



W.P.No.212 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.12.2022

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.212 of 2016
and
W.M.P.No.117 of 2016

S.Sivakumar

...Petitioner

-Vs-

The Secretary to Government,
Revenue Department,
Secretariat, Chennai - 9.

...Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the respondent vide G.O.(2D) No.609, Revenue (Ser-2[2]) Department, dated 21.12.2015 and to quash the same and consequently accord the petitioner's promotion to the post of Deputy Tahsildar in the year 2009.

For Petitioner : Mr.S.Vijayakumar

For Respondent : Mr.M.Shahjahan,
Special Government Pleader



ORDER

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The petitioner herein, while serving as an Assistant under the respondent, was levelled with certain charges under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules (hereinafter referred to as 'the Rules'), through a charge memo dated 21.11.2006. The substance of the charge is that he had failed to bring out the facts in his note file regarding the orders passed by the Assistant Settlement Officer while granting patta to the higher officials. Along with the petitioner, the Assistant Settlement Officer, against whom certain delinquencies have also been imputed, was proceeded with a common enquiry under Rule 9A of the Rules. The Enquiry Officer had held 7 out of the 9 charges as having been partially proved and one charge as not proved, through his report dated 03.03.2009. Consequently, the respondent had issued a second show cause notice dated 21.12.2009, which is claimed to have been received by the petitioner on 03.06.2010 calling for his further explanation. On the same day of receipt of the show cause notice, the petitioner herein has submitted his explanation. Thereafter, there was no further progress in the departmental proceedings, which prompted the petitioner to file a writ petition before this Court in W.P.(MD) No.9765 of 2014, in which, this Court had directed the respondent to complete the



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disciplinary proceedings within a period of 12 weeks. After expiry of 12 weeks, the final order of punishment dated 21.12.2015 was passed, imposing a punishment of stoppage of increment with cumulative effect for a period of three years. Challenging the order of punishment, the present writ petition has been filed.

2. The learned counsel for the petitioner predominantly raised four grounds questioning the order of punishment. Firstly, the petitioner, who was only an Assistant, had only obeyed the orders of the superior officer and therefore, the charges itself would not amount to a misconduct. Secondly, he would submit that the disciplinary proceedings against the co-delinquent, namely Thiru.V.Annappan, Deputy Collector / Assistant Settlement Officer against whom similar charges were framed and a common enquiry was conducted and the imputations in the charge memo were more serious against him, was dropped through G.O.(2D) No.186, Revenue (Ser.2[2]) Department, dated 24.04.2009 and therefore, the disciplinary authority ought to have dropped the proceedings against the petitioner also. Thirdly, he submitted that there is an inordinate delay of 9 years from the framing of charges till the impugned order of punishment. The final ground raised by the



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learned counsel for the petitioner is that the impugned order of punishment is a non-speaking order.

3. The learned Special Government Pleader appearing on behalf of the respondent placed reliance on the counter affidavit and submitted that the petitioner had failed to do his duties as an Assistant, which amounts to dereliction of duties and the punishment of stoppage of increment for a period of three years with cumulative effect is proportionate to the levelled charges.

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

5. The issue as to whether the delinquency attributed to the petitioner would amount to misconduct or not had already come up for consideration before this Court in the case of ***S.Subbiah Vs. The Secretary to Government, Revenue Department and another reported in (2022) 1 Writ L.R. 545***, wherein in identical factual matrix, it was held that the failure on the part of an Assistant to bring out all the facts and details in his note file submitted to the superior officer may not amount to dereliction of duty. While holding so,



reliance had been placed on two other decisions of this Court in the cases of

Y.Abudl Rahim vs. The District Collector, Sivagangai District, passed in ***W.P.(MD) No.2857 of 2006***; and ***V.Saravanan Vs. The Principal Secretary to Government, Department of Revenue, Government of Tamil Nadu and 2 others*** passed in ***W.P.No.16280 of 2011***. After placing reliance on these two decisions, it was held as follows:-

"10. On a co-joint reading of the decisions of the Hon'ble Supreme Court as recorded above, a subordinate 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."

