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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON	04.04.2022
PRONOUNCED ON	11.04.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.NO.23187 OF 2015

S.Subbiah

...Petitioner

Vs.

1. The Secretary to Government,
Revenue Department,
Secretariat,
Chennai-600 009.

2. The Director of Survey & Settlement,
Chepauk,
Chennai-600 005.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, calling for the records relating to the first respondent vide G.O.[1D] No.243, Revenue [Service 2(2)] Department, dated 03.06.2015 and to quash the same and consequently, direct the respondents to accord the petitioner's promotion to the post of Superintendent in the year 2008.

For Petitioner : Mr.S.Vijayakumar

For Respondents : Mr.T.Chezhiyan, AGP

O R D E R

Heard Mr.S.Vijayakumar, learned counsel for the petitioner and Mr.T.Chezhiyan, learned Additional Government Pleader appearing on behalf of the respondents.

2. The brief facts of the case are as follows:-

The petitioner herein was levelled with two charges through a charge memo dated 16.02.2005 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules [hereinafter



referred to as "TNCS (D&A) Rules"]. The basis of the charges were that, while the petitioner was working as an Assistant under the jurisdiction of the Assistant Settlement Officer (ASO), he is alleged to have issued patta by misusing his office and without submitting a report on the application seeking for patta. The petitioner had rendered his explanation to the charge memo on 15.09.2005 itself. By an order passed in G.O.(D) No.582, Revenue [Ser/2(2)] Department, dated 31.10.2008, an inquiry officer was appointed to inquire into these charges. Since there was no further development in the inquiry, the petitioner had sought for quashing the charge memo in W.P.No.28509 of 2010 and by an order dated 15.12.2010, this Court had directed the Government to take a final decision in the inquiry within a period of six months. Again the proceedings were kept pending for more than five years and since the petitioner's promotion to the post of Superintendent in the year 2008 was deferred, the petitioner had filed a Writ Petition in W.P.No.1596 of 2015, seeking for quashing the charge memo and granting him promotion. In this background, the first respondent herein had passed the impugned order dated 03.06.2015, imposing the punishment of stoppage of increment for a period of three years with cumulative effect. This order is put under challenge in the present Writ Petition.

3. The learned counsel for the petitioner predominantly raised two grounds. Firstly, that the petitioner herein, who was an Assistant did not have the authority to issue patta and his limited responsibility is to forward the application seeking for patta to the ASO with a note on the nature of application. Since the petitioner did not have authority to issue pattas and also since he had no powers to order the superiors with the note on the implication of the procedure or powers of the ASO to grant patta, the charges itself are baseless. Secondly, there is an inordinate delay of about 10 years from framing of the charges till the impugned order was passed and therefore the entire inquiry, resulting in the impugned punishment, is liable to be quashed.

4. The learned Additional Government Pleader, on the other hand submitted that, the charges against the petitioner are very serious in nature, whereby a loss of Rs.93,04,115/- has occurred to the Government. It is his submission that the petitioner ought to have recorded that the application seeking for patta has been received beyond the appeal time and about the relevant provision of the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963, [TN Act No.26 of 1963], which prohibits issuance of a Ryotwari Patta under the Act, which he had failed and therefore the charges against the petitioner is well substantiated. On the punishment, he submitted that since the petitioner was only a Section Officer,



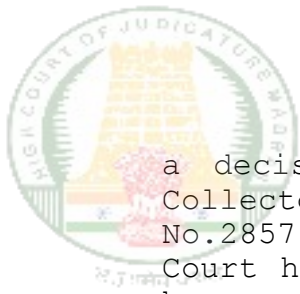
he was imposed with the award of stoppage of increment for a period of three years with cumulative effect, which is proportionate to the levelled charges.

5. I have given careful consideration to the submissions made by the respective learned counsels.

6. The background of the charges levelled against the petitioner is that the Panchappur Village in Srirangam Taluk of Trichy District was taken over by the Government under the provisions of the Tamil Nadu Inam Estates (Abolition and Conversion into Ryotwari) Act, 1963, [TN Act No.26 of 1963] and settled in the year 1969. After about 35 years, since the introduction of Ryotwari Settlement in that Village, an application from one Mr.Narayanasamy seeking for issuance of Ryotwari patta was received. The application was acted upon by the Assistant Settlement Officer/Deputy Collector, who is a Quasi-Judicial Authority and patta was granted through the proceedings of the ASO dated 03.06.2004, thereby causing a loss of Rs.93,04,115/- to the Government. In connection with this illegal grant of patta, the Assistant Settlement Officer, Section Superintendent and the Section Assistant namely, the petitioner herein, were proceeded under Rule 17(b) of the TNCS (D&A) Rules.

