

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :08.12.2017

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.34552 of 2014 and MP.No.1 of 2014

M.Sezhian .. Petitioner

vs

1.Puducherry Tourism Development Corporation Limited,
Rep.by its Managing Director,
No.21, Saint Vincent De Paul Street,
Colas Nagar, Puducherry-605 001.

2.The Enquiry Officer,
Puducherry Tourism Development Corporation Limited,
No.21, Saint Vincent De Paul Street,
Colas Nagar, Puducherry-605 001.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the file of the first respondent relating to the impugned charge memorandum dated 13.12.2014 bearing ref:no.293/PTDC/ADMN/1991-794 and quash the same.

For Petitioner : Mr.Kandakumar

For Respondents : No appearance

ORDER

The charge memo dated 13.12.2014, is sought to be quashed in this writ petition. The impugned charge memo was issued by the respondents setting out the following allegation against the writ petitioner:

ANNEXURE-I

Statement of articles of charge framed against Thiru.M.Sezhian, Manager (Catering). Under Rule 22.1, 22.4, 23.4, 23.1.8, 23.1.9, 23.1.10, 23.1.25, 23.1.26 and 23.1.29 of the PTDC LTD., (CD & A) Rules 2014.

Article-II

That the said Thiru.M.Sezhian, while functioning as Manager (Catering) at seagulls restaurent Karaikal branch of the Puducherry Tourism Development Corporation during the period from June 2011 to July 2012. the catering services was rendered to Department of Art and Culture Karaika for an amount of Rs.2,02,040/- on 17.08.2011 and 18.08.2011. The said department has paid an amount of Rs.50,000/- as advance by cash which was received on 18.08.2011 vide bill No.077843. But, the said amount was not remitted to out corporation account. The Department of Art and Culture, Karaikal has settled the balance amount of Rs.1,52,040/- in the month of January 2012.

Article-II

That during the aforesaid period and while functioning in the aforesaid branch, the said Thiru.M.Sezhian, Manager (Catering) has removed the cash Bill No.077843 dated 18.08.2011 from the bill Book No.0779 issued to the department of Art & Culture.

Article-III

That during the aforesaid period and while functioning in the aforesaid branch, the said Thiru.M.Sezhian, Manager (Catering) has not properly handed over the records to Mrs.H.Dharmambal, Receptionist/Tourist Guide Gr.I after received the transfer order. Thiru.M.Sezhian, Manager (Catering) has handover the letter only on 06.03.2013.

Article-IV

That during the aforesaid period and while functioning in the aforesaid branch, the said Thiru.M.Sezhian, Manager (Catering) has received the payment of Rs.1/78/007/- from the Assistant Director of Information & Publicity, Karaikal for 21 bills from bill No.84142 dated 07.04.2012 to bill No.084162 dated 27.05.2012. But, the statement prepared by Thiru.M.Sezhian Manager (Catering) has no relevancy with the bills raised to the Department of Information & Publicity, Karaikal. The bill includes one bill No.12 in the DSS No.22877 dated 29.06.2011 for Rs.8925/- pertaining to ONGC and another set of 10 bills shown in the statement totally to Rs.11,388/- pertains to Tourism Department belongs to the month of September 2011 and April 2012. The statement has no relevant with the statement given by the Department of Information & Publicity.

Article-V

That during the aforesaid period and while functioning in the aforesaid branch, the said Thiru.M.Sezhian, Manager (Catering) has given discount for an amount of Rs.17,042/- to the Department of Information & Publicity, Tourism Department and ONGC. The rate of discount in vary with one another.

Article-VI

That during the aforesaid period and while functioning in the aforesaid branch, the said Thiru.M.Sezhian, Manager (Catering) has used three manual books bearing nos.779, 782 and 841 simultaneously. The details are given below:

Manual Bill Book No.	Bill Numbers		Period	
	<i>From</i>	<i>To</i>	<i>From</i>	<i>To</i>
779	77811	77900	08.06.2011	28.07.2012
782	78101	78200	04.08.2011	04.01.2012
841	84001	84100	04.01.2012	22.04.2012

The bill Nos.77898, 77899 nad 77900 in the bill Book No.779 are not used and kept blank.

