



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P. (MD)No.13061 of 2020

and

W.M.P. (MD)No.11003 of 2020 & 1946 of 2021

T.Kumaravel

: Petitioner

Vs.

- 1.The Principal Secretary /
Commissioner of Revenue Administration
and Disaster Management,
Ezhilagam, Chepauk,
Chennai - 600 005.
 - 2.The Director,
O/o. Rehabilitation and Welfare of Non Residents Tamils,
Ezhilagam, Chepauk, Chennai - 600 005.
 - 3.The Deputy Director,
O/o. Rehabilitation and Welfare of Non Residents Tamils,
Ezhilagam, Chepauk,
Chennai - 600 005.
 - 4.The Special Deputy Collector (Rehabilitation),
O/o. Rehabilitation and Welfare of Non Residents Tamils,
Ezhilagam, Chepauk,
Chennai - 600 005.
- : Respondents

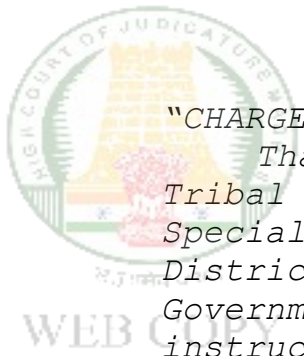
PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking issuance of Writ of Certiorari calling for the records relating to the impugned charge memo passed by the first respondent vide proceedings in Ser.2(2)/49732 dated 02.12.2019 and quash the same as illegal.

For Petitioner : Mr.M.Sricharan Rangarajan
for M/s.V.Malaiyendran
For Respondents : Mr.G.V.Vairam Santhosh,
Additional Government Pleader

ORDER

This writ petition is filed by the petitioner as against the charge memo dated 02.12.2019.

2.The petitioner, who is now working as District Adi Dravidar and Tribal Welfare Officer, has been slapped with eight charges, as follows:



"CHARGE 1:

That, Thiru T.Kumaravel, District Adi Dravidar and Tribal Welfare Officer, Kanyakumari, while working as Special Deputy Collector (Camp), Mandapam, Ramanathapuram District has failed to attend the interface meeting with the Government Officials held on 08.12.2017 inspite of the instructions issued by the Director of Rehabilitation and Welfare of Non Resident Tamils, Chennai. Thus, he has shown lethargic attitude towards the day to day administrative affairs and caused serious embarrassment to the administration.

CHARGE 2:

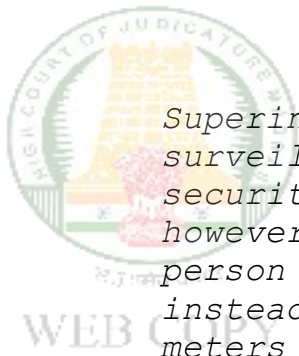
That, Thiru T.Kumaravel, District Adi Dravidar and Tribal Welfare Officer, Kanyakumari, while working as Special Deputy Collector (Camp), Mandapam, Ramanathapuram District has violated the instructions issued by the Director of Rehabilitation and Welfare of Non Resident Tamils, Chennai and collected Electricity charges from the Srilankan Refugees staying in the Mandapam Camp, at the time of issuance of relief amount to the Refugees, and thus caused lot of hardships to the Srilankan Refugees staying in the Mandapam Camp, and brought disrepute to the organization.

CHARGE 3:

That, Thiru T.Kumaravel, District Adi Dravidar and Tribal Welfare Officer, Kanyakumari District, while working as Special Deputy Collector (Camp), Mandapam, Ramanathapuram District, illegally and without any authority, has allowed one Tmt.Udhayakala, a Srilankan Refugee to construct a shop near her residence, inside the camp without getting proper permission from the Director of Rehabilitation and Welfare of Non Resident Tamils, Chennai. Moreover, Thiru Kumaravel with a malafide intention has permitted Tmt.Udhayakala, a Srilankan Refugee to use the Government Properties inside the camp for constructing the shop. Thus by allowing the construction of the said shop and by allowing the same to function from 12.12.2016, he allowed encroachment in the Government Land paving way for law and order issues.

CHARGE 4:

That, Thiru T.Kumaravel, District Adi Dravidar and Tribal Welfare Officer, Kanyakumari, while working as Special Deputy Collector (Camp), Mandapam, Ramanathapuram District, has violated the orders of the Hon'ble Madurai Bench of Madras High Court, in HCP(MD)No.815/2016 dated 19.07.2016, wherein, the Court has directed the



Superintendent of Police, "Q" Branch CID to keep surveillance over the detenu by providing round the clock security to Thiru Thayapararaj, H/o.Tmt.Udayakala and however, the delinquent officer did not allow the police person to keep surveillance near Tmt.Udayakala's house, instead he instructed to stay at a distance of about 200 meters away from Udhayakala's house. Thus, he had violated the Hon'ble Madurai Bench of Madras High Court order and caused disrepute to the District Administration.

