

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 29-03-2021  
Judgment Delivered on : 16-04-2021

Coram

The Honourable Mr. Justice R. Subbiah  
and  
The Honourable Mr. Justice Sathi Kumar Sukumara Kurup

Writ Appeal No. 2346 of 2019

P. Shankar .. Appellant /Petitioner

Versus

1. The Chairman  
Tamil Nadu Electricity Generation and Distribution  
Corporation Ltd., (TANGEDCO)  
No.144, Anna Salai  
Chennai - 600 002
2. The Chief Engineer (Personnel)  
Tamil Nadu Electricity Generation and Distribution  
Corporation Ltd., (TANGEDCO)  
No.144, Anna Salai  
Chennai - 600 002
3. The Superintending Engineer  
Chennai EDC/West (TANGEDCO)  
Anna Nagar, Chennai - 600 040
4. The Enquiry Officer/Executive Engineer (O & M)  
Anna Nagar (TANGEDCO)  
Chennai - 600 040 .. Respondents/Respondents

Writ Appeal filed under Clause 15 of Letters Patent against the Order dated 27.03.2019 made in WP No. 17616 of 2018 on the file of this Court.

Prayer in W.P.No. 17616 of 2018 Prayer: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned memo issued by the impugned memo issued by the 3<sup>rd</sup> respondent in memo No.013399/120/SE/CEBC/W/ADM.O/ADM.II/A1/F.D.P/2017 dated 15.11.2017 and quash the same.

For Appellant : Mr. M. Ravi

For Respondents : Mr. P.R. Dhilip Kumar

## JUDGMENT

R. SUBBIAH, J

Challenge in this appeal is to the order dated 27.03.2019 passed by the learned Single Judge in WP No. 17616 of 2019, dismissing the writ petition filed by the appellant herein whereby declining to quash the charge memo dated 15.11.2017.

2. The brief facts which are necessary for disposal of this appeal are as follows:-

3. The appellant herein was initially appointed as Technical Assistant on 02.07.1990 in the erstwhile Tamil Nadu Electricity Board, now called as Tamil Nadu Electricity Generation and Distribution Corporation - (TANGEDCO). He was promoted as Assistant Engineer in the year 2002. While he was discharging his duties in the office of the TNEB, Grand Line, Puzhal, according to the appellant/writ petitioner, a false complaint was given by one K.V. Abdul Kalam alleging that the appellant demanded money for issuance of revised test report to obtain permission for installation of generator. Based on such complaint, a criminal case was registered against the appellant under Section 13 (2) read with Section 13 (1) (d) of The Prevention of Corruption Act, 1988. Based on the said complaint, the appellant/writ petitioner was placed under suspension vide proceedings of the third respondent dated 12.02.2009 with effect from 11.02.2009. The criminal case filed against the appellant/writ petitioner was taken on file by the Special Chief Judicial Magistrate, Thiruvallur in S.C. No. 7 of 2009. On completion of trial, by Judgment dated 18.01.2017, the appellant was acquitted from the criminal prosecution by holding that he is not guilty of the offence under Section 13 (2) read with 13 (1) (d) of The Prevention of Corruption Act.

4. Consequent to the order of acquittal, by the Criminal Court, the appellant submitted a representation to the respondents seeking to reinstate him in service with all consequential service and monetary benefits. The third respondent, by order dated 14.06.2018, revoked the order of suspension and reinstated the appellant in service and posted him as Assistant Engineer/Construction in Anna Nagar Division, Chennai. The appellant/writ petitioner also joined the post of Assistant Engineer on 15.06.2018. While so, the appellant was issued with a charge memo dated 15.11.2017 served on the appellant on 03.01.2018. The charge relates to the alleged demand of Rs.5,000/- from the said Abdul Salam to issued a revised test report (RTR) for installing a Kirloskar Diesel generator in the water plant owned by his wife Tmt. Rajitha. According to the appellant, for the very same charge, he stood trial in the criminal proceedings and ultimately he was

