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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2020

CORAM

THE HONOURABLE MR.JUSTICE M. GOVINDARAJ

Writ Petition No.19042 of 2010
and M.P.No.2 of 2020

R. Kuppusamy

..Petitioner

Vs.

1. The Government of Tamil Nadu
Rep.by its Secretary to Government
Revenue Department
Chennai 600009
2. The Principal Secretary and Commissioner of
Revenue Administration,
Chepauk, Chennai 600005.
3. The District Collector,
Namakkal District,
Namakkal.

..Respondents

Petition filed under Article 226 of the Constitution of India praying for a writ of Certiorarified Mandamus, to call for the records relating to orders in (1) Pro.Ser.3(2)86637/09 dated 18.02.2010 of the second Respondent and (2) Pro.Na.Ka.8357/2002/A2 dated 23.11.2008 of the third Respondent and quash the same and direct the first respondent to include the name of the petitioner herein in the panel for promotion to the post of Deputy Collector for the year 2009-2010, notwithstanding and without reference to the above mentioned impugned orders and consequently promote him as such with retrospective effect from the date of promotion of his immediate junior.

For Petitioner	:	Mr.M. Ravi
For Respondents	:	Mr. P. Chinnadurai Additional Government Pleader



O R D E R

The Petitioner was initially appointed as Typist in the Revenue Department as early as on 05.11.1982 and was promoted as Assistant on 13.11.1995. Thereafter, he was promoted to the post of Deputy Tahsildar on 04.06.2001 and as Tahsildar on 01.08.2007. While he was working as Tahsildar on 03.11.2007 following Charge Memo was issued to him:

"Tr. Kuppusamy has obtained the signature of the Head Quarters Deputy Tahsildar, Namakkal on 15.07.1993 in the Death Certificate of Tr.Perumal of Varagur without orders of the Tahsildar, Namkkal and handed over the Death Certificate to the Village Administrative Officer, Varagur instead of to the applicant and made false entries in the Copy Application Register, the Tahsildar has ordered for issuing a Death Certificate on 16.09.1993 and thus committed Revenue Official mis-conduct."

Enquiry was conducted and the Proceedings in Roc.No.8357/2002/A3 dated 03.11.2007 punishment of stoppage of increment for a period of one year and six months without cumulative effect was imposed. Against which the Petitioner made an appeal to the Second Respondent on 12.01.2009 and it was rejected in Proceedings Ser.3(2)/86637/09 dated 18.02.2010. Aggrieved over the same, the Petitioner is before this Court.

2. Learned counsel for the Petitioner would contend that the Statement of imputations pertains to an incident, which happened on 27.07.1993, pursuant to a trap was organised by the Vigilance and Anti Corruption in Cr.No.1/AC/1993 against one R. Ganesan, the Village Administrative Officer, Varagur Village for having demanded a bribe amount of Rs.500/- from one Karuppannan, the complainant, for arranging the death certificate and legal heirship certificate of complainant's father. Based on this proceedings, the Government in G.O.(2D) No.246, Revenue (SCG) Department dated 15.12.1994 directed the Commissioner for Revenue Administration to initiate disciplinary proceedings against the Head Quarters Tahsildar and others. However, the departmental proceedings were dropped against the Head Quarters Tahsildar in G.O.(2D) No.340 Revenue (Ser.2(1)) Department dated 30.06.2003. After having dropped the charges against the officer who signed the document, initiation of charge after a period of 14 years is patently illegal and the delay vitiates the entire proceedings. Further, when the disciplinary proceedings were dropped against the co-delinquent who stands in the same pedestal, punishment should not have been imposed on the petitioner as per the judgment of Honourable Supreme Court in Man Singh vs. State of Haryana and Others [(2008) 8 MLJ 518



(SC)]. The learned counsel would submit that the delay of 14 years in initiating the disciplinary proceedings against the petitioner and selective discrimination in imposing punishment while dropping the same in respect of co-delinquent of the same proceedings vitiates the entire action of the respondents. Many of his juniors, since promoted, seeks consequential promotion on par with his juniors.

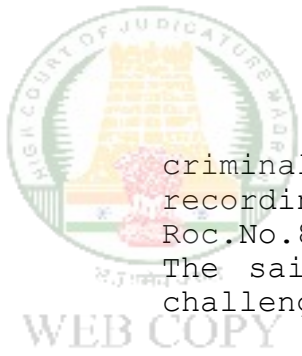
3. Per contra, the learned Additional Government Pleader appearing for the Respondents would contend that the disciplinary proceedings were initiated only after the deposition of the evidence by the Petitioner before the Criminal Court, otherwise it would have been initiated much earlier. It could not be initiated against the Head Quarters Tahsildar Mr.I.Abdul Kather for his evidence was not recorded before the Criminal Court before his retirement. Considering the above fact the disciplinary proceedings were dropped and he was permitted to retire. Therefore, there is no selective discrimination between the Head Quarters Tahsildar and the Petitioner. He would submit that the penalty imposed on the petitioner need not be interfered with.

