

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P.No. 28924 of 2012

and

M.P.Nos. 1 & 2 of 2012

P.Duraisamy

..Petitioner

.Vs.

1. The Deputy Inspector General of Police,
Coimbatore Range,
Coimbatore.

2. The Superintendent of Police,
Erode District, Erode.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for issue of Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in and by his proceeding Tha.Pa.74/j1/2012, dated 28.09.2012 and quash the same.

For Petitioner : Mr.R.Murali for Mr.M.Raja

For Respondents : Mr.R.Janaki,
Additional Government Pleader.

O R D E R

A charge memo is under challenge in this writ petition on the grounds of delay. According to the petitioner, the charges were framed for an alleged misconduct of the year 2001, after a delay of 11 years is opposed to Principles of Natural Justice, and the delay vitiates entire disciplinary proceedings.

2. According to him, while he was working as Sub Inspector of Police, Erode North Police Station, received a complaint from one Gopal on 10.01.2001 for a road accident happened on 20.10.2000. The reason for delay was that the victim was taking treatment at Nalli Hospital, Erode. The First Information Report was registered and the criminal case ended in conviction. Subsequently, the Insurance Company filed a complaint against the petitioner and three other persons for improper

investigation and for substituting a vehicle not involved in the accident by correcting the FIR. District Crime Branch, Erode registered the complaint in Crime No.86/2004 and a criminal case in C.C.No.630 of 2010 was conducted. After elaborate trial, the Judicial Magistrate - III, Erode by his judgment dated 27.11.2011 acquitted all the accused.

3. In the meanwhile, the petitioner was promoted as Inspector of Police in the year 2010 and was due to retire on 30.09.2012. On the eve of his retirement on 28.09.2012 the charge memo was issued and on 29.09.2012 he was permitted to retire from service on superannuation on 30.09.2012 AN without prejudice to pending departmental enquiry and further action will be proceeded under Tamil Nadu Pension Rules 1978. The delay of 11 years from the date of registration of the crime, 8 years from the date of complaint by Insurance Company and the charge sheet filed against him in a criminal court, vitiates the disciplinary proceedings.

4. Per contra, the learned counsel for the respondent would contend that the disciplinary proceedings were not initiated due to the pendency of the criminal proceedings against him. The charge with respect to criminal proceedings and the departmental proceeding was for conduct of improper investigation. Since the charge was one and the same in both proceedings, simultaneous proceedings was deferred. Immediately after the criminal proceedings were over, the departmental enquiry has been initiated. Therefore, there is no delay in issuance of the charge memo.

5. Heard the submissions.

6. Facts narrated above are not disputed. The graveman of the charge is that the petitioner brought disreputation to the department by conducting himself to the extent of filing charge sheet against him under Sections. 120B, 417, 420, 465, 468, 471, 511 r/w 109 IPC through reinvestigation for improper investigation conducted by him in respect of Crime No.17/2001.

7. The petitioner conducted improper investigation by correcting the FIR substituting an insured vehicle in the place of uninsured vehicle and thereby warranted reinvestigation of the case and subjected himself prone for criminal charge sheet under Sections 120 B, 417, 420, 465, 468, 471, 511 r/w 109 IPC against him before criminal court and thereby brought disreputation to the department. Therefore, it is clear that improper investigation conducted by him in Crime No.17/2001 registered on 10.01.2001 for an accident happened on 20.10.2000 is the root cause for issuing the charge memo. The consequence of improper investigation led to filing of charge sheet against

him in C.C.No.630/2010. This according to the respondent caused damage to the reputation of the department. Admittedly, the conduct of improper investigation, forgery and cheating by criminal conspiracy and abatement of a criminal offences were the charges stood not proved before the criminal court. Once the improper investigation stood not proved, there is no basis for framing the charges departmentally.

