

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 24.11.2017

CORAM

THE HONOURABLE Mr.JUSTICE S.M.SUBRAMANIAM

W.P.No.26076 of 2013
and M.P.Nos.1 and 2 of 2013

E.K.Srinivasan

... Petitioner

Vs

1.The Managing Director,
Tamil Nadu Minerals Ltd.,
31, Kamarajar Salai,
Chepauk, Chennai-5.

2.The General Manager,
Tamil Nadu Minerals Ltd.,
31, Kamarajar Salai,
Chepauk, Chennai-5.

... Respondents

Writ Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned charge memo issued by the 1st respondent in his proceedings in Na.Ka.No.10987/E2/2012 dated 09.11.2012 and quash the same and to forbear the respondents from initiating any further proceedings on the basis of the alleged confession statement of the petitioner in Crime No.162/2012 on the file of Keelavalavu Police Station, Melur Taluk, Madurai District.

For Petitioner : Mr.S.Thangasivan

for Mr.T.K.S.Gandhi

For Respondents : Mr.K.Venkataramani,

Addl. Advocate General

assisted by Ms.A.Srijayanthi

O R D E R

The charge memo issued by the first respondent in proceeding dated 09.11.2012, is under challenge in this writ petition. The petitioner is working as Junior Assistant in the respondent Corporation. On account of certain allegations and based on the statement given by the writ petitioner before the Police in relation to Crime No.162/2012, the charge memo was issued.

2.The learned counsel appearing on behalf of the writ petitioner contends that the charge memo itself was framed, only based on the statement given by the writ petitioner before the police and the statements are inadmissible in law and therefore, the same cannot constitute a charge. In other words, the learned counsel is of the opinion that based on the statement given before the Police, the Department cannot frame the charges. The charges can be framed, only in the event of getting concrete evidence, in respect of allegations to be formulated against the writ petitioner. With these contention, the learned counsel is of the opinion that the Department ought not to have framed the charges in advance, even without waiting for the final outcome of the criminal case registered against the petitioner in Crime No.162/2012.

3.The learned Additional Advocate General appearing on behalf of the respondents oppose the contentions by stating that charge memo was issued based on the sworn statement given by the writ petitioner before the Police Station and the genuinity or otherwise of the statement, is to be tested by way of departmental enquiry by the officials and the right of the competent authority to enquire into the allegations against the Government employee cannot be disputed. In other words, the learned Additional Advocate General is of the opinion that the State namely, the competent authority has got every right to initiate disciplinary proceedings against an employee, even on contemplation of charges or if any information is received. If any reliable informations are received against the Government employee, it is the duty of the Disciplinary Authority/Appointing Authority to initiate appropriate disciplinary proceedings. The truth or otherwise, ought to have been traced out only by conducting a domestic enquiry. Mere framing of the charge memo, will not be a ground for quashing the same, in the absence of any valid reason. At the outset, it is the duty of the employee concerned, to prove his innocence before the Enquiry Authority.

4.Considering the arguments and counter arguments advanced by the respective learned counsels appearing both for writ petitioner as well as the respondents, this Court is of the view that no writ proceedings can be entertained against a charge memo in a routine manner. A writ against a charge memo can be entertained only on limited grounds and on exceptional circumstances, the writ petition against a charge memo can be entertained, if the charge memo was issued by the incompetent authority having no jurisdiction or if an allegation of malafides are raised against the Disciplinary Authority or if the charge memo is in violation of statutory rules in force. Even in case of raising an allegation of malafides, the authority against whom such an allegation is to be raised has

impleaded as party respondent in the personal capacity in the writ proceedings. In the absence of any one of these legal aspects, the judicial review is certainly limited and the Constitutional Courts are to be cautious before entertaining a writ against the charge memo/show cause notice.

5. Intermittent intervention in departmental disciplinary proceedings are not preferable. Disciplinary proceedings initiated against a public servant should be allowed to be completed in all respects in accordance with Rules and the same should reach its logical conclusion. Intermittent intervention by the Courts will cause prejudice to the departmental disciplinary proceedings. In view of the fact that the ultimate object of the Disciplinary and Appeal Rules is to maintain a good and efficient public administration in the process of running an administration. It is necessary to initiate appropriate proceedings against a public servant, if any allegations is informed, noticed or found out. Thus, this Court is of an undoubted opinion that mere initiation of disciplinary proceedings against a public servant will not constitute a ground, to move a writ petition under Article 226 of The Constitution of India and the Courts in this regard should not entertain and the judicial review in this regard to be exercised cautiously. In this view of the matter, this Court has to consider the grounds raised by the learned counsel appearing on behalf of the writ petitioner that a mere statement before the Police is taken as a charge in the impugned charge memo by the authorities.