acquitted. While so, for the very same set of charges, the third respondent has issued the charge memo dated 15.11.2017 in connection with the complaint given by the said Abdul Salam in the year 2009. Therefore, challenging the same, the appellant has filed the instant writ petition in W.P.No.17616 of 2018 before the learned Single Judge on the ground that a reading of the charge in the criminal case and the charge memo issued by the third respondent dated 15.11.2017, goes to show that both the charges are grounded on the same set of facts and evidence. The charge(s) were framed through charge memo issued on 15.11.2017 with respect to the alleged occurrence that had taken place in the year 2009, after more than 9 1/2 years. The appellant has submitted his explanation to the charge memo through proper channel on 03.01.2018 but inspite of the same, the third respondent issued the proceedings dated 04.05.2018 appointing the fourth respondent to conduct an enquiry into the charge(s). Therefore, the appellant/writ petitioner prayed for setting aside the charge memo dated 15.11.2017 issued by the third respondent.

5. The said writ petition in W.P.No.17616 of 2018 was opposed by the third respondent by filing a detailed counter inter alia contending that it is open to the competent authority to continue disciplinary proceedings against the delinquent for the same set of charges from which he was acquitted by the Court. As per Para 125 of the Manual of the Directorate of Vigilance and Anti-Corruption in G.O. Ms. No.251, P&AR (Per-N) Department dated 21.04.1988 and the decision of the Supreme Court in the case of Noida Entrepreneurs Association vs. Noida and others reported in 2007 (5) AIC 37, a discretionary power is conferred upon the competent authority to initiate departmental proceedings based on the nature, gravity and proof in any given case on similar nature. It is on the basis of the said ratio laid down by the Supreme Court, the charge memo was issued to the appellant and it is proper. Therefore, the respondents sought for dismissal of the said writ petition.

6. The learned Single Judge, by relying upon the judgment of the Supreme Court in the case of Union of India and others vs. Upendra Singh reported in (1994) 3 SCC 357, dismissed the writ petition filed by the appellant herein. The relevant portion of the order of the learned Single Judge is as follows:-

"12. In respect of the similarity of the charges, this Court is of an undoubted opinion that even in moral turptitude, based on preponderance of probabilities and the nature of allegations and the extent of proof available, public servant can be punished. However, a conviction by the Criminal Court of law cannot be imposed on the similar way. Thus, it is held by the Apex Court that the nature of the

criminal proceedings cannot be compared with the departmental disciplinary proceedings. The competent authority is empowered to continue the departmental disciplinary proceedings independently and conduct an enquiry and thereafter, take a decision by affording an opportunity to the delinquent officials and by following the procedure contemplated. Under these circumstances, the petitioner cannot be exonerated in totality. He is bound to establish his innocence or otherwise by producing the documents and by adducing his evidence, if required. Contrarily, the Courts cannot quash the impugned charge memo merely on the ground of delay, more specifically when the allegations are in relation to the demand and acceptance of bribe. Even in common cause cases, the Supreme Court held that the charges of corruption cannot be quashed on the ground of delay, and all such corruption cases are to be tried in accordance with law and a disposal must be given."

7. The learned counsel for the appellant/writ petitioner contended that charge memo was issued to the appellant only after the criminal case against the appellant ended in acquittal. In this regard, the learned counsel for the appellant/writ petitioner submitted that the criminal case was instituted against the respondents based on the complaint given by one K.V.Abdul Salam. After trial, the appellant/writ petitioner was acquitted of the charge(s) in the Criminal Court by coming to the conclusion that the prosecution has not proved the guilt of the appellant beyond any reasonable doubt. In this regard, the learned counsel for appellant/writ petitioner invited the attention of this Court to certain portions of the judgment passed by the Criminal Court to show that the trial court, after analysing the evidence, had come to the conclusion that complainant is a habitual offender and he had enmity towards the appellant/writ petitioner. The said judgment of the Criminal Court had become final, as the respondents have not filed any appeal thereagainst. All the witnesses examined before the trial court turned hostile and it is those witnesses who are sought to be examined in the departmental enquiry. The learned Single Judge, without considering the over all facts and circumstances, disposed of W.P.No.17616 of 2018 mainly on the ground that charges of corruption cannot be quashed. The learned counsel appearing for the appellant/writ petitioner further submitted that a Division Bench of this Court, in identical case, had an occasion to consider a case where a Junior Divisional Engineer in the Highways Department was implicated in a criminal case under the provisions of the Prevention of Corruption Act. After trial in that case, the Junior Divisional Engineer was acquitted by the trial court. As

