

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.18911 of 2018

S.Seetharam

... Petitioner

.Vs.

1.The Commissioner of Police,
o/o.The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai-7.

2.The Deputy Commissioner of Police,
o/o. The Deputy Commissioner of Police,
Ambattur District, Greater Chennai Police,
Avadi, Chennai-54.

... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records of the proceedings of the second respondent issued in PR.No.12/WZ/2018 u/r 3(b) dated 28.03.2018 and quash the same with the consequential direction, directing the respondents to consider the petitioner for promotion to the post Deputy Superintendent of Police, on par with his juniors, with all attendant and monetary benefits.

For Petitioner : Mr.K.S.Govindaprasad

For Respondents : Mr.P.S.Sivashanmugasundaram
Special Government Pleader

ORDER

This Writ Petition has been filed challenging the Charge Memo issued by the 2nd respondent dated 28.03.2018 and for a consequential direction to consider the promotion of the petitioner to the post of Deputy Superintendent of Police.

2.The petitioner was appointed as a Sub Inspector of Police on 01.03.1996, by direct recruitment and he was thereafter promoted to the post of Inspector of Police on 23.04.2005. When the petitioner was working as an Inspector in the Maduravayal Police Station [Law and Order] a trap was laid based on a complaint by the Vigilance and Anti Corruption Police. An FIR came to be registered in

Cr.No.7/2007, for an offence under Section 7 Prevention of Corruption Act, on 12.10.2007. The allegation against the petitioner is that the petitioner had demanded money from the de facto complainant in order to release the lorry that was seized. The petitioner was arrested and

remanded to judicial custody and a suspension order came to be passed against the petitioner by proceedings dated 13.10.2007.

3.The petitioner faced trial in the criminal case before the Special Judge and Chief Judicial Magistrate, Tiruvallur in Special Case No.7/2008 and the trial Court by judgement dated 21.03.2016, found the petitioner not guilty and acquitted him from all charges. This judgement of the criminal Court has become final.

4.On 28.03.2018, a Charge Memo came to be issued against the petitioner by framing two charges and those charges are extracted hereunder:

Charge No.1:

On 11.10.2007 at about 10.00 P.M (22.00 Hrs) when the complainant Tr.V.Gnanasekar of Periyamathur met Inspector of Police, Thiru.Seetharaman, at T.4 Maduravoyal Police Station in connection with the release of his Tanker Lorry bearing Regn.No.TN-28-X-4399. The Inspector of Police, Thiru.Seetharaman, demanded Rs.50,000/- as illegal gratification to release the tanker lorry and directed him to bring the said amount of Rs.50,000/- on 12.10.2007 at about 08.30 P.M. and there by violated Rule 24 of Tamil Nadu Subordinate Police Officers Conduct Rules, 1964.

Charge No.2:

On 12.10.2007 at about 10.30 P.M. At T-4 Maduravoyal Police Station, when the Deputy Superintendent of Police Tr.M.B.Natarajan inquired Tr.Seetharaman, formerly Inspector of Police in continuation of the Trap proceedings against him, to prevent the inquiry and to threaten the officials, Inspector Thiru.Seetharaman after having broken the glass table mat and inflicted self injury by piece of glass on his left hand and thus violated Rule 24 of Tamil Nadu Subordinate Police Officers Conduct Rules, 1964.

5.The above Charge Memo is now made a subject matter of challenge before this Court.

that the impugned Charge Memo dated 28.03.2018, is liable to be interfered on the ground of delay. The learned counsel submitted that for an incident that took place in the year 2007, a Charge Memo came to be issued only in the year 2018. In order to substantiate this submission, the learned counsel relied upon the judgement of the Hon'ble Supreme Court in P.V.Mahadevan .v. MD.T.N.Housing Board reported in [2005 6 SCC 636].