CHARGE 5:

That, Thiru T.Kumaravel, District Adi Dravidar and Tribal Welfare Officer, Kanyakumari, while working as Special Deputy Collector (Camp), Mandapam, Ramanathapuram District, has violated the instructions issued by the Director of Rehabilitation and Welfare of Non Resident Tamils, Chennai that the registration of Srilankan Refugees who are not attending the camp continuously for three months would be deleted and they are not supposed to avail any other monetary benefit from the Government. However, the delinquent officer violated the instruction and deleted the name of members who have not attended the camp during the period from 20.07.2017 to 24.07.2017.

CHARGE 6:

That, Thiru T.Kumaravel, District Adi Dravidar and Tribal Welfare Officer, Kanyakumari, while working as Special Deputy Collector (Camp), Mandapam, Ramanathapuram District, has violated the instructions of the Director of Rehabilitation and Welfare of Non Resident Tamils, Chennai to register Thiru Nithushan and his family vide C2/1641/2016, dated 23.02.2017 and to permit them in the Mandapam Camp. However no action has been taken by the Delinquent Officer for a period of eight months and the same was processed only on 01.11.2017. Thus, he had disobeyed the orders of the Director of Rehabilitation and Welfare of Non Resident Tamils, Chennai and caused disrepute to the Government.

CHARGE 7:

That, Thiru T.Kumaravel, District Adi Dravidar and Tribal Welfare Officer, Kanyakumari, while working as Special Deputy Collector (Camp), Mandapam, Ramanathapuram District, instructed to block the way to the Sub Treasury, functioning in the Mandapam Camp and thereby prevented them from performing their duty, and caused inconvenience to the Treasury officials.



CHARGE 8:

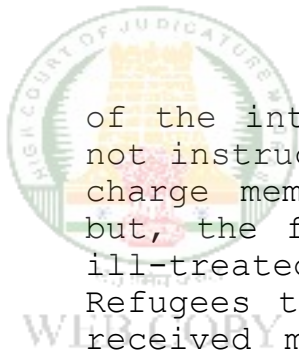
That, Thiru T.Kumaravel, Revenue Divisional Officer, Villupuram, while working as Special Deputy Collector (Camp), Mandapam, Ramanathapuram District has committed irregularities in the discharge of official duties, misused his official position in a manner prejudicial to the interest of the Government and he has failed to maintain absolute integrity and devotion to duty and acted in a manner which is unbecoming of a Government Servant and violated Rule 20(1) of the Tamil Nadu Government Servant Conduct Rules, 1973."

3.Mr.Sricharan Rangarajan, learned Counsel for the petitioner submitted that this charge memo was issued as against the petitioner in order to defeat his scope for promotion. By relying upon the circular issued by the Personnel and Administrative Reforms Department, in No.14353/Per.N/93-1, dated 11.03.1993, learned Counsel submitted that certain guidelines have been framed for initiation of proceedings under Rule 17(a) & 17(b) of Tamil Nadu Civil Services (Classification, Control & Appeal) Rules, 1953. He further submitted that the disciplinary authorities should frame charges under Rule 17(b) only when they are of the firm view that the charges, if framed and proved, would result in the imposition of any of the major penalties, namely, dismissal from service, removal from service, compulsory retirement or reduction to a lower rank in the seniority list or to a lower post or time-scale. In this case, the charges are vague in nature and even if it is proved, it may not result in a punishment of major penalty. While so, the charges have been framed under Rule 17(b), in order to defeat the scope of the promotion of the petitioner.

4.Learned Counsel has also referred about the manner in which the preliminary enquiry was conducted by proceedings in Na.Ka.No.C2/4938/2017, dated 20.11.2017 and submitted that by this proceedings, one Mr.Thiyagarajan and Mr.Thirugnanam were appointed to enquire into the complaints received as against this petitioner in the year 2017. Learned Counsel demonstrated that this proceedings dated 20.11.2017 has been prepared and signed by Mr.Thirugnanam. In other words, Mr.Thirugnanam has appointed himself as the Enquiry Officer, only to wreck vengeance as against this petitioner since he has lodged a complaint as against him.

5.With regard to the charges levelled, the learned Counsel has made his submissions as follows:

5.1.CHARGE 1 :- the charge is that the petitioner failed to attend the interface meeting held on 08.12.2017, in spite of the instruction issued by the second respondent. The second respondent has requested the petitioner to issue suitable instruction to the officials in-charge of the Refugees Camp for the smooth organizing



of the interface meeting, vide letter dated 15.11.2017 and he did not instruct the petitioner to attend the meeting, as alleged in the charge memo. However, the petitioner was present in the meeting, but, the fourth respondent, who is very junior to the petitioner, ill-treated the petitioner by occupying his seat and instigated the Refugees to give complaint against him. The fourth respondent also received mass signed blank papers from the Refugees. Hence, the petitioner was not able to continue in the meeting and was constrained to leave the meeting. In this regard, the petitioner sent a report to the second respondent vide letter dated 08.12.2017.