6. No doubt, this Court is not sitting in respect of admissibility and inadmissibility or otherwise of the statement given by the writ petitioner before the Police. It is for the competent Court of criminal jurisdiction to examine the validity or otherwise, genuinity or otherwise of the statement made by the witnesses/complainant and other persons. However, an information is provided by the petitioner himself by way of a statement before the Police, it is for the writ petitioner to convince the authorities whether the statements were made in a particular circumstances or in a particular manner. Thus, the genuinity or otherwise of the statement made by the petitioner, ought to be proved before the Enquiry Officer to be appointed by the Disciplinary Authority. Thus, this Court is of the opinion that once an allegation is brought out to the knowledge of the Disciplinary Authority, it is for the authority to institute the disciplinary proceedings by way of framing the charges. It is the duty of the public servant to submit his explanation/objections in respect of allegations set out in the charge memo and to prove his innocence, before the Enquiry Officer for the purpose of conducting enquiry. When this being the process to be adopted, an exception can be drawn only on

certain legal grounds stated in the foregoing paragraphs.

7. Thus, the very arguments advanced that the statement given before the Police Station cannot constitute a charge memo, deserves to be rejected. This Court, is of the opinion that it is left open to the writ petitioner to submit his explanations/objections before the competent authority and by participating in the enquiry proceedings, he has to prove his innocence in respect of allegations set out in the charge memo. So also, the Enquiry Officer is bound to consider all the materials produced by both the Presenting Officer as well as the Delinquent Officer, while conducting the enquiry in this regard.

8. This Court would rely upon the judgment of the Hon'ble Supreme Court of India, in the case of Union of India Vs Upendra Singh reported in 1994[3] SCC 357, His Lordship Justice B.P. Jeevan Reddy, while speaking for the Bench, made an observation as follows :

"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. The learned counsel for the writ petitioner finally urged this Court that the charge memo was issued on 09.11.2012 and therefore, an early disposal of the departmental disciplinary proceedings are imminent, since long pendency of the disciplinary proceedings are causing prejudice to the writ petitioner to avail his service benefits. However, the delay in this regard cannot be attributed only on the respondents, in view of the fact that the writ petitioner has filed the writ petition on 13.09.2013 and the writ petition is kept pending before this Court for about four years. Thus, the contention that there is a long delay in concluding the disciplinary proceedings cannot be attributed on the respondents and it is at the instance of the writ petitioner. However, this Court is of the opinion that once disciplinary proceedings are initiated against a Government employee, the same should be concluded in all respects without causing much delay. The very purpose of institution of disciplinary proceedings is to find out the truth, in respect of allegations raised against the Government servant.

10. In this view of the matter, this Court requested the Government Pleader to get instructions, in respect of completion of the disciplinary proceedings.

11. The official working in the office of the respondent, the Deputy Manager [P&A], Shri G.Venkatesan, TAMIN, Chennai-5, is present before this Court and assisted the Government Pleader. By getting instructions from the said officer, the Government Pleader informed this court that the disciplinary proceedings will be completed against the petitioner in all respects, within a period of six months from the date of receipt of a copy of the order.

12. In view of the reasonable submission made in this regard by the respective parties, this Court is inclined to direct the respondent to complete the enquiry in all respects and pass final orders in the disciplinary proceedings within a period of six months from the date of receipt of a copy of the order and

communicate the same to the writ petitioner. The writ petitioner is also directed to cooperate for the completion of the departmental disciplinary proceedings in all respects within the said period of six months. In the event of non-cooperation, the authorities competent in this regard is at liberty to record the same in the enquiry proceedings itself.

Accordingly, the writ petition stands disposed of. There is no order as to Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To
1.The Managing Director,
Tamil Nadu Minerals Ltd.,
31, Kamarajar Salai,
Chepauk, Chennai-5.

2.The General Manager,
Tamil Nadu Minerals Ltd.,
31, Kamarajar Salai,
Chepauk, Chennai-5.

+1cc to Mr.T.K.S.Gandhi, Advocate, S.R.No.84232

+1cc to Mr.A.Sri Jayanthi, Advocate, S.R.No.84405

W.P.No.26076 of 2013
and

सत्यमेव जयते M.P.Nos.1 and 2 of 2013

RRK(15/12/2017)

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