

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved on : 12.12.2019

Order Pronounced on : 01.07.2020

CORAM

THE HON'BLE MR.JUSTICE D. KRISHNAKUMAR

W.P.No. 10918 of 2014

P.Kumaresan

..Petitioner

Vs

1. The State of Tamilnadu,  
rep.by its Secretary to Government,  
Municipal Administration & Water Supply Dept.,  
Fort St.George, Chennai-9.

2. The Chairman & Managing Director,  
Tamil Nadu Water Supply & Drainage Board,  
Chennai- 5. .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the first respondent in Charge Memo No. 48347/Estt/DP/A2/2009 dated 21.10.2013 and quash the same.

For Petitioner : Mr.L.Sathosh Kumar

For Respondents: Mr.J.Ramesh -R1

Mrs.S.Thamizharasi -R2

O R D E R

The prayer sought for in the Writ Petition is to call for the records of the first respondent in Charge Memo No. 48347/Estt/DP/A2/2009 dated 21.10.2013 and quash the same.

Brief facts of the case:

2.1 The writ petitioner had entered into service as Assistant Engineer in the year 1974 and subsequently promoted as Engineering Director on 03.08.2009. On 11.09.2009 at about 2.30. hrs to 7.45 hrs, one S.Mohan, Inspection Cell Officer, Chennai had conducted surprise check in the office of the TWAD Board head office and registered a false criminal case in crime no. 30/2009 dated 11.09.2009 under Sections 7 & 13(2) r/w 13(1) (d) of Prevention of Corruption Act on the allegation of possession of Rs.45,000/-. The said criminal case is pending before the Special Judge in C.C. No. 22/2013. The petitioner has filed writ petitions in W.P. Nos. 25313 & 25134 of 2009 to quash the orders passed by the 1<sup>st</sup> respondent in GO(2D) No. 96 & GO(2D) No. 120, Municipal Department Dated: 17.09.2009 and 30.11.2009 respectively, wherein this Court by order dated 18.12.2012 directed the respondents to complete the departmental proceedings to conduct the disciplinary proceedings and finalise the same within a period of one year from the date of receipt of a copy of that order. Subsequently, the petitioner was suspended from service by the 1<sup>st</sup> respondent and not permitted to retire on attaining the age of superannuation i.e on 30.11.2009.

2.2 After suspension, the 2<sup>nd</sup> respondent had issued a charge memo in No. 48347/Estt.(DP)/A2/2009, dated 21.10.2013 to the petitioner by framing two charges. Since the charges framed by the 2<sup>nd</sup> respondent and the allegations leveled in the criminal case are identical, the petitioner has approached this Court by filing the present writ petition.

3. The learned counsel appearing for the petitioner submitted that on 11.09.2009 at about 2.30 hrs to 7.45 hrs the District Inspection Cell Officer, Chennai namely S.Mohan had conducted surprise check along with vigilance officials in the office of TWAD Board head office, wherein the monthly meeting was conducted by the Chairman & Managing Director, TWAD Board for all the Superintending Engineers and Executive Engineers who are working in moffusil districts and the petitioner himself is a participant. Based on the complaint preferred by S.Mohan, Inspection Cell Officer, a criminal case was registered in Crime No. 30/2009 dated 11.09.2009 under Sections 7 & 13(2) r/w 13(1)(d) of the Prevention of Corruption Act for the allegation that the petitioner demanded and accepted illegal gratification from the Superintending Engineers namely G.Blasubramanian and M.Ravichandran on 11.09.2009.

4. The learned counsel for the petitioner further submitted that pending criminal case, the petitioner was suspended from service by the first respondent and subsequently superannuated on 30.11.2009. In the meantime,

based upon the alleged surprise search conducted by the Vigilance and Anti Corruption Department, the 2<sup>nd</sup> respondent had issued a charge memo on 21.10.2013. The learned counsel further submitted that the imputations and allegation alleged in the criminal case and in the charge memo are one and the same, which will expose the defence in the criminal case in the event of conducting disciplinary proceedings culminating in the charge memo, which amount to violation of principles of natural justice and also affects the free and fair trial of criminal case as prescribed under Article 21 of the Constitution of India.