5.2.CHARGE 2:- the charge is that the petitioner has collected electricity charge from the refugees, by violating the instruction issued by the second respondent. It was in practice for the past so many years by the predecessors of the petitioner to collect the electricity charge from the refugees, based on Letter No.ROC.B2/3113/1999, dated 10.02.2000, to restrict the Refugees from abnormal consumption of electricity. The collected amount was duly remitted into the proper head of account. The second respondent has also directed the petitioner on 23.11.2017 at his chamber to maintain the *status-quo* with regard to collection of electricity charge till taking further decision.

5.3.CHARGE 3:- the charge is that the petitioner has permitted Tmt.Udhayakala to construct a shop near her residence. The petitioner has not given any such permission to the Refugees to construct a shop as alleged.

5.4.CHARGE 4:- the charge is that the petitioner has violated the order of this Court made in HCP(MD)No.815 of 2016, dated 19.07.2016 and he had not allowed the "Q" Branch Police to keep surveillance over Tmt.Udhayakala by providing round the clock security to Thiru Thayabararaj, H/o.Tmt.Udhayakala. In fact, no such order was passed by this Court on 19.07.2016, as alleged in the charge memo. It was passed on 11.07.2016, as an interim arrangement.

5.5.CHARGE 5:- the charge is that the petitioner has violated the instruction issued by the second respondent, by deleting the name of Members who have not attended the Camp during the period from 20.07.2017 to 24.07.2017. The Hon'ble Prime Minister visited Ramanathapuram and the District Collector, Ramanathapuram directed the petitioner to ensure the whereabouts of inmates of the camp on security reason for the period from 20.07.2017 to 24.07.2017. But, the Refugees did not attend the roll call during the above said period. Hence, their names were deleted from the register.

5.6.CHARGE 6:- the charge is that the petitioner has violated the instruction of the second respondent to register Thiru Nithun and his family and permit them in the camp. The petitioner has not received any such communication from the second respondent. The



petitioner has also sent a petition under the Right to Information Act seeking information regarding the date on which the letter was despatched to him. The petitioner received a reply that there is no material to show that the order was sent to him.

5.7.CHARGE 7:- the charge is that the petitioner blocked the way to the Sub Treasury Office, functioning in the Mandapam Camp. Already, there is a main gate to enter into the camp and the entry into the camp is restricted. But, the Sub Treasury Officials have constructed another gate. Hence, the movement of Refugees and outsiders could not be restricted. Due to security reason, the temporary gate put up by the Sub Treasury Officials was closed. Hence, the petitioner has not violated Rule 20(1) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules.

6.Though proper explanations have been given by the petitioner, without considering them, the charges have been framed, based on the report of Mr.Thirugnanam alone. Learned Counsel has also relied upon the decision of this Court in **M.Sampoornam v. State of Tamil Nadu and Others**, reported in **MANU/TN/0316/2013** and in **B.Sowndhararaj v. Director of Elementary Education and Others [W.P.No.20073 of 2019, decided on 11.12.2019]**.

7.In response, learned Additional Government Pleader, by referring to the counter affidavit filed by the second respondent / Director of Rehabilitation and Welfare of Non Resident Tamils, Chepauk, Chennai, has made his submissions as follows:

7.1.CHARGE 1:- the petitioner himself has admitted that the second respondent has requested him to issue suitable instruction to the concerned officials in-charge of the refugee camp. The petitioner was the Special Deputy Collector, solely appointed to look after the welfare of the refugees and he is the in-charge Camp Officer for Mandapam Camp. It is his primary duty, not only to arrange for meeting but also to co-ordinate the refugees with the Line Departments to resolve the issues of refugees with Line Departments and also to take follow up action on the decisions taken in the meeting. The petitioner evaded from his primary responsibility by boycotting the meeting conducted in the refugee camp itself, in which his office is located and now justifying falsely that his junior occupied his chair. It is the concocted story of the petitioner that the fourth respondent, then Special Deputy Collector, obtained mass signed blank papers from the refugees as it was required to submit to the District Collector to close a TASMACH shop. The then Special Deputy Collector / the fourth respondent himself got the complaint petitions against the petitioner and submitted the same to the second respondent. The petitioner himself admitted in his report dated 08.12.2017 addressed to the second respondent that he had already faced enquiry of the



District Collector, Ramanathapuram, on the allegations levelled against him by the "Q" Branch.

