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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2021

CORAM

THE HONOURABLE MR. JUSTICE M.GOVINDARAJ

WP NO.30385 OF 2008

T.K.Rajan

... Petitioner

Vs.

The Secretary to Government  
Home Department  
Secretariat  
Fort St. George, Chennai - 600 009.

... Respondent

PRAYER: The Writ Petition has been filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in his proceedings in G.O.(D) No.1096, Home (Police 2) Department, dated 30.09.2008 and to quash the same and consequently set aside the dismissal order in G.O.(3D) No.65, Home (Police II) Department, dated 30.05.1995 and allow the petitioner to retire from service with all retirement benefits.

For Petitioner : Mr.T.K.Rajan  
Party - in - Person-NA

For Respondent : Mr.C.Selvaraj  
Government Advocate (Civil Side)

O R D E R

The petitioner has challenged the order of dismissal passed by the respondent in G.O.(D) No.1096, Home (Police 2) Department, dated 30.09.2008.

2.The short facts of the case is that one M.Periasamy and Mr.A.M.Lakshman, have given complaints against the petitioner on 07.10.1983 on the allegation that the petitioner had coerced and blackmailed them during the course of enquiry. The petitioner was due to retire on 30.04.1995 as Deputy Superintendent of Police. However, on 29.04.1995, the petitioner was kept under suspension in contemplation of the disciplinary proceedings in respect of a charge memo which was issued on



21.04.1987, in which oral enquiry commenced on 15.12.1987 and completed on 24.11.1988. The punishment order was issued on 30.05.1995 dismissing the petitioner from service.

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3.It is pertinent to note that for a complaint, which was received on 07.10.1983, by the Director General of Police, a charge memo was issued after a period of four years and the enquiry was completed after a period of five years from the date of the alleged complaint. However, final orders were not passed for seven years.

4.A perusal of the punishment order discloses that it was an exparte enquiry and it is alleged that the delinquent officer has failed to defend himself by not giving explanation and his further written statement of defence. The petitioner made his representation on 19.07.1991 repudiating the charges levelled against him as absolutely groundless. But however, on the basis of the exparte minute recorded by the Enquiry Officer, the petitioner was dismissed from service. The punishment order passed by the original authority does not disclose any of the points raised by the petitioner in his representation dated 19.07.1991. The reasons mentioned in the order is that he remained exparte and failed to avail the opportunity, the punishment order of dismissal came to be passed. The order of punishment, without considering the objections raised by the petitioner four years before it was passed, by itself, suffers from the vices of non-application of mind. There was a delay of four years in issuing the charge memo. It is crystal clear that there is a delay of seven years from the date of completion of the enquiry viz., 24.11.1988 and the date of passing the final orders on 30.05.1995. More particularly, the order of punishment came to be issued on the basis of the exparte enquiry. Such a delay of four years in issuing the charge memo and seven years in passing the final orders by itself vitiates the disciplinary proceedings and the punishment order imposed on the petitioner.

5.This Court in R.KUMAR VS. THE SECRETARY TO GOVERNMENT, LABOUR & EMPLOYMENT DEPARTMENT [WP [MD]NO.543 OF 2015 DECIDED ON 22.03.2019] this Court has observed as under:

".....The respondents cannot proceed with the departmental proceedings at their whims and fancies and such delay in initiating departmental proceedings will cause much harmful to the petitioner. It is also pertinent to point out that the criminal case also ended in acquittal in favour of the petitioner and the same attained finality. Of course, mere acquittal in criminal proceedings is not a bar



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for the department to initiate departmental proceedings on the same set of facts. However, in the case at hand, for the incident that took place in 1994, the first charge memo was issued in 2006 and thereafter, the petitioner faced with criminal proceedings and after periodical litigations, the same ended in acquittal and on acquittal, the petitioner was again issued with a second charge memo in the year 2014 nearly after a period of 20 years of the alleged occurrence, that too, for the similar facts. Thus, this Court is of the view that the delay itself vitiates the impugned proceedings and the same would entitle the petitioner to get the reliefs sought for. "

Thus, the delay of four years in issuing the charge memo and seven years in passing final orders in an exparte enquiry vitiates the entire proceedings and this Court has no hesitation to set aside the impugned order of dismissal on the grounds of delay.

6. Accordingly, the impugned order in G.O.(D) No.1096, Home (Police 2) Department, dated 30.09.2008 is quashed and the writ petition is allowed. No costs.

s/d  
Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

TK

To

The Secretary to Government  
Home Department  
Secretariat  
Fort St. George,  
Chennai - 600 009.

+1cc to Government Pleader, SR.No.37368

WP NO.30385 OF 2008

SSI (CO)  
PM(02/09/2021)