

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving the Order	Date of Pronouncing the Order
24.07.2018	21.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.No.23413 of 2014

and

M.P.No.2 of 2014

J.Devaraj ... Petitioner

-vs-

1.The State of Tamil Nadu
rep.by its Secretary to Government
Municipal Administration and
Water Supply Department
Secretariat, Fort St.George
Chennai-600 009

2.The Director of Town Panchayats
Kuralagam
Chennai-600 108

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the records relating to the proceedings issued by the 1st respondent in G.O.Ms.(10) No.225 Municipal Administration and Water Supply Department dated 06.06.2014 revising the orders passed by the second respondent in proceedings Na.Ka.No.2051/2008/A4, dated 28.09.2012 and to quash the same with consequential and directing the respondents to issue attendant benefits.

For Petitioner : Mr.N.Balamurali Krishnan
for Mr.V.Rajinikanth

For Respondents : Mr.J.Pothiraj
Special Government Pleader

O R D E R

The case of the petitioner is as follows:

(a) The petitioner was appointed as Junior Assistant, in the Town Panchayat Department, on 12.05.1986 and he was promoted to the post of Head Clerk and further promoted as Selection Grade Town

Panchayat Executive Officer on 13.08.2003. While he was working as Executive Officer in Alangulam Selection Grade Town Panchayat, certain allegations made against him in regard to possession of assets in his name and in the name of his wife and mother disproportionate to the known source of income. In regard to the said allegations, Vigilance and Anti-Corruption Department had conducted an enquiry and finally, it was reported that there was no substance in the allegations made against the petitioner and therefore, recommended for dropping of further action against him. On the basis of the said recommendation, the Government issued G.O.(2D) No.10, Municipal Administration and Water Supply Department, dated 02.01.2008, dropping further action against the petitioner.

(b) While being so, on the basis of certain instructions from the Vigilance and Anti-Corruption Department, a departmental action was initiated against the petitioner for the same allegations and a charge memo was issued, under Rule 17(b) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules, containing seven articles of charges, all relating to the same set of allegations, on the basis of the enquiry conducted by the Department of Vigilance and Anti-Corruption.

(c) In response to the charge memo, a detailed explanation was submitted by the petitioner, on 20.12.2010, answering each one of the charges that there was absolutely no basis for initiating departmental action against him and the charges, in its entirety, are completely unfounded and cannot be substantiated. However, being not satisfied with the explanation submitted by the petitioner, an enquiry was ordered by the second respondent / Disciplinary Authority and on conclusion of the enquiry, a report, dated 15.07.2011, was submitted holding the charges 1 to 4 as not proved and charges 5 to 7 as proved. Thereafter, the Disciplinary Authority, vide its proceedings dated 09.11.2011, recorded a disagreement note in regard to the findings of the Enquiry Officer in relation to the charges 1 to 4 and accepted the findings of the Enquiry Officer in regard to the other charges. Subsequently, a further explanation was called for from the petitioner and thereafter, vide proceedings dated

28.09.2012, the Disciplinary Authority imposed a penalty of cut in increment for three years with cumulative effect.

(d) As against the order of the Disciplinary Authority, the petitioner preferred an appeal to the Appellate Authority, namely, first respondent / Government on 04.01.2013. The appeal was disposed of vide order dated 26.06.2014 and the punishment originally imposed by the Disciplinary Authority was modified into that one of stoppage of increment for one year without cumulative effect. The Government has passed G.O. (1D) No.225, Municipal Administration and Water Supply Department, dated 06.06.2014, to that effect. The orders passed by the respondents 1 and 2 are put to challenge in this writ petition.

2. Mr.N.Balamuralikrishnan, learned counsel, appearing for the petitioner would submit that the entire disciplinary proceedings initiated against the petitioner stood vitiated on the ground that there was inordinate delay in initiating disciplinary action ranging from 10 to 17 years for issuing the charge memo in relation to the transactions, which took place in the early 1990s. In the absence of any valid explanation for such a long delay, as per the settled legal principles, the disciplinary action initiated against the petitioner is liable to be interfered with on that ground alone.

