

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :10.01.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.9377 of 2019

P.Subramani

...Petitioner

Vs.

1. State of Tamil Nadu
Rep. By its Secretary to Govt.,
Department of School Education,
Secretariat, Chennai 600 009.
 2. The Director of School Education,
College Road, Chennai 600 006.
 3. The Joint Director of Matriculation Schools
and Inquiry Officer,
College Road, Chennai 600 006.
- ...Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned proceedings of the second respondent in Na.Ka.No.24196/21/2/2014 dated 25.10.2018 and quash the same and consequently, direct the second respondent to pass orders concluding the proceedings initiated in the first Charge Memo in Na.Ka.No.24196/m1/,2/2014-1 dated 09.05.2014 and permit the petitioner to retire from service and pay him the entire retiral benefits with 12% interest within a reasonable time frame fixed.

For Petitioner : Mr.Sathia Chandran R.

For Respondents : Mrs.V.Annalakshmi
Government Advocate

ORDER

This Writ Petition has been filed challenging the proceedings of the second respondent dated 25.10.2018 and for a consequential direction to direct the second respondent to pass necessary orders in the earlier Charge Memo issued on 09.05.2014 and in which the inquiry was also completed.

2. It is seen from the records that the petitioner had joined the services of the first respondent in the year 1985. He was working in his post of District Education Officer at Vellore from the year 2013. He was served with a Charge Memo by the second respondent dated 09.05.2014, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules 1973. A glance at the Charge Memo shows that a single charge was framed against the petitioner.

3. The petitioner gave his explanation to the second respondent denying the charges. The third respondent was appointed as an Inquiry Officer to conduct the inquiry and the petitioner participated in the inquiry and gave his explanation.

The inquiry was completed and the Inquiry Report was also filed before the second respondent. The second respondent by letter dated 12.12.2015, furnished the inquiry report to the petitioner and directed him to submit his explanation. The petitioner gave his explanation on 05.06.2014 and 25.03.2015. The petitioner also received a letter dated 14.05.2015 from the first respondent seeking for further explanation and the petitioner submitted his explanation to the first respondent on 08.06.2015.

4. In the meantime, no orders were passed and the petitioner was about to attain superannuation on 31.05.2016. Therefore, an order came to be passed by the first respondent on 30.05.2016 suspending the petitioner from service and not permitting the petitioner to retire from service, due to the pending disciplinary proceedings. The petitioner was making representations to the respondents to pass final orders based on the first charge memo that was issued against the petitioner.

5. The second respondent issued an altered Charge Memo dated 25.10.2018 to the petitioner. The petitioner has challenged this altered Charge Memo before this Court in the present Writ Petition.

6. Mr.R.Sathia Chandran, learned counsel appearing on behalf of the petitioner submitted that the so called altered charge memo is only a repetition of the earlier charge memo except that second charge has been added. The learned counsel submitted that the first charge is the same in both the first charge memo as well as the second charge memo and therefore, the second charge memo issued by the second respondent virtually wipes of the entire explanation and the inquiry that was conducted after the first charge memo was issued. The learned counsel submitted that the respondent ought to have proceeded further to pass orders on the first charge memo, since the inquiry was completed

and the inquiry report was also given and the petitioner had also given his further explanation.

7. The learned counsel in order to substantiate his submissions, relied upon the following judgments.

- a) State of Assam and another v. J.N.Roy Biswas, reported in CDJ 1975 SC 189
- b) Kanailal Bera v. Union of India & Ors., reported in CDJ 2007 SC 1461
- c) Dr.Narendra Narain Rai v. The State of Bihar and Ors.
- d) K.Muthusamy v. The Secretary to Govt., Revenue Department, Secretariat, Chennai 9 and others
- e) T.Sekar v. The Superintendent, Central Prison-II, Puzhal, Chennai.

8. The Director of School Education had filed a counter affidavit in this case. In the said counter affidavit, he has not disputed regarding the earlier charge memo that was issued and the inquiry conducted by the Inquiry Officer. The claim made in the counter affidavit is to the effect that the charge memo had to be vetted by the DVAC, since a Criminal Case is pending, as per G.O.(2D).No.10, dated 07.04.2014 and since the first charge memo was not vetted by the DVAC, the second respondent has issued the revised charge memo duly vetted by DVAC. Therefore, the second respondent has justified the issuance of the revised charge memo.

