



W.P.No.24570 of 2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2022

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.24570 of 2016
and W.M.P.No.20957 of 2016

S. Udayakumar

... Petitioner

Vs.

1.The Principal Secretary to Government,
Environment and Forest Department,
7th Floor, Namakkal Kavignar Maaligai,
Fort St. George,
Chennai – 600 009.

2.The Principal Chief Conservator of Forests,
(Head of the Department),
Panagal Maaligai,
Saidapet, Chennai – 600 015.

3.District Forest Officer,
Attur Division,
Attur, Salem District.

... 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 of the third respondent pertaining to the Charge Memo dated 29.06.2016 issued vide No.12/2016 and the consequential G.O.(2D).No.57 & 58, dated 30.06.2016 issued by the first respondent, Environment and Forests



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(FR.1) Department and quash the same and consequently direct the respondents to permit the petitioner to retire by settling all the retiral benefits.

For Petitioner : M/s.V. Pushpa

For Respondents : Mr.K.H. Ravi Kumar,
Government Advocate

ORDER

When the petitioner herein was serving as a Forest Ranger under the respondent, he was implicated with charges under a Charge Memo in Na.Ka.No.B2/1480/2004 dated 31.12.2007, with allegations of having received Rs.5,000/- towards penalty, for trespass of some third party into a forest land on 04.10.2003, for which, he has issued a receipt of Rs.2,500/- only. There was no further progress in their departmental proceedings after the Charge Memo was issued and ultimately, when the petitioner was due to retire on 30.06.2016, this Charge Memo dated 31.12.2007 was withdrawn by the respondents. On the same day, a fresh Charge Memo in the same reference No. Na.Ka.B2/1480/2004 dated 29.06.2016 was issued for identical delinquency of having issued a receipt of Rs.2,500/- after receiving Rs.5000/- towards penalty on 04.10.2003. On 30.06.2016, two



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orders came to be passed, placing him under suspension and not permitting him to retire from services, which orders are under challenge in the present Writ Petition.

2. The learned counsel for the petitioner submitted that the respondents having withdrawn the charges earlier, are precluded from subjecting the petitioner to disciplinary proceedings on the very same set of charges. It is also his submission that for the delinquency that took place on 04.10.2003, the respondents cannot commence departmental proceedings after about 13 years, in view of the various settled propositions on this aspect.

3. The learned Government Advocate appearing for the respondents, on written instructions, submitted that after the impugned Charge Memo was framed, an inquiry was conducted and an Inquiry Report dated 04.05.2020 has also been made. The Inquiry Report is now before the Disciplinary Authority awaiting for final orders and therefore, he submitted that the petitioner should await for the final orders of the Government.



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4. Admittedly, the present Charge Memo dated 29.06.2016, relates to an incident that occurred on 04.10.2003, which is after a lapse of about 13 years.

5. This Court, in catena of decisions, has held that such inordinate delay in initiation of disciplinary proceedings, would be fatal to the department and consequently, such Charge Memos were quashed on the ground of delay in initiation. One such decision is in the case of ***L.T.Palanisamy Vs. The Secretary to Government of Tamil Nadu, Agricultural Department, Chennai – 600 009***, passed in ***W.P.Nos.14071 & 24327 of 2014***, dated ***21.04.2022***, whereby, this proposition was laid down in the following manner:-

“11. The delay in initiating the proceedings also contributes to the lapses committed by the Commissioner of Disciplinary Proceedings in framing the charge memo. This Court in many cases have held that the charge memo can be quashed on the ground of delay. Some of such cases are quoted below:-

12. 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



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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."

13. 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.



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14. *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 and in particular, on the ground that initiation of disciplinary proceedings after six years and continuance thereof, for a period of seven years prejudiced the delinquent officer.*

15. *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.*

16. *Though the charge memo does not refer to the incident for which the petitioners are charged relates to the year 2001 to 2002, such a ground is not disputed by the respondents also. Admittedly, the incident relates to the year 2001-2002, the respondents have chosen to initiate disciplinary proceedings in the year 2014, which is more than 13 years and when there is no explanation by the respondents for the delay in initiation, such a delay can be*



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termed to be “inordinate” in nature.”