7.The learned counsel further submitted that no useful purpose will be served by proceeding further with the department enquiry since the very same witnesses who had deposed before the criminal Court can only be called as witnesses in the departmental proceedings also and they cannot give a different version in the departmental proceedings. That apart, the availability of witnesses itself is questionable since the incident had taken place 13 years back.

8.The learned counsel further submitted that in view of the departmental proceedings, the promotion of the petitioner has not been considered and all his juniors have been granted promotion to the post of Deputy Superintendent of Police. The learned counsel further submitted that the Charge Memo issued by the 2nd respondent is liable to be quashed and the respondents must be directed to consider the promotion of the petitioner to the post of Deputy Superintendent of Police.

9.Per contra Mr.P.S.Sivashanmugasundaram, learned Special Government Pleader appearing on behalf of the respondents submitted that the ground of delay cannot be put against the department in all cases and this Court has to see the reason behind the delay. The learned counsel submitted that the criminal case was registered in the year 2007 and it came to an end only in the year 2016. Th learned counsel submitted that immediately thereafter, the Charge Memo came to be issued against the petitioner on 28.03.2018. The learned counsel further submitted that there are two charges that have been framed against the petitioner and the 1st Charge only pertains to the criminal case. Insofar as the 2nd Charge is concerned, it is an independent incident which took place after the trap proceedings. The learned counsel further submitted that the 2nd charge is also serious in nature, since the petitioner had conducted himself in such a manner where he prevented an inquiry and he threatened the officials and the same is in violation of Rule 24 of the Tamil Nadu Subordinate Police Officers Conduct Rules, 1964. The learned counsel submitted that this Court can fix a time limit for the completion of the proceedings and that there are absolutely no grounds to interfere with the Charge Memo issued by the 2nd respondent.

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

11.The subject matter of challenge in this writ petition is the Charge Memo that was issued by the 2nd respondent against the petitioner. The Charges have already been extracted supra. The 1st Charge pertains to the incident which relates to the registration of a criminal case and in which case, the petitioner was also acquitted by the trial Court by a judgement dated 21.03.2016. The 2nd Charge pertains to an incident that had happened subsequently when the Deputy Superintendent of Police called the petitioner for an inquiry and at that point of time, the petitioner is said to have prevented the inquiry and had threatened the officials.

12.The main ground that has been raised by the learned counsel for the petitioner is the delay in issuing the Charge Memo against the petitioner. According to the learned counsel for the petitioner, the incident for which the Charge Memo has been issued pertains to the year 2007 and the Charge Memo has been issued after nearly 11 years, in the year 2018. At this juncture, it will be relevant to rely upon the judgement of the Hon'ble Supreme Court, cited by the learned counsel for the petitioner referred supra and the relevant portions are extracted hereunder:

4.In the first case of Bani Singh, an O.A. was filed by the officer concerned against initiation of departmental enquiry proceedings and issue of charge-sheet on April, 22, 1987 in respect of certain incidents that happened in 1975-76 when the said officer was posted as Commandant 14th Battalion, SAF Gwalior. The Tribunal quashed the charge memo and the departmental enquiry on the ground of inordinate delay of over 12 years in the initiation of the departmental proceedings with reference to an incident that took place in 1975-76. The appeal against the said order was filed in this Court on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. This Court rejected the contention of the learned counsel. While dismissing the appeal this Court observed as follows :

"The irregularities which were the subject matter of the enquiry is said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April 1977 there was doubt the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is

unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

5. In the second case [1998] 4 SCC 154, the respondent was appointed as Assistant Director of Town Planning in the year 1976. A report dated 7.11.1987 was sent by the Director General, Anti-Corruption Bureau, Andhra Pradesh, Hyderabad to the Secretary to the Government, Housing, Municipal Administration & Urban Development Department, Andhra Pradesh, Hyderabad, about the irregularities in deviations and unauthorized constructions in multi storied complexes in the twin cities of Hyderabad and Secunderabad in collusion with municipal authorities. On the basis of the report, the State issued two memos both dated 12.12.1987 in respect of three officials including the respondent-Radhakishan, the then Assistant City Planner. In this case, till 31.07.1995 the article of charges had not been served on the respondent. The Tribunal, however, held that the memo dated 31.7.1995 related to incidents that happened ten years or more prior to the date of the memo and that there was absolutely no explanation by the Government for this inordinate delay in framing the charges and conducting the enquiry against the respondent and that there was no justification on the part of the State now conducting the enquiry against the respondent in respect of the incidents at this late stage. This Court, in para 19, has observed as follows :

