



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.5684 of 2015

and

M.P.(MD) No.2 of 2015

Jeyasutha

... Petitioner

vs.

The Superintendent of Police
Theni, Theni District

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus calling for the records relating to the impugned charge memo issued by the Respondent in F1/Tha.Pa.32/2014, under Rule 3(b) dated 08.07.2014 quash the same and consequently direct the Respondent to give all monetary benefits and service regularization benefit.

For Petitioner : Mr.F.Deepak
For Respondent : Mr.S.Dhayalan
Government Advocate

O R D E R

The charge memo, dated 08.07.2014, issued by the respondent, under Rule 3(b) of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, (hereinafter, referred to as "the Discipline and Appeal Rules"), is under challenge in the present writ petition.

2. The writ petitioner was appointed as a Women Police Constable on 31.10.1997 and promoted as Grade-I Police Constable on 31.10.2007. Subsequently, she was promoted as Women Head Constable on 31.10.2012. On account of certain allegations, a criminal case in Crime No.280 of 2014 was registered, by the Chinnamanoor Police, against the writ petitioner. The writ petitioner challenged the charge memo before this Court by filing W.P.(MD) No.12203 of 2014 and on account of the interim order of stay granted by this Court, the departmental disciplinary proceedings initiated against the writ petitioner were kept in abeyance. However, during the pendency of the writ petition, the criminal case was ended with an order of acquittal dated 13.10.2014, in C.C.No.210 of 2014, passed by the learned Judicial Magistrate, Uthamapalayam. Now, the present writ petition is filed challenging the very same charge memo, dated 08.07.2014, issued by the respondent.



3. The learned counsel for the writ petitioner states that the writ petitioner was acquitted from the criminal case and therefore, the impugned charge memo is liable to be quashed. Further, it is contended that the charge memo was kept in abeyance on account of the interim order of stay granted by this Court and now, after a lapse of many years, the Department cannot be allowed to proceed with the disciplinary proceedings.

4. This Court is of the considered opinion that the nature of the departmental disciplinary proceedings is noway connected with the criminal case. The procedures to be followed for convicting a person under the criminal law is entirely different. To convict a person under the criminal law, a high standard of proof is required. However, no such strict proof is required for the purpose of punishing a Government employee under the Discipline and Appeal Rules. Preponderance of probabilities is enough to punish an employee under the Discipline and Appeal Rules. The contention of the writ petitioner that the order of acquittal is also a ground to exonerate her from the departmental disciplinary proceedings is contrary to the legal principles settled by the Courts. Mere acquittal from the criminal cases cannot be a ground for grant of exoneration from the departmental disciplinary proceedings. Even otherwise, the Department can independently proceed with the enquiry and made a finding in respect of the allegations made against the delinquent official. This being the principles to be followed, the order of acquittal from the criminal case would not confer any right on the writ petitioner to seek exoneration from the departmental disciplinary proceedings.

5. The allegations made against the writ petitioner are undoubtedly serious in nature. She was acquitted from the criminal case on benefit of doubts. This being the factual position, the writ petitioner is bound to face the departmental disciplinary proceedings for the purpose of establishing her innocence or otherwise by producing documents or adducing evidence.

6. The charge framed against the writ petitioner is extracted hereunder:

"கடந்த 01.06.2014-ம் தேதி 09.30 மணிக்கு சின்னமனூர், திருவள்ளூர் பள்ளி தெருவில் உள்ள மணிமேகலையின் வீட்டிற்கு சென்று, மணிமேகலை மற்றும் அவரது மகன் யஸ்வந்த் ஆகியோரை கத்தியை காட்டி மிரட்டி அடித்து, ரத்த காயம் ஏற்படுத்தியது தொடர்பாக, மணிமேகலை என்பவர் கொடுத்த புகாரின் பேரில் உம்மீது சின்னமனூர் காவல் நிலைய குற்ற எண் 280/2014 பிரிவு, 324, 506(ii) இதச-ன் படி வழக்குப் பதிவு, செய்து, நீதிமன்ற காவலுக்கு உட்படுத்த காரணமாக இருந்து உமது கடமையிலிருந்து தவறியதுடன் கண்ணியம் மிக்க காவல்துறைக்கு களங்கம் ஏற்படுத்தியது கண்டிக்கத்தக்க ஒழுங்கீனமான குற்றம்."

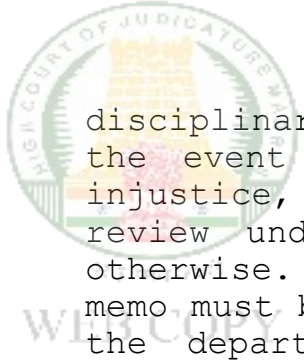


7. The statement of imputations as well as the list of documents and witnesses relied upon by the Department were also furnished in the charge memo. Thus, the charge framed against the writ petitioner does not suffer from any infirmity as such. Instead of participating in the enquiry proceedings for the purpose of establishing her innocence, the writ petitioner has chosen to file the present writ petition.

8. The recent trend amongst the Government servants is to file a writ petition after writ petition and protract the disciplinary proceedings so as to escape from the clutches of the disciplinary proceedings. Writ petitions are filed and the same are kept pending for years together. During the interregnum period, the departmental authorities are not proceeding with the disciplinary proceedings, even if there is no interim order. Such a delay in proceeding with the disciplinary proceedings provides advantage to the delinquent employees. Thus, such writ petitions are repeatedly filed at every stage of the departmental disciplinary proceedings in order to escape from the clutches of the disciplinary proceedings. Courts cannot encourage such attitude of the Government servants. Once an allegation is set out against the public servant, he is bound to face the enquiry proceedings and establish his innocence or otherwise. The disciplinary authorities are also bound to proceed with the departmental enquiry at the earliest possible and conclude the same without causing any undue delay. Long pendency of the departmental disciplinary proceedings would cause prejudice to the interest of the employees also. An employee facing departmental disciplinary proceedings is not entitled for promotion. The terminal and pensionary benefits also cannot be settled. For all these reasons, the departmental proceedings initiated against the public servant must be concluded as expeditiously as possible, so as to avoid all complications and to ensure that the misconducts committed by the public servant are addressed with reference to the relevant rules in force.