3. The learned counsel for the petitioner further submitted that even on merits, the petitioner has a clear case as the entire charges framed against him are baseless and unfounded. Further, the Tamil Nadu Public Service Commission has given a clear finding in favour of the petitioner that the alleged transactions, which formed the basis for the disciplinary action against the petitioner, did not warrant any disciplinary action at all muchless imposing penalty. The learned counsel would further submit that the Disciplinary Authority, without any supporting materials and without relying on any contra piece of evidence that was made available in the department enquiry, has disagreed with the findings of the Enquiry Officer in regard to the charges 1 to 4 and merely concluded that the conclusion of the Enquiry Officer was not acceptable. Therefore, the learned counsel would submit that such a bald disagreement cannot be countenanced either under law or on facts. The Disciplinary Authority, while imposing penalty, has also not taken into consideration the long inordinate delay in initiation and completion of the enquiry and such a delay has constituted grave prejudice to the petitioner.

4. The learned counsel for the petitioner would further submit that the Appellate Authority, while passing order on 06.06.2014, has also not passed a detailed order as the Appellate Authority has merely incorporated the advice of the Tamil Nadu Public Service Commission and modified the punishment instead of setting aside the penalty originally imposed. In fact, the advice of the Tamil Nadu Public Service Commission is very clear that the petitioner was not involved in any irregularity and had not violated any rules. The advice, in this regard, by the Tamil Nadu Public Service Commission is very clear and unambiguous. Nevertheless, it was ultimately recommended to modify the punishment into that one of stoppage of increment for one year without cumulative effect. Unfortunately, the Appellate Authority, without applying independent mind, mechanically followed the advice of the Tamil Nadu Public Service Commission and imposed the penalty, thereby the Appellate Authority has abdicated its statutory responsibility conferred on him under the relevant statute.

5. Besides, the learned counsel for the petitioner submitted that due to long pendency of disciplinary action against the petitioner, his promotion was gravely affected as many of his juniors have been promoted as Special Grade Executive Officers and also Assistant Directors of Town Panchayat. The learned counsel would, therefore, submit that this is a fit case for interference of this Court.

6. Upon notice, Mr.J.Pothiraj, learned Special Government Pleader, entered appearance and filed a detailed counter affidavit. In the counter affidavit, it is admitted that it is on the basis of the advice by the Investigating Agency, a departmental action was initiated against the petitioner. However, there is no worthwhile explanation for the long delay in initiating the disciplinary action. According to the learned Special Government Pleader, the disciplinary action was imposed in terms of the Conduct Rules and on the basis of the proved misconduct, the punishment came to be imposed on the petitioner. Even, the Tamil Nadu Public Service Commission, which is an independent agency, has only suggested modification of the penalty and therefore, the advice of the Tamil Nadu Public Service Commission was accepted by the Government and the penalty was subsequently modified into that one of stoppage of increment for one year without cumulative effect. Since the punishment ultimately imposed on the petitioner was minor in nature and the Enquiry Officer has held that charges 5 to 7 are proved, there cannot be any legitimate cause for any complaint against the impugned action by the respondents. He would, therefore, pray this Court to dismiss the writ petition on the ground of devoid of merits and substance.

7. The learned counsel for the petitioner, at this juncture, would submit that admittedly the official of the Vigilance and Anti-Corruption Department was present during the departmental enquiry and his presence had also influenced the Enquiry Officer as well as the Disciplinary Authority to the detriment of the petitioner's interest. He would rely on two decisions in support of his contention that the delay by itself can be a vitiating factor in a matter of disciplinary proceedings. One is *Union of India v. Choudhuri*, reported in (2000) 3 M.L.J. 372, wherein the Honourable Division of this Court has quashed the articles of charges on the ground of delay alone after adverting to various decisions on the subject matter. The relevant portion, namely Paragraph Nos.24 and 25, is reproduced hereunder:

"24. With regard to the delay, the alleged irregularities were committed in the year 1983-84. It is not known as to why the appellants kept quiet all these years. No explanation has been given by them. The appellants should not have taken their sweet time to act. In the absence of any explanation, in the background of the earlier litigation, this Court is only rather driven to come to a conclusion that the memo came to issued with bad intention to harass the respondent. The inordinate delay would certainly cause hardship and irreparable loss to the respondent and consequently, the impugned memo dated February 10, 1989 and the statement of article of charges are rightly quashed.