19. "It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest

administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

This Court held that there was hardly any explanation worth consideration as to why the delay occurred. In the circumstances, this Court held that the Tribunal was justified in quashing the charge memo dated 31.7.1995 and directing the State to promote the respondent as per recommendation of the DPC ignoring memos dated 27.10.1995 and 1.6.1996. Accordingly, the appeal filed by the State of Andhra Pradesh was dismissed.

6.Mr. Prabhakar also invited our attention to the affidavit filed by the appellant in support of his case. It is stated in para 14 of the affidavit that the respondent with the mala fide intention issued the present charge memo against the appellant even though the alleged incident of issuance of sale deed was of the year 1990, which was 10 year prior to the issuance of charge memo and that very reason for issuing charge memo

was that the appellant could be detained from promoting to the post of Chief Engineer of the Housing Board.

7. The very same ground has been specifically raised in this appeal before this Court wherein it is stated that the delay of more than 10 years in initiating the disciplinary proceedings by issuance of charge memo would render the departmental proceedings vitiated and that in the absence of any explanation for the inordinate delay in initiating such proceedings of issuance of charge memo would justify the prayer for quashing the proceedings as made in the writ petition.

11. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher government official under charges of corruption and disputed integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the department in the procedure for initiating the

disciplinary proceedings, the appellant should not be made to suffer".

13. It is clear from the above judgment that delay in initiating disciplinary proceedings is a very important factor since it will cause serious prejudice to the delinquent employee to defend himself due to non-availability of materials. However, the Hon'ble Supreme Court has clarified the position and held that it is not possible to lay down any predetermined principles for all cases and all situations where it involves delay in initiating disciplinary proceedings. It will depend upon the facts of each case and the Court has to necessarily take all the relevant factors and balance them to determine if it is in the interest of a

clean and honest administration that the disciplinary proceedings should be allowed or it has to be terminated in view of inordinate delay which will result in a very serious prejudice to the delinquent employee.

14. In the present case, the 1st Charge against the petitioner is directly relatable to the criminal case that was filed against the petitioner. In the criminal case, the trial Court has acquitted the petitioner after considering the evidence of all the witnesses. If the respondent wants to sustain the 1st Charge, the very same witnesses who deposed before the trial Court must be called as witnesses in the departmental proceedings. The incident pertains to the year 2007 and the witnesses cannot come and give a different version in the departmental proceedings. This peculiar situation will always arise where the criminal case and the departmental proceedings are based on the identical set of facts and the same witnesses who were examined before the criminal Court can only be the witnesses in the departmental proceedings also. If the criminal Court after considering the evidence of the witnesses has found that no case has been made out by the prosecution and the petitioner has been acquitted by a judicial pronouncement after giving a finding to the effect that the case of the prosecution is unusual, abnormal, not reasonable and unbelievable, it would not be fair to allow the disciplinary proceedings on the very same Charge. The law on this issue is well settled and it has been repeatedly held by the Hon'ble Supreme Court that in all those cases, it will not be fair to continue with the departmental proceedings against the delinquent employee. One more fact that has been taken into consideration is that the incident in this case had taken place in the year 2007 and at this length of time, it is not known as to how effectively witnesses can depose about the incident and the lapse of time will certainly cause prejudice to the petitioner in defending himself in the departmental proceedings.

