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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.01.2019

PRONOUNCED ON : 04.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE **R.SUBBIAH**

and

THE HONOURABLE MR. JUSTICE **B.PUGALENDHI**

W.A. (MD) No.536 of 2017

and

W.M.P. (MD) Nos.4531 & 10097 of 2017

and

WP(MD)No.21798 of 2016

C.Isaivani ... Appellant/Petitioner

Vs.

1.The Director,
Directorate of Vigilance and Anti Corruption,
P.S.Kumaraswamy Raja Salai,
Raja Annamalaipuram,
Chennai - 600 028.

2.The Deputy Inspector General of Police,
Tiruchirappalli Range,
Tiruchirappalli. ... Respondents/Respondents

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent against the order passed by this Court in W.P.(MD)No.21798 of 2016 dated 18.04.2017.

Prayer in WP(MD). 21798 OF 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari to call for the records on the file of the 2nd respondent in connection with the impugned charge memo issued by him in his proceedings in K1/Tha.Pa.No. 53/2016 dated 21.10.2016 (served on 01.22.16) and quash the same as illegal and arbitrary.

For Appellant : Mr.Veera Kathiravan,

Senior Counsel

for Mr.G.Thalaimutharasu



For Respondents

: Mr.V.R.Shanmugathan,
Special Government Pleader

JUDGMENT**W/B.PUGALENDHI, J.,**

This Writ Appeal is filed as against the order passed by the Writ Court in W.P.(MD)No.21798 of 2016 dated 18.04.2017. The writ petition was filed by the appellant herein as against the charge memo issued by the second respondent herein in K1/Tha.Pa.No.53 of 2016 dated 21.10.2016.

2. The appellant, a Sub-Inspector of Police was trapped and arrested by the Inspector of Police, Vigilance and Anti Corruption Wing, on 10.08.2012 and a case in Crime No.4 of 2012 was registered as against this appellant for the offence punishable under Sections 7 & 13(1)(d) r/w Section 13(2) of the Prevention of Corruption Act, 1988. She was also placed under suspension under Rule 3(e)(1)(ii) of Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, vide proceedings in RO.No.160 of 2012, dated 10.08.2012.

3. The criminal case registered against the appellant was taken up for trial in Special Case No.7 of 2013 by the learned Chief Judicial Magistrate, Pudukottai and the learned trial Judge, by order dated 18.12.2015, acquitted the appellant. The Director of Vigilance and Anti Corruption decided not to file an appeal, but made a proposal to the Department with a draft charge memo on 06.04.2016 to initiate disciplinary proceedings. Thereafter, a charge memo was issued to the appellant under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955, on 21.10.2016. Challenging the charge memo, W.P.(MD) No.21798 of 2016 came to be filed and the Writ Court, vide order dated 18.04.2017, dismissed the same.

4. The instant appeal is filed on the ground that the charge memo was issued only on the recommendation of the Director of Vigilance and Anti Corruption, who has made a proposal for disciplinary proceedings along with a charge memo on 06.04.2016. Therefore, the impugned charge memo, according to the appellant, is at the instigation of the Director of Vigilance and Anti Corruption.

5. The learned Senior Counsel for the appellant further contended that even the Government has given directions to the Director General of Police to initiate disciplinary proceedings vide its letter dated 22.06.2016, ie., only after a lapse of four months after the pronouncement of the acquittal in the criminal case in S.C.No.7 of 2013, dated 18.12.2015 and therefore, the mandatory provision in PSO-67(4) was not complied with, as such,



the charge memo cannot be allowed to proceed further.

6. As per PSO-67(4), the departmental enquiry by the disciplinary authority is a time bound one and within one month, a report must be sent to the Government for initiating disciplinary proceedings. In this case, the Department has not taken any initiative as contemplated under PSO-67(4) and Rule 125(2)(1) of the Vigilance and Anti Corruption Manual, but the charge memo was issued at the instance of the Director of Vigilance and Anti Corruption / the first respondent herein, as such, the learned Senior Counsel prays for allowing the present appeal.

7. The learned Special Government Pleader appearing for the respondents submitted that the appellant was not fully exonerated from the criminal case. She was acquitted on some technical grounds and on extending the benefit of doubt by the criminal Court. He further submitted that Rule 125(2)(1) of the Vigilance and Anti Corruption Manual empowers the competent Disciplinary Authority to institute or continue disciplinary proceedings against the delinquent for the same charges from which she was acquitted by the Court, if he is of the view that there are good grounds and sufficient evidence to proceed with the departmental disciplinary proceedings. Moreover, PSO-67(4) only states that a report should be submitted to the Government, as to the acquittal, within a period of one month and it does not specify that action should be initiated within one month.

8. Heard the learned Senior Counsel appearing for the appellant and the learned Special Government Pleader appearing for the respondents.

