



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 24.01.2017

DELIVERED ON: 24.02.2017

CORAM:

THE HONOURABLE MR. JUSTICE R. SUBBIAH
and
THE HONOURABLE MRS. JUSTICE J. NISHA BANU

W.A. (MD) No. 494 of 2015
and
M.P. (MD) No. 1 of 2015
and C.M.P. (MD) No. 3325 of 2016

Thomas Stanislaus De Rose,
S/o. Alexis De Rose,
Divisional Manager,
Arasu Rubber Corporation,
Keeripparai,
Kanyakumari District.

.. Appellant/
Petitioner

Vs.

1. The Government of Tamil Nadu,
rep. By its Secretary to Government,
Environment and Forests Department,
Secretariat,
Chennai - 600 009.

2. The Tribunal for Disciplinary Proceedings,
rep. By its Commissioner,
Madurai - 20.

3. The District Forest Officer,
Tuticorin District,
Tuticorin.

.. Respondents /
Respondents

(R3 impleaded, as per the order of this Court, dated 12.06.2015,
in W.A. (MD) No. 494 of 2015)

Writ Appeal has been filed under Clause 15 of the Letters
<https://hservices.accounts.gov.in/hservices/>
Patent, against the order, dated 31.02.2014, made in W.P. (MD).
No. 11120 of 2009 by a learned Single Judge of this Court.



Prayer in WP(MD) . 11120/ 2009 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorari, calling for the records of the second respondent in connection with the impugned proceedings issued in TDP No. 33/2008 dated 20/08/2009 and quash the same.

For appellants : Mr.M.Ravi

For respondents 1 & 3 : Mr.N.S.Karthikeyan

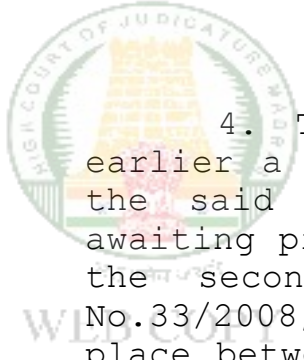
JUDGMENT

(Judgment of the Court was delivered by **R.SUBBIAH,J.**)

The appellant is the writ petitioner. This writ appeal has been filed by him as against the order passed by a learned Single Judge of this Court in W.P.(MD).No.11120 of 2009, whereby and whereunder the learned Single Judge has refused to quash the charge memo issued by the second respondent to the appellant.

2.The case of the appellant before the learned Single Judge is that he was directly recruited as Forest Apprentice and posted as Forest Ranger during the year 1983. In the panel for promotion to the post of Assistant Conservator of Forest for the year 2007-08, his name was not included stating that a charge memo dated 10.09.2004 is pending. But, subsequent to the implementation of the panel, the Principal Chief Conservator of Forests, by his proceedings dated 12.05.2009, had passed final order dropping the said disciplinary proceedings. Thereafter, since no order was passed promoting him with retrospective effect, he has approached this Court in W.P.No.12069 of 2009, in which the second respondent herein has submitted that since a charge memo in TDP No.33/08, dated 20.08.2009 is pending against him, he has not been considered for promotion. But, the said charge memo was communicated to the appellant only on 24.10.2009. The said disciplinary proceeding has been initiated after a lapse of 18 years from the date of alleged occurrence, based on the complaint lodged by the Forest offenders against whom he had initiated criminal action. According to the appellant, the charges are not only vague and bereft of any specific particulars but also highly belated one. Hence, challenging the said charge memo, the appellant has filed the writ petition before this Court.

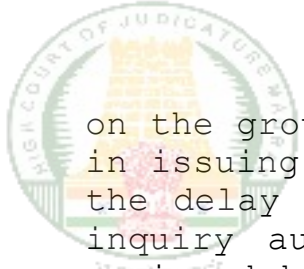
3.The learned Single Judge, after hearing both sides, dismissed the writ petition holding that the appellant is entitled to file a reply to the said charge and pursue the matter to the logical conclusion.



