

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :30.10.2017

CORAM

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

W.P.No.25104 of 2012

and

M.P.No.2 of 2012

Lakshmanan

..Petitioner

vs

1.The Principal Chief Conservator of Forests,
'Panagal Building'
Saidapet, Chennai - 600 015

.. Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the respondent in connection with the impugned charge memo issued by the respondent No.11007-05(P) 04/11/2009 and quash the same and direct the respondent to convert the charge memo issued under rule 17(b) into one of 17(a) of TNCS(D & A) Rules.

For Petitioner : Mr.T.Ayngaraprabhu

For Respondent : Mr.M.Santhanaraman

Additional Government Pleader(Forests)

O R D E R

The relief sought for in this writ petition is to call for the records in connection with the charge memo issued by the respondent in proceedings dated 04.11.2009.

2.The learned counsel for the petitioner states that the writ petitioner was initially recruited as Forester and appointed on 16.10.1980. Thereafter, he was promoted to the post of Forest Range Officer on 14.12.2002. On account of certain allegations, a charge memo was issued to the writ petitioner in proceedings dated 04.11.2009. The charges against the writ petitioner are as under:

குற்றச்சாட்டு °1

திரு. லட்சுமணன், சரகர், தனது வார நாட் குறிப்பில் 15.10.05 மற்றும் 25.10.05-ல் முதன்மை தலைமை வனப்பாதுகாவலரின் சுற்றறிக்கை எண்.19/88-1 நாள் 13.10.88-ன்படி எந்தெந்த பணிகள் எந்த நேரத்தில் மேற்கொள்ளப்பட்டது. தலைமையிடத்திலிருந்து புறப்பட்ட நேரம் மற்றும் திரும்பிய நேரம் தலைமையிடத்திற்கு எவ்வாறு வரப்பட்டது (Mode of conveyance) குறித்து விபரங்கள் எதுவும் குறிப்பிடப்படாதது குற்றம்.

Annexure - II speaks about the allegations and Annexure - IV states about the documents.

3.The learned counsel is of the opinion that the nature of the allegations against the writ petitioner are serious in nature and it relates to the violation of certain instructions issued by the department. Thus, the charges framed under Rule 17(b) of the Tamil Nadu Civil Services(Discipline and Appeal) Rules are untenable. The learned counsel submits that if at all any violation of this nature, the Department ought to have framed charges under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules for the purpose of imposing the minor penalty. The circular issued by the Chief Conservator of Forests is enclosed in the typed set of papers. However, the fact remains that the writ petitioner was holding the post of Forest Range Officer and performing the duties and responsibilities which is certainly more responsible one.

4.At the outset, the learned counsel appearing for the writ petitioner urged this Court that the charges framed against the writ petitioner are very simple in nature and therefore, the charges ought not to have been framed under Rule 17(b) of the Tamil Nadu Civil Services(Discipline and Appeal)Rules. In this regard, he suggested that the Government also issued a circular stating that for imposing minor punishment, the charge under Rule 17(a) alone to be framed.

5.The learned Additional Government Pleader(Forests) appearing on behalf of the respondents opposed the contentions raised by the learned counsel appearing for the writ petitioner, by stating that the charges framed are very serious in nature and it is erroneously projected before this Court as if it is a violation of mere instructions in this regard. The learned Additional Government Pleader referred the counter affidavit filed by the respondents, stating that failure on the part of the writ petitioner to mention the date and time of leaving the Head Quarters and time of returning to Head Quarters and the mode of conveyance, etc., amounts to contravention of the instructions issued by the Chief Conservator of Forests in Circular No.19/88-1 dated 13.10.1988. In this regard, the

charge memo itself is self-explanatory and there is no ambiguity in the charge memo issued to the writ petitioner. In view of the above instructions of the Chief Conservator of Forests by the petitioner amounts to in-subordination, which is of grave in nature warranting suitable punishment such as reduction in rank, compulsory retirement from service etc., as per Rules 8 of the Tamil Nadu Civil Services(Discipline and Appeal)Rules. Further, it is stated that the objective of the instructions of the Principal Chief Conservator of Forests is to ensure sanctity and genuinity in maintaining the Government records. However, the petitioner who was trapped and arrested on 25.10.2005 at Shencottai by the Director of Vigilance and Anti Corruption officials are creating false records in the diary on 25.10.2005 as if he visited a village namely Karkudi on that date without mentioning the time of leaving Head Quarters, mode of conveyance used and time of returning to Head Quarters.

