

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27-03-2019

CORAM

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No. 17616 of 2018

and

W.M.P.Nos.20889 & 20890 of 2018

P.Shankar

... Petitioner

Vs

1. The Chairman,
The Tamil Nadu Electricity Generation and Distribution
Corporation Ltd., (TANGEDCO),
No.144, Anna Salai,
Chennai 600 002.
2. The Chief Engineer (Personnel)
The Tamil Nadu Electricity Generation and Distribution
Corporation Ltd., (TANGEDCO),
No.144, Anna Salai,
Chennai 600 002.
3. The Superintending Engineer,
Chennai EDC/West,
Anna Nagar,
Chennai 600 040.
4. The Enquiry Officer / Executive Engineer (O & M),
Anna Nagar,
Chennai 600 040.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned memo issued by the 3rd Respondent in Memo No.013399/120/SE/CEDC/W/Adm.O/Adm.II/A1/F.D.P/2017 dated 15.11.2017 and to quash the same.

For Petitioner

: Mr.G.Sankaran

For Respondents

: Mr.P.R.Dhilipkumar
Standing Counsel TNEB

O R D E R

The charge memo dated 15.11.2017 issued by the respondents is under challenge in the present writ petition. The charges framed against the writ petitioner are extracted here under:

“Charge - I

Thiru.P.Shankar, Assistant Engineer/O&M/Grandline/Redhills/Avadi Division/Chennai-52, (Now under suspension) on 10.02.2009 had demanded sum of Rs.5,000/- as bribe from one Thiru.K.V.Abdul Salam to issue received test report (RTR) for installing a kirloskar diesel generator set of 50K 415V, for the Geo fresh herbal water plant, owned by his wife Tmt.Sahetha, at No.18/20, Valluvar Street, Kavangarai, Redhills, Chennai-52. Then he has conducted himself in a manner unbecoming of a public servant and he has violated the Board rules and hence charges is framed under as per regulation 8(b) of TNEB D&A Regulations (Re-organisation and reforms transfer scheme 2010).

Charge-II

Thiru. P.Shankar, Assistant Engineer/O&M/ Grandline/Redhills/Avadi Division / Chennai-52, (Now under suspension) in continuation of the above transaction when the aforesaid witness. Thiru.K.V.Abdul Salam met him 11.02.2009 at 9.30 hrs. Thiru.P.Shankar, Assistant Engineer/O&M/ Grandline/Redhills/ Avadi Division/ Chennai-52, (Now under suspension) reiterated the earlier demand of Rs.5000/- and accepted as bribe other than legal remuneration to issue Revised Test Report (RTR) for installing a kirloskar diesel generator set of 50K 415V, for the Geo fresh herbal water plant, owned by his wife Tmt.Sahetha, at No.18/20, Valluvar Street, Kavangarai, Redhills, Chennai - 52 and at that time he was trapped by

the officials of the Vigilance and Anti Corruption. Thus he has failed to maintain absolute integrity and devotion to duty, which is in violation of the Tamil Nadu TNEB Employees Discipline and Appeal regulation 8(b) of TNEB D&A Regulations (Re-organisation and reforms transfer scheme 2010) and acted in the manner unbecoming of a public servant."

2. Annexure-II, charge memo provides statement of allegations, namely, imputations of misconduct or misbehaviour, in support of the charges framed against the writ petitioner. Annexure-III denotes the list of documents relied upon by the authorities competent. Annexure-IV enumerates the list of witnesses to be examined in order to establish the charges.

3. The learned counsel for the writ petitioner states that a criminal case was registered against the writ petitioner under the Prevention and Anti-Corruption Act by the Department of Vigilance and Anti-Corruption. The writ petitioner participated in the criminal trial and the learned Special Judge-Judicial Magistrate, Tiruvallur in Special Case No.07 of 2009 acquitted the writ petitioner from the criminal case charges. The learned counsel for the writ petitioner states that though the writ petitioner was acquitted on benefit of doubt, he is able to establish that the charges framed against him was based on certain incorrect facts.

