



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.04.2022

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.14652 of 2021
and
W.M.P.No.15534 of 2021

T.K.Govindan

...Petitioner

vs.

1. The Chairman
Tamil Nadu Generation and Distribution
Corporation Ltd., (TANGEDCO)
NPKRR Maaligai, 144, Anna Salai,
Chennai - 600 002.
2. The Chief Engineer-Personnel
Tamil Nadu Generation and Distribution
Corporation Ltd., (TANGEDCO)
NPKRR Maaligai, 144, Anna Salai,
Chennai - 600 002.
3. The Superintending Engineer,
CEDC (South-I)
110/33 KVSS Complex
K.K.Nagar,
Chennai - 600 034.
4. The Executive Engineer (Civil)
Office of the Executive Engineer,
C.D.C, TANGEDCO, Chennai - 600 032.
5. The Assistant Executive Engineer (O& M),
Thirumudivakkam,
Enquiry Officer,
Thirumudivakkam SS Complex, SIDCO
Chennai - 600 044.

...Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari Mandamus, calling for the records pertaining to the impugned Charge Memorandum No.008805/NiPi/U4/Ko.O.Na/2010 dated 16.09.2020 issued by the 3rd respondent and quashing the same as illegal and consequently directing the respondents to



confer all monetary and promotional benefits till date as per the Tamil Nadu Electricity Board Service Regulations, by considering the period of suspension between 06.12.2010 and 30.09.2019 as regular duty.

WEB COPY

For Petitioner : Mr.P.S.Sivashanmuga Sundaram

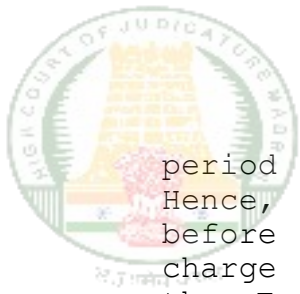
For Respondents: Mr.P.Subramanian
Standing Counsel

O R D E R

This writ petition has been filed seeking to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned Charge Memorandum No.008805/NiPi/U4/Ko.O.Na/2010 dated 16.09.2020 issued by the 3rd respondent and quashing the same as illegal and consequently directing the respondents to confer all monetary and promotional benefits till date as per the Tamil Nadu Electricity Board Service Regulations, by considering the period of suspension between 06.12.2010 and 30.09.2019 as regular duty.

2. The case of the petitioner that while the petitioner was working as a Foreman Grade-I in the Poonamallee Office of the respondents/board, on 06.12.2010, the Deputy Superintendent of Police, Vigilance and Anti-Corruption, has trapped the petitioner for receiving the illegal gratification of Rs.4,000/- during the course of his official duty. Thereafter, a criminal case has been registered by the Inspector of Police, Vigilance and Anti-Corruption, Special Investigation Cell, Chennai under Sections 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988. The aforesaid case was referred to the learned Special Judge and Chief Judicial Magistrate at Tiruvallur in Special Case No.23/2011. It is submitted that while pending the said criminal case, the petitioner was placed under suspension by the 3rd respondent by the Memo No.020643/1022/Adm 1/A4/P/DVAC-Sus/2020, dated 13.12.2010. After full fledged trial conducted by the learned Special Judge and Chief Judicial Magistrate at Tiruvallur and on considering the evidences, by the judgment dated 08.04.2019 in Special Case No.23/2011, the Special Judge and Chief Judicial Magistrate at Tiruvallur has acquitted the petitioner from the aforesaid criminal case.

3. Pursuant to the aforesaid judgment passed by the learned Special Judge and Chief Judicial Magistrate at Tiruvallur, the 3rd respondent vide Memo No.008805/Adm.1/A3/F.Revocation/2019, dated 12.09.2019 has revoked the petitioner's suspension order. Thereafter, the petitioner made a representation dated 20.03.2020 to the 3rd respondent, requested to regularise the



period of suspension as duty. But no orders has been passed. Hence, he has filed the writ petition in W.P.No.12906 of 2020 before this Court. At that stage, the 3rd respondent has framed charge memo dated 16.09.2020 under Standing Order No.30 (v) of the Tamil Nadu Electricity Board Regulations in respect of employees under non-clerical cadre. The petitioner has agreed before the 3rd respondent that he will co-operate for the disciplinary proceedings and expedite the said disciplinary proceedings and to take final orders.