5. Per contra, the learned counsel appearing for the 2<sup>nd</sup> respondent submitted that on 11.09.2009 at the TWAD Board, Chepauk, Chennai, during surprise check, the officers of the Special Investigation Cell of the Directorate of Vigilance and Anti Corruption seized unaccounted money of Rs.45,000/- from the the petitioner in three office covers and Rs.2,93,200/- from the Superintending Engineers who came for the meeting. In this connection, the petitioner was arrested on the same day i.e on 11.09.2009 and a case in Cr.No.39/2009 u/s 7 and 13(2) r/w 13(1)(2) of Cr.P.C was also registered against the petitioner. Since the petitioner was detained in custody for a period exceeding forty eight hours, under Regulation 10(a) (ii)(b) of the Tamil Nadu water Supply and Drainage Board Employees' (Discipline and Appeal) Regulations, 1972, he was placed under suspension until further orders in G.O. 2(d) No. 96, MA & WS Department, dated 17.09.2009. Further, as per Rule 56(1)(c) of the Fundamental Rules, the petitioner was not permitted to retire on reaching the age of superannuation on the A.N. Of 30.11.2009 but retained in service until the criminal case is concluded .

6. The learned counsel for the respondent further submitted that as against the order passed by this Court in W.P. Nos. 25313 & 25314 of 2009, the respondent has preferred appeal and the same is pending before this Court in WA.SR.Nos. 42958/2013 and 42960/2013 and notice had been ordered to the petitioner on 14.07.2014. The learned counsel for the respondent further submitted that as per CCA guidelines "when both departmental as well as criminal action is initiated against the Government servant, in regard the departmental action, charge may be framed against him for the lapses committed by him and final orders may be passed after obtaining the required registers/records/documents from the Court irrespective of the fact, whether he is acquitted or not. Thus the departmental action will be confined to the irregularities or lapses committed by the delinquent officer with reference to the administrative aspects. Accordingly, the charges were framed against the petitioner and the same is pending.

7. Heard Mr.L.Santhosh Kumar, learned counsel appearing for the petitioner and Mr.J.Ramesh, learned Additional Government Pleader appearing for the 1<sup>st</sup> respondent and Mrs.S.Thamizharasi, learned counsel appearing for the 2<sup>nd</sup> respondent.

8. It is seen from the records that the prosecution, based on the voluntary written statement of PW- 3 [Mr.G.Balasubramanian] during enquiry, had co-related Rs.10,000/- kept in the brown colour cover along with his visiting card. His statement regarding alleged visit of the petitioner to Coimbatore on 17.08.2009, convening the meeting of Engineers and threaten him that he will reduce the strength of the Engineers, if they do not perform. Thereafter, when PW- 3 [Mr.G.Balasubramanian] met the petitioner at Siruvani Guest House on the same day evening at 5.30 p.m., the petitioner has specifically demanded bribe and told that bribe should be given to him during the monthly review meeting to be held at Chennai. Accordingly, he brought the money and gave it to the petitioner on 11.09.2009.

9. The another sum of Rs.15,000/- found in the second cover alleged to have been by PW-4 [Mr.Ravichandran]. During the investigation, he had admitted that he gave this money to the petitioner on that day morning, since the petitioner demanded the same as illegal gratification. Based on the statements of the witnesses and material objects collected, the prosecution has laid final report against the petitioner.

10. The trial Court has framed the charges under Sections 7 and 13(2) r/w 13(1)(d) of Prevention of Corruption Act, 1988. To prove the charges, the prosecution has examined 42 witnesses and 11 exhibits were marked through them besides 6 Material Objects. On behalf of the accused/petitioner, 26 exhibits were marked and one Sivas was examined as defence witness.