9. Mrs.Annalakshmi, learned Government Advocate appearing on behalf of the respondents submitted that the revised charge memo cannot be termed as a second charge memo issued by the second respondent. The learned counsel submitted that the Government Order under reference, insist for vetting of the charge memo by the DVAC in all cases where the charge memo is issued based on the case registered by the DVAC. The learned counsel submitted that there are totally seven documents that are relied upon and out of the same six documents are already available and only one more document is yet to be received from the Competent Authority. Immediately after the seven documents are available, the same will be furnished to the petitioner and inquiry will be conducted and completed within a time fixed by this Court.

10. This Court has carefully considered the submissions made on either side and the materials available on record.

11. There is no serious dispute with regard to the facts of the case and the facts that have been extracted supra, is admitted by both the parties. The only issue that has been taken into consideration is as to whether, the second respondent can be permitted to give a revised charge memo after the first charge memo was issued, Inquiry Officer was appointed, inquiry was conducted and further explanation was taken from the petitioner.

12. In order to decide this issue, it will be useful to rely upon some of the judgments that were cited by the learned counsel for the petitioner.

13. The Hon'ble Supreme Court in Kanailal Bera v. Union of India & Ors., referred supra, has held as follows:

Para 6 and 7

"6. In K.R. Deb v. The Collector of Central Excise, Shilong, [1971] 2 SCC 102, this Court while considering the provisions contained in Rule 15(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957 held as under:

" 12. It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper inquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or were not examined for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9.

13. In our view the rules do not contemplate an action such as was taken by the Collector on February 13, 1962. It seems to us that the Collector, instead of taking responsibility himself, was determined to get some officer to report against the appellant. The procedure adopted was not only not

warranted by the rules but was harassing to the appellant".

7. The next question which arises for our consideration is as to whether we would follow the normal rule, namely, set aside the impugned judgment and remit the matter back to the High Court or deal with the matter ourselves. One other option which is available to us was to set aside the punishment recorded by the disciplinary authority and request the High Court to consider the matter afresh on the basis of the materials brought on record in the disciplinary proceedings."

14. The next judgment that can be relied upon is the judgment of this Court in *K.Muthusamy v. The Secretary to Govt., Revenue Department, Secretariat, Chennai 9 and others*, referred supra. The relevant portions in the judgment is extracted here under:

"14. Here in the subject case, the Government even without issuing notice to the petitioner and during the currency of the earlier enquiry report, appointed another Enquiry Officer to conduct a fresh enquiry. The report submitted by the first Enquiry Officer is a very detailed one. It is not as if appointment of second enquiry officer was found necessary on account of the inability of first Enquiry Officer to continue or such other relevant factors. In the case on hand, it was only after the conclusion of enquiry and submission of report to the Disciplinary Authority, fresh enquiry was initiated.

15. The Supreme Court in *Vijay Shankar Pandey v. Union of India*, (2014) 10 SCC 589, while interpreting the provisions of All India Services, (Conduct Rules), 1968, made it clear that second enquiry is not possible for the simple reason that report is not acceptable to the Disciplinary Authority.

24. Be that as it may, the question is whether the disciplinary authority could have resorted to such a practice of abandoning the enquiry already undertaken and resort to appointment of a fresh enquiring authority (multi-member). The issue is not really whether the enquiring authority should be a single member or a multi-member body, but whether a second inquiry such as the one under challenge is permissible.

.....

26. It can be seen from the above that the normal rule is that there can be only one enquiry. This Court has also recognised the possibility of a further

enquiry in certain circumstances enumerated therein. The decision however makes it clear that the fact that the report submitted by the enquiring authority is not acceptable to the disciplinary authority, is not a ground for completely setting aside the enquiry report and ordering a second enquiry.

16. The disciplinary proceedings initiated in 2003 continued up to 2014 in total disregard of the order passed by the Tribunal, fixing outer time limit for disposal. There is nothing on record to show that the Government have filed application for extension to conclude the proceedings. The Disciplinary Authority virtually flouted the order passed by the Tribunal and continued with the enquiry. In any case, the second enquiry was initiated without notice to the petitioner. The petitioner is therefore justified in his contention that the second enquiry is bad in law.

