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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.20121 of 2013

and

M.P. (MD) No. 1 of 2013 and W.M.P. (MD) No.15644 of 2016

R.Sekar

... Petitioner

Vs.

1. The Superintendent of police,
Thanjavur District,
Thanjavur.

2. The Inspector of Police,
Vigilance and Anti Corruption Wing (V&AC),
Thanjavur.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling for the records pertaining to charge memo in P.R.No.02 of 2013 passed by the first respondent dated 02.01.2013 and quash the same.

For Petitioner

: Mr.A.Arun Prasad

For Respondents

: Mr.M.Muthu

Additional Government Pleader

ORDER

The charge memo issued against the writ petitioner in P.R.No.02 of 2013 dated 02.01.2013, by the first respondent is under challenge in this writ petition.

2. The writ petitioner joined as Grade-II Police Constable in Armed Reserve Police on 04.04.1981. Subsequently, the petitioner was promoted as Head Constable. On account of the allegations of demand and acceptance of bribe, a criminal case was registered against the writ petitioner in Crime No.07 of 2002, under the provisions of Corruption Act, 1988. The learned counsel for the writ petitioner states that the writ petitioner was acquitted by the competent criminal Court of law and the facts and circumstances both in the criminal case as well as the departmental disciplinary proceedings are one and the same and therefore the charge memo is liable to be quashed. The learned counsel for the writ petitioner states that the writ petitioner was already acquitted from the criminal charges and the same set of documents are produced before the departmental disciplinary proceedings and therefore the



department cannot proceed with the disciplinary proceedings.

3. The learned additional Government Pleader appearing on behalf of the respondents oppose the contention by stating that mere acquittal in a criminal case will not exonerate an employee in departmental disciplinary proceedings. The allegations set out against the writ petitioner is demand and acceptance of bribe and therefore no leniency can be shown against the writ petitioner. This apart, the criminal case was disposed of by the competent Court on 08.05.2012 and thereafter the department has initiated the disciplinary proceedings against the writ petitioner. The department has waited for the outcome of the criminal case in view of the fact that during the pendency of the criminal case, the department cannot proceed with, against the writ petitioner under the Discipline and Appeal Rules.

4. Considering the arguments, this Court is of an opinion that the charges framed against the writ petitioner are extracted hereunder.

"Annexure -1 - Gross dereliction of duty misconduct and highly reprehensible conduct in having demanded a bribe of Rs.40,000/- from Tr.Ramamoorthy S/o. Padmanaban Senior Co-operative Auditor, No.10,Pethaperumal Street, VOC Nagar, Thanjavur on 06.04.2002 at 11.00 hrs for not including him as accused in the charge sheet in CCIW CID,Thanjavur Case in Cr.No.6/2001 and reiterated his demand on 09.05.2002.On 29.05.2005, he again demanded the bribe and accepted Rs.1,000/- as advance. On 19.06.2002, he reduced the demand of bribe amount from Rs.40,000/- to Rs.20,000/- and on 20.06.2002 at 20.45 hrs reiterated the earlier demand at Thiruvaiyaru near junction of Keelaveeli and Kumbakonam Road near small Amman koil and accepted Rs.19,000/- as bribe and thereby failed to maintain absolute integrity and devotion to duty and violated rule 24 of Tamil Nadu Subordinate Police Officers Conduct Rules,1994."

5. Annexure-2 to the charge memo enumerates the statement of allegations in support of the charges framed against the writ petitioner. Annexure-3 provides the list of documents, based on which the charges are framed. 17 documents are cited. Annexure-4 to the charge memo denotes the list of witnesses to be examined in the enquiry proceedings. 10 witnesses are cited. Thus there is no infirmity as such in respect of the charge memo issued to the writ petitioner.

6. On a perusal of the allegations, it is a gross dereliction of duty, misconduct and highly reprehensible conduct in having demanded a bribe of Rs.40,000/- from Thiru. Ramamoorthy S/o. Padmanaban Senior Co-operative Auditor, No.10, Pethaperumal Street, VOC Nagar, Thanjavur on 06.04.2002 at 11.00 hrs for not including him as an accused in charge sheet in CCIW CID, Thanjavur, case in Crime No.6/2001. Further allegation is that he again demanded bribe



and accepted Rs.1,000/- as advance. On 19.06.2002, he reduced the demand of bribe amount from Rs.40,000/- to Rs.20,000/- and on 20.06.2002 on 20.45 hrs, reiterated the earlier demand at Thiruvaiyaru near junction of Keelaveeli and Kumbakonam Road near small Amman Koil and accepted Rs.19,000/- as bribe.