7.2.CHARGE 2:- the Government of Tamil Nadu is supplying electricity on free of cost and there are no specific instructions to collect electricity charges from the inmates of the camp. However, when it was brought to the notice of the second respondent on 23.11.2017 at his chamber, he had instructed the petitioner not to collect any amount towards electricity charges. In contra, the petitioner is lying that the second respondent instructed him to maintain *status-quo* till taking further action.

7.3.CHARGE 3:- the petitioner himself admitted that he had joined as Special Deputy Collector, Mandapam, on 14.08.2016. It is submitted that the petitioner had sent a letter to the Inspector of Police, "Q" Branch CID, Ramanathapuram, in Roc.No.A3/1017/2015, dated 15.12.2016, offering the remarks on the petition dated 15.12.2016 presented by Tmt.Uthayakala. In the petition, Tmt.Uthayakala had stated that she had started a small business for her livelihood, ie., Tmt.Uthayakala started her shop on 12.12.2016. The Superintendent of Police, "Q" Branch, Chennai, in his letter dated 01.12.2016 had also stated that the petitioner had allowed Tmt.Uthayakala to construct a provisional shop. The Superintendent of Police, "Q" Branch, Chennai, in his letter dated 15.12.2016 had also stated that Tmt.Uthayakala had opened the shop on 12.12.2016. The Mandapam Refugees Camp is a fenced one and under the control of the Special Deputy Collector, Mandapam camp and he is responsible for everything in the camp and the camp refugees should get the permission of the Camp Officer, ie., Special Deputy Collector even for moving outside the camp. If it is so, it is the responsibility of the petitioner not to allow Tmt.Uthayakala, who is not at all a refugee, to construct a shop within the camp premises. The petitioner is evading from his responsibility by stating that he had not given any permission to the refugees to construct a shop as alleged in the charge memo. If he had not given any order, it is his responsibility to vacate the same immediately. But the petitioner erred by indirectly allowed her to construct, open and run the shop.

7.4.CHARGE 4:- A Division Bench of this Court, in HCP(MD)No.815 of 2016, directed the Superintendent of Police, "Q" Branch, Chennai, to keep surveillance over the detainee, ie., Thiru Thayabararaj, H/o.Tmt.Uthayakala. The petitioner had not refuted the charge, but has stated that this Court has not passed any such order. While passing orders in the habeas corpus petition on 19.07.2016, this Court has extracted the earlier order passed on 11.07.2016, as follows:

"5.Subsequently, after quoting the earlier order dated 04 July, 2016, another order was passed on 11 July, 2016. The order reads thus:

"....."



12. We direct the second respondent to keep surveillance over the detenu by providing round the clock security.""

7.5.CHARGE 5:- As per G.O.Ms.No.613, Public (RHII) Department, dated 16.07.2014, in para 3(vi), it was ordered that "Refugees failing to answer the roll call both in 1st week and 3rd week will not be given cash dole for that month. Refugees failing to satisfactorily answer the absence in both main and supplementary roll calls within 60 days of the main roll call will have their names deleted from the camp roll list." But, the petitioner had violated the Government Order by deleting the names of refugees who had not attended the roll call on 20.07.2017 without giving any opportunity to them.

7.6.CHARGE 6:- The respondent had on 23.02.2017 ordered for re-admission of Thiru Nithushan in Mandapam Refugee Camp, but the petitioner had allowed him only on 01.11.2017, after eight months delay. The order was despatched from the Office of the second respondent in the month of February, 2017 itself. The petitioner has to prove on which date the communication was received by him.

7.7.CHARGE 7:- The Sub Treasury is functioning within the refugee camp premises and the officials of Sub Treasury used to enter the office without any hindrance. But, due to the difference of opinion between the petitioner and the Sub Treasury staff, the petitioner had ordered in his proceedings in Roc.A1/0054/2017, dated 03.10.2017, that the staff of Sub Treasury, including the Sub Treasury Officer, have to put their signature in the register being maintained by Sentry, whenever they enter or exit at main gate citing that Sub Treasury officials are indulging in corrupt activities; audited the salary bill of the staff; and that Assistant Treasury Officer and staff are frequently absenting from duty and that they are habitually late beyond office hours. As an afterthought, the petitioner has now stated that the Sub Treasury Officer had constructed another gate and due to security reason, the temporary gate was closed. The Commissioner of Treasuries and Accounts, in his letter dated 10.11.2017 addressed to the second respondent, has stated that the petitioner had compelled the Sub Treasury officials to sign in the Sentry register; that they entered their office without signing; that they were not allowed to come out of the camp as the gate was locked; that the gate was opened by 7 pm after his intervention; the petitioner was acting against the rules disturbing the Sub Treasury staff and requested the second respondent to take necessary action for the smooth functioning of Sub Treasury by cancelling the order passed by the petitioner. The second respondent, thereafter, by letter dated 17.11.2017, instructed the petitioner to cancel the erroneous order passed by the petitioner restraining the Sub Treasury staff. The above facts would prove the indiscipline attitude of the petitioner, who



disturbed the government officials, ie., Sub Treasury staff, to perform their duties.

