



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 11.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.24366 of 2013
and
M.P.Nos. 1 of 2013 & 1 of 2014

V.Balasubramanian

...Petitioner

-Vs-

1.Government of Tamilnadu,
Rep. by its Secretary,
Department of Tamil Development,
Information and Public Relations,
Fort St. George,
Chennai - 600 009.

2.The Director of Information and
Public Relations,
Fort St. George,
Chennai - 600 009.

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the memo dated 10.06.2013 issued by the 2nd respondent in Letter No.32499/Nir/1/2012, quash the same and consequently direct the respondents to promote the petitioner as Public Relations Officer from the date on which his juniors were promoted to that post with due seniority and all other consequential benefits.

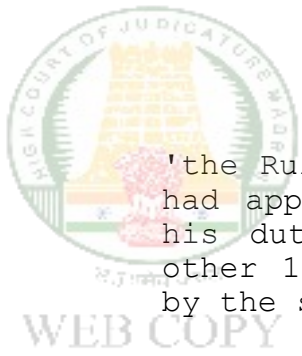
For Petitioner : Mr.V.Ajoy Khose

For Respondents: Mr.C.Selvaraj,
Additional Government Pleader

ORDER

With the consent of both the parties, this writ petition is taken up for final disposal.

2. The petitioner herein, along with 10 others, were levelled with charges under Rule 17(a) of the Tamil Nadu Civil Service (Discipline & Appeal) Rules (hereinafter referred to as



'the Rules') on 04.03.2013, alleging that he, along with others, had applied for leave en-masse and thereby failed to discharge his duty with devotion. In the enquiry conducted against the other 10 co-delinquents, they were exonerated from the charges, by the second respondent on 22.05.2014.

3. The learned counsel for the petitioner submitted that insofar as the petitioner herein is concerned, the second respondent had earlier issued a charge memo under Rule 17(a) and subsequently, by inserting certain other allegations, had issued a second charge memo under Rule 17(b) on 10.06.2013, which is impermissible in the absence of any provisions under the Rules. It is his further submission that neither a prior notice was given for such conversion nor was the earlier charge memo under Rule 17(a) dropped or recalled. The learned counsel also submitted that when the other co-delinquents were exonerated, the present charge memo also requires to be quashed.

4. On the contrary, the learned Additional Government Pleader for the respondents submitted that since the charge against the petitioner is that he was the reason for having instigated others to go on en-masse leave, the charge was serious in nature and therefore, the respondents have converted the same into one under Rule 17(b).

5. Admittedly, there is no provision under the Rules to convert a charge from Rule 17(a) to Rule 17(b), though the rule provides that the charges under Rule 17(b) can be altered to Rule 17(a). This proposition has been reiterated by the Hon'ble Division Bench of this Court in A.Bommusamy Vs. The Government of Tamil Nadu, Co-operation, Food and Consumer Protection Department reported in 2007 (3) CTC 518, by holding that alteration of the charges under Rule 17(a) into one under Rule 17(b) is against the procedure contemplated under the Rules. The aforesaid decision of the Hon'ble Division Bench came to be followed by a learned single Judge of this Court in the case of M.Meera Mytheen Vs. State of Tamilnadu, Labour & Employment Department and another passed in W.P.No.4242 of 2009, dated 09.10.2009, wherein it has been held as follows:-

"4. As contended by the learned counsel for the petitioner, the proposed punishment of the charges framed earlier and subsequent by the second respondent are distinct and different from the charges framed under Rule 17(a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules wherein minor penalties are proposed whereas for the charges framed under the impugned charge memo major penalties are proposed. It is no doubt true that in the present case, an enquiry has been conducted and based upon that enquiry impugned charge memo has been issued. However, inasmuch as



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the said alteration involves civil consequences affecting the rights of the petitioner, this Court is of the considered opinion that the petitioner should have been given an opportunity before passing impugned charge memo. The Hon'ble Division Bench in the judgement reported in 2007 (3) CTC 518 (supra) observed is as follows:

"As seen from the facts and circumstances of the case, though initially the charges were framed under Rule 17(a) of the Rules, but later on the charges were altered to the one under Rule 17(b) and this was done without following the procedure as contemplated in the Rules, without conducting any further enquiry and without conducting any enquiry and without giving any opportunity to the petitioner. Further, the third respondent is not the competent authority to issue the charge memo under Rule 17(b) of the Rules as he was not the appointing authority of the petitioner and even on this ground also the order of punishment is liable to be set aside."

5. On a consideration of the said judgement, this Court is of the opinion that the second respondent ought to have been given an opportunity to the petitioner before altering the charge memo. It is no doubt true that in the present case, an enquiry has been conducted and based upon that enquiry impugned charge memo has been given, coming to the prima facie conclusion."

6. It is also not in dispute that when the impugned charge memo under Rule 17(b) was passed on 10.06.2013, the respondents had neither dropped the earlier charge under Rule 17(a) nor issued a prior show cause notice. This position has also been considered by the Hon'ble Supreme Court in the case of Lt. Governor, Delhi and others Vs. HC Narinder Singh reported in (2004) 13 SCC 342, wherein, in paragraph 4 of the said judgement, it was held that the second proposed action, based on the same cause of action proposing to deny promotion or reversion, would amount to double jeopardy.

7. Thus, when the respondents herein had originally initiated the domestic enquiry by levelling the charges under Rule 17(a), levelling the second set of charges for the same cause of action under Rule 17(b), without recalling or dropping these charges, is apparently in violation of the decisions cited



above and is also done without any powers under the relevant rules. In this background, the charge memo under Rule 17(b) itself, being against the settled principles of law, cannot be sustained.

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8. It is now brought to the notice of this Court that in the domestic enquiry initiated, based on the charges under Rule 17 (a) as against the other co-delinquents, the delinquents came to be exonerated on the basis of the reply given by them, through an order dated 22.05.2014. This leaves the petitioner to face the charges initiated under Rule 17(a) in the charge memo dated 04.03.2013. When all the 10 delinquents have been exonerated, the question of the petitioner instigating them, would not arise. Now that this Court has found that the subsequent charge memo under Rule 17(b) as illegal and cannot be substantiated, the petitioner also would be entitled for the benefit of exoneration, which decision was taken insofar as the 10 co-delinquents are concerned.

9. In the light of the above findings, the impugned order dated 10.06.2013 passed by the second respondent herein is quashed. In view of the quashing of the present charge memo, the petitioner would be entitled for all the service and monetary benefits, if withheld, including the promotional benefits. In this connection, there shall be a direction to the second respondent herein to pass appropriate orders, dropping the charges against the petitioner herein under the charge memo in letter No.32530/Nir.2/2012 dated 04.03.2013, issued under Rule 17(a) of the Rules and further grant all service and monetary benefits, if any, including the promotional benefits to the petitioner, within a period of 4 weeks from the date of receipt of a copy of this order.

10. The Writ Petition stands allowed, accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

hvk

To

1.The Secretary,Government of Tamil Nadu,
Department of Tamil Development,
Information and Public Relations,
Fort St. George,
Chennai - 600 009.



2.The Director of Information and
Public Relations,
Fort St. George,
Chennai - 600 009.

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+1 cc to Mr.V.Ajoy Khose, Advocate Sr.NO. 25204

+1 cc to Government Pleader Sr.NO. 25766

W.P.No.24366 of 2013

and

M.P.Nos. 1 of 2013 & 1 of 2014

GSM(CO)

A.SK(26/04/2022)