8. Be that as it may, the cause of action for framing the above the charge arose in the year 2004, when the charge sheet in the above criminal case was filed. The final report must have been filed based on prima-facie evidence. It is not the case of the respondent that filing of charge sheet was not within their knowledge, as it was filed by the very same police department. If that be so, departmental action should have been taken in 2004 itself. It is well settled principle that there is no bar for parallel proceedings viz., departmental as well as criminal proceedings. But the respondents have chosen to wait for the result of the criminal proceedings as it was on the same charge. But it ended in acquittal as the charges were not proved. By that time 11 years have passed from the date of registration of FIR by the petitioner, even otherwise, 8 years have passed after filing charge sheet. There is no satisfactory explanation, other than pendency of criminal proceedings for the delay ensured in issuance of charge memo. As observed earlier, pendency of criminal proceedings is not a bar for initiation of disciplinary proceedings, as such the reason adduced is not justified. The learned counsel for petitioner would rely on the following judgments to buttress his contention on the point of delay:-

- i) CDJ 2015 MHC 5217 - The Agricultural Production Commissioner and Principal Secretary to Government and Another Vs M.Sampath & Others
- ii) CDJ 2012 MHC 3785 - S.Rajendran Vs The Director General of Police, Chennai & Others
- iii) CDJ 2011 MHC 3047 - K.Subramanian Vs The State of Tamil Nadu & Another
- iv) 2011 Writ L.R.298 - N.P.K.S.Sheik Abdullah Vs The State of Tamil Nadu and 2 others."

9. In so far as delay is concerned the Hon'ble Supreme Court in State of Punjab and others Vs. Chaman Lal Goyal reported in 1995(2)SCC 570 held as follows:

"9. Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would

not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the Court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the Court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the Court has to indulge in a process of balancing..."

In the above case there is no reasonable explanation for the delay in issuing the charge memo. More over, the reason for issuing the charge memo at the fag end of this Service, that too after giving promotion to the petitioner to a higher post stands to no reason.

10. In 2008 (6) MLJ 139 (SC), Ranjeeth Singh Vs. State of Haryana, in Paragraph No. 8 the Supreme Court has held as follows:-

"8. We find that the Trial Court decreed the suit primarily for three reasons: (a) There was an unexplained delay of nine years in issuing the charge sheet; (b) There was unexplained delay of seven years in issuing show cause notice after the enquiry report was submitted in January 1985; (c) The appellant was promoted thrice between the dates of alleged misconduct and imposition of punishment (which was about nineteen years). This Court has repeatedly held that inordinate delay in initiating disciplinary proceedings is a ground for quashing the enquiry unless the employer satisfactorily explains the delay. For example, where matter is referred to CBI for investigation and there is delay in getting its report or where the charge is of misappropriation and the facts leading to misappropriation come to light belatedly, it can be said that the delay is not fatal? But where the alleged misconduct was known and there was no investigation pending and when no explanation is forthcoming in regard to the delay, necessarily the unexplained delay would cause serious prejudice to the employee and, therefore, enquiry will have to be quashed. (State of A.P. Vs. N.Radhakrishnan, AIR 1998 SC 1833: (1998) 4 SCC 154 and P.V.Mahadevan Vs. Managing Director, Tamil Nadu Housing Board AIR 2006 SC 207: (2005) 6 SCC 636: 2005-III LLJ-527."

11. In the instant case also, as discussed supra, there is a delay of 8 years in issuing the charge memo. The charge sheet filed against the petitioner was very much within the knowledge of the respondents from the year 2004. The unexplained delay, even after the pronouncement of the judgment by Criminal Court in the year 2011, for issuing the charge memo one day prior to his retirement, vitiates the disciplinary proceedings.

12. Furthermore, when the petitioner was acquitted by the Criminal Court, the charges fall to ground. As admitted by the respondents, the departmental proceedings cannot be initiated on the same set of charges tried before Criminal Court after the order of acquittal of the petitioner. The petitioner has already suffered enough mental agony and further proceedings on the same set of charges will prejudice him to a greater extent. He cannot be expected to remember all the incidents like a computer and gathering the witnesses will also be a herculean task. The initiation of disciplinary proceedings at this distance of time is opposed to principles of natural justice.