17. The fourth respondent issued another charge memo dated 28 November 2006, alleging that the petitioner engaged the services of a private typist for doing the job without the permission of Assistant Director, Department of Geology and Mining. While framing the said charge, the Disciplinary Authority failed to take note of the statement given by the Assistant Director before the first Enquiry Officer to the effect that it was he who engaged the service of Ms. Malliga on account of the workload. Since the Assistant Director has taken a position that engagement was made by him, there is no question of proceeding against the petitioner on account of such appointment. The charges were framed on 28 November 2006. Here also, the enquiry took several years. The petitioner attained the age of superannuation on 30 November 2006 without prejudice to the pending proceedings.

26. Though the petitioner attained superannuation as early as on 30 November 2006 he is still not in a position to enjoy the retirement benefits on account of the pendency of proceedings initiated way back on 2003. Even after a period of 11 years, proceedings have not attained finality. The respondents have no concern to the prejudice and difficulties caused to its employees like the petitioner on account of the pendency of disciplinary proceedings for years together. In view of the peculiar background facts, I am inclined to quash the departmental proceedings initiated against the petitioner."

15. The next judgment that can be relied upon is the case of T.Sekar v. The Superintendent, Central Prison-II, Puzhal, Chennai, referred supra, the relevant portions of the judgment is extracted hereunder:

"4. Shri.P.Rajendran, the learned counsel appearing for the petitioner would submit that the order passed by the Disciplinary Authority directing re-enquiry to be conducted against the writ petitioner is per se illegal and contrary to the legal principles laid down by the Courts and hence the same is liable to be interfered with by this Court. According to him it is not open to the Disciplinary Authority to order re-enquiry because of the fact that the enquiry report was not to his satisfaction. In support of his contention, he relied on the decision of the Hon'ble Supreme Court of India in the case of Vijay Shankar Pandey Vs. Union of India and another reported in (2014) 10 SCC 589. The learned counsel would draw the attention of this Court to paragraph Nos.24 and 25 of the decision, which are extracted hereunder;?

"24.Be that as it may, the question is whether the disciplinary authority could have restored to such a practice of abandoning the enquiry already undertaken and resort to appointment of a fresh enquiring authority should be a single member or a multi-member body, but whether a second inquiry such as the one under challenge is permissible. A Constitution Bench of this Court in K.R.Deb V. CCE, examined the question in the context of Rule 15(1) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957. It was a case where an enquiry was ordered against a Sub-Inspector, central Excise (the appellant before this Court). The Enquiry Officer held that the charge was not proved. Thereafter, the disciplinary authority appointed another enquiry officer "to conduct a supplementary open inquiry". Such supplementary enquiry was conducted and a report that there was "no conclusive proof" to "establish the charge" was made. Not satisfied, the disciplinary authority thought it fit that another enquiry officer should be appointed to inquire afresh into the charge.

25. The Court in K.R.Deb [(1971) 2 SCC 201] has held that:

12.It seems to us that Rule 15, on the face of it, really provides for one inquiry but it may be possible if in a particular case there has been no proper enquiry because some serious defect has crept into the inquiry or some important witnesses were not available at the time of the inquiry or for some other reason, the Disciplinary Authority may ask the Inquiry Officer to record further evidence. But there is no provision in Rule 15 for completely setting aside previous inquiries on the ground that the report of the Inquiring Officer or Officers does not appeal to the Disciplinary Authority. The Disciplinary Authority has enough powers to reconsider the evidence itself and come to its own conclusion under Rule 9.

13.In our view the rules do not contemplate an action such as was taken by the Collector on February 13, 1962. It seems to us that the Collector, instead of taking responsibility himself, was determined to get some officer to report against the appellant. The procedure adopted was not only not warranted by the rules but was harassing to the appellant." (Emphasis supplied)

Therefore, the learned counsel for the petitioner would submit that the course adopted by the Disciplinary Authority is not permissible either in law or authorized by any Rules. It is always open to the disciplinary authority to differ with the findings of the Enquiry Officer, but certainly it is not open to him to order re-enquiry for the purpose of getting a favourable report in order to take action against the petitioner.

5.At this, Mr.J.Pothiraj, the learned Special Government Pleader, appearing for the respondent would submit that though the impugned order is not happily worded, but what is intended was that there were certain procedural lapses committed by the Enquiry Officer while conducting and concluding the enquiry. Therefore, in order to set right the procedural lapses, re-enquiry was ordered and therefore, the

petitioner cannot said to be prejudiced by such order passed by the Disciplinary Authority.