6. Perusal of the aforesaid decisions, would reveal that the Disciplinary Authority is not empowered to initiate departmental proceedings after an inordinate delay of 13 years and on this ground, the Charge Memo itself is liable to be quashed.

7. This apart, the respondents have earlier subjected the petitioner to the same set of charges through their earlier Charge Memo dated 31.12.2007 in Na.Ka.No.B2/1480/2004 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. However, by an order dated 29.06.2016, the respondents have thought it fit to drop further proceedings on the Charge Memo dated 31.12.2007 and accordingly, have withdrawn the Charge Memo. Curiously, on the very same day, which is just one day prior to the petitioner's date of superannuation, a fresh Charge Memo for the same delinquency, has been issued without reference to the earlier Charge Memo. When charges were already framed in the year 2007 and no further steps were taken for almost 10 years and ultimately, the Government had thought it fit to withdraw the Charge Memo, the



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respondents ought to have atleast attempted to justify the reason as to why they had withdrawn the earlier Charge Memo and had thought it fit to frame the same charges, once again.

8. On an identical set of facts before an Hon'ble Division Bench of this Court in the case of '**A. Obaidhullah Vs. The State of Tamil Nadu, Home Department**' reported in '**2002 (5) CTC 380**', wherein, a Charge Memo dated 29.08.1978 under Rule 17(b) was issued and the reply submitted by the petitioner was kept pending for over 12 years, thereafter, on 05.12.1990, a Second Charge Memo under Rule 17(b) was issued in super session of the earlier Charge Memo dated 29.08.1978. When the disciplinary proceeding was challenged by the delinquent officer before the Tamil Nadu State Administrative Tribunal, which ultimately came to be dealt with by the Hon'ble Division Bench in the aforesaid decision, it was held that when no reasons have been assigned for cancellation in the first Charge Memo, a belated issuance of fresh Charge Memo after a period of 12 years, cannot be sustained. The relevant portion of the order reads as follows:-

10..... *"We have already mentioned that the second*



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charge memo dated 5-12-90 does not contain any reason for cancellation of first charge memo dated 29-8-78. It is not the case of the department that new materials have been gathered and based on the same, the second charge memo dated 5-12-90 came to be issued. On the other hand, the very same charge based on the report of the Commission was reiterated in the fresh charge memo dated 5-12-90. The tribunal has overlooked the issuance of the second charge memo superseding the earlier charge memo without adequate reason which is fatal to the disciplinary proceedings.

In the light of the principles laid down in the Supreme Court decision, in the absence of any explanation for not pursuing the first charge memo and issuance of fresh charge memo after a period of 12 years cannot be sustained.....”

9. In line with the similar set of facts involved in the aforesaid decision, the charges in the instant case which were framed on 31.12.2007 was withdrawn after about 9 years and just one day prior to the petitioner's date of retirement, a fresh Charge Memo was issued and the petitioner was



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placed under suspension, owing to the pendency of the fresh Charge Memo dated 29.06.2016 and was also not permitted to retire from service.

Such a procedure adopted by the respondent, is highly deplorable and on this ground also, the Charge Memo as well as all further disciplinary proceedings pursuant to the Charge Memo, requires to be quashed.

10. Now that this Court has held that the Charge Memo itself cannot be sustained in the light of the findings rendered above, the submissions of the learned Government Advocate that the petitioner should await for the final orders from the Government, cannot be sustained.

11. Accordingly, the Charge Memo dated 29.06.2016 as well as all the further proceedings initiated by the Disciplinary Authority pursuant to the impugned Charge Memo dated 29.06.2016, are quashed. Consequently, there shall be a direction to the first respondent herein, to forthwith pass orders, notionally retiring the petitioner from his services as an Assistant Conservator of Forests on the date of his superannuation and thereby disburse all the service and other monetary benefits, including the pensionary benefits, within a period of four (4) weeks from the date of



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receipt of a copy of this order.

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12. With the above directions, this Writ Petition stands allowed. No costs. Connected miscellaneous petition is closed.

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Speaking order

Index: Yes

Internet: Yes

Neutral Citation: Yes

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To

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