11. After appreciating the evidence let by the prosecution and the defence, the trial Court has acquitted the accused on the ground that the prosecution has failed to prove demand and acceptance of Rs.10,000/- and Rs.15,000/- as illegal gratification from PW-3[Mr.G.Balasubramanian] and PW-4 [Mr.Mr.Ravichandran] for not harassing them in their duty. Since the prosecution has failed to prove the guilty of the accused beyond reasonable doubt by giving benefit of doubt, the accused/petitioner herein was acquitted under Section 248 (1) of Criminal Procedure Code.

12. Aggrieved by judgment of the trial Court, the State has preferred a appeal in Criminal Appeal No. 16 of 2017 before this Court. This Court had dismissed the said appeal by confirming the order of acquittal passed by the trial Court in C.C. No. 22 of 2013.

13. Now, to consider the prayer sought for by the petitioner in the present writ petition, it is necessary to analyse the following points;

(i). whether the charges framed by the trial Court and the Departmental proceedings are one and the same or not.

(ii) in view of the fact that the trial Court has acquitted the petitioner from the charges and this Court has also confirmed the same in the appeal preferred by the State, whether it is necessary to decide the case on the ground of pending parallel proceedings and acquittal in the criminal proceedings.

14. In this Connection it is relevant to extract the allegation made in the criminal proceedings and the charges framed in the Departmental Proceedings;

Charges levelled before the trial Court against the petitioner:

"The accused Thiru P.Kumaresan conducted a meeting on 17.08.2009 at the office of the Chief Engineer, Western Region TWAD Board, Coimbatore between 05.00 pm and 05.30 pm. In which, the staff of the Office of the Chief Engineer, including engineers and Thiru G.Balasubramanian, Superintending Engineer, Erode-Tiruppur-Karur Circle who was holding additional charge of Coimbatore-Ooty Circle. TWAD Board had attended the meeting. During the meeting, the accused Thiru P.Kumaresan had scolded the engineers as if they had not performed their duties. Further, he also stated that he would reduce the strength of the engineers for having failed to perform their duties. He also threatened them that he would send them to field duties. Later Thiru G.Balasubramanian met the accused Thiru P.Kumaresan at Siruvani Guest House at Coimbatore on the same date where the accused with annoyance insisted him to bring money at the time of his next meeting. Similarly, he also threatened Thiru M.Ravichandran, Superintending Engineer, TWAD Board, Madurai-Theni-Dindigul Circle over phone in the first week of September 2009 and asked to him bring money at the

time of his next meeting.

On 11.09.2009 at about 09.15 AM, Thiru M.Ravichandran met the accused at the Office of the Engineering Director, III Floor, TWAD Board, Chennai -5 where the accused accepted Rs.10,000/- in a brown colour cover as bribe in pursuance of his earlier demand. Similarly, Thiru G. Balasubramanian also met the accused at his office at about 09.30 hrs where the accused also accepted a sum of Rs.10,000/- in a brown colour cover with the visiting card of Thiru G.Balasubramanian as bribe in continuation of his earlier demand for not harassing him in his day to day duties. Both the amounts were kept in his blue colour rexin shoulder bag and thereby the accused had committed the offence punishable u/s. 7 of Prevention of Corruption Act, 1988 (2 counts).

The accused Thiru P.Kumerasan being a public servant by corrupt or illegal means and by abusing his official position as a public servant obtained a sum of Rs. 10,000/- from Thiru M. Ravichandran and another Rs.10,000/- from Thiru G.Balasubramanian as pecuniary advantage in the circumstances stated above and thereby he had committed an offence punishable u/s.13(2) r/w 13(1) (d) of Prevention of Corruption Act, 1988.