9. The order impugned in the writ petition is a charge memo. A mere charge memo does not amount to an adverse order, which vitiates the rights of a party and therefore, the Courts, normally, restrain to interfere with a charge memo, unless it has been passed by an authority without jurisdiction. In this regard, the Hon'ble Supreme Court, in its decision in **Union of India and another v. Kunisetty Satyanarayana**, decided on 22.11.2006, has held as follows:

"A mere charge sheet or show cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show cause notice or after holding an enquiry, the authority concerned may drop the proceedings and / or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show cause notice or charge sheet does not infringe the right of any one. It is only when a final order imposing some



punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

Writ jurisdiction is discretionary jurisdiction and hence, such discretion under Article 226 should not ordinarily be exercised by quashing a show cause notice or charge sheet."

10. Keeping this ratio in mind, we have viewed the present case on hand carefully. The learned Senior Counsel for the appellant has taken a plea that the order of acquittal was made on 18.12.2015 and the disciplinary proceedings was initiated only at the instance of the first respondent and that too, after the cut-off date as contemplated under PSO-67(4) and Rule 125(2)(1) of the Vigilance and Anti Corruption Manual.

11. Clause 67(4) of the Police Standing Orders is extracted hereunder for ready reference:

"PSO 67. Procedure after acquittal

(4) In every such case where the departmental authority is of opinion that departmental proceedings are called for against the Government servant who is acquitted in court, the facts of the case shall within one month from the date of judgment (exclusive of the period required for obtaining copy), be reported to the Government for orders. Every case so reported shall be accompanied by a Copy of the Judgment in the Criminal case."

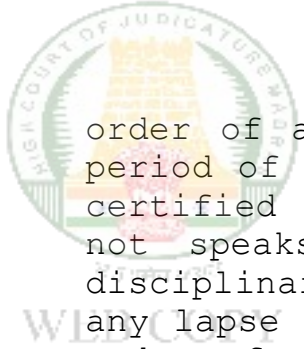
12. Rule 125(2)(1) of the Vigilance and Anti Corruption Manual provides the procedure for initiation and continuation of departmental proceedings in the cases ended in acquittal by the Courts and the same reads as follows:

"125. Cases ended in acquittal by Courts - Fresh Departmental Proceedings - Institution of ...

(2) Government have therefore ordered:

(i) that, in the case of an Accused Official acquitted by Court of Law, whether on merits or on technical grounds or otherwise, it is open to the competent Disciplinary Authority to institute or continue disciplinary proceedings against the Accused Official for the same charges from which he was acquitted by the Court, if the competent Disciplinary Authority is of the view that there are good grounds and sufficient evidence to proceed with the departmental disciplinary proceedings."

13. As rightly pointed out by the learned Special Government Pleader, Clause 67(4) of the Police Standing Orders does not lay down any limitation for initiation of any disciplinary proceedings from the date of acquittal. Clause 67(4) of the Police Standing Orders, no doubt, mandates the concerned authority to report the



order of acquittal along with the copy of the judgment within a period of one month (excluding the period taken for obtaining the certified copy of the judgment) to the Government. But, it does not speak about the limitation in the Government initiating disciplinary proceedings as against the delinquent. If there is any lapse on the part of the concerned authority in informing the order of acquittal to the Government within the stipulated time limit, it is the dereliction of duty committed by the concerned authority, for which, he can be departmentally proceeded with and it will not be a ground to vitiate the disciplinary proceedings contemplated as against this appellant, which was initiated on the directions of the Government.

14. The disciplinary proceedings was initiated pursuant to the proceedings of the Government in Letter No.27459/POL.IVA/2016-2, dated 22.06.2016, vide which, the Government, after perusing the entire facts and circumstances of the case, has directed the Director General of Police to initiate disciplinary action against the appellant, as contemplated under Rule 125 of the Vigilance and Anticorruption Manual and G.O.Ms.No.251, Personnel and Administrative Reforms (N) Department, dated 25.04.1988.

15. In fact, the letter dated 06.04.2016 of the Vigilance and Anti Corruption Department is cited under reference of the proceedings dated 22.06.2016 and on a perusal of the same, it could be seen that the Vigilance and Anti Corruption Department has decided not to file an appeal against the acquittal. The relevant portion of the proceedings dated 22.06.2016 is extracted hereunder:

"... On perusal of the judgment copy, the Appropriate Investigating Authority of the Government has decided not to file an appeal against the acquittal in the High Court. The Appropriate Investigating Authority of the Government is of the opinion that according to G.O.Ms.No.251, P & AR (Per.N) Department, dated 21.4.88 and para 125 of Vigilance Manual, in the case of an acquittal by the Court of Law, whether on merits or on technical grounds or otherwise, departmental disciplinary action may be proceeded with the same facts constituting the charge and there is no bar for proceeding departmentally against the accused Tmt.C.Isaivani, Woman Sub-Inspector of Police, Prohibition Enforcement Wing, Pudukkottai District, for the said allegation.

2. I am, therefore, to request you to initiate departmental disciplinary action against Tmt.C.Isaivani, Woman Sub-Inspector of Police, Prohibition Enforcement Wing Unit, Pudukkottai District, as contemplated in para 125(2)(1) of DVAC Manual, and also as per the orders issued in G.O.(Ms) No.251, Personnel and Administrative Reforms (N) Department, dated 21.4.88 and reiterated in Letter Ms.No.91, Personnel and Administrative Reforms (N) Department dated 19.06.2012,

in view of her acquittal in the criminal case."