6. In fact, the learned Special Government Pleader appearing for the respondent would draw the attention of this Court to a counter affidavit filed on behalf of the respondent. In the counter affidavit, a particular paragraph has been referred to stating that it was only to rectify the procedural lapse and defect, the Disciplinary Authority passed the impugned order of re-enquiry.

7. The point for consideration before this Court is as to whether the order passed by the Disciplinary Authority, which is impugned in the writ petition, is sustainable in law or not or whether it is a simple order of re-enquiry in order to rectify any procedural lapses committed by the Enquiry Officer while conducting and concluding the enquiry.

8. From the pleadings and the materials placed on record, this Court is unable to appreciate the contention put forth on behalf of the respondent that it was a simple order of re-enquiry by the Disciplinary Authority in order to rectify certain lapses appeared to have crept in, in the conduct and completion of the enquiry. It appears from the records that the Disciplinary Authority was not satisfied with the findings by the Enquiry Officer in holding that the charges were partly proved. In such an event, it is certainly not open to the Disciplinary Authority to order re-enquiry in order to get a report to his liking and to his satisfaction to determine the further course of action to be proceeded against the petitioner.

9. Such action on the part of the Disciplinary Authority discloses a mala fide intention on his part and therefore, this Court is satisfied that the petitioner has made out a case for grant of relief in the writ petition. The order passed by the Hon'ble Supreme Court of India in the afore extracted paragraph squarely applies to the facts of this case. In any event, even in the counter affidavit, where the attention of this Court is drawn, it appears that the Disciplinary Authority has averred that without getting proper order from him, the enquiry was hastily

concluded, which means that the Enquiry Officer has to take a final nod from the Disciplinary Authority before finalizing his report. Therefore, the intention of the Disciplinary Authority is quite writ large from the statement made by him in the counter affidavit and also in the impugned order passed by him.

16. In the present case, the first charge memo was issued on 07.04.2014. There was only one charge in the said charge memo, that was framed against the petitioner. The only difference in the second charge memo is that one more charge has been added and which in essence is only a consequence of the first charge. The first charge in the second charge memo is exactly the same as found in the earlier charge memo. Therefore, the so called amended/rectified charge memo is only a replica of the earlier charge memo except that a second charge has been added, which is not in any way a new charge and it is only a consequence of the first charge.

17. In view of the above, no useful purpose will be served by going through one more inquiry in the second charge memo (altered charge memo). For the first charge in the second charge memo, the petitioner has already given his explanation and an Inquiry Officer has been appointed and he has also submitted the Inquiry Report and the petitioner has also given further explanation for the findings in the Inquiry Report. Therefore, it is not necessary to undergo the very same process in the second charge memo. It is true that the charge memo ought to have been vetted by DVAC. However, the second charge memo does not bring in any new case against the petitioner and it virtually reiterates the earlier charge that is found in the first charge memo. Therefore, in the considered view of this Court, there is no requirement for the petitioner to undergo the very same exercise all over again. In fact, the petitioner will be put to prejudice, if he is made to submit a fresh explanation and undergo the inquiry pursuant to the second charge memo issued against him.

18. In view of the above discussion and the settled law on this issue, this Court has no hesitation to interfere with the impugned charge memo dated 25.10.2018 and accordingly, the same is quashed.

19. This Writ Petition is allowed and there shall be a direction to the second respondent to pass final orders in the earlier disciplinary proceedings which commenced with the issuance of the charge memo dated 09.05.2014 and in which the

petitioner has already given his explanation, an Inquiry Officer was appointed and the Inquiry Report was also filed and for which the petitioner has also given his further explanation. The final order shall be passed within a period of four weeks from the date of receipt of a copy of this order. No costs.

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

jv
To

1. The Secretary to Govt.,
Govt. of Tamil Nadu,
Department of School Education,
Secretariat, Chennai 600 009.
 2. The Director of School Education,
College Road, Chennai 600 006.
 3. The Joint Director of Matriculation Schools
and Inquiry Officer,
College Road, Chennai 600 006.
- +1 CC to Mr.S.Sathia Chandran, Advocate sr 2800.

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SPD(CO)
SP(13/02/2020)

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