



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

W.P. (MD) No.13105 of 2018 and

WMP(MD) No.11978 of 2018

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S.Periyasamy

..Petitioner

Vs

The Dean,
M.G.M.Government Hospital,
Puthur,
Thiruchirappalli.

..Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned second charge memo of the respondent in Na.Ka.No.8975/N2/2015 dated 21.04.2018 and quash the same as being illegal, arbitrary and unconstitutional and direct the Respondent for regularizing his service in the promotional post of Ambulance Driver from 21.08.2014 and sanction increment from 01.01.2016, within a time frame.

For Petitioner : Mr.M.Sridharan

For Respondent : Mr.P.Mahendran

Additional Government Pleader

O R D E R

The petitioner herein, while serving as an Ambulance Driver in the respondent Hospital, was originally served with a charge memo under 17(a) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules, (hereinafter referred to as the 'Rules') on set of charges, on 28.06.2016. Pursuant to his explanation dated 05.07.2016, the charges were dropped. Subsequently, on 21.04.2018, the petitioner was served with same set of charges. But the respondent had chosen to proceed against him under 17(b) of the Rules, though the delinquency was one and the same for the original charges under Section 17(a) Rules, as well as the present charges under 17(b) of the Rules.

2.The learned counsel for the petitioner would submit that the second charge memo without any notice or following the procedure contemplated under Rule 17(b) of the Rules proceeded with the departmental action cannot be sustained. The learned counsel would also submit that the service of the petitioner in the post of Ambulance Driver has not been regularised so far and the eligible increment from 01.01.2016 is yet to be sanctioned.

3.The learned Additional Government Pleader for the respondent would submit that the action of the respondent in non-



sanctioning of increment to the petitioner, in view of the pendency of the departmental enquiry, cannot be found fault with.

4. For the sake of convenience, Rules 17(a) & 17(b) of the Rules are extracted hereunder:-

"17. (a): Procedure to be followed to impose minor penalties:-

In every case where it is proposed to impose on a member of a service or a person holding a civil post under the State any of the penalties specified in items (i), (ii), (iii), (v) and (ix) in rule 8 or in rule 9, he shall be given a reasonable opportunity of making any representation that he may desire to make and such representation, if any, shall be taken into consideration before the order imposing the penalty is passed ;

Provided that the requirements of this sub-rule shall not apply where it is proposed to impose on a member of a service any of the penalties aforesaid on the basis of facts which have led to his conviction by a court martial or where the officer concerned has absconded or where it is for other reason impracticable to communicate with him:

Provided further that, in every case where it is proposed, after considering the representation, if any, made by the Government servant, to withhold increments of pay and such withholding of increments is likely to affect adversely the amount of pension payable to the Government servant or to withhold increments of pay without cumulative effect for a period exceeding 3 years or to withhold increment of pay with cumulative effect for any period, the procedure laid down in sub-rule (b) shall be followed before making any order imposing on the Government servant any such penalty.

Rule 17(b): Procedure to be followed to impose major penalties:-

(i) Without prejudice to the provisions of the Public Servants' Inquiries Act, 1850, (Central Act XXXVII of 1850), in every case where it is proposed to impose on a member of a service or on a person holding a Civil Post under the State any of the penalties specified in items (iv), (vi), (vii) and (viii) in rule 8, the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged, together with a statement of the allegation, on



which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time to put in a written statement of his defence and to state whether he desires an oral inquiry or to be heard in person or both. An oral inquiry shall be held if such an inquiry is desired by the person charged or is directed by the authority concerned. Even if a person charged has waived an oral inquiry, such inquiry shall be held by the authority concerned in respect of charges which are not admitted by the person charged and which can be proved only through the evidence of witnesses. At that inquiry oral evidence shall be heard as to such of the allegations as are not admitted, and the person charged shall be entitled to cross-examine the witnesses to give evidence in person and to have such witnesses called, as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reason to be recorded in writing, refuse to call a witness. Whether or not the person charged desired or had an oral inquiry, he shall be heard in person at any stage if he so desires before passing of final orders.