6.The learned Additional Government Pleader states that in order to create a ground of alibi, the writ petitioner has created a false record contrary to the circular issued by the Department. Thus, the purpose for which the details are not mentioned by the writ petitioner was clear i.e. in order to escape from the clutches of the case, registered against him by the Department of Vigilance and Anti Corruption. A criminal case against the writ petitioner under the Prevention of Corruption Act is pending before the competent criminal Court of law. On account of the pendency of the criminal case, the writ petitioner was not allowed to retire from service on 30.04.2016 and he was placed under suspension with effect from 27.04.2016 and his services were retained by invoking the powers under Rules 56(c)(1) of the fundamental Rules. Thus, the charge memo, under these circumstances, deserves to be proceeded against the writ petitioner in accordance with the rules and the writ petitioner has not made out any legal grounds to quash the charge memo.

7.The learned counsel appearing for the writ petitioner rebutting the above contentions that the charge memo impugned in this writ petition emanated from the report submitted by the writ petitioner on 15.10.2005 and 25.10.2005. However, the trap was organised on 25.10.2005. Therefore, the writ petitioner may not have any object of creating false record. However, this Court is of the opinion that there is a close proximity in relation to these dates. As per the charge memo impugned in this writ petition, the weekly notes were prepared on 15.10.2005 and on 25.10.2005. However, the trap convened as per the writ petitioner was held on 21.10.2005. Probably, the writ petitioner has prepared these notes without mentioning any date mode of conveyance etc., in his notes, so that he can

conveniently use such notes at the time of criminal trial and in the departmental disciplinary proceedings since, the allegation is that he has not stated the time, date where he started from the Head Quarters and the time of returning to the Head Quarters were not mentioned in his notes. Therefore, it is clear that the writ petitioner can use the same to suit his convenience. Thus, the arguments advanced by the learned counsel for the writ petitioner cannot be accepted in this regard. When the writ petitioner has not mentioned the date of leaving the Head Quarters, nature of duties performed and the time when he returned to the Head Quarters, there is every reason to believe that these details are not furnished in order to escape from the clutches of law or use the record for the purpose of disproving the allegations set out in the criminal case registered by the Department of Vigilance and Anti Corruption. However, this Court need not go into these aspects in this case and it is for the competent authority to take a full fledged enquiry in this regard and arrive a conclusion.

8.A charge memo can be challenged on limited grounds and the Court can entertain a writ petition on exceptional circumstances. A charge memo can be challenged if the same was issued by an incompetent authority having no jurisdiction, an allegation of mala fides is raised if the same is in violation of statutory rules. Even in case of raising the allegation of mala fides, the authority against whom such an allegation is raised, has to be impleaded as a party respondent in the writ proceedings in his personal capacity. In the absence of any such legal grounds, no charge memo can be entertained by way of writ petition at this stage.

9.Intermittent intervention in departmental disciplinary proceedings are not preferable and a judicial review in this regard has to be exercised cautiously. Departmental disciplinary proceedings initiated against an official shall be allowed to be concluded in all respects and the same should reach its logical conclusion. The authorities competent shall be allowed to continue the enquiry in all respects and the power of taking decision must be exercised in all respects under the Rules by the competent authorities.

10.In respect of the contentions that the charges framed are simple in nature, this Court is of the opinion that the learned Additional Government Pleader raised a point that the writ petitioner was already arrested on account of the case registered by the Department of Vigilance and Anti Corruption under the Prevention of Corruption Act and he was placed under suspension and his services are retained beyond his date of superannuation. Under these circumstances, this Court is not inclined to consider these contentions and a full fledged

enquiry into these allegations are certainly warranted in public interest.

11. In the above background, learned counsel for the writ petitioner has placed strong reliance upon a judgment rendered by a Division Bench of this Court in W.P.No.19144 of 2004, on 07.12.2004. The Division Bench, in paragraph 6 of the said judgment, had referred to the guidelines issued by the Government for deciding when charges may be framed under Rule 17 (b) of the Rules and, thereafter, the issue has been dealt with in paragraph 7. Hence, paragraphs 6 and 7 are quoted hereunder :

"6. A perusal of the order of the Tribunal shows that the Tribunal is of the considered opinion that the allegations do not warrant the initiation of the proceedings under Rule 17 (b) of the Rules, which contemplates imposition of major penalties. The Tribunal was fully convinced keeping in mind the nature of the allegations that the charge should have been framed under Rule 17 (a) as the charges were not serious in nature. In this connection, it may be pointed out, that even though the Tribunal has not referred to the guidelines issued by the Government for deciding whether the charges could be framed under Rule 17 (a) or under 17 (b), it is quite obvious that the Tribunal had kept in mind those guidelines. The guidelines are to the following effect:

GUIDELINES FOR DECIDING WHETHER CHARGES MAY BE FRAMED UNDER RULE 17 (b)

(1) Cases in which there is reasonable ground to believe that a penal offence has been committed by a Government servant but the evidence forthcoming is not sufficient for prosecution in a Court of law, e.g.,

(a) possession of assets disproportionate to the known sources of income;

(b) obtaining or attempting to obtain illegal gratification ;

(c) misappropriation of Government property, money or shares;

(d) obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate etc.,

(2) Falsification of Government records.