15. In view of the above findings, this Court finds that the Charge Memo has to be necessarily interfered insofar as the Charge No.1 is concerned. Accordingly, the 1st Charge in the impugned Charge Memo dated 28.03.2018, is quashed.

16. This Court will now take into consideration, the 2nd Charge that has been levied against the petitioner. This is an independent Charge which pertains to an incident that happened after the criminal case was registered against the petitioner. In this Charge, it has been alleged that the petitioner had prevented an enquiry conducted by the Deputy Superintendent of Police, and had threatened the officials and had broken the glass table mat and inflicted self injury on himself. This according to the respondents is in violation of Rule 24 of the Conduct Rules. In order to substantiate this Charge, Annexure 3 appended to the Charge Memo gives the

materials that are going to be relied upon by the department.

17. Insofar as the above Charge is concerned, the only issue that requires for consideration is whether the said Charge is also vitiated by delay in initiating the departmental proceedings. As stated supra, delay cannot be taken as a straight jacket formulae for interfering with the disciplinary proceedings. As held by the Hon'ble Supreme Court, it will always depend upon the facts and circumstances of each case.

18. In the present case, the respondents were waiting for the completion of the criminal case and the criminal case itself came to an end only in the year 2016, by virtue of the judgment dated 21.03.2016. Subsequently, the Charge Memo came to be issued on 28.03.2018. The respondents were not able to issue a Charge Memo till 2016, due to the pendency of the criminal case. Thereafter, a decision was taken by the respondents to initiate disciplinary proceedings against the petitioner not only with regard to the criminal case but also with regard to an incident which took place after the registration of the criminal case. The 2nd Charge that has been framed against the petitioner is quite serious, taking consideration the fact that the petitioner is working in Police force which is expected to maintain a higher degree of discipline. This must also be taken into consideration in the facts of the present case. This Court does not find that the delay by itself will vitiate the 2nd charge. The reason being that the witnesses who are going to be examined in order to substantiate this Charge are going to be the official witnesses and what is going to be marked are official documents and these materials will have nothing to do with the criminal case. This Court does not find that the two years period as between the judgment of acquittal and the framing and the issuance of the Charge Memo, is enormous and this delay by itself does not vitiate the Charge Memo issued by the 2nd respondent, insofar as the 2nd Charge is concerned. The petitioner has to necessarily face the disciplinary proceedings insofar as the 2nd Charge is concerned.

19. The other grievance that has been expressed by the petitioner is with regard to non-consideration of the name of the petitioner for promotion to the post of Deputy Superintendent of Police. The petitioner has to necessarily wait for the completion of the disciplinary proceedings before his name is considered for promotion.

20. In view of the above discussion, this Court is of the considered view that there are no grounds to interfere with the Charge Memo issued by the 2nd respondent, insofar as the 2nd Charge is concerned. However, taking into consideration, the long delay, there shall be a direction to the 2nd respondent to complete the disciplinary proceedings against the petitioner insofar as the 2nd Charge is concerned,

within a period of six weeks from the date of receipt of copy of this order.

21. In the result, this writ petition is partly allowed and the Charge Memo issued by the 2nd respondent, is interfered insofar as the 1st Charge is concerned and the writ petition is dismissed insofar as the 2nd Charge is concerned. The disciplinary proceedings shall be concluded within the time stipulated by this Court. There shall be no order as to costs.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

KP

To

1. The Commissioner of Police,
o/o. The Commissioner of Police,
Greater Chennai Police,
Vepery, Chennai-7.
2. The Deputy Commissioner of Police,
o/o. The Deputy Commissioner of Police,
Ambattur District, Greater Chennai Police,
Avadi, Chennai-54.

+1cc to Mr. K.S.Govinda Prasad, Advocate, S.R.No. 2936

+1cc to the Government Pleader, S.R.No. 3473

W.P.No.18911 of 2018

BR(CO)

GN(04/03/2020)

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