A report of the inquiry or personal hearing (as the case may be) shall be prepared by the authority holding the inquiry or personal hearing whether or not such authority is competent to impose the penalty. Such report shall contain a sufficient record of the evidence, if any, and a statement of the findings and the grounds thereof. Whenever any inquiring authority, after having heard and recorded the whole or any part of the evidence in an inquiry ceases to exercise jurisdiction therein, and is succeeded by another inquiring authority which has, and which exercises such jurisdiction, the inquiring authority so succeeding may act on the evidence so recorded by its predecessor or partly recorded by its predecessor and partly recorded by itself;

Provided that if the succeeding inquiring authority is of the opinion that further examination of any of the witnesses whose evidence has already been recorded is necessary in the interest of justice, it may recall, examine, cross-examine and re-examine any such witnesses as hereinbefore provided:

Provided further that where there is a complaint of sexual harassment within the meaning of rule 20-B of the



Tamil Nadu Government Servants' Conduct Rules, 1973, the complaints Committee established in each Government department or Office for inquiring into such complaints, shall be deemed to be the inquiring authority appointed by the Disciplinary Authority for the purpose of these rules and the Complaints Committee shall hold the inquiry as far as practicable in accordance with the procedure laid down in these Rules.

Provided also that the Government Servant may take the assistance of any retired Government servant to present the case on his behalf but may not engage a legal practitioner for the purpose unless the inquiring authority is a legal practitioner or the inquiring authority, having regard to the circumstances of the case, so permits.

Explanation .- The Government servant shall not take the assistance of any retired Government servant who has two pending disciplinary cases on hand, in which he has to give assistance."

5. When the Disciplinary Authority proposes to impose on a member of a Civil Service, under the State, for any of the penalties referred therein, the following procedure requires to be adopted:

(a) The grounds on which the action is proposed, should be reduced in the form of definite charges;

(b) The charges are required to be communicated to the Delinquent;

(c) The charge memo should be accompanied with the statement of the allegation, on which, the charges are based (or) any other like circumstances;

(d) The charge memo shall call upon the Delinquent to give his written statement of defence;

(e) The charge memo should seek for the Delinquent's desire of the mode of enquiry to be conducted;

(f) When a Delinquent opts for an oral enquiry, such an oral enquiry shall be conducted;

(g) Even when an oral enquiry is waived, an enquiry should be held on un-admitted charges and the Delinquent would be entitled to cross-examine the witnesses;

(h) The Delinquent, thereafter or at any stage, should



be given the opportunity of personal hearing, before passing of final orders; and

(i) An enquiry report shall be prepared together with a statement of findings and grounds there of.

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6. In the instant case, originally, the petitioner was subjected to charges under Rule 17(a) on 28.06.2016 and after a considerable time, new charges were framed on 21.04.2018 under Rule 17(b) on the same set of statement of allegations. Since the petitioner herein has been proceeded with the present charge memo under Rule 17(b) of the Rules, without adopting the procedure contemplated in the Rules, the charge memo itself cannot be sustained.

7. For the foregoing reasons, this impugned Charge Memorandum issued by the respondent vide Na.Ka.No.8975/N2/2015 dated 21.04.2018 is quashed. However, if the respondent is of the view that the petitioner should be subjected to departmental action under Rule 17(b) of the Rules, and they are hereby granted liberty to do so, by strictly adhering to the procedure contemplated under Rule 17 (b).

8. The writ petition stands allowed accordingly. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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NOTE:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Dean,
M.G.M.Government Hospital,
Puthur,Thiruchirappalli.



+1 CC to M/s.SPL GP (SR-8177[F] dated 02/03/2021)

+1 CC to M/s.M.SRIDHARAN, Advocate (SR-8448[F] dated 03/03/2021)

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Order made in
W.P. (MD) No.13105 of 2018 and
WMP (MD) No.11978 of 2018
01.03.2021

ns (CO)

KK (07.04.2021) 6P 4C

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