4. I heard the rival submissions.

5. Materials produced before this Court disclose the fact that the disciplinary proceedings were offshoot of the trap conducted against one Ganesan, Village Administrative Officer for demanding and accepting a sum of Rs.500/- for issuing a death certificate. Pursuant to the criminal case, the Government instructed the Commissioner for Revenue Administration to initiate disciplinary proceedings vide G.O.(2D) No.246 & 247 Revenue Department dated 15-12-1994 against the petitioner and the Head Quarters Tahsildar for adopting irregular procedures on extraneous consideration. It is pertinent to note that further instructions were issued in the above said G.O. to issue charge memo after their deposition as witnesses before criminal court.

6. Curiously, the Head Quarters Tahsildar was not called to depose before the Criminal Court till he attained age of superannuation. He was due to retire on 30.06.2003. Therefore, by virtue of G.O.(2D) No.340 Revenue Department dated 30.06.2003 he was permitted to retire, as he was only a witness in the criminal case and the lapse was only defective supervision, which was considered not so serious, with a condition that he shall depose before the Court as and when called. In the meanwhile the petitioner was promoted as Assistant in the year 1995, Deputy Tahsildar on 04.06.2001 and as Tahsildar on 1.8.2007.

7. The Petitioner, who was also cited as witness in the



criminal case let in evidence in the year 2007 and after recording of his evidence the charge memo was issued in Roc.No.8357/2002/A3 dated 03.11.2007 by the third respondent. The said Charge Memo and the imposition of penalty are under challenge on the grounds of delay and selective discrimination.

8. Before analysing the issue in detail, it is relevant to note that the criminal court acquitted the Village Administrative Officer and on appeal by the Government, the Appellate Court had given a categorical finding on appreciation of elaborate evidence placed before it that the complaint itself was false, for the reason that the Death Certificate was dispatched to the applicant namely, one Ramakrishnan S/o Perumal on 15.07.1993, and he had also applied for legal heirship certificate annexing the death certificate, whereas complaint for demand of bribe was made on 28.07.1993 by one Karuppanan the defacto complainant and trap was organised on the basis of that complaint.

9. The predominant issues to be decided are

(1) Whether the issuance of charge memo, while dropping it against the co-delinquent in respect of the same proceedings offends doctrine of equality and

(2) Whether the delay in issuing the charge memo vitiates the proceedings.

10. As noted above the disciplinary proceedings are off shoot of the trap conducted against the Village Administrative Officer by Vigilance and Anti Corruption Department. The said accused before the Criminal Court, who was tried for acceptance of bribe for issuance of the death certificate himself was acquitted and it was confirmed in appeal and the judgment has become final. In that event, without direct evidence, the allegation of acting on extraneous considerations against the Petitioner cannot be sustained.

11. Another important fact to be noted is that the initiation of disciplinary proceedings did not emanate from bottom, i.e., by the disciplinary authority, rather it was initiated at the instance of the Government by G.O.Ms.No.246 dated 15-12-1994. The gravamen of the charge is that the petitioner while serving as Junior Assistant, obtained signature in the death certificate from the Head Quarters Deputy Tahsildar, instead of Tahsildar. In that event it shall be construed that the responsibility is more on the Head Quarters Tahsildar rather than the Junior Assistant. The person who signed the certificate is accountable for the lapse than the



person who put up the file for signature.

12. As seen above in G.O.(2D) No.340 Revenue Department dated 30.06.2003, he was permitted to retire without initiating any disciplinary proceedings. Whereas, a charge memo was issued to the petitioner for the misconduct in respect of the same incident. It is well settled law that disciplinary proceedings shall be initiated against all the delinquents and punishment shall be imposed to all equally corresponding to the graveness of the misconduct. It cannot be initiated against one officer leaving out the other involved in the same proceedings. In the instant case both the petitioner and the Head Quarters Deputy Tahsildar were cited as witnesses in the criminal case. In that event both should have been treated on the same pedestal. When it is considered that affixing signature in death certificate was due to lack of supervision, it shall be considered that the gravity of misconduct is lesser on the part of the sub-ordinate officer. In such circumstance, initiating disciplinary proceedings only against the petitioner amounts to selective discrimination and amounts to malafide exercise of power due to bias.

13. The Honourable Supreme Court in M.Raghavelu vs. Government of Andhra Pradesh and Another [1997 (10) SCC 779] has held that when one person is acquitted co-delinquents are also entitled to acquittal. Acquitting one and punishing the other amount to discrimination.