13. A duty is cast upon the disciplinary authority to initiate the departmental proceedings soon after the irregularities committed and soon after discovering the same. In the instant case, the improper investigation was discovered and reinvestigation was ordered. On the top of it a charge sheet was also filed in the year 2004 before the Criminal Court. The authority should have issued the charge memo in the year 2004 itself. In such circumstances, as held by the Hon'ble Supreme Court in Chaman Lal's Case, delay vitiates the disciplinary proceedings.

14. In view of the above discussions, this Court is of the considered opinion that the impugned charge memo issued in proceedings Tha.Pa.74/j1/2012 dated 28.09.2012 by the 1st respondent is liable to be quashed for its unexplained delay and accordingly stands quashed.

15. In fine, the Writ Petition is allowed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar

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Sub Assistant Registrar

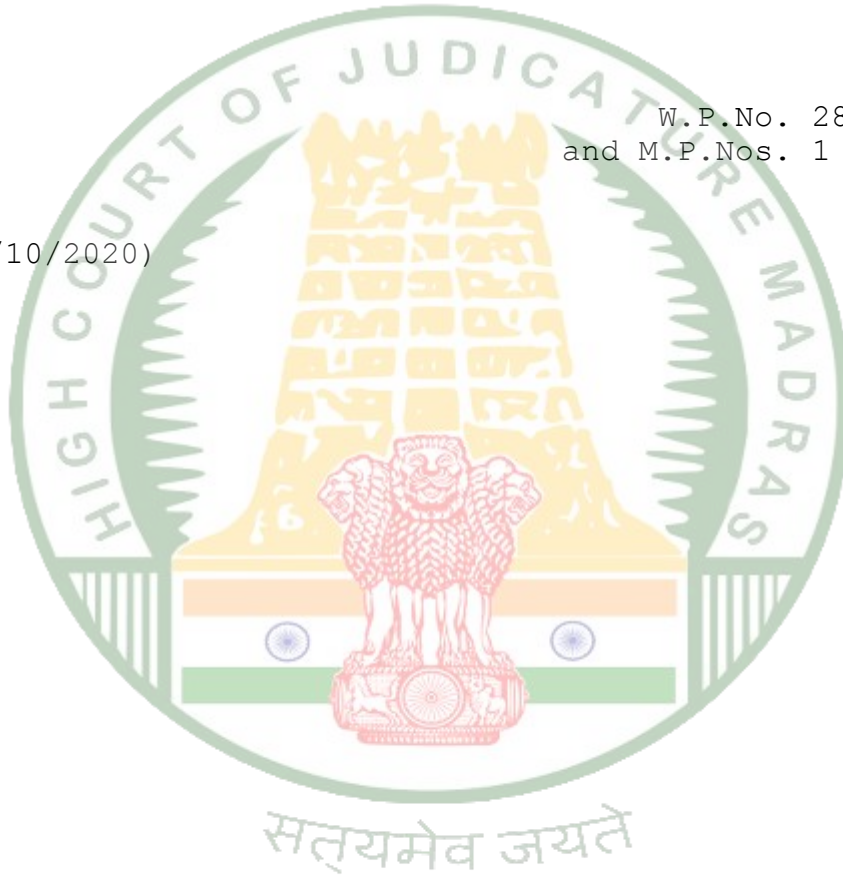
To:-

1. The Deputy Inspector General of Police,
Coimbatore Range,
Coimbatore.
2. The Superintendent of Police,
Erode District, Erode.

+lcc to Mr.R.Murali, Advocate, Sr.No.71
+lcc to the Government Pleader, Sr.No.938

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gj (co)
rr ii (08/10/2020)



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