8.Learned Additional Government Pleader further submitted that the charges have been framed in accordance with the guidelines issued by the Personnel and Administrative Reforms Department and there is no violation in the issuance of the charge memo. That apart, as per the settled position of law, at the stage of charge memo, this Court cannot interfere. Therefore, learned Additional Government Pleader prayed for dismissal of the writ petition.

9.This Court paid it's anxious consideration to the rival submissions and also perused the documents placed on record.

10.The petitioner has been slapped with eight charges, which were extracted supra. The charges have been framed as against the petitioner under Rule 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules. Before framing the charges, a preliminary enquiry was conducted by the second respondent, by appointing two Officers, namely, Mr.Thiyagarajan and Mr.Thirugnanam, as Enquiry Officers, by proceedings dated 20.11.2017. As pointed out by the petitioner's Counsel, this proceedings dated 20.11.2017 of the second respondent / Director, has been signed by Mr.Thirugnanam, who has been appointed as one of the Enquiry Officers to enquire into the complaints received as against this petitioner. It also appears that though two Enquiry Officers have been nominated, the enquiry report was signed and submitted by Mr.Thirugnanam alone, on 11.12.2017. The signatures found in the enquiry report dated 11.12.2017 and the proceedings of the second respondent dated 20.11.2017 appointing Enquiry Officers to enquire into the complaints received as against the petitioner are one and the same. It is also seen from the records that as against Mr.Thirugnanam, who submitted the enquiry report dated 11.12.2017, the petitioner has already lodged a complaint on 08.12.2017, that the said Thirugnanam, then Special Deputy Collector, has issued certain oral instructions and directed to comply with the same, without any proceedings. The complaint dated 08.12.2017 of the petitioner addressed to the second respondent is usefully extracted as under:

"Thiru Thirugnanam, Special Deputy Collector (R) from the Commissionerate for Rehabilitation and Welfare of Non-Resident Tamils, Chennai - 600 005 was here on his two days' Official visit. On 2nd day i.e. (08.12.2017) while addressing among the gathered people (in-mates and officials) he promulgated the following Oral Orders without having any basic ideas and jurisdiction:-

Order No.1:-

The in-mates of this camp is allowed to rear the goats because it is livelihood of the refugees.



(Decision to prohibit totally to rear the goats was taken during the meeting of the Building Committee held on 18.04.1976 chaired by the District Collector of Ramanathapuram District with a view to preserve the every green trees left out in the campus)

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Order No.2:-

The refugees those who lost their registration due to prolonged absence and are residing out of this camp can shift their residence to this camp prior to re-registration.

When I was here, without my consent he has permitted one Thiru Rajagopal who is residing in Rameswaran for the past so many years and the related file is pending for "Q" Branch Clearance.

(It is inevitable to interrogate the inmates on their prolonged absence to ensure their involvement in criminal activities because of the threat to the National Security and hence the order of the re-registration of the Commissionerate is essential after getting the clearance from the "Q" Branch.)

Order No.3:-

The Heavy Motor Vehicles eventhough in the name of out-siders are also allowed to park their vehicle in front of their hutments in the camp.

((1) In security to the vehicle (2) May be theft a vehicle (3) May be involved in criminal activities. Taking into consideration of all the above facts, it is prohibited to park the HMV into the camp. Two wheelers are allowed for domestic purposes)

Order No.4:-

The inmates are allowed to consume the electricity without any limit and there is no need to pay any charges.

(Collections are made only to the abnormal consumption as per the provision laid down in Commissioner's D.O.letter No.Roc.B2/3113/1999 dated 10.02.2000 just to restrict some inmates. It is in practice for the past so many years. I am only a follower. No objection was raised from the right people and the problem is created by the in-mates those are hand-in-glove with "Q" Branch just to target the Mandapam Camp SDC. Moreover, this issue is still pending with the Director of the Commissionerate to arrive a decision).



Order No.5:-

The inmates are allowed to move round the clock (out of campus) without any restrictions.

(It is absolutely beyond his limit because their movements are restricted between 6.00 am and 6.00 pm., because of the security of the nation. However, they are allowed to ... into this camp upto 10.00 pm., not only to restrict them but also to avoid the invasion of the intruders who are in practice to indulge in anti-social activities. On necessity, some inmates are allowed after getting prior permission from the SDC on the ground of livelihood).