(3) Irregularity or negligence in the discharge of official duties with a dishonest motive.

7. It is not in disputed that the charges framed against the petitioner do not come under (1) and (2) of the aforesaid Guidelines. Learned counsel for the petitioner has submitted that the charges framed against the petitioner come under paragraph 3 of the guidelines. We are unable to accept this submission. Even if the action of the respondent No.1 may amount to irregularity or negligence in the discharge of his official duties, there is no whisper in the charge memo or to the effect that it was with any dishonest motive. Moreover, it is not the contention of the counsel for the petitioner that there was any dishonesty on the part of respondent No.1 in the discharge of his official duties."

12. Learned counsel for the petitioner has then relied upon a judgment of another Division Bench rendered on 05.09.2006 in W.P.No.3558 of 2004. Therein also, the Division Bench considered the above quoted guidelines and arrived at the conclusion that the charges under Rule 17 (b) ought not to have been framed. Learned counsel for the petitioner has also pointed out that a learned single Judge, in his judgment rendered on 07.09.2009 in W.P.No.17652 of 2006 in S.Kannan v. State of Tamil Nadu, (2009) 8 MLJ 217, had subscribed to the same view that charges under Rule 17 (b) cannot be framed against the civil servant, for want of allegations, touching upon integrity or irregularity or negligence in discharge of official duties with a dishonest motive. Learned counsel for the petitioner has also pressed into service the judgment rendered by the Supreme Court in State of U.P. v. Gobardhan Lal, (2004) 11 SCC 402, wherein, in paragraph 7, it has been held as under :

"7..... Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered

with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision."

13. Learned counsel for the petitioner has also drawn our attention to another judgment of the Supreme Court in National Hydro Electric Power Corporation Ltd. v. Shri Bhagwan and another, (2001) 8 SCC 574.

14. The Government guidelines adverted to by two different Division Benches of this Court earlier have been reproduced by this Court, a little earlier. At the outset, it is apt to recall the legal principles governing the issue of enforceability of administrative instructions/executive orders/non-statutory guidelines. It is beyond any pale of doubt, that the aforementioned categories of instructions do not have any statutory backup or flavour. They are purely intended for regulating the business of the Government, to be carried out in a most effective manner. If a field is already occupied by a statutory provision or the rules made under a statute, administrative instructions or guidelines can never supplant the same. At best, such instructions or guidelines can only supplement the rule or the statutory provision. The administrative instructions or guidelines, therefore, have no enforceability. (see AIR 1982 SC 917, (2001) 3 SCALE 289, (1979) 2 SCC 491).

15. Administrative instructions or guidelines also confer no rights on any individual. (see Union of India v. K.P. Joseph, 1973 SCJ 1, (2001) 2 SLJ 258).

16. It is a settled principle of law that administrative instructions or guidelines should not be inconsistent with the statutory provisions or the rules made thereunder, which are meant for giving effect to the provisions of a statute. (see District Registrar v. M.B. Kutti, AIR 1979 SC 1060). Giving effect to the guidelines or instructions, which are inconsistent with a statutory provision or rule, would tantamount to an abuse. (see (1979) 2 SCC 491).

17. When this Court look at the guidelines in question, the first guideline sets out cases, in which there is reasonable ground to believe that a penal offence has been committed by a

Government servant, but the evidence forthcoming is not sufficient for prosecuting in a Court of law, and the examples cited in respect thereof relate to (1) (a) possession of assets disproportionate to the known sources of income; (b) obtaining or attempt to obtain illegal gratification; (c) misappropriation of Government property, money or shares; (d) obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration, which is not adequate; (2) Falsification of Government records; (3) Irregularity or negligence in the discharge of official duties with a dishonest motive. When this Court critically examine these guidelines, which give freedom to the competent disciplinary authority to proceed further under Rule 17 (a), but not to frame charges under Rule 17 (b), it is wonder struck. Rule 17 (a) is put in place only for the purpose of imposition of minor penalties. The necessary procedure to be followed has been provided and contemplated in that regard.