4. The learned counsel for the appellant submitted that earlier a charge memo was issued on 10.09.2004, but subsequently the said charge memo was dropped. When the petitioner was awaiting promotion to the post of Assistant Conservator of Forest, the second respondent has issued the charge memo in TDP No.33/2008, dated 20.08.2009 for the occurrence said to have taken place between October and December, 1991. Further, the charge is that during the said period, the appellant is alleged to have misappropriated teak wood relating to the case properties and made furniture for him with the connivance of his father-in-law and one Murugan, who is the owner of Sri Murugan Stores, Tuticorin. The learned counsel for the appellant, drawing the attention of this Court to the "Return of Assets and Liabilities", dated 17.11.1989, submitted that Teak wood furniture were shown in the property much earlier to the alleged occurrence said to have taken place in the year 1991. Thus, the allegation is factually incorrect. The learned counsel for the appellant further submitted that the charge memo has been issued after an inordinate and unexplained delay of 18 long years, that too at the verge of his promotion and the same would cause great prejudice to him in view of loss of memory, record and various such factors. Thus, he prayed to quash the impugned proceedings.

5. Countering the above submissions of the learned counsel for appellant, the learned Additional Government Pleader submitted that while the appellant was working as Forest Range Officer at Azhagiapandiapuram Range between October and December, 1991, he misappropriated teak wood which were the case properties and made furniture for his own use. After coming to know about such misconduct, the Government had immediately appointed an inquiry authority to make a preliminary enquiry into the matter and finally, found that the appellant was responsible for the alleged misconduct and thereby referred the matter to the 2nd respondent viz., the Tribunal for Disciplinary Proceedings. The delay has occurred only due to the investigation of about 40 persons by the inquiry authority. Further, the learned Additional Government Pleader submitted that due to the interim orders granted by a learned Single Judge of this Court in the writ petition and this Court in the writ appeal, the impugned proceeding has not been proceeded with. The learned Additional Government Pleader has further submitted that the appellant has also been previously imposed with punishments for misconduct and that the charge memo cannot be quashed at the threshold on the ground of inordinate delay. He has further submitted that the learned Single Judge has rightly negatived the submissions made by the learned counsel for the appellant and there is no need to interfere with the order passed by the learned Single Judge. Thus, he prayed for dismissal of the appeal.

<https://hcservices.courts.gov.in/hcservices/> 6. Considering the submissions made on either side, we have carefully gone through the entire materials available on record. The learned counsel for the appellant mainly focused his argument



on the ground of inordinate and unexplained delay of 18 long years in issuing the charge memo. According to the official respondents, the delay was due to the examination of about 40 witnesses by the inquiry authority. This Court is of the view, the said reason assigned by the respondents, that too for the delay of 18 years, is liable to be thrown out, at the threshold. The respondents have not assigned any valid reason to explain the inordinate delay of 18 years in issuing the charge memo. According to the appellant, the issuance of charge memo after 18 long years would cause great prejudice to him in view of loss of memory, record and various such factors. The said submission of the learned counsel for appellant cannot be ruled out.

7. At this juncture, we are of the view, it would be appropriate to refer to the decision of the Hon'ble Supreme Court in P.V.Mahadevan vs. M.D., Tamil Nadu Housing Board, reported in AIR 2006 SC 2007, wherein the Hon'ble Supreme Court 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 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."

8. The above dictum laid down by the Hon'ble Supreme Court is squarely applicable to the facts of this case as, in this case, the charge memo has been issued after an inordinate delay of 18 long years. Had the charge memo been issued at an earlier point of time, by this time, the punishment imposed on the appellant would have come to an end. In view of the delay in issuing the charge memo, the appellant's chance for getting promotion has got further delayed. In fact, the appellant had already suffered enough and more on account of the disciplinary proceedings. For the inaction



on the part of the respondents, the appellant cannot be made to suffer. More over, we are of the opinion that allowing the second respondent to proceed further with the departmental proceedings at this length of time will be highly prejudicial to the appellant.

9. In view of the above, this Writ Appeal is allowed and the order passed by the learned Single Judge is set aside and the impugned proceedings issued by the second respondent is also quashed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Environment and Forests Department,
Secretariat,
Chennai - 600 009.
2. The Tribunal for Disciplinary Proceedings,
rep. By its Commissioner,
Madurai -20.
3. The District Forest Officer,
Tuticorin District,
Tuticorin.

+1cc to Polax Legal Solutions, Sr No.10600

Pre-Delivery Judgment made in
Writ Appeal (MD) No.494 of 2015
24.02.2017

MS/CM.MSA/SAR2/5P.5C