I submit, when I was assuming charges as Special Deputy Collector (Rehabilitation) of this camp, it was found that the violations were only the rules (விதி மீறல்களை விதிவாக்க இருந்தன). After experiencing much difficulties, great efforts and earned group of dissidents among all levels (Inmates, "Q" Branch, Officials and Outsiders) I brought to this camp to this level to hold on the horns in my hand. But it is collapsed all-of-sudden within minutes because of the irrelevant attitude of Thiru Thirugnanam, Special Deputy Collector (Rehabilitation) of Commissionerate.

It is further submitted that he has induced to OFERR people to get mass signature in blank paper saying that it is required to submit representation to the District Collector, Ramanathapuram for removing the TASMAR retail outlet. It is planned to use the signed paper for preparing minutes against me. But I am having the list of persons present and photographs.

The visit of the SDC is not in good-faith behind some reasons not known to me. Knowing the fact that I am prevailing from Tirunelveli District, he observed that it is too hard to work with them. Today he has ill-treated me by occupying my seat and hence I was unable to attend the office. I therefore humbly request that appropriate action may kindly be taken against him and thus render justice.

It is submitted that I had already faced the enquiry of the District Collector, Ramanathapuram on the allegations levelled against me by the "Q" Branch and the related papers are sent herewith for favour of information and ready reference."



11.According to the petitioner, for having lodged this complaint dated 08.12.2017 as against Mr.Thirugnanam, in order to wreck vengeance, Mr.Thirugnanam has sent the enquiry report dated 11.12.2017, based on which, the impugned charge memo came to be issued. His further grievance is that though all these explanations were offered to the respondents, without considering any of them, the impugned charge memo was issued, solely based on the enquiry report of Mr.Thirugnanam dated 11.12.2017.

12.In the decision in **B.Sowndhararaj's** case (supra), this Court, by relying upon the ratio of **M.Sampoornam's** case (supra), has held as follows:

"8. This Court, in the case of M.Sampoornam, referred to supra, has held as follows :

'7. Learned counsel for the petitioner submitted that based on the allegations, charges could be framed against the petitioner only under rule 17 (a) and not under rule 17 (b) of the Tamil Nadu Civil Services (Discipline & Appeals) Rules. In support of the contention raised, the learned counsel appearing for the petitioner also relied the various decisions: A Division Bench of this Court (P.K.Misra, J and F.M. Ibrahim Kalifulla, J) in W.P.No.6809 of 2004 dated 17.06.2004, preferred by the State against the order passed in Original Application No.3913 of 2003 dated 04.02.2004 by the Tamil Nadu Administrative Tribunal, has held that the modification of charge under Rule 17(a) instead of Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules was not against law and accordingly declined to interfere with the order. It was held that there is no error in the order passed by the Tamil Nadu State Administrative Tribunal, modifying the charge under Rule 17(b) instead of Rule 17(a) under the Tamil Nadu Civil Services (Discipline & Appeal) Rules and accordingly, the writ petition was dismissed. It has been made clear in the decision that charge Nos.1 and 2 framed against the first respondent therein relating to failure for taking effective steps towards collection of taxes due from the dealers by Subordinate Officials and it was failure in executing administrative instructions given by the superior officers therein. The Tamil Nadu State Administrative Tribunal held that the Assistant Commissioner (CT), violating Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973 would be under rule 17(a) and not rule 17(b) to frame the charge for the alleged failure for the non-compliance of the administrative instructions given by the superior officer. A Division Bench of this Court (Elipe Dharma Rao, J and K.Suguna, J) passed an order dated 05.09.2006



in W.P.No.3558 of 2004, wherein it has been held that as per the guidelines given by the Government, the charges framed against the petitioner would not come under rule 17(b) but only under rule 17(a) of the said Rules. The Government of Tamil Nadu has given specific guidelines with regard to framing of charges under rule 17(a) and rule 17(b) of the said Rules. In this regard, the guidelines given are as follows:

"(1) Cases in which there is reasonable ground to believe that a penal offences has been committed by a Government Servant but the evidence forthcoming is not sufficient for prosecution in a Court, of law, e.g.,

(a) possession of asset disproportionate to the known sources of income;

(b) obtaining or attempting to obtain illegal gratification;

(c) misappropriation of Government property, money or shares;

(d) obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate, etc.,

(2) Falsification of Government records.

(3) Irregularity of negligence in the discharge of official duties with a dishonest motive".

8. It is not in dispute that the charges under rule 17(a) relate to minor delinquencies whereas the charges under rule 17(b) relate to any major delinquency warranting major punishment in case the same is proved. In Writ Appeal No.1893 of 2011 dated 29.09.2011, a Division Bench of this Court (M.Y.Eqbal, the Chief Justice and T.S.Sivagnanam, J) has held as follows:

"2. We have considered the reasoning given by the learned Single Judge and other materials available on record including the charge memo and the consequential proceedings, from where it appears that there are no grave charges levelled against the respondent/writ petitioner except for some lapses in the discharge of his supervisory duty. Moreover the allegation pertains to the period 2004-2006, whereas, the charge memo was served only in the year 2011, i.e. on the verge of his retirement.