9. No writ petition can be entertained against the charge memo in a routine manner. Judicial review against the charge memo is undoubtedly limited. A charge memo can be challenged only if the same has been issued by the incompetent authority having no jurisdiction or allegations of *mala fide* are raised or if the same is in violation of the statutory rules in force. Even in case of the allegations of *mala fide* are raised, the authority against whom such allegations are raised is to be impleaded as party respondent in his personal capacity. In the absence of any one of the legal grounds, no writ proceedings can be entertained against the charge memo issued under the Discipline and Appeal Rules.

10. Intermittent intervention in the departmental disciplinary proceedings is not preferable. Frequent such intervention by the High Court would cause prejudice to the smooth continuance of the departmental disciplinary proceedings. Thus, the High Court must be cautious while interfering with such departmental



disciplinary proceedings during the intermittent period. Only in the event of gross violation of the procedures contemplated or injustice, the High Court would exercise the power of judicial review under Article 226 of the Constitution of India and not otherwise. Thus, entertaining a writ petition against the charge memo must be restrained to the extent possible so as to ensure that the departmental disciplinary proceedings initiated against the public servants are proceeded with in accordance with the rules in force and reached its logical conclusion.

11. The Honourable Supreme Court of India, in the case of **Union of India and others vs. Upendra Singh**, reported in **(1994) 3 SCC 357**, in Paragraph No.6, has held as follows:

"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."

12. In the case of **Ministry of Defence vs. Prabhash Chandra Mirdha**, reported in **(2012) 11 SCC 565**, the Apex Court, in Paragraph Nos.10, 11 and 12, has held as follows:

"10. Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show cause notice in disciplinary proceedings should not ordinarily be quashed by the Court. (Vide : State of U.P. v. Brahm Datt Sharma, AIR 1987 SC 943; Bihar State Housing Board v. Ramesh Kumar Singh, (1996) 1 SCC 327; Ulagappa v. Commr., AIR 2000 SC 3603; Special Director v. Mohd. Ghulam Ghouse, AIR 2004 SC 1467; and Union of India v. Kunisetty Satyanarayana, (2006) 12 SCC 28.

11. In State of Orissa v. Sangram Keshari Misra, (2010) 13 SCC 311, this Court held that normally a charge-sheet is not quashed prior to the conclusion of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that correctness or truth of the charge is the function of the disciplinary authority. (See also: Union of India v. Upendra Singh, (1994) 3 SCC 357).

12. Thus, the law on the issue can be summarised to the effect that charge-sheet cannot generally be a subject matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a



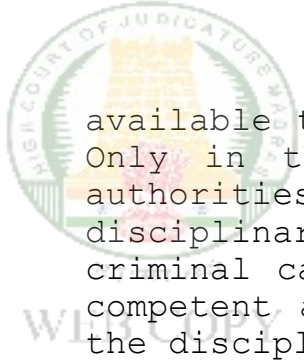
premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings."

13. In the case of **Union of India and another vs. Kunisetty Satyanarayana**, reported in **(2006) 12 SCC 28**, the Apex Court, in Paragraph Nos.13 and 14, has held as follows:

"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide *Executive Engineer, Bihar State Housing Board v. Ramesh Kumar Singh*, 1995 (8) SC 331, *Special Director v. Mohd. Ghulam Ghouse*, AIR 2004 SC 1467, *Ulagappa vs. Divisional Commr., Mysore*, 2001(10) SCC 639, *State of U.P. v. Brahm Datt Sharma*, AIR 1987 SC 943 etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. 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."

14. This Court is of the considered opinion that mere pendency of a criminal case is not a bar for the continuance of the departmental disciplinary proceedings. The order of acquittal from the criminal case is also not a ground to seek exoneration from the departmental disciplinary proceedings. The competent authorities can continue the departmental disciplinary proceedings even during the pendency of the criminal case, if sufficient materials are



available to establish the charges against the delinquent official. Only in the cases, where no materials are available, then the authorities competent are at liberty to keep the departmental disciplinary proceedings in abeyance till the disposal of the criminal case. These all are the principles to be followed by the competent authorities, while undertaking the process of enquiry in the disciplinary proceedings.

15. In the present case on hand, though the writ petitioner was acquitted from the criminal case, there cannot be any exoneration from the departmental disciplinary proceedings as the nature of the allegations are mooted out against the writ petitioner and the moral turpitude, in this regard, can be ascertained by conducting an enquiry, after affording due opportunity to the writ petitioner, with reference to the Discipline and Appeal Rules and by passing suitable orders in accordance with law by the competent authorities. This apart, the writ petitioner must cooperate for the early disposal of the departmental disciplinary proceedings. In the event of non-cooperation on the part of the writ petitioner, the same shall be recorded in the proceedings by the authority concerned. Under these circumstances, the respondents are directed to proceed with the departmental disciplinary proceedings and pass final orders as expeditiously as possible without causing any undue delay.

16. With these observations, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To:
The Superintendent of Police,
Theni, Theni District.

+1 CC to SPL GP SR-73503.
+1 CC to M/s.F.DEEPAK, Advocate SR-73279.

W.P. (MD) No.5684 of 2015
and
M.P. (MD) No.2 of 2015
03.07.2019