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IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 15.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.No.516 of 2019
and
W.M.P.No.526 of 2019

M.Mohamed Khan

...Petitioner

Vs

The Additional Director
General of Police,
Crime, Chennai - 600 008.

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records pertaining to the charge memo issued by the respondent herein in his P.R.No.09/2018 u/r 3(b) dated 24.12.2018 and quash the same.

For Petitioner : Mr.Ravi Shanmugam

For Respondent : Mr.K.V.Sajeev Kumar,
Government Counsel

ORDER

By consent of both the parties, this writ petition is taken up for final disposal.

2. The impugned charge memo pertains to certain dereliction on the part of the petitioner, who was a Head Constable in the Video Piracy Cell, CBCID, Coimbatore, wherein on a set of charges, which includes the charge that the petitioner had demanded an accepted bribe of Rs.10,000/- for booking a case under a minor section in Crime No.18/2009 of Video Piracy Cell and thereby, reduced the gravity of the offence, in order to favour the complainant.

3. The impugned charge memo has been levelled against the petitioner by the Additional Director General of Police, Crime, Chennai, who is the respondent herein.

4. Rule 4 of the Tamil Nadu Civil Service (Disciplinary Proceedings Tribunal) Rules, 1955, provides for the nature of cases that could be referred to the Tribunal. The said rule reads thus:

<https://hcservices.ecourts.gov.in/hcservices/> 4. (1) The Government shall, subject to



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the provisions of rule 5, refer the following cases to the Tribunal, namely:-

(a) Cases relating to Officers of the State Services in respect of matters involving corruption on the part of such Officers; and

(b) All appeals or petitions to the Government against orders passed on charges of corruption and all disciplinary cases in which the Government propose to revise original orders passed on such charges;

Provided that it shall not be necessary to consult the Tribunal-

(i) in any case in which the Tribunal has, at any previous stage, given advice in regard to the order to be passed and no fresh question has thereafter arisen for determination; or

(ii) where the Government propose to pass orders rejecting such appeal or petition.

(2) The Government may, subject to the provisions of rule 5, also refer to the Tribunal any other case of class of cases which they consider should be dealt with by the Tribunal and the Government, in exercising the power conferred by this sub-rule, shall have regard to the nature and gravity of the charge, the grade or rank of the officer charged and the organisational strength of the department concerned in handling cases involving interpretation of rules regulating conditions of service of Government Servants.

(3) Notwithstanding anything contained in sub-rule (1) or sub-rule(2), cases arising in the Judicial Department shall not be referred to the Tribunal.

(4) The Executive authority of a local authority may, with the sanction of the Government and shall, if so required by the Government, refer to the Tribunal cases of servants of the local authority when they are involved in charges of corruption jointly with Government servants whose cases are referred to the Tribunal under this rule. The cases so referred shall be enquired into by the Tribunal in accordance with the rules relating to appointment and punishment of officers and servants of the



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local authority.

(5) The Tamil Nadu Public Service Commission may, without reference to the Government, directly refer to the Tribunal cases relating to the Secretary (except when he is a member of the Indian Administrative Service) or a Joint Secretary or a Deputy Secretary or an Under Secretary to that Commission or a member of the staff of that Commission in respect of matters involving corruption or corruption combined with other charges on the part of the officers aforesaid and members of the staff of the Commission and that Tribunal shall conduct the inquiry in accordance with rule 7 of Annexure-II or, as the case may be, rule 4A of Annexure-V to the Tamil Nadu Public Service Commission Regulations, 1954.

Thus, it is seen that as per Rule 4, cases that pertain only to matters involving corruption could be dealt with by the T.D.P. Rule 8(a) deals with the procedures to be adopted by the Tribunal and the rule expands the nature of cases to be dealt with by the Tribunal to include cases of corruption combined with other charges. Rule 8(d) specifically provides that the procedures to be adopted in cases other than those of corruption, whereby, the provisions of the Tamil Nadu Civil Service (Disciplinary Proceedings Tribunal) rules, have been made applicable.

5. A combined reading of all the aforesaid provisions reveals that, whenever the delinquent is levelled with charges of corruption or the charges of corruption are combined with other charges, the T.D.P would be the appropriate authority to deal with the disciplinary proceedings and in all other cases, the provisions of Tamil Nadu Civil Service (Discipline and Appeal) Rules, shall apply. Apparently, rule 17(a) and (b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, deals with the procedures to be adopted in cases, where such disciplinary action is adopted.

6. The learned counsel for the petitioner had questioned the jurisdiction of the respondent herein to initiate departmental action by framing of charges.

7. In the instant case, the charges levelled against the petitioner by the respondent herein pertains to corruption and other charges and in view of Rule 4 of the Tamil Nadu Civil Service (Disciplinary Proceedings Tribunal) Rules, 1955, the Tribunal for Disciplinary Proceedings would be the appropriate authority to frame the charges. As such, the impugned charges levelled by the respondent herein, is without jurisdiction.



charge memo lacks jurisdiction, the High Court, exercising its power under Article 226 of the Constitution of India, will be entitled to interfere with such disciplinary action. Such a proposition has been laid down by the Hon'ble Supreme Court in the case of Secretary to Government of Tamil Nadu Vs. D.Subramanyan Rajadevan reported in AIR 1996 SCC 2634.

9. In view of the aforesaid discussions, the impugned order cannot be sustained. Nevertheless, if the respondent herein is granted liberty to proceed with the disciplinary action by taking recourse of framing the relevant charges by the Tribunal for Disciplinary Proceedings, if they choose to do so, in accordance with the provisions of the Tamil Nadu Civil Service (Disciplinary Proceedings Tribunal) Rules, the ends of justice could be secured.

10. In the light of the above observations, the impugned charge memo of the respondent dated 24.12.2018, is quashed. However, the respondent herein is granted liberty to proceed against the petitioner herein under the relevant provisions of the Tamil Nadu Civil Service (Disciplinary Proceedings Tribunal) Rules, in case they opt to do so. It is made clear that in case the first respondent intends to proceed against the petitioner herein, such a decision shall be taken, atleast within a period of twelve weeks from the date of receipt of copy of this order.

11. Accordingly, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Hvk

To

The Additional Director General of Police,
Crime, Chennai - 600 008.

W.P.No.516 of 2019

and

W.M.P.No.526 of 2019

GPL (CO)
GN(13/08/2021)