3. In that view of the matter, the impugned judgment passed by the learned Single Judge needs no interference by this Court..."

9. In S.KANNAN VS. STATE OF TAMIL NADU, (2009) 8 MLJ 217, this Court (V.Dhanapalan, J) held that unless there



is dishonest motive, misconduct or misappropriation of funds of the Government or wilful and dishonest act, there cannot be any departmental proceeding initiated under rule 17(b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules, as per the guidelines issued by the Government. It is an admitted fact that the Government of Tamil Nadu has issued guidelines with regard to framing of charges under rule 17(a) and rule 17(b) of the said Rules. The unreported decision in W.P.No.13581 of 2007 dated 24.08.2011, this Court (K.N.Basha, J), based on the guidelines given by the Government has highlighted the same in respect of charges being framed under rule 17 (a) and rule 17 (b) of the said Rules. Referring to the guidelines in S.KANNAN VS. STATE OF TAMIL NADU, represented by its Secretary to the Government, calling upon the impugned proceedings therein, this Court (V.Dhanapalan, J) directed the first respondent therein to alter the charge levelled against the petitioner only under rule 17(a) and not proceed under rule 17 (b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules and to proceed in accordance with law.

10. In the instant case, it has been made clear in the light of various decisions rendered by this Court that the guidelines given by the Government have to be followed scrupulously for framing charges against employee of the Government. As per the guidelines, charges can be framed under rule 17 (b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules, under the following circumstances:

1) Cases in which there is a reasonable ground to believe that a penal offence has been committed by the Government Servant but the evidence forthcoming is not sufficient for prosecution in a Court of law, e.g., [a] possession of assets disproportionate to the known sources of income; [b] obtaining or attempting to obtain illegal gratification; [c] misappropriation of Government property, money or shares; [d] obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate etc.,

[2] Falsification of Government records.

[3] Irregularity or negligence in the discharge of official duties with a dishonest motive. [emphasis supplied]

[4] Misuse of official position for personal gain.



[5] Disclosure of secret or confidential information even though it does not fall strictly within the scope of the Official Secrets Act.

[6] Misappropriation of Government funds, false claims of Travelling Allowance, reimbursement of false medical bills, etc., Charges could be made framed under rule 17(b) of TNCS (D & A) Rules.

... ..

12. In the light of catena of decisions referred to above, having gone through the facts and circumstances and material papers available on record, I am of the view that the respondents could have framed the charges against the petitioner only under rule 17(a) and not under rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules, it being a minor delinquency, as per the guidelines issued by the Government and the proceeding would not be a bar in promoting the petitioner, subject to the result of the departmental proceeding. It is also brought to the notice of this Court that the petitioner is on the verge of retirement and if she is not promoted that will adversely affect her legitimate right, since the departmental proceeding was initiated after a lapse of 2+ years after the occurrence and pending for more than three years.''

9. It is also relevant to refer to the Division Bench decision of this Court in *Government of Tamil Nadu v. P.Sundar*, referred to above, wherein it has been held as under :

'10. We have considered the rival submissions. The guidelines framed by the government of Tamil Nadu for deciding whether charges may be framed under Rule 17 (b) are as follows :

1. Cases in which there is a reasonable ground to believe that the penal offence has been committed by a government servant but the evidence forthcoming is not sufficient for prosecution in a court of law, e.g.,

(a) possession of assets disproportionate to known sources of income;

(b) obtaining or attempting to obtain illegal gratification;

(c) misappropriation of government property, money or shares;

(d) obtaining or attempting to obtain any valuable thing on pecuniary advantage without



consideration or for a consideration which is not adequate, etc.,

(2) falsification of government records.

(3) irregularity or negligence in discharge of official duties with dishonest motive.

It is the above guidelines which are considered by the Division Bench in WP No:3558 of 2004. Considering the guidelines issued by the Government with reference to framing of charges against its employees, the Division Bench has observed as follows :

Therefore, as per the above guidelines also, as stated earlier, the charges framed against the petitioner will not come under Rule 17 (b), but only under Rule 17 (a) however since the petitioner was imposed punishment on framing charges under Rule 17 (b) which is a bar for consideration of promotion, he has been deprived of the promotion to the next cadre. We are therefore of the view that the charges should have been framed under Rule 17 (a) and not in Rule 17 (b). In Kannan Vs. State of Tamil Nadu, reported in 2009 (8) MLJ, the learned single judge of this court had followed and reiterated the above dictum of the Division Bench.

