

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2018

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No. 30646 of 2005

K.S.Subbunarasimhan

... Petitioner

Vs

The Transport Commissioner,
Chepauk ,
Chennai 5.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the respondent in connection with the impugned Charge Memo No.73022/V1/04 dated 08.03.05 and quash the same.

For Petitioner : Mr.K.Venkataramani for
Mr.T.Aynagaraprabhu

For Respondent : Mrs.R.Janaki,
Additional Government Pleader.

O R D E R

The charge memo dated 08.03.2005 issued against the writ petitioner is under challenge in the writ petition. The writ petitioner was appointed as Senior Assistant in Transport Department and promoted upto the level of Personal Assistant in the Regional Transport Officer. On account of certain allegations, charge memo was issued against the writ petitioner vide proceeding dated 08.03.2005. The charges against the writ petitioner are extracted here under:

Charges:I: That the said Thiru.K.S.Subbunarasimman, while working as Superintendent during the period from 01.01.1998 to 03.0.1998 at Regional Transport Office, Tripur, it was found that fees and life time tax for new vehicles was not actually paid in the office and some outsiders made bogus entries in the

registration papers by the Registration Certificate to the new vehicles without verifying genuineness of the fees and life time tax payment particulars in the office.

Charges:II: It has also been found that fee for special numbers was not actually paid in the office and bogus entries were made in the application as if it was paid in the office, by the outsiders using their own cash trac machine. Thiru.K.S.Subbunarasimman, has signed and issued Registration certificate for the new vehicles without verifying fees payment entries in the office.

Charges:III: Thiru.K.S.Subbunarasimman caused loss of revenue to Government to the tune of Rs.33,570/- by committing the above lapses.

Charges:IV: Thiru.K.S.Subbunarasimman has behaved himself in a manner, unbecoming of a Government servant.

Charges:V: Thiru.K.S.Subbunarasimman discharges his duties in a negligent and lethargic manner. He was not sincere in his duties, which led to the loss of revenue to the Government to the tune of Rs.33,570/-. Thus he has failed to maintain absolute integrity and devotion to duty.

Annexure II to the charge memo provides statement of allegations, namely imputation of misconduct or misbehavior in support of the charges framed against the writ petitioner.

Annexure III denotes the list of documents relied upon by the Department.

2.On a perusal of the entire charge memo, this Court is of the opinion that there is no infirmity as such in respect of the charge memo issued against the writ petitioner. The petitioner instead of submitting an explanation and establishing his innocence before the competent authority has chosen to file the writ petition.

3.This Court is of the opinion that the writ petitioner had earlier filed a writ petition challenging the charge memo on the

ground that the disciplinary authority ought to have initiated disciplinary proceeding under Rule 17A of the Tamil Nadu Civil Services Discipline and Appeal Rules. In respect of conversion of charges from 17B to 17A, this Court has passed an order directing the authorities to consider the representation and consequently, the competent authority rejected the representation submitted by the writ petitioner for conversion of charges from 17B to 17A.

4.This Court is of the opinion that judicial review against the charge memo is certainly limited. The merits and demerits of the allegations ought to be adjudicated before the competent authority by the delinquent officials. Thus, the merits raised in the present writ petition deserves no adjudication at all. It is left open to the writ petitioner to prove his innocence or otherwise by producing documents and by adducing evidences, by availing opportunity to be provided by the competent authority.

"3.Therefore, this Court is of the opinion that there is no infirmity in the charge memorandum framed against the writ petitioner. A charge memo can be challenged on a limited ground and a judicial review against the charge memo is certainly limited. 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.

4.Intermittent intervention in the disciplinary proceedings is not preferable. However, only on exceptional circumstances, this Court can issue a direction against the proceedings and not in a routine manner. Mere issuance of a call letter to the writ petitioner directing him to participate in

the domestic enquiry will not give any cause of action to move this writ petition under Article 226 of the Constitution of India. Thus, the writ petition is absolutely misconceived and the grounds raised in this writ petition cannot be considered.

5. 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."

6. In the case of Secretary, Ministry of Defence and Others Vs. Prabhakar Chandra Mirdha [Civil Appeal No. 2333 of 2007, Decided on May 29, 2012], the Apex Court of India held that normally, a Charge sheet is not liable to be quashed as it does not adversely affect the rights of an employee and does not give rise to any cause of action. A writ lies only when some right of a party is infringed. The charge sheet does not infringe the right of a party. It is only when a final order imposing punishment or otherwise, it may have a cause of action. Hence, writ petition challenging charge sheet by itself is not maintainable. However, it can be quashed on the ground that issuing authority being not competent to issue the same.

7. In the case of Union of India vs. Kunishetty Satyanarayana [(2006) 12 SCC 28], it was held that writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not be ordinarily exercised by quashing a charge sheet. No doubt, in some very rare and exceptional cases, the High Court can quash a charge sheet if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal.

5. In view of the fact that there is no infirmity as such in respect of the impugned charge memo, the petitioner is at liberty to submit his explanations/objections in respect of the

allegations set out in the impugned charge memo and defend his case in the manner known to law.

6. With these observations, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

vkrr/tar

To

The Transport Commissioner,
Chepauk ,
Chennai 5.

+1 cc to M/s.M.Muthappan, Advocate Sr.No.87287

W.P.No. 30646 of 2005

RGN(CO)
CSL/26.02.2019