against the judgment of acquittal, no appeal was filed by the Highways Department. Subsequently, the Highways Department, for the very same misconduct, initiated departmental proceedings by initiating charge memo. Challenging the said charge memo W.P.No.14173 of 2013 was filed by the appellant/writ petitioner before this Court, in which a learned Single Judge, by order dated 26.06.2018, held that from the entirety of the criminal case judgment, he was acquitted, as there was no acceptable piece of evidence made available and in view of the categorical finding of the Criminal Court in regard to the innocence of the writ petitioner therein, the Court does not see as to how the charge could be established in the departmental proceedings. Accordingly, the said Writ Petition in W.P.No.14173 of 2013 (P.Siva Shanmugam Vs. State of Tamil Nadu and another) filed by the delinquent (appellant/writ petitioner herein) was allowed on 26.06.2018. The Division Bench, on appeal, by judgment dated 16.07.2019 in Writ Appeal No.2710 of 2018, (State of Tamil Nadu vs. P. Sivashanmugam) dismissed the Writ Appeal filed by the State, by holding that the departmental proceedings and the criminal proceedings are based on same set of facts. By pointing out the above decision of the Division Bench in W.A.No.2710 of 2018, the learned counsel for the appellant/writ petitioner prayed for allowing this appeal.

8. Countering the submissions of the learned counsel for the appellant, the learned counsel for the respondents submitted that the acquittal in the criminal case will not be a bar for the department to proceed with the departmental enquiry. In the criminal proceedings, the prosecution has to prove the case beyond reasonable doubt. In the departmental proceedings, preponderance of probability is enough to hold the delinquent guilty of the charges. Therefore, the learned Single Judge has rightly dismissed the writ petition and it need not be interfered with by this Court.

9. Keeping the above submissions of the counsel for both sides, we have gone through the records. The appellant/writ petitioner faced criminal proceedings for the offence under Section 13 (2) read with 13 (1) (d) of The Prevention of Corruption Act based on the complaint given by one Abdul Salam in S.C. No. 7 of 2009 on the file of the Sessions and Chief Judicial Magistrate, Thiruvallur. The said case ended in acquittal of the appellant on 18.01.2017. After the judgment of acquittal, the appellant was reinstated in service. However, shortly thereafter, a charge memo was issued to the appellant for the very same set of charges. The charges framed against the appellant herein (writ petitioner) in the Criminal Court and the charges framed in the present departmental proceedings, are one and the same and the relevant portions of the charge(s) are extracted below:-

| Charges in the Criminal case                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | Charges in the Departmental enquiry                                                                                                                                                                                                                                                                                                                    |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| P.Shankar was accused of demand and acceptance of a bribe of Rs.5000/- from K.V.Abdul Salam, which was a punishable offence under Section 7 of the Prevention of Corruption Act, 1988. The Accused is a Public Servant as defined under Section 2(c) of the Prevention of Corruption Act, 1988. The above acceptance of bribe and the transaction of the same is said to have occurred at around 9.30 hours on 11.02.2009. Accused appeared before the Court and pleaded not guilty and denied offence and charges under Sections 7, 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act, 1988. | P.Shankar demanded sum of Rs.5,000/- as bribe from Tr.K.V.Abdul Salam. Delinquent acted in a manner unbecoming of a public servant and violated Regulation 8(b) of the TNEB Employees (Discipline and Appeal) Regulations. On 11.02.2009 at around 9.30 hours, the delinquent reiterated the earlier demand and acceptance of the bribe of Rs.5,000/-. |

10. It is well settled proposition of law that an employer can conduct a parallel departmental enquiry during the pendency of trial in the criminal case with respect to the same set of charges. The employer is well within his right to do so. However, whether the employer will be justified in initiating departmental proceedings after conclusion of the criminal case is to be examined.