18. As is normally understood, imposition of minor penalty is warranted where the attributable misconduct is on a minor scale. For certain lapses in discharge of functions by a civil servant, which may not be so serious enough to warrant imposition of major punishment, such as removal or dismissal or compulsory retirement from service or even reduction in rank (reversion) or in status etc., but only a minor penalty is required to be imposed, then the procedure under Rule 17 (a) is required to be followed. Minor penalties commence from censure/warning, which will have a limited period of shelf life, say, six months or one year and other punishments, such as, stoppage of annual grade increment (s) for a specified period, which will impact the employee concerned in monetary terms for a specified period. This gradation of punishments has been attempted by the rule making authority more for the purpose of regulating the exercise of discretion. For every minor misconduct, the gravest of the punishments is not supposed to be inflicted, in the name of exercising disciplinary control. A harsh or disproportionate punishment would produce the opposite of the desired result of disciplinary control. It will demoralise the cadre concerned. It would also put them off for rendering services efficiently and productively too. On every occasion, he would be tempted to indulge in "safety first" norms, so that he cannot be penalised for any reason. The net result would be the slowing down of the operating machine of the entire civil services. The Governance of the State would get impaired in that process. To ensure freedom of mind amongst the civil servants, a gradation of punishments has been prescribed with an inbuilt direction to the competent disciplinary authority to choose the most appropriate one amongst them. In

choosing the punishment to be inflicted, the alleged degree of misconduct, the manner in which such misconduct is exhibited, the level/grade of the civil servant and the stage of his service life at which the punishment is sought to be inflicted are all relevant factors, which are required to be taken into consideration, while exercising the discretion.

19. The guidelines, as they appear, in my opinion, are inconsistent with the very theme behind the disciplinary control, which is vested in every appointing authority/competent disciplinary authority. In this context, it is appropriate to bear in mind that conscious effort is required certainly to protect the rights of the civil servants, it is who are expected to honestly and fearlessly perform their duties and functions without buckling under any pressures or succumbing to temptations, encountered by them or likely to be encountered by them, during their service tenure. That was the reason, why valuable rights/obligations have been contemplated and provided for in the form of Article 311 by our constitutional makers. While doing so, designedly, protection has been insulated as against the punishments of dismissal, removal or reduction in rank only. It does not mean that there is no protection to a civil servant available against rest of the punishments. A fair procedure, which accords with the principles of natural justice, has to be followed. The insulation contemplated and provided for by Article 311 is to create the necessary sense of security in the mind of the civil servant. Against any unjust or arbitrary disciplinary control, the remedies of getting such actions corrected is always available to the civil servants. That was the very reason why, to regulate the discretion conferred upon competent disciplinary authority for inflicting punishments on erring civil servants, a graded scale of punishment is put in place. The guidelines talk of, not subjecting a civil servant to the disciplinary control, leading to possible infliction of major punishments under Rule 17 (b), even in such cases where the civil servant is stated to be in possession of assets disproportionate to his known sources of income or obtaining or attempting to obtain illegal gratification.

20. The precious plea put forth behind the guidelines was that if the disciplinary authority were to find that the evidence was not forthcoming, which is sufficient for prosecution in a Court of law, no major penalty proceeding should be drawn under Rule 17(b) of the Rules. Who has to determine, whether there is sufficient evidence for one to be prosecuted in a Court of law ? Is it dependent upon the will, the pleasure or the lack of it on the part of the disciplinary

authority ? Then, what is meant by sufficiency of evidence ? What kind of evidence, that can be considered sufficient for prosecuting a civil servant, who is in possession of disproportionate assets to his known sources of income or for his obtaining or attempting to obtain illegal gratification ? What objective standards can be applied for determining the sufficiency of evidence in such cases ? If such grave misdemeanour exhibited by civil servants as possessing disproportionate assets is to be condoned, including cases like misappropriation of Government property, money or shares, one wonders as to for whose benefit these guidelines are intended. Surely, the guidelines are not meant to protect the wrongdoers, who are in possession of disproportionate assets to his known sources of income or persons, who made an attempt to obtain illegal gratification or did obtain illegal gratification and persons, who have misappropriated Government money, property or shares or a civil servant, who has obtained or attempted to obtain a valuable thing or pecuniary advantage without consideration or for inadequate consideration. Such conduct, by no stretch of imagination, on the part of the civil servant, is liable to be countenanced. Any such act of seeking to condone the conduct of civil servants of the above referred nature would tantamount to holding a protective umbrella over the heads of certain civil servants, who treat or take it for granted, that they are beyond the reach of law. In this process, the very principles enshrined behind the Prevention of Corruption Act, to the extent of the civil servants are concerned, can never be allowed to be diluted. Any such attempt will pollute the purity of the stream of the civil services. Civil services have been constituted not only for the sake of providing employment to adequate numbers under the Government hold, but, it is essentially meant for delivery of services, which the State is required to render to its citizens. Therefore, the stream of civil services is required to maintain its purity at all times, lest the civil servants would tend to use the opportunity of their position or placement as such, to indulge in profiteering for themselves. They would be doing so at the cost of the State as well as its citizens. A person, who has obtained or attempted to obtain illegal gratification for performing services, for which he is recruited, is simply doing violence to the very nature of his employment. The State has been providing for adequate remuneration for each civil servant in return, commensurate to their services and the economic capacity, permitting the State to do so. It fixes the scales of pay, which contain periodical incremental growth. That was meant to ensure that the civil servants get paid adequate remuneration proportionate to the nature of duties and responsibilities discharged by them. Scales of pay are also revised periodically to offset the inflation that has set in in the meantime between last revision of pay scales. They are getting paid allowances