#### Charges framed in the Departmental Proceedings:

Charge No.1 : that during the course of surprise check conducted on 11.09.2009 at the TWAD Board, Chepauk, Chennai-5, unaccounted money of Rs.45,000/- was seized and found in three office covers in the office room of the Engineering Director in the 3<sup>rd</sup> floor of the TWAD Board and thereby committed misconduct under Regulation 6(v) of TWAD Board Employees ' (Discipline and Appeal) Regulations 1972.

Charge No.2: that he has failed to maintain high standard of integrity and devotion to duty as expected from an officer of his rank as per Regulation 3 of TWAD Board Officers and Servants Conduct Regulations, 1972.

15. Hence, it is clear that the allegations made before the trial Court and the charges framed in the departmental proceedings are based on identical and similar set of facts.

16. With regard to the evidence let in before the trial Court, this Court in the order passed in Criminal Appeal No. 16 of 2017 has discussed in detail. The relevant portion is extracted below;

9. PW-3[Mr.G.Balasubramanian] has given a statement that during the month of September, there was inspection at Coimbatore and at that point of time, the accused stayed at Siruvani Guest House, demanded bribe and told him to pay money during monthly review meeting to be held at Chennai. It is also the specific statement of PW- 3[Mr.G.Balasubramanian] that the accused used to demand illegal gratification during monthly review meeting.

10. The above two statements had been positively disproved by the defence by production of Log Book-Ex.D2 wherein the accused/respondent, on 17.08.2009 was travelling on road between Coimbatore and Udumalpet about 347km between 08.00 a.m., and 10.00 p.m. No record produced by the prosecution to prove the accused stayed in Siruvani Guest House on 17.08.2009. Further, the accused/respondent as a Director of TWAD Board took charge only a month prior to the date of occurrence and the review meeting held on 11.09.2009 was his first monthly review meeting. Hence, there is no truth in the allegation of PW- 3[Mr.G.Balasubramanian] that the accused person demanded bribe on 17.08.2009 and used to demand and collect illegal gratification during every monthly review meeting.

11. Further, the trial Court has pointed out that just before the occurrence, the departmental action was initiated against PW- 3[Mr.G.Balasubramanian] for misconduct and a memo was issued. Hence, he had a grudge against the accused since he thought the accused was the man behind this. To prove the same, the appellant has marked Ex.D3- charge memo issued to PW-3 [Mr.G.Balasubramanian]. Furthermore, there is a plausible explanation given by the accused person for possession of Rs.20,000/- with him. Even in the recovery mahazar, it is stated that the accused had explained he is keeping that money to pay flight ticket. To prove the same, the accused has examined DW-1[Mr.Sivas] an Executive of Star Travel Company and had marked Ex.D-26- flight ticket, which indicates that on 11.09.2009, the travel ticket in the name of the accused had been booked for his travel from Chennai to Triuchirapally.

12. Further, the defence exhibits and prosecution witnesses, except PW-3[Mr.G.Balasubramanian], had not supported the case of the prosecution. Insofar as Rs.2,81,900/- recovered from 25 Engineers is concerned, they have given reason for possession of those money."

17. In the above judgment, this Court after elaborate discussion of statement of witnesses and the exhibits has come to the conclusion that the trial Court has rightly considered the explanation given by the accused person and the other Engineers from whom the money has been seized. Accordingly, confirming the order of acquittal passed by the trial Court by, had dismissed the aforesaid appeal.

