



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.12.2021

CORAM:

THE HONOURABLE **DR.JUSTICE ANITA SUMANTH**

W.P.(MD)No.1505 of 2018

and

W.M.P.(MD)Nos.1584 & 1585 of 2018

R.Rajendran

...Petitioner

/Vs./

1.The Principal Secretary to the Government,
Department of Municipal Administration
and Water Supply Department,
Secretariat, Fort.St.George,
Chennai.

2.The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
TWAD Board House,
31, Kamarajar Salai, Chepauk,
Chennai.

3.The Enquiry Officer / Chief Engineer,
Southern Region,
Tamil Nadu Water Supply and Drainage Board,
Madurai.

...Respondents

PRAYER:- Writ Petition - filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari to call of the records on the file of the 2nd respondent Proceedings vide proceedings Charge Memo. No. 16566/Estt.(DP)/A4/2014-15 dated 23.12.2015 and impugned punishment order vide Proc. No. 16566/Estt (DP)/A4/2014-7 dated 14.11.2017 to quash the same.

For Petitioner	: Mr.S.Raja Karthikeyan
For R1	: Mr.K.S.Selvaganesan
	Additional Government Pleader
For R2 & R3	: Mr.B.Vijay Karthikeyan
	Standing Counsel

ORDER

Heard Mr.S.Raja Karthikeyan for the petitioner, Mr.K.S.Selvaganesan, learned Additional Government Pleader for R1/Principal Secretary to Government and N.Vijay Karthikeyan, learned Standing Counsel appearing for the Managing Director and the Enquiry Officer of the Tamil Nadu Water Supply and Drainage Board



(TNWAD Board/R2 & R3).

2. The petitioner was employed with the TWAD Board, and retired from the post of Executive Engineer on 31.05.2013. Post retirement, he was in receipt of a charge memo dated 23.12.2015, which levelled the following charges as against him.

ANNEXURE-I

STATEMENT OF THE CHARGES FRAMED AGAINST THIRU R. RAJENDRAN, THEN ASSISTANT EXECUTIVE ENGINEER [NOW EXECUTIVE ENGINEER (RETIRED)]

Charge No.1: that he has countersigned the bill for payment of 95% of the value of work without assessing actual value of balance work to be done and not informed the higher officers whether above cost comes within 5% of the value of work done, apart from the failure to detect the damage in certain components of the scheme needing rectification at an estimate cost of Rs.549.67 lakhs (Annexure-A) which ultimately is financial loss to Board and thereby committed misconduct under Regulation 6(x) 6(xxx) and 6(XL) of TWAD Board Employees' (Discipline and Appeal) Regulations, 1972.

Charge No.2: contrary to C.E's instructions to release the 2½ % withheld amount only after completion of maintenance period, he has recommended to release the 2½% withheld amount to the contractor even before completion of maintenance period and thereby committed misconduct under Regulation 6(i) and 6(x) of TWAD Board Employees' (Discipline and Appeal) Regulations, 1972.

Charge No.3: that the failure to renew / encash and remit to Board account the Bank guarantee for the withheld amount for Rs.51.64 lakhs (Annexure-B), while it lapsed on 15.10.2010 / 3.11.2010 / 25.11.2010 implicate culpable negligence, which ultimately caused financial loss to Board, and thereby he has committed misconduct under Regulation 6(x) and 6(XL) of TWAD Board Employees' (Discipline and Appeal) Regulations, 1972.

Charge No.4: that he has failed to show devotion to duty and high standard of integrity as expected from an officer of his rank as per Regulation 3 of TWAD Board Officers' and Servants' Conduct



Regulations, 1972."

3.The charge memo was enquired into and the defence of the petitioner was taken into consideration and rejected vide proceedings dated 14.11.2017 finding that charges 1 to 3 stood proved and 4 had not been proved. A punishment of recovery of a sum of Rs.5,000/- per month for two years was awarded to him. Though the order is subject to statutory appeal, the petitioner has chosen to approach this Court challenging the same alleging a fatal jurisdictional flaw, of the bar of limitation.

4.The specific ground argued is that charge memo dated 23.12.2015 is beyond the time limit stipulated under Rule 9(2)(b) of the Tamil Nadu Pension Rules (in short 'Rules'). Rule 9 provides for the right to withhold or withdraw pension by the State and sub-rule (2) thereof sets out two situations for such withdrawal.

5.Sub-rule (2)(a) is not relevant to the present case and sub-rule (2)(b) deals with a situation where the recovery is instituted post retirement of the Government servant, reading as follows:

"9.Right of Government to withhold or withdraw pension.-

.....

(2) (a)

.....

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment,-

(i) shall not be instituted save with the sanction of the Government;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

....."

6.The stipulation therein is that departmental proceedings shall be initiated within four years from the occurrence of the event that forms the basis for such disciplinary proceedings. In the present case, the event in question is stated to be non-invocation of bank guarantees on account of certain lapses in a comprehensive water supply scheme in Dindigul District.