25. In this regard, we deem it necessary to refer to few rulings. In *V.S. Ramanarayanan v. The Food Corporation of India*, 1984 T.N.L.J. 123, a Division Bench of this Court had occasion to consider the hardships that may be caused to the delinquent in such cases. To quote the relevant passage:

"... As contended by the learned counsel for the petitioner, it will be impossible for the petitioner to remember the identity of witnesses whom he could summon to appear before the Inquiring Authority to support his case. Even if he could summon their presence, it would be a doubtful proposition to remember what happened more than six year back and help him in his defence. Further more, the petitioner may not be in a position to effectively cross-examine the witnesses to be examined on the side of the Department in support of the charges. Practically, it

would be a doubtful proposition that either the prosecution witnesses or the defence witnesses would be in a position to remember the facts of the case and advance the case of either the Department or the petitioner.

....The repercussions of unexplained delay when prejudice has been made out will be the same both in the case of initiation of disciplinary action.

.....the delay, as spoken against the Department, will constitute denial of a reasonable opportunity to the petitioner to defend himself and that it would amount to violation of the principles of natural justice and as such, the impugned charge memo must be struck down on this ground alone."

In State of Madhya Pradesh v. Bani Singh, A.I.R. 1990 S.C. 1308, it was held as under:

"The irregularities which were the subject-matter of the enquiry is said to have taken place between the years 1975-1977. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April, 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the department enquiry to be proceeded with, at this stage."

In Kashinath Kikshita v. Union of India and others, (1006) 2 L.L.J. 468, the Supreme Court ruled thus:

"When a Government servant is facing disciplinary proceedings, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a

departmental enquiry can effectively meet the charges unless copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, the concerned employee cannot (sic) prepare his defence, cross-examine the witnesses and point out the inconsistencies with a view to show that the allegations are incredible."

In Committee of Management, K.D.College v. Shambhu Saran Pandey, (1995) 1 S.C.C.404, the Supreme Court ruled as under:

"... In the first instance, the delinquents should be given opportunity for inspection. and thereafter the enquiry should be conducted and then hear the delinquent at the time of conclusion, of the enquiry."

In State of U.P. v. Lal and another, (1998) 2 L.L.J. 799, in paragraph No.4 of the judgment, it was held thus:

"4. Now, one of the principles of natural justice is that a person against whom an action is proposed to be taken has to be given an opportunity of hearing. This opportunity . has to be an effective opportunity and not a mere pretence. In departmental proceedings where charge-sheet is issued and the documents which are proposed to be utilised against that person are indicated in the charge-sheet but copies thereof are not supplied to him in spite of his request, and he is, at the same time, called upon to submit his reply, it cannot be said that an effective opportunity to defend was provided to him. (See: Chandrama Tewari v. Union of India, A.I.R. 1988 S.C. 117; Kashinath Dikshita v. Union of India and others, (1986) 2 L.L.J. 468 (S.C.); State of Uttar Pradesh v. Mohd. Sharif, (1982) 2 L.L.J. 180 (S.C.)"

8. Another one is Ranjeet Singh v. State of Haryana, reported in 2008 (3) CTC 781, wherein the learned counsel for the petitioner has drawn the attention of this Court to Paragraph No.8, which is extracted hereunder:

"8. We find that the Trial Court decreed the Suit primarily for three reasons: (a) There was an unexplained delay of nine years in issuing the charge-sheet; (b) There was an unexplained delay of seven years in issuing show cause notice after the enquiry report was submitted in January 1985; © The appellant was promoted thrice between the dates of alleged misconduct and imposition of punishment (which was about nineteen years). This Court has repeatedly held that inordinate delay in initiating disciplinary proceedings is a ground for quashing the enquiry unless the employer satisfactorily explains the delay. For example, where the matter is referred to CBI for investigation and there is delay in getting its report or where the charge is of misappropriation and the facts leading to misappropriation come to light belatedly, it can be said that the delay is not fatal. But where the alleged misconduct was known and there was no investigation pending and when no explanation is forthcoming in regard to the delay, necessarily the unexplained delay would cause serious prejudice to the employee and, therefore, enquiry will have to be quashed [Vide State of A.P. v. N.Radhakishnan, 1998 (4) SCC 154 and P.V.Mahadevan v. Managing Director, Tamil Nadu Housing Board, 2005 (4) CTC 403 : 2005 (6) SCC 636]."