4. Relying on the judgement of the Criminal Court in S.C.No.07 of 2009 dated 18.01.2017, the learned counsel for the petitioner states that after the disposal of the criminal case, an impugned charge memo has been issued by the Superintending Engineer in proceedings dated 15.11.2017. Thus, the charges are belated and liable to be quashed on the ground of delay. It is further contended that once the public servant is acquitted in the criminal case, the same charges cannot be framed by the departmental charge memo. In other words, it is contended that the allegations before the Criminal Court of law as well as the impugned charges are one and the same and therefore the charges are liable to be quashed.

5. The counter filed by the third respondent states that the writ petitioner has intentionally not impleaded the Directorate of Vigilance and Anti-Corruption as party respondent in the writ proceedings. The DVAC was omitted with a view to ensure that this Court does not get a holistic and complete view of the facts that led to the issuance of the impugned charge

memo. The views of the DVAC are necessary to bring finality to the issue in question, and to expose the misdeeds of the petitioner. The petitioner was involved in a Criminal proceedings pertaining to receiving of bribe, while being an employee of the Board and carrying on the activities in an official capacity. The petitioner was arrested and enlarged on bail. Board has issued the impugned Charge Memo dated 15.11.2017, on the allegations namely imputation of misconduct or misbehaviour of the writ petitioner and on the charge of receiving illegal gratification other than legal remuneration as a motive or reward for installing a Kirlostar diesel generator set of 50k, 415v for Geo fresh herbal water plant of Tmty.Sahitha, W/o.Thiru, K.V.Abdul Salam.

6. It is further contended that the relief sought for by the writ petitioner in the writ petition is unsustainable as it runs against the principles laid down by the three Judges Bench of the Hon'ble Supreme

Court of India in Noida Entrepreneurs Association vs. Noida and others reported in 2007 (5) AIC 37, wherein it was held that there is no bar for simultaneous proceedings viz. Departmental enquiry and trial of the criminal case and that the standard of proof required in a departmental proceeding is not the same as required in the criminal case and hence even an acquittal in criminal case does not bar departmental proceedings and it is relevant to extract Paragraph NO.9 of the above cited judgement:

"19. In the case of NOIDA Entrepreneur Association v. NOIDA and the others [JT 2001 (2) SC 620], the Court held that the standard of proof and nature of evidence in the departmental inquiry is not the same as in criminal case. The purpose of departmental enquiry and of prosecution is two different and distinct aspects. The criminal prosecution is launched for an offence for violation of a duty the offended owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore desirable to lay down any guidelines as inflexible

rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and

circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law."

7. Paragraph 125 of the manual of the Directorate of Vigilance and Anti-Corruption in G.O.Ms.No.251, Personal and Administrative Reforms(Per-N), dated 21.04.1988 and the ruling of the Apex Court Bench in the case of Noida Entrepreneurs Association vs. Noida and others reported in 2007(5) AIC 37 confer discretionary powers on the competent authority to institute the disciplinary proceeding based on the nature, gravity and proof in any given case of similar nature. The instant case of the petitioner squarely applies to the said case and this is a fit case for departmental enquiry.

8. This Court is of the considered opinion that the nature of the criminal proceedings as well as the departmental disciplinary proceedings are distinct and different. The criminal proceedings cannot be compared with the departmental disciplinary proceedings. To convict a public servant, a high standard of proof is required. However, no such strict proof is required for punishing a public servant under the Discipline and Appeal Rules. Even, preponderance of probabilities is not sufficient to punish an employee under the Discipline and Appeal Rules.

9. An order of acquittal would not confer any right on the public servant to seek exoneration from the departmental disciplinary proceedings. The writ petitioner in the present case was acquitted on benefit of doubt. Thus, he could not seek quashing for entire charge memo on the ground that he was acquitted from the charges.

10. In respect of the continuance of the departmental disciplinary proceedings during the pendency of the criminal case, it is now settled that the simultaneous proceedings are permissible. However, the facts and circumstances of each case is to be considered by the competent authority for taking a

decision to continue the departmental disciplinary proceedings during the pendency of the criminal case. If the competent authority is of the opinion that files, materials, documents are available enabling the disciplinary authority to proceed with the departmental disciplinary proceedings, then, there is no bar in proceeding with the departmental disciplinary proceedings, even during the pendency of the criminal case. If the competent authority is of the opinion that it is not desirable to continue the departmental disciplinary proceedings during the pendency of the criminal case, for want of documents or otherwise, then, a decision shall be taken to keep the departmental disciplinary proceedings in abeyance till the disposal of the criminal case.