7.The period of work stretched between 2008 and 2010 and thus, the bank guarantees ought to have been invoked prior to 15.10.2010/03.11.2010/25.11.2010, on which dates the guarantees expired/lapsed (occurrences in question). The non-invocation of the aforesaid bank guarantees on or before the stated dates by the others, who are stated to be responsible for the



lapses, forms the basis of the charges.

8. In such an event, bearing in mind the admitted dates as aforesaid, it was incumbent upon the authorities to have initiated timely action within four years from the said dates, which would be 14.10.2014, 02.11.2014, 24.11.2014 respectively, whereas the charge memo in the present case has been issued only on 23.12.2015.

9. Learned standing counsel for TWAD Board would seek to explain the delay in the following manner. He draws attention to para 4 of the counter affidavit filed by R2, wherein it is stated that though the occurrences in question took place between 2008 and 2010, the State Quality Maintenance Squad Wing of Head Office (SQMS) had detected the irregularities and submitted its report only on 20.10.2015.

10. The report *inter alia* states that the then Deputy Chief Engineer/SQMS had inspected the scheme between 20th and 22nd of January 2014 and submitted her findings fixing responsibility upon the officers, who had caused such lapses and resultant loss.

11. The Joint Managing Director of TWAD Board inspected the scheme on 11th and 12th of April, 2014. It was only upon their inspection and report that the disciplinary authority was alerted to the non-invocation of the bank guarantee and resultant loss. The stand taken by SQMS is that the eligible date, from which the period of four years is to be computed would be the date of retirement of the concerned employee.

12. This stand is rejected straightaway as a patently incorrect interpretation of Rule 9(2)(b) of the Rules. The Rule uses the term 'event' and such 'event' certainly cannot refer to retirement of the concerned employee. Had it been so, legislature would have stated simply as such, and there would have been no necessity to use a wider term such as 'event'. The 'event' in question thus has to be the commission of the alleged irregularity, which in this case would mean the non-invocation of the bank guarantees, admittedly on 15.10.2010, 03.11.2010 and 25.11.2010 (see charge no.3 extracted supra in this order).

13. Thus, while rejecting the stand in counter, I am inclined to accept the submission of the petitioner to the effect that charge memo dated 23.12.2015 has been issued beyond the period of four years as stipulated in Rule 9(2)(b) of the Rules. The impugned charge memo and all proceedings thereafter are thus hit by bar of limitation and are quashed.

14. Yet another argument put forth by learned Standing Counsel for TWAD Board is that the 'event' as described in Rule 9(2)(b) of the Rules would mean the detection of the irregularities by the SQMS



and the submission of its report. This argument is also rejected for the reason that the 'event' contemplated under sub-clause (b), in my view, refers to the error or the delinquency committed in respect of which show cause notice is issued.

15. The error in this case has been crystallized in the charge memo as being the lapse of the bank guarantees and thus, there is no doubt in my mind that the date of lapsing of the bank guarantees must be construed to be the 'event' for the purpose of issuance of show cause notice.

16. A copy of letter bearing No.15574/WS3/2014-2, dated 05.11.2014 is brought to my attention, which refers to sanction having been rejected in the case of 13 retired officials, while according sanction for disciplinary action in respect of only two officials, one of whom is the petitioner. It is unclear as to why the State had granted sanction only in respect of two persons, and the communication does not throw any light on this aspect of the matter.

17. One thing is however, clear. The bank guarantees have lapsed on 15.10.2010, 03.11.2010 and 25.11.2010. The inspection of the project was in January 2014 and the second inspection of the project by the Joint Managing Director was in April 2014. Sanction for disciplinary action was sought on 26.06.2014 and 11.09.2014 and granted on 05.11.2014.

18. In such event, I am at a loss to understand why the impugned show cause notice has been issued only on 23.12.2015. Clearly, all is not well in the conduct of the proceedings and though inclined to probe further into the matter and fix responsibility on the persons who had delayed the proper conduct of proceedings, I refrain reluctantly solely on account of the fact that those concerned would have retired long since.

19. This Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

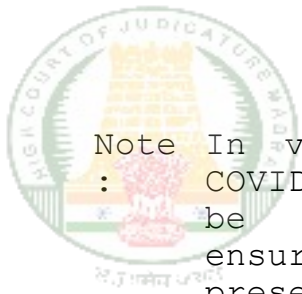
Assistant Registrar(CS-III)

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/ /2022

Sub Assistant Registrar(CS)

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To

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and Water Supply Department,
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Chennai.

2.The Managing Director,
Tamil Nadu Water Supply and Drainage Board,
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3.The Enquiry Officer / Chief Engineer,
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+1 CC to M/s.RAJAKARTHIKEYAN, Advocate (SR-38168[F] dated 10/12/2021)

+1 CC to M/s.B.VIJAY KARTHIKEYAN, Advocate (SR-38250[F] dated 10/12/2021)

+1 CC to M/s.SPL GP (SR-38364[F] dated 13/12/2021)

Order made in
W.P. (MD) No.1505 of 2018
Dated: 10.12.2021

nsn(CO)

TR(01.02.2022) 6P 7C