Article-XI

That during the aforesaid period and while functioning in the aforesaid branch, the said Thiru.M.Sezhian, Manager (Catering) has handled the bill books. The hand writing/signature in the original bill (No.077872) and the copy of the same bill differ from each other and original signature is found in the duplicate. Original Bill was cancelled and the cancellation is not effected in the duplicate copy of the same bill.

Article-XII

That during the aforesaid period and while functioning in the aforesaid branch, the said Thiru.M.Sezhian, Manager (Catering) has either claimed nor cancelled the manual bills bearing No.77817, 77818, 77819, 77820.

Article-XIII

That during the aforesaid period and while functioning in the aforesaid branch, the said Thiru.M.Sezhian, Manager (Catering) has not

used the bill sequentially as per serial numbers printed and the bills were prepared irregular dates. The details are as follows:

SI.NO.	MANUAL BILL BOOK NO. 779		SI.NO	MANUAL BILL BOOK NO. 779	
I.	077816 077817 077820-22 077823 077824	27.06.2011 26.06.2011 28.06.2011 27.06.2011 28.06.2011	VII	078123 078124 078125 078126 078127	24.09.2011 11.10.2011 11.10.2011 27.09.2011 07.10.2011
II.	077831 077832 077833-34 077835	04.07.2011 04.07.2011 29.06.2011 04.07.2011	VII	078135 078136 078137 078138	23.10.2011 10.09.2011 10.09.2011 14.10.2011
III	077839 077840 077841 077842 077844 077845	19.08.2011 18.08.2011 18.08.2011 23.08.2011 18.08.2011 24.08.2011	IX.	078164 078165 078166 078167 078168 078169	08.12.2011 NOT USED 09.12.2011 12.11.2011 13.11.2011 15.12.2011 19.12.2011 06.12.2011 13.12.2011
IV	077849 077850 077851	17.04.2011 15.04.2011 22.04.2011			
V	077866 077867 077868	30.07.2011 29.07.2011 30.07.2011			
VI	077880 077881 077882	21.09.2011 04.09.2011 12.09.2011			

Article-VII

That during the aforesaid period and while functioning in the aforesaid branch, the said Thiru.M.Sezhian, Manager (Catering) has prepared the manual bill and computer bill with a difference. The manual bill amount is not tallied with the computer bill and the details are given below;

SI.NO	MANUAL BILL NO.AMOUNT (RS.)	COMPUTER BILL AMOUNT (RS.)
1.	078161 981.00	1,165.00
2.	078179 16,075.00	15,180.00
3.	078181 27,025.00	22,675.00
4.	078184 52,050.00	51,035.00
5.	078188 7,850.00	8,350.00
6.	078189 600.00	400.00

Article-VIII

That during the aforesaid period and while functioning in the aforesaid branch, the said Thiru.M.Sezhian, Manager (Catering) has prepared the manual bills in the same date i.e., 12.11.2011 in two different manual bill books. The details are given below;

SI.NO	MANUAL BOOK NO.	BILL NUMBER	AMOUNT (RS)
1.	782	078167	8,500.00
2.	779	077889	11,650.00

Article-IX

That during the aforesaid period and while functioning in the aforesaid branch, the said Thiru.M.Sezhian, Manager (Catering) has belatedly prepared the manual bill bearing no.078126 only on 27.09.2011 for the computer bills generated during the month of July 2011, August

2011 and September 2011.

Article-X

That during the aforesaid period and while functioning in the aforesaid branch, the said Thiru.M.Sezhian, Manager (Catering) has prepared the manual bill No.078177 on 19.12.2011 and the date of the relevant computer bill shows 19.11.2011. So, the manual bill has been prepared after one month gap from the computer bills.

2. Ten charges were framed against the writ petitioner. Annexure 2 of the charge memo provided the list of documents. Annexure 3 provides list of witnesses. There is no infirmity in respect of the charge memo issued to the writ petitioner. The contention of the writ petitioner is that the Presenting Officer is the retired employee of the respondent/Corporation and the retired employee cannot be appointed as Presenting Officer.