7. As pointed out by the learned counsel for the petitioner, the charge memo dated 16.02.2005 seems to implicate the petitioner for having issued a "patta" to the applicant. The charge memo further commences by stating that, it is the District Revenue Officer, who is entrusted with the powers of granting patta and that the petitioner had misused his powers and granted patta. These statements in the charge memo can never be prima-facie substantiated, since the petitioner is not entrusted or empowered with the task of granting pattas. The charge also further states that the petitioner had not submitted a report on the application seeking patta to his superior officers namely, the Settlement Officer, Special Commissioner and Director of Survey and Settlement, Special Commissioner and Commissioner of Land Administration for obtaining delay condonation orders or specific orders for issuance of patta. This statement is again unsustainable since as a Section Assistant, the petitioner has neither any power to recommend or make remarks on the application which is to be dealt with by the ASO, who is not only his superior officer, but also a Quasi-Judicial Authority. The very allegation in this regard would also amount to exercise of powers which the petitioner is not vested with and further, would amount to interfering with the Quasi-Judicial functions of the ASO.

8. The learned counsel for the petitioner placed reliance on



a decision of this Court in Y.Abudl Rahim vs. The District Collector, Sivagangai District, Sivagangai passed in W.P.(MD) No.2857 of 2006, wherein in an identical circumstances, this Court had held that an Assistant, who is a sub-ordinate and who has no powers to issue a patta, cannot be implicated for like charges. The relevant portion of the order reads as follows:-

"9. On the other hand, the learned Additional Government Pleader would submit that once charge memo has been framed, it is the duty of the petitioner to give explanation. The fact of delay can also be a ground which can be agitated by the petitioner before the enquiry authority. The enquiry authority will definitely consider the same and there is no reason for the petitioner to doubt that he will be imposed with punishment, especially when it is the case of the petitioner that he is not at all involved in the issuance of patta as such.

10.At the out set the Collector's decision is clear, namely, that the issuance of patta was admittedly by the order of Assistant Settlement Officer dated 12.02.1996 which was performed as a statutory function by virtue of a statutory act. This was on 12.02.1996. On the face of it, one can understand that a person, who has held a post of Assistant has absolutely nothing to do with the issuance of patta under the Act. As a subordinate working in the office, it was only his duty to implement the orders passed by the higher authority. In view of this factual situation, there is absolutely no difficulty in coming to the conclusion that the petitioner cannot be implicated even by remotely."

9. Likewise in the case of V.Saravanan Vs. The Principal Secretary to Government, Department of Revenue, Government of Tamil Nadu, Secretariat, Chennai and 2 others passed in W.P.No.16280 of 2011 dated 19.10.2012, a learned Single Judge of this Court placed reliance on the powers of the sub-ordinate staff, as well as the scope of their powers to record their notings in the file, by placing reliance on various decisions of the Hon'ble Supreme Court, had held in the following manner:-

"14. The Government acts through its instrumentalities. The file would be routed through different officials right from Clerks



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to the Secretary and then to the concerned Minister. The Subordinate officials are entitled to record their views in the note file. It is open to an officer to express his views with respect to a subject matter in a particular manner. Another officer is entitled to indicate a different opinion. It is for the Government to take a decision in the matter ultimately. In case the ultimate authority to take a decision is the Secretary, necessarily, the Secretary has to examine the opinion recorded by the Subordinates at various levels and to form a definite opinion to accept one view or the other. The views expressed by the concerned officers are all tentative in nature and it would not bind the Government. Merely because the officer has given a particular opinion it cannot be said that he has taken a decision consciously to help a particular person. In case the officers are subjected to disciplinary action on account of their expression of opinion, no officer would be dare enough to indicate his opinion with respect to a subject matter. Things would be different in case records were manipulated to grant undue benefits in exchange of pecuniary gain.

The Authorities:

15. The Supreme Court in *Shanti Sports Club v. Union of India*, (2009) 15 SCC 705, considered the question as to whether a note recorded in the file would confer any right or adversely affect the right of a person. The Supreme Court observed that notings are only opinion of the concerned officer and it would not constitute a decision.

"52. As a result of the above discussion, we hold that the notings recorded in the official files by the officers of the Government at different levels and even the Ministers do not become decisions of the Government unless the same is sanctified and acted upon by issuing an order in the name of the President or Governor, as the case may be, authenticated in the manner provided in Articles 77(2) and 166(2) and is



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communicated to the affected persons. The notings and/or decisions recorded in the file do not confer any right or adversely affect the right of any person and the same can neither be challenged in a court nor made basis for seeking relief. Even if the competent authority records a noting in the file, which indicates that some decision has been taken by the authority concerned, the same can always be reviewed by the same authority or reversed or overturned or overruled by higher functionary/authority in the Government."