9. According to the learned counsel for the petitioner, the Honourable Supreme Court has held that delay in initiating disciplinary proceedings is a ground for quashing the enquiry unless there is a satisfactory explanation for the delay. In the present case, he would submit that there has been absolutely no explanation for the delay and therefore, he would submit that on this ground the disciplinary proceedings initiated against the petitioner are liable to be set aside.

10. This Court has given its anxious consideration to the factual and legal submissions made on behalf of both the petitioner and the respondents.

11. From the materials and the pleadings placed on record, it could be seen that there has been undue and inordinate delay in initiating disciplinary action against the petitioner for which no valid explanation was forthcoming. In fact, nothing is disclosed in the counter affidavit for explaining the inordinate delay in issuing charge memo in the year 2010 for the transactions, which had taken place in the early 1990s. Further, when the Department of Vigilance and Anti-Corruption

had closed the case on the ground that the charge of disproportionate wealth was not substantiated, on the same set of allegations, the petitioner was charge-sheeted for certain procedural violation after such a long period of time. Even the said procedural violation, as alleged against the petitioner, was faulted with by the Tamil Nadu Public Service Commission, in its advice, which is extracted in the order passed by the Government in the impugned order dated 06.06.2014. The Tamil Nadu Public Service Commission, in its advice, has given its opinion as follows:

“அரசு சுற்றறிக்கை எண்,14358 ிநச,சூ,93/1இ பணியாளர் மற்றும் நிர்வாக சீர்திருத்தத் துறை? நான் 11.03.1993/ல் கீழ்க்கண்டவாறு தெரிவிக்கப்பட்டுள்ளது என மூலமுறையிட்டாளர் மூற்றுகாள் காட்டியுள்ளார்,

Guidelines for deciding whether charges may be framed under Rule 17(b)

Without prejudice to the generality of situations involving indiscipline, moral turpitude, corruption etc. charges under rule 17(b) have to be framed in the following types of cases for imposing any one of the major penalties:-

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 prosecutions in 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.

4) Misuse of official position for personal gain.

5) Disclosure of secret or confidential information even though it does not fall strictly within the scope of official secrets Act.

6) Misappropriation of Government funds, false claims of Travelling allowance, reimbursement of the medical bills etc.

Unless a major punishment is really warranted namely dismissal from service, removal from service, compulsory retirement or reduction to a lower rank in the seniority list or to a lower post or time scale, framing of charge under rule 17(b) is not necessary and should be avoided.

The disciplinary authority has also failed to take into consideration the provisions of Rule 7(i) (a) r/w its explanation and Rule 7(ii)(a). The averments set-out in G.O.Ms.No.409 P&AR (Per-A) Department dated 24.12.1992 which has come into force on 27th September 1974 has not been taken note of by the disciplinary authority. The amendments are reproduced hereunder:- Amendments:
In the said Rules in Rule 7

(i) In sub rule (1) in clause (a) the following Explanation shall be added at the end namely:
"The movable or immovable property acquired by the members of the family of a Government Servant solely with their own resources need not be included in such returns"

மூலக் குறிப்பிட்ட ஆறு னேர்டுகளில் கண்ட எந்தவித முறைகூட்டிலும் குற்ற அலுவலர் குடும்பத்தில் என்னபதும் இ அவ்வாறு குற்றச்சாட்டிலும் ஏதும் குறிப்பிடப்படவில்லை என்பதும் இ ஆனால் மூலக் கண்ட 6 னேர்டுகளில் குறிப்பிடப்படாத தவறுக்கு தமிழ்நாடு குடிமுறைப்பணிகள் (ஒழுங்கு மற்றும் மூலமுறையீடு) விதிகளில் விதி 17(ஆ)/வின் கீழ் குற்றச்சாட்டுகள் பிறப்பித்து அவை அனைத்தும் நிரூபணமாகிறது என முடிவ, மூலக்கொண்டு குற்ற அலுவலருக்கு அதிக பட்ச தண்டனை வழங்கியிருப்பது நியாயமானது அல்ல என முடிவ, செய்யப்பட வேண்டியது அவசியமாகிறது,

Therefore the Commission advises the Government to modify the punishment of stoppage of increment for three years with cumulative effect imposed on the appellant into stoppage of increment for one year without cumulative effect."