4.Despite the petitioner's request, the 3rd respondent has not concluded the disciplinary proceedings as alleged in the charge memo framed by the 3rd respondent. Thus, the petitioner has filed the writ petition in W.P.No.12906 of 2020. By an order dated 19.11.2020, this Court has directed the respondents therein to conclude the disciplinary proceedings within a period of three months from the date of receipt of a copy of the order. However, the 3rd respondent has not concluded the disciplinary proceedings. Hence, he has filed the instant writ petition before this Court for the aforesaid prayer to quash the impugned charge memo.

5.The learned counsel appearing for the petitioner would submit that on 06.12.2010, the Deputy Superintendent of Police, Vigilance and Anti-Corruption, has trapped the petitioner for receiving illegal gratification of Rs.4,000/-. Thereafter, a criminal case has been registered as against the petitioner and the same was referred to the Special Judge and Chief Judicial Magistrate at Tiruvallur in Special Case No.23/2011. After elaborated trial and considering the evidences, by the judgment dated 08.04.2019, the Criminal Court, has acquitted the petitioner in the aforesaid criminal case and no appeal has been preferred by the Vigilance and Anti-Corruption Department. Thereafter, the petitioner made a representation dated 20.03.2020 to the 3rd respondent to regularise his service for the suspension period. Thereafter, on 16.09.2020, the impugned charge memo has been framed as against the petitioner.

6. According to the petitioner, the aforesaid charge memo has framed after 10 years from the date of alleged occurrence taken place in the year of 2010. Therefore, in the light of the decision of the Hon'ble Supreme Court in the case of P.Shankar vs. The Chairman, TANGEDCO and others (W.A.No.2346 fo 2019 dated 16.04.2021), that there is an inordinate delay in initiating the disciplinary proceedings as against the petitioner. Therefore, on this ground, the aforesaid impugned charge memo dated 16.09.2020 is liable to be quashed.

7.The second contention of the learned counsel appearing for the petitioner that despite there is a delay in framing the



charge memo, the petitioner has also undertaken that he will co-operate for concluding the said disciplinary proceedings at an earliest. The said request of the petitioner was not considered and there is no response from the 3rd respondent. The petitioner has filed W.P.No.12906 of 2020 before this Court and the said writ petition has been allowed by this Court by directing the respondents therein to conclude the disciplinary proceedings within a period of three months from the date of receipt of a copy of the order. No further proceedings taken place by the 3rd respondent. Hence, he filed the instant writ petition before this Court on 09.07.2021. After lapse of six months time, there is no initiation of the disciplinary proceedings by the 3rd respondent. Thus, the petitioner has challenged the impugned charge memo on the aforesaid grounds. Therefore, the impugned charge memo is liable to be quashed.

8. According to the learned Standing Counsel appearing for the respondents, the 3rd respondent has initiated the disciplinary proceedings independently for the aforesaid serious charge of demanding and accepting the illegal gratification of Rs.4,000/- during the course of his official duty. He also relying upon the judgment of the Hon'ble Supreme Court in Noida Entrepreneurs Association vs. Noida and others reported in 2007 (5) AIC 37, wherein it is held that there is no bar for taking simultaneous proceedings by way of departmental proceedings and trial of a criminal case. Therefore, the present writ petition is liable to be dismissed.

9. Heard both sides and perused the materials available on record.

10. The points for consideration in this writ petition, whether the charges framed under Standing Order No.30 (v) of the Tamil Nadu Electricity Board Regulations in respect of employees under non-clerical cadre is barred by delay and latches. According to the petitioner, on 06.12.2010, when the petitioner was working as a Foreman Grade - I in the Poonamallee office of the respondents, a sudden inspection was conducted by the Superintendent of Police, Vigilance and Anti-Corruption. During ride, it is alleged that the petitioner has demanded the illegal gratification of amount of Rs.4,000/- from one Mani's daughter and based on the complaint of the said Mani's daughter, the Inspector of Police, Vigilance and Anti-Corruption, Special Investigation Cell, Chennai, has lodged a criminal case and the same is taken on file in S.C.No.23/2011 on the file of the learned Special Judge and Chief Judicial Magistrate at Tiruvallur. By the judgment dated 08.04.2019, the Special Judge and Chief Judicial Magistrate at Tiruvallur has acquitted the petitioner from the aforesaid criminal case and the said judgment has become final. Further, it is also brought to



notice, in the meantime the said complainant died. Thereafter, the petitioner made a request to the 3rd respondent to regularise his service for the suspension period as duty. There is no response from the 3rd respondent. After filing of the writ petition in W.P.No.12906 of 2020, the 3rd respondent has framed the impugned charge memo under Standing Order No.30 (v) of the Tamil Nadu Electricity Board Regulations in respect of employees under non-clerical cadre.