14. In Man Singh vs. State of Haryana and Others [(2008) 8 MLJ 518 (SC)] it is held as follows:

"18. In view of the factual backdrop and the above-stated statement of HC Vijay Pal, we are of the opinion that the respondents cannot be permitted to resort to selective treatment to the appellant and HC Vijay Pal, who was involved in criminal case besides departmental proceedings. HC Vijay Pal has been exonerated by the appellate authority mainly on the ground of his acquittal in the criminal case, whereas in departmental proceedings he has been found guilty by the disciplinary authority and was awarded punishment for serious misconduct committed by him as police personnel.

19. We may reiterate the settled position of law for the benefit of the administrative authorities that any act of the repository of power



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whether legislative or administrative or quasi-judicial is open to challenge if it is so arbitrary or unreasonable that no fair minded authority could ever have made it. The concept of equality as enshrined in [Article 14](#) of the Constitution of India embraces the entire realm of State action. It would extend to an individual as well not only when he is discriminated against in the matter of exercise of right, but also in the matter of imposing liability upon him. Equal is to be treated equally even in the matter of executive or administrative action. As a matter of fact, the doctrine of equality is now turned as a synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of 'fair play' and reasonableness. We have, therefore, examined the case of the appellant in the light of the established doctrine of equality and fair play. The principle is the same, namely, that there should be no discrimination between the appellant and HC Vijay Pal as regards the criteria of punishment of similar nature in departmental proceedings. The appellant and HC Vijay Pal were both similarly situated, in fact, HC Vijay Pal was the real culprit who, besides departmental proceedings, was an accused in the excise case filed against him by the Excise Staff of Andhra Pradesh for violating the Excise Prohibition Orders operating in the State. The appellate authority exonerated HC Vijay Pal mainly on the ground of his acquittal by the criminal court in the Excise case and after exoneration, he has been promoted to the higher post, whereas the appeal and the revision filed by the appellant against the order of punishment have been rejected on technical ground that he has not exercised proper and effective control over HC Vijay Pal at the time of commission of the Excise offence by him in the State of Andhra Pradesh. The order of the disciplinary authority would reveal that for the last about three decades the appellant has served the Police Department of Haryana in different capacity with unblemished record of service."

15. As observed above the doctrine of equality is now termed as synonym of fairness in the concept of justice and stands as the most accepted methodology of a governmental action. The administrative action is to be just on the test of fair play and



reasonableness. In the instant case, while the Government had taken a conscientious decision that affixing signature in the disputed death certificate is not a serious misconduct, it should not have initiated disciplinary proceedings against the petitioner. Issuance of impugned charge memo and the disciplinary action is thus opposed to fair play and reasonableness. That too at the instance of an officer other than the disciplinary authority tantamounts to malafide exercise of power. Thus the disciplinary proceedings conducted against the petitioner is violative of doctrine of equality, fair play and justice and it amounts to selective discrimination, bias and malafide. Such proceedings do not stand the test of judicial sanctity.

16. The second issue is delay. Admittedly the basis for issuance of the Charge Memo is G.O.No.246 dated 15.12.1994 and the letter of Inspector of Police (V & AC), Salem in RC.74/1993/REV/SC dated 29.10.2007. This has been clearly mentioned in the charge memo issued in Roc.No.8357/2002/A3 dated 03.11.2007. If that be so, for an incident which had happened in 1993, Government had taken a decision to initiate disciplinary proceedings in 1994 itself. Not initiating any action during 1994 or within a reasonable period was not explained in the charge memo. From G.O.No.246 dated 15.12.1994, we can deduce that the disciplinary authority was instructed to initiate action after the delinquent let in evidence as witness on the side of the prosecution before the Criminal Court. It is well settled law that pendency of a criminal proceeding is not a bar for initiating departmental action. Strangely, the criminal proceedings was initiated against a third person, in which the charged official was only a witness on the side of prosecution. In such circumstance there was no bar for initiating departmental action against the petitioner. There is no reasonable nexus between the deposition as witness before court and issuance of charge memo. Ultimately, it leads to an unassailable inference that the delay was without any satisfactory and justifiable reasons. That too after promoting the petitioner as Assistant, Deputy Tahsildar and Tahsildar and after he put 13 years of service without any allegation. The delay of 14 years in initiating departmental proceedings for an incident based on trap proceedings against some other official is fatal and vitiates entire proceedings.

17. The Honourable Supreme Court in State of Punjab and others vs. Chaman Lal Goyal [1995 (2) SCC 570] has held as under:

10)

(a)

(b) The explanation offered by the



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government for the delay in serving the charges is unacceptable. There was no reason for the government to wait for the Sub-divisional Magistrate's report when it had with it the report of the Inspector General of Prisons which report was not only earlier in point of time but was made by the highest official of the prison administration, Head of the Department, itself. The Inspector General of Prisons was the superior of the respondent and was directly concerned with the prison administration whereas the Sub-divisional Magistrate was not so connected. In the circumstances, the explanation that the government was waiting for the report of the Sub-divisional Magistrate is unacceptable. Even otherwise they waited for two more years after obtaining a copy of the said report. Since no action was taken within a reasonable time after the incident, he was entitled to and he must have presumed that no action would be taken against him. After a lapse of five and a half years, he was being asked to face an enquiry.