16. The scope and ambit of notings recorded in the file, came up for consideration in *Jasbir Singh Chhabra Vs. State of Punjab* 2010 (2) Scale 754 = 2010 (4) SCC 192. The Supreme Court said

"20.It must always be remembered that in a democratic polity like ours, the functions of the Government are carried out by different individuals at different levels. The issues and policy matters which are required to be decided by the Government are dealt with by several functionaries some of whom may record notings on the files favouring a particular person or group of persons. Someone may suggest a particular line of action, which may not be conducive to public interest and others may suggest adoption of a different mode in larger public interest. However, the final decision is required to be taken by the designated authority keeping in view the larger public interest. The notings recorded in the files cannot be made basis for recording a finding that the ultimate decision taken by the Government is tainted by malafides or is influenced by extraneous considerations. The Court is duty bound to carefully take note of the same."

17. The Supreme Court in *Union of India vs. Vartak Labour Union* 2011 (3) Scale 246 = (2011] 4 SCC 200 reiterated the legal position



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that inter departmental communications and notings do not have the sanction of law. The Supreme Court said

"14. It is trite that inter-departmental communications and notings in departmental files do not have the sanction of law, creating a legally enforceable right. In Sethi Auto Service Station & Anr. Vs. Delhi Development Authority & Ors.³ (2009) 1 SCC 180, a Division Bench of this Court, in which one of us (D.K. Jain, J.) was a member has observed thus:

Needless to add that internal notings are not meant for outside exposure. Notings in the file culminate into an executable order, affecting the rights of the parties, only when it reaches the final decision-making authority in the department, gets his approval and the final order is communicated to the person concerned."

10. On a co-joint reading of the decisions of the Hon'ble Supreme Court as recorded above, a sub-ordinate clerk cannot be expected to render his remarks, which would be in the nature of his views, in the note file and that any consequential departmental action for alleging failure to make the relevant remarks in the note file, would be illegal. In this background, the very basis on which the charges were framed against the petitioner alleging that he had not recorded that the application seeking patta has been received beyond appeal time and crossed the limitation period and is against law, cannot be sustained.

11. The learned counsel for the petitioner also raised a ground of delay in concluding the departmental proceedings against the petitioner. Though the charges were levelled against the petitioner through the impugned charge memo dated 16.02.2005, the ultimate punishment was imposed only on 03.06.2015, which is after more than 10 years. Pursuant to the charge memo dated 16.02.2005, the petitioner has rendered his explanation on 15.09.2005 itself. Thereafter, there was no further proceedings, which prompted the petitioner to file a Writ Petition in W.P.No.28509 of 2010, whereby this Court had directed the respondents to complete the inquiry within a period of six months. In the meanwhile, the first respondent herein



had issued a letter dated 13.12.2010, enclosing the copy of the report of the inquiry officer dated 19.03.2010, to which the petitioner has given his further representation on 17.02.2011. Even after the receipt of the further representation, there was no progress and when the petitioner sought for his promotion by filing a Writ Petition, the impugned punishment came to be imposed on 03.06.2015. On an overall consideration of the manner in which the respondents had dealt with the charges levelled against the petitioner for over a period of 10 years and above, the delay requires to be termed as "inordinate". The only explanation given for the delay in the counter affidavit of the respondents is that the delay was due to administrative reasons as the delinquents are at different cadres. By taking into account that it had taken more than 10 years for the respondents to conclude the departmental action and the petitioner having missed his promotion to the post of Superintendent due to this pendency, this Court is of the view that a serious prejudice would have been caused to the petitioner owing to the delay and hence such an administrative reason, is unacceptable.

12. In this regard, a learned Single Judge of this Court, in the case of Kootha Pillai Vs. The Commissioner, Municipal Administration and 4 others passed in W.P.No.15231 of 2006 dated 05.11.2008, had an occasion to refer to various decisions of the Hon'ble Supreme Court and ultimately held that the inordinate delay in initiating and completing the disciplinary proceedings, would cause prejudice to the delinquent and therefore, the proceedings itself, is vitiated. Some of the decisions referred to by the learned Single Judge in Kootha Pillai (supra) are as follows:-

"45. In State of Madhya Pradesh v. Bani Singh and another reported in 1990 (Supp) SCC 738, the Supreme Court had come down heavily against the latches on the part of the employer in conducting departmental enquiry and after finding out that there was no satisfactory explanation for the inordinate delay, held that it would be unfair to order departmental enquiry to proceed further.