as well for undertaking any travel beyond their headquartered place. All these are put in place by the State, as a package of adequate remuneration, for rewarding the civil servants, who are effectively, efficiently and honestly discharging their duties and responsibilities attached to their post. In spite of such reasonably attractive packages and, above all, the status of a civil servant which he enjoys all through his tenure as a civil servant if he were to indulge recklessly in dishonesty by acquiring assets disproportionate to his known sources of income or attempting to obtain illegal gratification or misappropriate the Government property or money for obtaining pecuniary advantage without consideration or for inadequate consideration, such misconduct cannot be tolerated at all. Any such attempt to deal with such men with velvet gloves would bring out clear inconsistency between the very concept of security of service, the disciplinary control and the fundamental obligation of every civil servant to maintain integrity and honesty throughout his tenure of employment. For these reasons, we are clearly of the view that the guidelines framed by the State Government for the purpose of determining whether charges, leading to imposition of major penalties, are to be framed under Rule 17 (b) or not, is an unsustainable exercise, indulged in by the State.

21. Even in cases where falsification of Government records by a civil servant is sought to be protected by these guidelines which declare that charges need not be framed under Rule 17 (b). After all, the Government records are required to be maintained properly, accurately and diligently. If the Government records were to be falsified, would it be very difficult for one to imagine the disastrous consequences that can flow, sometimes, from any such falsification. Above all, can a State suffer the ignominy of doubting the accuracy of its own record. We fail to comprehend as to what purpose the guidelines framed by the Government are intended to achieve? The third of the kind of misconducts which is aimed to be insulated by these guidelines is with regard to irregularity or the negligence in discharge of official duties with a dishonest motive. While it is time that the State is reminded that motive is absolutely irrelevant in the matter of disciplinary control, the essential test, which is to be determined is, whether the misconduct is a mere motive or is the very foundation for chargesheeting the employee. Long years ago, it has been pointed out by the Supreme Court in State of Bihar v. Gopi Krisore Prasad (AIR 1960 SC 689) that the motive fades itself into insignificance when the foundational facts behind the charge are laid properly. This principle has been consistently followed subsequently in State of Bihar v. Shiva Bhikshuk Misra (AIR 1971 SC 1011); ONGC v. Dr.M.Iskander Ali (AIR 1980 SC 1242) and Nepal Singh v. State of U.P. (AIR 1980 SC 1459). In the face of this legal regime and also in view of the fact that no guidelines are enforceable, the

guidelines framed, we are of the opinion, are only trying to help the wrongdoers to escape from the net of being proceeded against, to the extent of avoiding infliction of major punishments.

22. Hence, this Court take this opportunity to direct the State Government to reconsider the matter and withdraw these guidelines or frame appropriate guidelines, which will not result in sufferance of the dishonest employees in its services.

23. In view of the facts and circumstances narrated above, this Court is of the view that the writ petitioner is facing both departmental disciplinary proceedings as well as a criminal case under the Prevention of Corruption Act. Thus, no leniency can be shown to the petitioner, it is left open to the writ petitioner to prove his innocence both before the departmental disciplinary proceedings as well as the Criminal Court in this regard.

24. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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TO

1. THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS,
'PANAGAL BUILDING'
SAIDAPET, CHENNAI - 600 015

2. THE SECRETARY TO GOVERNMENT,
PUBLIC AND ADMINISTRATIVE REFORMS
DEPARTMENT, FORT. ST. GEORGE,
CHENNAI-9.

+1cc to Mr. M. MUTHAPPAN Advocate, S.R.No. 76806/17
+1cc to the Government Pleader, S.R.No. 76576/17

W.P.No.25104 of 2012

TR(06/12/2017)