11. Adverting to the facts of the present case, we find that none of the charges framed against the respondent would fall within the parameters laid down in the guidelines issued by the Government. This being so, we do not think that the appellants were justified in framing charges under Rule 17 (b) even for minor delinquencies and thereby denying promotion to the respondent. We must point out that even though the Disciplinary Authority has found the respondent guilty of the charges imposed only a minor punishment of stoppage of increment that too without cumulative effect. The said punishment by itself does not operate as a bar for promotion. If so the appellants cannot by framing charges for trivial derelictions under Rule 17 (b) deprive promotion to the respondent. ''

10. It is clear from the above judgments that guidelines have been framed by the Government of Tamil Nadu for deciding when Charges can be framed under Rule 17 (b) of the Rules. The guidelines make it clear that framing charges under Rule 17 (b) will arise only in very serious cases and not for minor delinquencies. Such minor delinquencies can also be handled by framing charges under Rule 17 (a) of the Rules. The facts of the present case and also the subsequent development that has taken place, makes it very clear that



they do not fall within the guidelines framed by the Government of Tamil Nadu and that they do not warrant a Charge Memo, being issued under Rule 17 (b) of the Rules. To that extent, the Charge Memo issued by the second respondent requires interference.

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11. On issuance of Charge Memo under Rule 17(b), serious consequences will arise, where the delinquent will not be entitled to be considered for promotion, whereas, when a Charge Memo is issued under Rule 17 (a) of the Rules, the guidelines issued by the Government clearly show that there is no bar in considering the promotion of the delinquent employee, subject to the result of the Departmental proceedings."

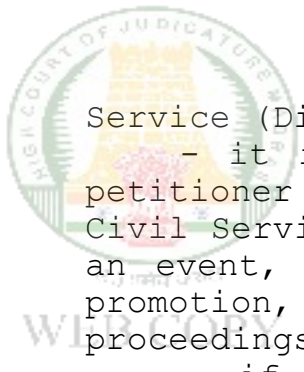
13. Though both the parties have raised allegations and counter allegations as against each other, this Court, at this stage, is not inclined to probe into the same, inasmuch as the proceedings are at the stage of charge memo.

14. At the same time, this Court, after perusing the charges framed as against the petitioner and going by the facts of the case, is of the considered opinion that even if the charges are proved, it would not result in the imposition of any major penalties, like, dismissal from service, removal from service, compulsory retirement or reduction to a lower rank in the seniority list or to a lower post or time-scale. At the most, the allegations levelled as against the petitioner can be termed under insubordination, for which, this Court is of the view that the respondents could have framed the charges against the petitioner under Rule 17(a) and not under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules. The guidelines issued by the Government and the decisions referred to supra make it very clear that framing of charges under Rule 17(b) will arise only in very serious cases, which is not the case herein.

15. In fact, the petitioner has also raised a ground that in order to stall his scope for promotion, the impugned charge memo was framed under Rule 17(b) and issued on 02.12.2019, for the alleged occurrence said to have taken place in the year 2017, after a lapse of two years. This ground raised by the petitioner could not be brushed aside *in toto*, since on issuance of charge memo under Rule 17(b), serious consequences will arise, where the delinquent will not be entitled to be considered for promotion, which is not the case when a charge memo is issued under Rule 17(a) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules.

16. In view of the foregoing discussions and reasonings, this Court is passing the following order:-

- the impugned charge memo dated 02.12.2019, framing charges as against the petitioner under Rule 17(b) of the Tamil Nadu Civil



Service (Discipline & Appeal) Rules, is hereby set aside;

- it is open to the second respondent to proceed against the petitioner by framing charges under Rule 17(a) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules, if so advised and in such an event, there will be no bar in considering the petitioner for promotion, if any, subject to the result of the disciplinary proceedings; and

- if any such disciplinary proceedings are initiated, the petitioner is expected to render his fullest co-operation and the respondents shall endeavor to complete the proceedings at an early date.

17.The writ petition stands allowed in the above terms. There shall be no order as to costs. Consequently, connected miscellaneous petitions stand closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

gk

To

- 1.The Principal Secretary/
Commissioner of Revenue Administration
and Disaster Management,
Ezhilagam,
Chepauk, Chennai.
- 2.The Director,
O/o. Rehabilitation and Welfare of Non Residents Tamils,
Ezhilagam,
Chepauk,
Chennai.
- 3.The Deputy Director,
O/o.Rehabilitation and Welfare of Non Residents Tamils,
Ezhilagam,
Chepauk,
Chennai.



4.The Special Deputy Collector (Rehabilitation),
O/o. Rehabilitation and Welfare of Non Residents Tamils,
Ezhilagam,
Chepauk, Chennai.

+1 CC to M/s.V.MALAIYENDRAN, Advocate (SR-39002[F]
dated 16/12/2021)

+1 CC to M/s.SPL GP (SR-39055[F] dated 16/12/2021)

W.P. (MD) No.13061 of 2020
15.12.2021

SAR(CO)

GC(30.12.2021) 19P 7C