46. In State of A.P., v. N.Radhakrishnan reported in 1998 (4) SCC 154, the Supreme Court, at Paragraph 19, held as follows:

"Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer



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unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations."

47. In Union of India v. CAT reported in 2005 (2) CTC 169 (DB), this Court held that, "The delay remains totally unexplained. Therefore, we have no hesitation at all in concluding that the ground of inordinate delay in proceeding with the departmental enquiry as referred to above by us, would come in the way of the Govt., to continue with the enquiry any further....."

48. In P.V.Mahadevan v. M.D. Tamil Nadu Housing Board reported in 2005 (4) CTC 403, this Court after referring to various decisions, held that,

"The protracted disciplinary enquiry against a government employee should, therefore be avoided not only in the interest of the government employee but in public interests and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

15. We therefore, have no hesitation to quash the charge issued against the appellant. The appeal is allowed. The appellant will be entitled to all the retiral benefits in accordance with law. The retiral benefits shall be disbursed within three months from this date. No cost."

49. In the Special Commissioner and Commissioner of Commercial Taxes, Chempauk v.



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N.Sivasamy reported in 2005 (5) CTC 451, the Division Bench of this Court held as follows:

"Though the alleged lapse occurred in the year 1995 and certain charges related to the period 1993-94, the charge memo was issued on 15.07.1997 and served on 23.07.1997, just 7 days before the date of retirement. The contention of the appellant that only with a view to cause hardship, agony and anguish, the charge memo was issued cannot be ignored..... We have already pointed out that though the applicant failed Original Application No.6284/97, challenging the charge memo, dated 15.07.1997, admittedly, no stay was granted. Despite the above fact that the department had not proceeded with the disciplinary proceedings, there is an inordinate and unexplained delay on the part of the department. According to the applicant, he is 67 years of age as on the date and had rendered 38 years of service in the department. He had undergone sufferings from mental worry, agony, anguish and hardship for all these years. We are satisfied that there is no need to pursue the charge memo, dated 15.07.1997."

50. In yet another decision in R.Tirupathy and others v. the District Collector, Madurai District and others reported in 2006 (2) CTC 574, this Court was pleased to quash the charge memo, dated 02.02.2005 on the ground that the charges relate to purchase of uniforms during the year 1994-95 and 1995-96 and the inordinate delay on the part of the department in issuing a charge memo was not properly explained.

51. The Supreme Court in M.V.Bijlani v. Union of India and other reported in 2006 (5) SCC 88, quashed the order of removal from service, confirmed by the appellate authority on various grounds particularly, on the ground that initiation of disciplinary proceedings after six years and continuance thereof, for a period of seven years prejudiced the delinquent officer.

52. In M.Elangovan v. The Trichy District Central Co-operative Bank Ltd., reported in 2006 (2) CTC 635, this Court, while quashing the



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second show cause notice on the ground of inordinate and unexplained delay in initiating and completing the disciplinary proceedings, allowed the Writ Petitions holding that the petitioners therein were entitled to all the benefits in accordance with law. The same view has been expressed by this Court in yet another decision in Parameswaran v. State of Tamil Nadu reported in 2006 (1) CTC 476."

13. As held in the aforesaid decisions, the delay of 10 years in the present case, which is inordinate in nature and had caused serious prejudice to the petitioner by depriving him of his promotion, would be fatal to the entire action initiated by the respondents against the petitioner. On this ground also, the petitioner would be entitled to succeed.

14. For all the foregoing reasons, the impugned order dated 03.06.2015 passed by the first respondent, is quashed. Consequently, there shall be a direction to the first respondent herein to extend all the service and monetary benefits, including re-fixation of the petitioner's scale of pay that may have been withheld owing to the punishment imposed through the impugned order dated 03.06.2015. The respondents shall also pass appropriate orders, granting notional promotion to the petitioner for the post of Superintendent in the year 2008. Such orders shall be passed atleast within a period of four weeks from the date of receipt of a copy of this order. The Writ Petition stands allowed. There shall be no orders as to costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

DP

To

1. The Secretary to Government,
Revenue Department,
Secretariat,
Chennai-600 009.
2. The Director of Survey & Settlement,
Chepauk,
Chennai-600 005.



+1cc to Mr.S.Vijayakumar, Advocate, S.R.No.24643

+1cc to the Government Pleader, S.R.No.25761

[09/06/2022]

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KV (CO)
PM/19/04/2022