3. The learned counsel appearing for the petitioner refers Standing order No.1 of 2007 and Clause 2(f) denotes the meaning of permanent employee. Since the Presenting Officer is not a permanent employee of the respondent/Corporation, the appointment of the Presenting Officer is not in accordance with the standing orders.

4. This Court has gone into the standing order referred by the learned counsel appearing for the petitioner. Clause 2 of the Standing

order provides definition for various terms, where the permanent employee has been defined in Clause 2(f). Such a definition provided under the standing order has no relevance in respect of the disciplinary proceeding to be conducted against the employees.

5. Enquiry proceedings are independent and the disciplinary Authority has to conduct the enquiry by providing reasonable opportunity to the delinquent officials and by adhering to the principles of natural justice. The process of enquiry has to be conducted in accordance with the principles of natural justice. The enquiry officer has to conduct independent enquiry, in order to cull out the truth in respect of the allegations set out in the charge memo. The manner in which the enquiry has to be conducted is depending on the procedures adopted by the employer. The judicial review in this regard can be exercised to test the reasonableness adopted by the employees while conducting the enquiry. The test of reasonableness alone should be the criteria for involving in the process of disciplinary proceedings. The procedures may defer from one organization to another but the main object is to see that whether the employer has complied with the principles of natural justice or not. In other words, the procedures adopted by the employer must be transparent and in accordance with the established procedures for conducting the enquiry proceedings. Thus the grounds raised in this regard by the writ

petitioner deserves no merit consideration.

6. On perusal of the charge memo, this Court is of the opinion that allegations are certainly serious and full fledged enquiry is certainly warranted. It is left open to the writ petitioner to submit his explanation / objection to prove his innocence by participating in the enquiry proceedings. Challenging the charge memo on certain flimsy grounds are only for the purpose of prolonging or protracting the enquiry proceedings. Such an idea of the delinquent employee can never be encouraged by the Constitutional Courts. The employee facing the charge memo has to prove his innocence by participating in the departmental disciplinary proceedings. Contrarily, they have resorted to indulge in continuous allegation in one way or another only with an idea to escape from the clutches of the disciplinary proceedings. This kind of an idea of the employees should be deprecated.

7. No writ can be entertained against the charge memo and the Court can interfere only on exceptional circumstances and on limited grounds. The writ against the charge memo can be entertained if such a memo was issued by an incompetent authority having no jurisdiction or allegation of malafide are raised or if the charge memo is in violation of the statutory rules. Even in case of raising allegation of malafides authority

against whom such an allegation is raised has to be impleaded as a party in the writ proceedings in his personal capacity. In the absence of any one of these ground, no writ can be issued against the charge memo. Judicial review against the charge memo is certainly limited.

8. The Honourable Supreme Court of India ***in the case of Union of India and others Vs. Upendra Singh, reported in (1994) 3 SCC 357*** and the paragraph 6 which is extracted hereunder:

"6. In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in H.B. Gandhi, Excise and Taxation Officer-cum- Assessing Authority, Kamal v. Gopi Nath & Sons. The Bench

comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus : (SCC p. 317, para 8)

"Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

9. This Court is of the opinion that intermittent intervention in disciplinary proceedings are certainly not preferable and the disciplinary proceedings initiated against the government employee should be allowed to be completed in all respects and the same shall reach its logical conclusion. Mere issuance of the charge memo will not confer any right on the employee to move the writ petition under Article 226 of the Constitution of India. The charge memo can never be construed as a cause of action for the purpose of filing this writ petition.

10. This being the view of this Court, it is left open to the writ petitioner to participate in the enquiry proceedings to prove his innocence. Thus, the grounds raised in this writ petition and the arguments advanced by the learned counsel appearing for petitioner deserves no merit consideration.

11. Accordingly, the writ petition stands dismissed. No costs. Consequently connected miscellaneous petition is also closed.

08.12.2017

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Internet:Yes

Index:Yes

Speaking Order

To

1.The Managing Director,
Puducherry Tourism Development Corporation Limited
No.21, Saint Vincent De Paul Street,
Colas Nagar, Puducherry-605 001.

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Puducherry Tourism Development Corporation Limited,
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S.M.SUBRAMANIAM J.

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