11. In the present case on hand, the departmental disciplinary proceedings are kept in abeyance during the pendency of the criminal case. Only after the disposal of the criminal case, the competent authority issued the charge memo. The criminal Court delivered a judgement on 18.01.2017 in S.C.No.07 of 2009. The impugned charge memo has been issued in proceeding dated 15.11.2017 and therefore absolutely there is no delay on the part of the disciplinary authority in issuing the impugned charge memo. Thus, the charge memo cannot be quashed, in the present case, on the ground of delay.

12. In respect of the similarity of the charges, this Court is of an undoubted opinion that even in moral turpitude, based on preponderance of probabilities and the nature of allegations and the extent of proof available, public servant can be punished. However, a conviction by the Criminal Court of law cannot be imposed on the similar way. Thus, it is held by the Apex Court that the nature of the criminal proceedings cannot be compared with the departmental disciplinary proceedings. The competent authority is empowered to continue the departmental disciplinary proceedings independently and conduct an enquiry and thereafter, take a decision by affording an opportunity to the delinquent officials and by following the procedures contemplated. Under these circumstances, the petitioner cannot be exonerated in totality. He is bound to establish his innocence or otherwise by producing the documents and by adducing his evidences if required. Contrarily, the Courts cannot quash the impugned charge memo merely on the ground of delay, more specifically when the allegations are in relation to the demand and acceptance of bribe. Even in common cause cases, the Supreme Court held that the charges of corruption cannot be quashed on the ground of delay, and all such corruption cases are to be tried in accordance with law and a disposal must be given.

13. 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.

14. 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.

15. 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. 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.

16. This being the legal principles to be followed, this Court is of the opinion that the similarity of the charges now advanced by the writ petitioner is of no avail and he is at liberty to submit his explanations/objections in respect of the allegations set out in the impugned charge memo and establish his innocence by availing the opportunity to be provided by the competent authority while conducting an enquiry into the allegations.

17. However, this Court is of the opinion that as the writ petitioner faced the criminal trial for a considerable length of time and after the disposal of the criminal case, now the departmental disciplinary proceedings are initiated. The disciplinary authority should ensure early disposal of this departmental disciplinary proceedings without causing any undue delay. Long pendency of the criminal disciplinary proceedings would cause prejudice to the interest of the employees also. They may not be in a position to get their service rights and benefits. Thus, on initiation of the disciplinary proceedings, the authorities competent must ensure that all such proceedings are concluded within a reasonable period of time and certainly without causing any undue delay. In the present case, the impugned charge memo has been issued in proceedings dated 15.11.2017. The learned counsel for the respondents states that the enquiry officer has been appointed. Under these circumstances, the authorities competent are empowered to continue the departmental disciplinary proceedings by affording an opportunity to the writ petitioner and conclude the same and pass final orders in the departmental disciplinary proceedings on merits and in accordance with law, within a period of four months from the date of receipt of a copy of this Order.

18. The writ petitioner is directed to co-operate for the earlier disposal of the departmental disciplinary proceedings. The writ petitioner cannot seek adjournment of the enquiry proceedings and in emergency circumstances only, the competent authority may grant adjournments, enabling the authority to conclude the proceedings and pass final orders.

19. In the event of non-cooperation on the part of the writ petitioner, the time schedule now fixed shall lapse automatically. With these directions, the writ petition stands

disposed of. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

ssb/kmm

To

1. The Chairman,
The Tamil Nadu Electricity Generation and Distribution Corporation Ltd., (TANGEDCO),
No.144, Anna Salai,
Chennai 600 002.
2. The Chief Engineer (Personnel)
The Tamil Nadu Electricity Generation and Distribution Corporation Ltd., (TANGEDCO),
No.144, Anna Salai,
Chennai 600 002.
3. The Superintending Engineer,
Chennai EDC/West,
Anna Nagar,
Chennai 600 040.
4. The Enquiry Officer / Executive Engineer (O & M),
Anna Nagar,
Chennai 600 040.

+1cc to Mr.G.Sankaran, Advocate SR.No.30208

+1cc to Mr.P.R.Dhilipkumar, Advocate SR.No.30225

W.P.No. 17616 of 2018
and

W.M.P.Nos.20889 & 20890 of 2018

PMS (CO)
GMY (22/05/2019)

WEB COPY