11. According to the petitioner, the impugned charge memo framed by the 3rd respondent is barred by laches in the light of the decision of the Hon'ble Division Bench of this Court in the case of V.Boopathy vs. Union of India (W.P.No.26664 of 2014 dated 01.04.2015), wherein the Hon'ble Division Bench of this Court at paragraph No.17 held as follows:-

"17. In the above said facts and circumstances, it can be very well said that the initiation of the disciplinary proceedings by the issuance of the Charge Memo dated 18.12.2013 shall cause serious prejudice to the petitioner leading to miscarriage of justice. Delay of more than 16 years, a considerable part of which has not been satisfactorily explained, will result in serious prejudice to the petitioner leading to miscarriage of justice. Hence we are inclined to accept the contention of the petitioner. In this regard, the Tribunal seems to have misguided itself in appreciating and applying the instructions given in the Compendium on Postal Complaints, 1998. We are unable to agree with the reasons assigned by the Tribunal for the dismissal of the Original Application. We are of the considered view that the case on hand is a fit one for quashing the departmental proceedings."

12. On perusal of the counter affidavit filed by the 3rd respondent, the 3rd respondent has not answered to the grounds raised by the petitioner that there is an inordinate delay in framing the impugned charge memo as well as pursuant to the order passed by this Court, the 3rd respondent has not concluded the disciplinary proceedings within the time as specified by this Court. On these two grounds are concerned, there is no explanation in the counter affidavit filed by the 3rd respondent.

13. Firstly, as per the direction issued by this Court in W.P.No.12906 of 2020 dated 19.11.2020, the 3rd respondent ought to have initiated the disciplinary proceedings within the reasonable time, there is no bar for taking simultaneous proceedings, one by way of departmental proceedings and also by the criminal proceedings. If any delay on the part of the respondents, the respondents have to satisfy the inordinate



delay in filing the said charge memo. There is no satisfactory explanation from the 3rd respondent for the delay of more than 9 years and despite, the order has been passed by this Court in W.P.No.12906 of 2020 dated 19.11.2020, the 3rd respondent has not sent any communication to the petitioner to appear for the disciplinary proceedings nor file any application before this Court for extension of time to conclude the disciplinary proceedings, if any genuine reason. Therefore, the allegation of the petitioner that the aforesaid disciplinary proceedings initiated by the 3rd respondent is nothing, but to harass the petitioner for nearly ten years.

14. In the judgment in M. Elangovan v. Trichy District Central Co-operative Bank, reported in 2006 (3) MLJ 621, this Court had held as follows:-

14. It is in this regard, the judgment of the Apex Court is a guiding factor wherein, the Supreme Court has categorically held that keeping an official under charges and disputing integrity would cause unbearable agony and distress to the officer concerned stating that the protracted disciplinary enquiry against the Government employee should be avoided not only in the interest of the employee but also in the interest of inspiring confidence in the minds of the Government employees. Therefore, the Supreme Court heavily came down against the protracted enquiry and put an end to the said enquiry.

15. The Supreme Court in this regard for the future guidance states as follows:-

"Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher Government official under charges of corruption and dispute integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest 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 the department in the procedure for initiating the disciplinary proceedings, the appellant should not be



WEB COPY

made to suffer.

Applying the said dictum in the present case, it can be safely concluded that the petitioner has already suffered enough on account of the disciplinary proceedings and as pointed out and the mental agony and sufferings of the petitioner due to the protracted disciplinary proceedings would be much more than the proposed punishment itself. For the mistakes committed by the department in inordinate delay in the initiating proceedings and also during the conducting of the proceedings the petitioner shall not be made to suffer any further."

15. In the Judgment in A. Shahul Hameed v. The Special Commissioner, reported in 2007 WLR 601, this Court had held as under:-

"12. Admittedly, the allegations levelled against the date back to 1995 for which charges were framed against him in the year 2004 with a delay of nine years. For this, there is no justification given on the side of the respondents, much less, a valid justification, except a vague mention in the counter that disciplinary action was initiated against the petitioner and one Somasundaram, Deputy Collector, formerly Personal Assistant to the Sub-Collector, Pollachi, vide Charge Memo, dated 26.05.2004, which does not contain any reason for the delay.