11. PW2 was the complainant in this case, but he himself did not support the case of the prosecution before the trial court. The witnesses examined before the trial court also did not support the case of the prosecution before the trial court. Furthermore, in the instant case, the charge memo dated 15.11.2017 was issued to the appellant only after his acquittal by the Criminal Court. For the reasons best known, the respondents waited till the conclusion of the criminal trial against the appellant to issue the instant charge memo on 15.11.2017 in connection with the complaint given against him during February 2009. The respondents also did not file any appeal against the judgment of acquittal passed by the competent Criminal Court and it has reached a finality. While so, at this length of time, the initiation of departmental enquiry against the appellant will only prejudice the appellant/writ petitioner. It is needless to mention that initiation of departmental proceedings, after the acquittal of the appellant in the

Criminal Case, would amount to double jeopardy.

12. The learned counsel for the appellant/writ petitioner placed reliance on the judgment dated 16.07.2019 of the Division Bench of this Court in W.A.No.2710 of 2018 (supra) in the case of State of Tamil Nadu vs. P.Siva Shanmugam). In that case, the Division Bench had an occasion to consider a case of the delinquent in an identical situation. In that case also, the employee, who was tried by the Criminal Court for an offence punishable under the Prevention of Corruption Act, acquitted him of the charges. After his acquittal, the Department initiated a departmental enquiry. The aggrieved delinquent/employee filed the writ petition in W.P.No.14713 of 2013 (supra) and it was allowed on 26.06.2018. The Department went on appeal before the Division Bench of this Court. The Division Bench in W.A.No.2710 of 2018, dismissed the said Writ Appeal No.2710 of 2018 and held in para Nos.7, 8, 9 10 as follows:-

"7. The Hon'ble Supreme Court in G.M.Tank Vs. State of Gujarat and Ors. (2006 (5) SCC 446), considered the issue relating to departmental proceedings after the acquittal of the accused. The departmental proceedings and the criminal case were based on similar set of facts and the charge in the department case and the charge before the criminal court were one and the same. The Supreme Court found that the Investigating Officer and other departmental officials were the witnesses, examined by the Enquiry Officer. The same witnesses were examined in the criminal case, resulting in acquitting the accused. The Supreme Court, by placing reliance on the earlier judgment held that it would not be prudent to continue the disciplinary proceedings after the acquittal by the criminal Court on the basis of the very same charges and evidence.

8. The facts are identical here. The charge sheet issued to the appellant in the criminal case was converted as a charge memo to initiate disciplinary proceedings. The witnesses are one and the same. There is no question of re-appreciating the evidence by the Enquiry Officer to punish the respondent. The incident is of the year 2002. Nothing prevented the appellants from initiating disciplinary proceedings against the respondent even before the disposal of the criminal case.

9. The learned single Judge has given sufficient reasons for the ultimate conclusion taken in the Writ Petition. We do not find any

ground made out by the appellants to take a different view in the matter.