12. From the opinion as extracted above, it is very clear that there was no material whatsoever to hold anything against the petitioner, even with regard to procedural violation. When such is the finding of fact by the independent body, namely, Tamil Nadu Public Service Commission, this Court does not see any justification on the part of the respondents for framing the charges and imposing the impugned penalty.

13. As rightly contended by the learned counsel for the petitioner, even on merits, the petitioner has made out a clear case for interference of this Court for the reason that the

substantial portion of the charges, as found in charges 1 to 4, is held to be not proved by the Enquiry Officer, of course, this was disagreed by the Disciplinary Authority, but the disagreement was not on the basis of any materials as made available in the departmental enquiry. It appears that the disagreement was made only on the basis of the perception of the Disciplinary Authority and was not supported by any independent materials and therefore, the disagreement, as such, cannot be accepted to be a valid disagreement, which can be relied on for imposition of penalty on the petitioner. Moreover, even in regard to the findings of the Enquiry Officer in respect of charges 5 to 7, there appears to be no substantive material for any procedural violation as alleged to have been committed by the petitioner herein. In any event, ultimately, the orders passed by the both Disciplinary Authority as well as Appellate Authority do not address the issue of inordinate delay in initiating the disciplinary action against the petitioner, particularly, the order of the Appellate Authority is a non-speaking order on several aspects as it has merely incorporated the advice of the Tamil Nadu Public Service Commission and followed the same, without independent application of mind. Such surrender of authority to the outside agency would amount to abdication of its statutory responsibility conferred on the authority under the relevant statute. Therefore, the order of the Appellate Authority is non-speaking and contrary to the Disciplinary Rules.

14. The decisions, as relied on by the learned counsel for the petitioner, are squarely applicable to the factual matrix of the present case, since the delay is enormous and inordinate, which stood unexplained by the respondents. Ultimately, what alleged as against the petitioner is only a minor infraction of the Rules in terms of procedural regulation and as such, the infraction cannot attract disciplinary action after a lapse of several years. The prolonged disciplinary action against the petitioner has resulted in denial of due promotion to him to the next higher grades. As rightly advised by the Tamil Nadu Public Service Commission, there was absolutely no material whatsoever for framing of 17(b) charges against the petitioner and therefore, this Court is of the view that framing of 17(b) charges against the petitioner in the facts and circumstances of the case was clearly a mala fide and colourable exercise of law. Once the initiation of disciplinary action found to be lacking in bonafides, consequently the imposition of penalty, on the basis of such disciplinary action, has to go in lock, stock and barrel. This Court, from the consideration of all the issues and facts, is of the clear view that in all fours, the petitioner has made out a case for setting aside the impugned orders passed by the respondents.

15. In the result, the writ petition is allowed and the order in G.O.Ms.(10) No.225, Municipal Administration and Water Supply Department, dated 06.06.2014, passed by the first respondent and the order in Na.Ka.No.2051/2008/A4, dated 28.09.2012, passed by the second respondent are set aside on the ground of delay as well as on merits. The respondents are directed to grant all attendant benefits, like, fixation of seniority and pay scale etc., to the petitioner as admissible to him. The consequential orders, implementing the above directions of this Court, to be passed by the respondents within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

-s/d-
Assistant Registrar (CS-IX)

True Copy

Sub-Assistant Registrar

krk

To:

1.The Secretary to Government,
Municipal Administration and
Water Supply Department,
Secretariat, Fort St.George,
Chennai-600 009.

2.The Director of Town Panchayats,
Kuralagam,
Chennai-600 108.

+1 CC to Mr.V. Rajinikanth, advocate sr 57561

W.P.No.23413 of 2014
and
M.P.No.2 of 2014

SP(10/09/2018)