16. In G.O.Ms.No.251, Personnel and Administrative Reforms (N) Department, dated 21.04.1988, several instructions were issued for institution of departmental proceedings after the case ended in acquittal and the relevant portion is extracted hereunder:

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4. In the light of the position set out above, the government after consideration and in supersession of the instructions issued in Government memo No.109/66-4, Public (Services - B) department, dated 14.07.1966, issued the following instructions:-

i) that, in the case of an accused official acquitted by courts of law, whether on merits or on technical grounds or otherwise, it is open to the competent disciplinary authority to institute or continue disciplinary proceedings against the said accused official for the same charges from which he was acquitted by court, if the competent disciplinary authority as often view that there are good grounds and sufficient evidence to proceed with the departmental disciplinary proceedings and

ii) that, in cases of acquittal of an accused official by a court, the competent disciplinary authority is of the opinion that the departmental proceedings need not be instituted / continued against him, the competent authority shall, within one month of the date of the judgment (exclusive of the period required for obtaining the copy) shall send report of such cases to the Government containing justification for the stand taken by him. Every case so reported shall be accompanied by a copy of the relevant judgment."

17. The question of continuance of disciplinary proceedings after the acquittal by a criminal Court on the same charge has been approved by a catena of judgments. Whether the acquittal is on merits, or on technical grounds, or otherwise, it is open to the competent disciplinary authority to initiate disciplinary proceedings against the delinquent for the same charges if the competent disciplinary authority is of the view that there are sufficient grounds to proceed with, as per G.O.Ms.No.251, dated 21.04.1988

18. The criminal proceedings and the departmental proceedings are entirely different. In criminal proceedings, the purpose sought to be achieved is the protection of the public, whereas, in departmental proceedings, the purpose sought to be achieved is purity and deficiency of public service. Even if a person stood acquitted by a criminal Court, departmental enquiry can be held, the reason being that the standard of proof required in a departmental enquiry and in a criminal case are altogether different. In a criminal case, standard of proof required is



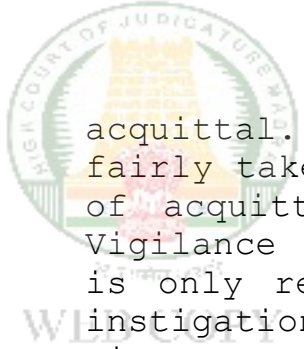
beyond reasonable doubt while in a departmental enquiry, it is the preponderance of probabilities that constitutes the test to be applied.

19. A three-Judge Bench of the Hon'ble Supreme Court in the decision reported in **(2005) 7 SCC 764 [Ajit Kumar Nag v. Indian Oil Corporation Limited]**, has held as follows:

"11. ...In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with the Rules and Regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on the offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In a departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'."

20. According to the appellant, except the witness no.3, namely, Manimekalai, all other witnesses in the charge memo are the witnesses in the criminal prosecution and therefore, allowing the departmental proceedings to proceed further would be a futile exercise. But, as stated supra, the ratio in the criminal proceedings and the departmental proceedings are different and therefore, we are not in affirmative with the stand taken by the appellant.

21. We are also not accepting the contention of the appellant that the disciplinary proceedings have been instituted at the instigation of the Director of Vigilance and Anti Corruption. The proceedings of the Government dated 22.06.2016 (extracted supra) makes it very clear that the Government has taken the decision independently, based on the provisions under Rule 125(2)(1) of the Vigilance and Anti Corruption Manual and as per the Government Order in G.O.Ms.No.251, P & AR Department, dated 21.04.1988. The Director of Vigilance and Anti Corruption was consulted with regard to their stand on the appeal as against the order of



acquittal. The Director of Vigilance and Anti Corruption has fairly taken a decision not to file an appeal as against the order of acquittal, however, suggested that as per Rule 125 of the Vigilance Manual, a departmental proceeding can be initiated. It is only recommendatory in nature and it cannot be termed as an instigation. No *mala fide* is also attributed as against the Director of Vigilance and Anti Corruption and the concerned officer is also not impleaded in his individual capacity in the writ petition. In view of the same, we are not in a position to accept this contention.

22. Since all the grounds raised by the appellant lack merits, we are not inclined to interfere with the order passed by the learned Single Judge of this Court in W.P.(MD)No.21798 of 2016 dated 18.04.2017 and accordingly, the same stands confirmed.

23. In the result, the writ appeal fails and the same stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Director,
Directorate of Vigilance and Anti Corruption,
P.S.Kumaraswamy Raja Salai,
Raja Annamalaipuram,
Chennai - 600 028.

2.The Deputy Inspector General of Police,
Tiruchirappalli Range,
Tiruchirappalli.

+1 CC to M/s.SPL GP (SR-59300[F] dated 05/04/2019)

+1 CC to M/s.G.THALAIMUTHARASU, Advocate (SR-59406[F] dated 05/04/2019)

GK

**judgment made in
W.A. (MD) No.536 of 2017
and**

**W.M.P. (MD) Nos.4531 & 10097 of 2017
04.04.2019**