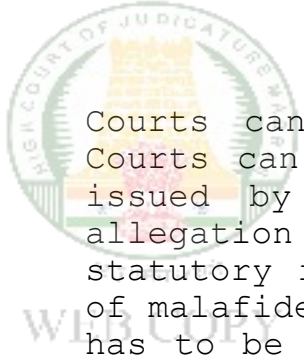
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7. This Court is of an opinion that the allegations set out in the charge memo are certainly serious in nature, warranting a full-fledged enquiry by the departmental disciplinary authorities. The allegations are relating to the corrupt activities of the public servant. There cannot be any leniency in respect of the corruption allegations against the public servant. Corruption is a menace and spreading like a cancer in this great nation. Corruption is detrimental to the development activities of our nation. People are almost fed up with the habit of corruption by the public servants and therefore the Courts cannot be lenient in respect of the corruption charges.

8. The Hon'ble Apex Court of India repeatedly emphasized that the charges of corruption cannot be quashed on certain technical grounds, more specifically on the ground of delay. Thus the ground raised by the learned counsel for the petitioner is that there is a delay in issuing the charge memo need not be considered. Further, the criminal case was pending from the year 2002 onwards and the competent Court of law disposed of the criminal case only on 08.05.2012. Thereafter, the department on receipt of those documents had initiated the disciplinary proceedings and framed the charges. Thus, there is no infirmity as such in respect of the charge memo issued to the writ petitioner. The writ petitioner was acquitted from the criminal charges based on the benefit of doubt. Thus he cannot claim any immunity from the departmental disciplinary proceedings.

9. Court proceedings and departmental proceedings are distinct and different. High standard of proof is required for the purpose of convicting a person under the criminal law. However, no such strict proof is required for punishing a Government servant under the Discipline and Appeal Rules. Preponderance of probabilities are enough to punish the Government servant under the Discipline and Appeal Rules. Thus there cannot be a comparison in respect of the procedures to be followed by the criminal Court of law and the procedures to be followed by the departmental disciplinary authorities. Such being the distinction between these two proceedings, there is no bar to proceed under the Discipline and Appeal Rules, in respect of the corruption charges against the public servant.

10. In the present writ petition, the very charge memo itself is under challenge. A charge memo per se will not constitute a cause of action for the purpose of moving the writ petition. No writ can be entertained against the charge memo in a routine manner. Judicial review against the charge memo is certainly limited and the



Courts cannot entertain a writ petition in this regard and the Courts can entertain the writ petition only if the charge memo is issued by an incompetent authority, having no jurisdiction or allegation of malafide is raised or if it is in violation of the statutory rules in force. Even in case of raising the allegations of malafides, the authority against whom such allegations are raised has to be impleaded as party on the personal capacity in the writ proceedings. In the absence of any one of this legal grounds, no writ petition can be entertained.

11. Charge memo as the same would not provide a cause of action for the delinquent official. Only for passing of the official orders in the disciplinary proceedings, the cause of action would be arose on the delinquent. This being the principles to be followed, this Court is of an opinion that the present writ petition filed challenging the charge memo need not be entertained at this stage. It is left open to the writ petitioner to submit his explanation / objection and prove his innocence before the competent authorities.

12. Intermittent intervention in the departmental disciplinary proceedings are certainly not preferable. Disciplinary proceedings initiated against the delinquent officials are to be concluded as early as possible and without causing any undue delay. Long pendency of disciplinary proceedings certainly cause prejudice to the employee also. For instance, if the disciplinary proceedings are pending, the employee cannot get promotion and get retire from the service and get retirement benefits also. Thus the disciplinary authorities, on initiation of disciplinary proceedings must ensure that such proceedings are concluded within a reasonable period of time. In this view of the matter, this Court is of an opinion that the respondents are bound to proceed with the disciplinary proceedings and conclude the same as early as possible. In view of the fact that the writ petitioner has already attained the age of superannuation.

13. 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."

14 **.In the case of Secretary, Ministry of Defence and Others Vs. Prabhash 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.

15. **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."

16. The learned counsel appearing on behalf of the writ petitioner raised a apprehension that there is a likelihood of prejudice on the part of the disciplinary authorities. This Court would like to clarify that no such prejudice can be shown against the writ petitioner for all purpose. The writ petitioner must be provided with the opportunities contemplated under the Rules to defend his case by producing evidences, documents etc., on his part. It is needless to state that the department enquiry proceedings are



to be conducted in a fair manner. The enquiry officer has to conduct most fairly in order to collage the truth behind the allegations set out on the writ petitioner. The officials concerned are bound to provide all reasonable opportunity to the writ petitioner to defend his case and to prove his innocence.

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17. With these observations, this Court is of an opinion that the writ petitioner is bound to participate in the departmental disciplinary proceedings and the respondents are bound to proceed with the same in accordance with law without any further delay. Accordingly, this Court finds no merits in the writ petition, in respect of the prayer for quashing the charge memo.

18. Accordingly, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar()

/True Copy/

Sub Assistant Registrar

To

1. The Superintendent of police,
Thanjavur District,
Thanjavur.
2. The Inspector of Police,
Vigilance and Anti Corruption Wing (V&AC),
Thanjavur.

Pnn

MV:GT:SAR1:21/03/2018/6P/3C

W.P. (MD) No. 20121 of 2013

07.03.2018