10. In the upshot, we dismiss the intra court appeal. No costs."

13. The said judgment dated 16.07.2019, rendered by a Division Bench of this Court in Writ Appeal No.2710 of 2018, filed against the order dated 26.06.2018 passed in Writ Petition No.14173 of 2013, applies to the facts of this case. Though pendency of the criminal case is not a bar for the department to proceed with the departmental enquiry against the appellant, in the instant case, the department, without any reason, waited for the conclusion of the criminal trial. It is not as though the charge memo was issued simultaneously when the criminal case was pending and on account of the pendency of the criminal case, they did not proceed with the departmental enquiry. On the other hand, the Department waited for the result of the criminal trial and when it turned in favour of the appellant, resorted to proceed with the departmental proceedings after acquittal by the criminal court, for the very same set of charges. Above all, the charges for which the appellant stood trial in the criminal case is verbatim the same in the departmental enquiry proposed by the respondents against the appellant. The delay in initiating the departmental proceedings against the appellant, in our opinion, vitiates the entire departmental proceedings proposed against the appellant. In the present case, the complaint was given in the year 2009 and the Criminal Court (Special Judge/Chief Judicial Magistrate, Thiruvallur, passed the Judgment of acquittal on 18.01.2017 in Special Case No.7 of 2009. Soon after the verdict of the criminal court, the instant charge memo was issued to the appellant on 15.11.2017. Thereafter, the appellant/writ petitioner was also reinstated in service and he joined the post of Assistant Engineer on 15.06.2018, without prejudice to the department proceedings proposed against him. Such a course of action resorted to by the department cannot be countenanced. We are therefore inclined to interfere with the order passed by the learned single Judge in the writ petition.

14. For all these reasons, we set aside the order dated 27.03.2019 made in WP No. 17616 of 2018. The Writ Appeal is allowed. No costs. Consequently, the connected CMP No. 15504 of 2019 is closed.

Sd/-

Assistant Registrar (CS-VII)

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Sub Assistant Registrar

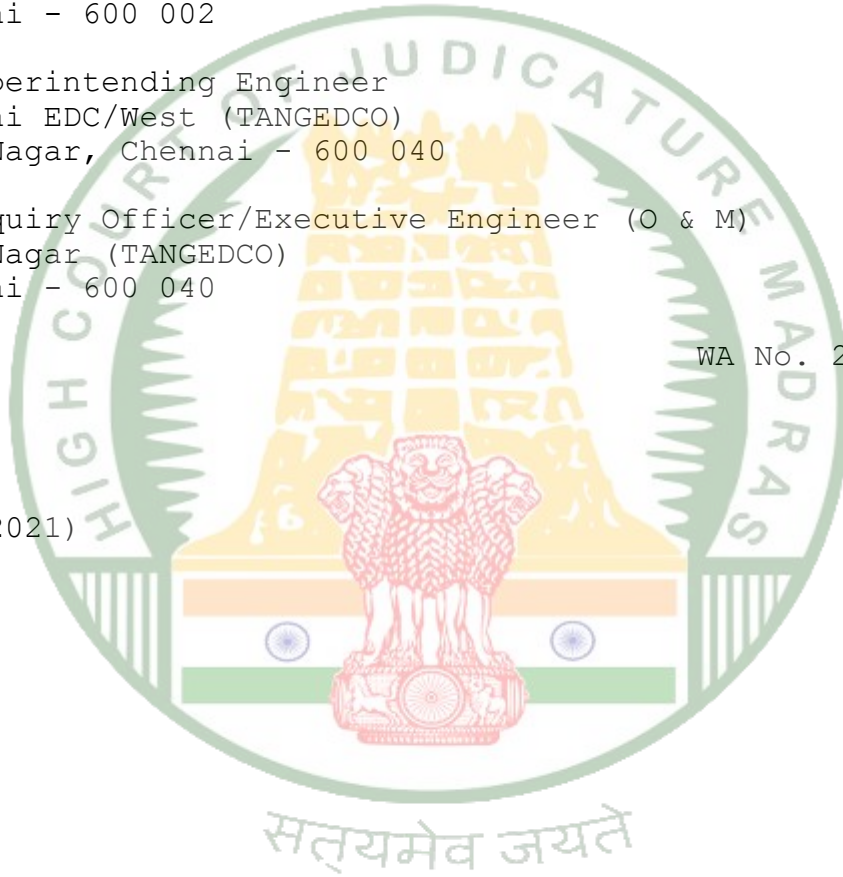
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To

1. The Chairman  
Tamil Nadu Electricity Generation and Distribution  
Corporation Ltd., (TANGEDCO)  
No.144, Anna Salai  
Chennai - 600 002
2. The Chief Engineer (Personnel)  
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WA No. 2346 of 2019

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