18. It is the contention of the petitioner that since the allegations/charges are identical in both criminal proceedings and the departmental proceedings, this Court by taking note of the fact that trial court and this Court had acquitted the petitioner from charges beyond reasonable doubt, may quash the charge memo. To support his contention, the learned counsel for the petitioner had relied upon the judgment of the Hon'ble Supreme Court in the case of Karnataka Power Transmission Corporation Ltd., Vs. Sr.C.Nagaraju & another in Civil Appeal No. 7279 of 2019 dated 16.09.2019. Wherein the Hon'ble Supreme Court had allowed the said appeal by referring the case of Captain M.Paul Anthony and G.M. Tank. The relevant portion is extracted below;

"11. Reliance was placed by the High Court on a judgment of this Court in G.M. Tank (supra) whereby the Writ Petition filed by Respondent No.1 was allowed. In the said case, the delinquent officer was charged for an offence punishable under Section 5(1) (e) read with Section 5(2) of the PC Act, 1988. He was honourably acquitted by the criminal court as the prosecution failed to prove the charge. Thereafter, a Departmental Inquiry was conducted and he was dismissed from service. The order of dismissal was upheld by the High Court. In the Appeal filed by the delinquent officer, this Court was of the opinion that the departmental proceedings and criminal case were based on identical and similar set of facts. The evidence before the Criminal Court and the departmental proceedings being exactly the same, this Court held that the acquittal of the [11] employee by a Criminal Court has to be given due weight by the Disciplinary Authority. On the basis that the evidence in both the criminal trial and Departmental Inquiry are the same, the order of dismissal of the appellant therein was set aside. As stated earlier,

the facts of this case are entirely different. The acquittal of Respondent No.1 was due to non-availability of any evidence before the Criminal Court. The order of dismissal was on the basis of a report of the Inquiry Officer before whom there was ample evidence against Respondent No.1."

19. In the present case on hand, there is no dispute that the allegations made before the trial Court and charges framed in the departmental proceedings against the petitioner were based on the identical and similar set of facts. With regard to the evidence, as discussed above, the trial Court in its Judgment in C.C.No.22 of 2013 dated 31.05.2016, after detailed discussion, acquitted the petitioner beyond reasonable doubt and this Court has also confirmed the order of acquittal awarded by the trial Court.

But, it is seen from the records that in the departmental proceedings, the recording of evidence has not been commenced. Therefore, in the absence of evidence before the departmental proceedings, the petitioner cannot seek to quash the charge memo by relying upon the aforesaid judgment. The decision relied by the petitioner in the aforesaid Karnataka Power Transmission Corporation Ltd., case, the evidence before the criminal court and the departmental proceedings are same. Thus, the aforesaid decision will not apply to the facts of the present case.

20. In this connection, it is useful to rely upon the decision of the Apex Court in M. Paul Anthony v. Bharat Gold Mines Ltd., wherein the law has been laid down in the following terms:

"13. .... the basic principle that proceedings in a criminal case and the departmental proceeding can proceed simultaneously with a little exception. As we understand, the basis for this proposition is that proceedings in a criminal case and the departmental proceedings operate in distinct and different jurisdictional areas. Whereas in the departmental proceedings, where a charge relating to misconduct is being investigated, the factors operating in the mind of the disciplinary authority may be many such as enforcement of discipline or to investigate the level of integrity of the delinquent or the other staff, the standard of proof required in those proceedings is also different than that required in a criminal case. While in the departmental proceedings the standard of proof is one of preponderance of the probabilities, in a criminal case, the charge, has to be proved by the prosecution beyond reasonable doubt. The little exception may be where the departmental proceedings and the criminal case

are based on the same set of facts and the evidence in both the proceedings is common without being a variance".

20. In view of the decision cited supra and considering the facts that the recording of evidence has not been commenced in the departmental proceedings which based on the preponderance of the probabilities, this Court is of the opinion that the grounds raised by the petitioner are unsustainable and it would not be proper to interfere with the charge memo issued by the 2<sup>nd</sup> respondent at this stage.

However, the petitioner shall produce all the materials before the authorities concerned by way of explanation.

With the above directions, the Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

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To

1. The Secretary to Government,  
Municipal Administration & Water Supply Dept.,  
Fort St. George, Chennai-9.

2. The Chairman & Managing Director,  
Tamil Nadu Water Supply & Drainage Board,  
Chennai- 5.

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PVS (CO)  
GMY (19/08/2020)