(c) If not in 1992, his case for promotion was bound to come up for consideration in 1993 or at any rate in 1994. The pendency of a disciplinary enquiry was bound to cause him prejudice in that matter apart from subjecting him to the worry and inconvenience involved in facing such an enquiry.

... ..

13. Applying the balancing process, we are of the opinion that the quashing of charges and of the order appointing enquiry officer was not warranted in the facts and circumstances of the case. It is more appropriate and in the interest of justice as well as in the interest of administration that the enquiry which had proceeded to a large extent be allowed to be completed. At the same time, it is directed that the respondent should be considered forthwith for promotion without reference to and without taking into consideration the charges or the pendency of the said enquiry and if he is found fit for promotion, he should be promoted immediately. This direction is made in the particular facts and circumstances of the case though we are aware that the Rules and practice normally



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followed insuch cases may be different. The promotion so made, if any, pending the enquiry shall, however, be subject to review after the conclusion of the enquiry and in the light of the findings in the enquiry. It is also directed that the enquiry against the respondent shall be concluded within eight months from today. The respondent shall cooperate in concluding the enquiry. It is obvious that if the respondent does not so cooperate, it shall be open to the enquiry officer to proceed ex-parte. If the enquiry is not concluded and final orders are not passed within the aforesaid period, the enquiry shall be deemed to have been dropped."

18 In Ranjeet Singh vs. State of Haryana [2008 (3) CTC 781] it is observed as follows:

"Perusal of the disciplinary authority's order, it is crystal clear that the charges levelled against the petitioner have not been proved by necessary evidence which has been recorded by the disciplinary authority. In the absence of evidence disciplinary authority proceeded to impose the punishment of stoppage of 3 future annual increments with permanent effect. It is to be noted that it is not lesser punishment, it has got cumulative effect. In other words, it amounts to major penalty. Further the appellate authority even though he had given personal hearing to the petitioner, it was bounden duty of the appellate authority to consider the appeal in accordance with the rules governing the appeal consideration. Perusal of the consideration of appeal it is evident that none of the contentions raised by the petitioner in appeal has been taken note of. Moreover, when the disciplinary authority has recorded that charges levelled against the petitioner was not proved and the charges were not supported by none of the prosecution witnesses, in such event it was the duty of the appellate authority to examine the order of the disciplinary authority. Thus, there is a total non-application of mind by the disciplinary, authority appellate 4 of 5 authority as well as revisional authority. Hence, orders dated 22.1.2014, 28.2.2014 and 13.08.2014 (Annexure P-5, P-7 and P-9, respectively) are set aside."



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In yet another judgment in P.V. Mahadevan vs. The Managing Director, Tamil Nadu Housing Board [2005 (6) SCC 636], the Honourable Supreme Court has held that delay in completion of departmental enquiry would be prejudicial to the interest of the employee concerned.

19. In battery of case, the Honourable Supreme Court has held that pendency of the departmental proceedings for a longer period by itself would amount to punishment due to the mental torture and deprivation of career prospects and appropriate status. In the instant case the petitioner was not included in the panel for Deputy Collector and the promotion orders issued to his juniors would have caused serious prejudice, set back in his career and deprivation of enjoying the stature of officiating higher posts. Taking into consideration of the factual back ground and in the light of the ratio laid down by the Honourable Supreme Court, this Court has no other option other than declaring the disciplinary proceeding against the petitioner stand vitiated on account of delay.

20. Hence, on these premordial issues, the impugned order passed by the Second Respondent in TQ3(2)/86637/09 dated 18.02.2010 and Proceedings in Na.Ka.No.8357/2002/A2 dated 23.11.2008 of the Third Respondent are set aside. The Respondents are directed to include the name of the Petitioner in the panel for promotion to the post of Deputy Collector for the year 2009-2010 and to give notional promotion on par with his immediate junior with all monetary and attendant benefits within a period of twelve (12) weeks from the date of receipt of a copy of this Order.

21. In view of the above, the Writ Petition is allowed. No costs. Connected M.P.is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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Copy to:

1. The Secretary to Government
Revenue Department
Chennai 600009



2. The Principal Secretary and Commissioner of
Revenue Administration,
Chepauk, Chennai 600005.

3. The District Collector,
Namakkal District,
Namakkal.

+1cc to The Government Pleader, SR4755

Order in:
W.P.No.19042 of 2010

CO (CP)
BDL/30/12/2020
KKV/29/01/2021