned order is not passed by the proper authority and on that ground also, it has to be quashed.

9.Though the grounds raised by the petitioner are acceptable, the same cannot be interfered with by this Court at this stage. The grounds urged here are very much available to the petitioner to be raised in his explanation which may be submitted to the authorities concerned and without exhausting such remedy, he cannot rush to this Court only on the ground that the impugned charge memo is vague and bereft of details. The authorities may drop the proceedings after receiving his explanation. Therefore, as the petitioner has an opportunity to submit his explanation to the authorities raising the above said grounds, the writ petitions are not maintainable. Accordingly, these writ petitions are dismissed. No costs. Consequently, W.M.P (MD) Nos.5766 and 5767 of 2016 are closed.

Sd/

Assistant Registrar(CS-II)

/TRUE COPY/

Sub Assistant Registrar(C.S)
Madurai Bench of Madras High Court,
Madurai.



To

1.The Managing Director,
TN Tourism Development,
Corporation Limited, Tourism Complex,
No.2, Wallajah Road, Chennai 600 002.

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Hotel Tamil Nadu, Madurai 625 001.

4.The Deputy Manager (Administration),
TN Tourism Development, Corporation Limited,
Tourism Complex, No.2, Wallajah Road,
Chennai 600 002.

+2ccs to M/S.T.Cibi Chakraborty, Advocate in SR.Nos.19301 & 19302

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and

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sms

PA/JGB-DP/20.04.2016/4P/7C