6. The facts involved in the aforesaid decision is identical to the facts in the present case also and therefore, the allegation that the petitioner had failed



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to prepare a proper note file by placing it before his higher authority, may not amount to dereliction of duty.

7. Insofar as the second ground that the charges levelled against the co-delinquent, namely V.Annappan, who was the Assistant Settlement Officer at the relevant point of time, and the petitioner herein are one and the same, a common enquiry under Rule 9A of the Rules was conducted against the Assistant Settlement Officer and the petitioner herein and similar charges against the Assistant Settlement Officer were also held to be proved. In this background, the Government had dropped the further disciplinary action against V.Annappan, the Assistant Settlement Officer, through G.O.(2D) No.186, Revenue (Ser.2[2]) Department, dated 24.04.2009. When the charges are identical and a common enquiry was conducted, more particularly, when the delinquency attributed to the Assistant Settlement Officer was more serious than the delinquency attributed to the petitioner, the Government ought not to have proceeded with the case of the petitioner alone, while dropping further action against the co-delinquent. Such an action would amount to selective discrimination and hence, the consequential punishment imposed to the petitioner herein cannot be sustained.



8. Insofar as the third ground that there is an inordinate delay from framing of the charges till the impugned order of punishment was passed is concerned, it is seen that the charges came to be framed under Rule 17(b) of the Rules on 21.11.2006 for an incident that happened in the year 2003. Therefore, there was a delay of three years in framing of charges. After the charge memo, the respondent had taken two years to appoint an Enquiry Officer on 10.04.2008. Though the Enquiry Officer had submitted his report on 03.03.2009 and the petitioner had submitted his further explanation on 03.06.2010, no further course of action was taken on the further explanation rendered by the petitioner herein, which prompted him to file a writ petition before this Court and pursuant to the directions issued in W.P.(MD) No.9765 of 2014, in which, the respondent was directed to complete the disciplinary proceedings within a period of 12 weeks, the respondents had chosen to pass the impugned order of punishment only on 21.12.2015, after the expiry of 12 weeks.

9. Incidentally, in the case of *S.Subbiah (supra)*, this Court had also dealt with the ground of delay in concluding the disciplinary proceedings therein, whereby the charge memo came to be ultimately quashed. The



relevant portion of the order reads as follows:-

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*"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 unless it can be



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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.



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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, Chepauk v. 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*



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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 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."

10. On a co-joint appraisal of the manner in which the charges were framed and the ultimate punishment was imposed, it is seen that there is an inordinate delay of three years for framing of the charges from the date of incident and there was a delay of more than nine years between the framing of charges and the final order of punishment. There is absolutely no explanation in the counter affidavit as to why such a delay had occurred. In the absence of the same, this Court is of the view that serious prejudice would have caused to the petitioner and on this ground also, the impugned order deserves to be quashed.

11. The last ground raised by the learned counsel for the petitioner is that the impugned order is a non-speaking order. A perusal of the impugned order of punishment reveals that though the respondent had passed the impugned order through 20 pages, the operative portion of the order starts at paragraph 3 of page 19 and even therein, no reasons have been absolutely



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assigned as to how the Government has come to a subjective satisfaction with regard to the enquiry report and the ultimate punishment. Rather, a general observation has been made as if it was evident that the delinquent officer had failed to bring out all the facts and details in his note file regarding the orders of the Assistant Settlement Officer, which should not be given effect, as per the orders in force. Clearly the order itself is one of non-application of mind and hence could be treated as a non-speaking order.

12. In the light of the above findings, the impugned order dated 21.12.2015 is quashed. Consequently, there shall be a direction to the respondents herein to pass appropriate orders, granting all the service and other monetary benefits that may have been deprived to the petitioner, in view of the impugned order of punishment, within a period of six (6) weeks from the date of receipt of a copy of this order. Accordingly, the writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index:Yes
Internet:Yes

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Speaking order
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M.S.RAMESH,J.

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To

The Secretary to Government,
Revenue Department,
Secretariat, Chennai - 9.

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