15. Since the proposition of law laid down by the Supreme Court that there cannot be inordinate delay in initiating disciplinary proceedings, which has also been followed by a Division Bench of this Court, as stated above, is squarely applicable to the facts of the case on hand where charges have been framed against the petitioner, nine years after his alleged mis-conduct, this Court holds that the impugned Charge Memos are liable to be quashed as they are hit by inordinate delay."

16. In the judgment in The Secretary to Government v. N. Ponniah, reported in 2007 WLR 903, the Division Bench of this Court had held as under:-

"2. Though Mr. M. Dhandapani, learned Special Government Pleader would attempt to contend that the charges were of serious nature, and therefore, the order of the Tribunal should be interfered with, we are unable to countenance such a plea. Apart from what has been observed by the Tribunal, even in the affidavit filed in support of this Writ Petition, we do not find any anxiety shown in hastening the



WEB COPY

disciplinary proceedings against the first respondent. In fact, even as on date, i.e., July 2007, the fact remains that no progress had been made in respect of the charge memo, dated 31.03.1998, issued to the first respondent. The ill effect of all the above factors is that in respect of an accident which happened in the year 1989 - 1990, the petitioners have displayed supine indifference for the past 17 years, during which period not even the copies of the documents were made available to the first respondent by the petitioners. In spite of such a lethargic attitude displayed by the petitioners, if they were to be permitted to proceed with the charge memo as against the first respondent, we are of the considered opinion that it would result in putting a premium on the total inaction and indifferent attitude displayed by the petitioners in taking disciplinary action against the first respondent. After the due date of retirement of the first respondent, more than 15 years have gone by and that by itself would act as sufficient punishment for the first respondent. In this context, it will be more appropriate to refer to the decision of the Hon'ble Supreme Court reported in 2005 (4) CTC 403 = 2006 (1) LW 157 [P.V. Mahadevan v. M.D., Tamil Nadu Housing Board] wherein, the Hon'ble Supreme Court, in Paragraph No. 10, has noted that more than ten years delay involved in initiating the disciplinary proceedings by issuing a charge memo by itself would render the departmental proceedings vitiated. The Hon'ble Supreme Court has laid down the ratio in such cases in Paragraph No. 14, which reads as under:-

"Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher Government official under charges of corruption and dispute integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interests of the government employee but in public interest 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 the department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer."

17. In the judgment in *Ranjeet Singh v. State of Haryana*, reported in 2008 (3) CTC 781 [SC], the Apex Court had held as under:-

"We find that the Trial Court decreed the Suit primarily for three reasons: (a) There was an unexplained delay of nine years in issuing the charge-sheet; (b) There was an unexplained delay of seven years in issuing show cause notice after the enquiry report was submitted in January 1985; (c) The appellant was promoted thrice between the dates of alleged misconduct and imposition of punishment (which was about nineteen years). This Court has repeatedly held that inordinate delay in initiating disciplinary proceedings is a ground for quashing the enquiry unless the employer satisfactorily explains the delay. For example, where the matter is referred to CBI for investigation and there is delay in getting its report or where the charge is of misappropriation and the facts leading to misappropriation come to light belatedly, it can be said that the delay is not fatal. But where the alleged misconduct was known and there was no investigation pending and when no explanation is forthcoming in regard to the delay, necessarily the unexplained delay would cause serious prejudice to the employee and therefore, enquiry will have to be quashed."

18. In the judgment in *V. Mallika v. Secretary to Government*, reported in 2011 (8) MLJ 256, this Court had held as follows:-

"17. It is settled law that ordinarily a Writ Petition should not be entertained against a mere show-cause notice or charge-sheet as at that stage, the Writ Petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is also well settled law that the delay in initiating disciplinary proceedings has to be considered in the peculiar facts and circumstances of the case. There is no general rule that whenever there is a delay, charge sheet should be quashed. While, considering the question of delay, the Courts have to look into the nature of charges, gravity of misconduct, extent of delay as well as the possible prejudice which would be caused to the



WEB COPY

delinquent on account of such belated initiation of disciplinary proceedings. There is no straight jacket formula in such cases to be applied to all situations and cases. But, when the facts and circumstances of the present case are considered in the light of the above decisions, it can be held that the nature of the charges framed against the petitioner are not tenable and also there is considerable delay in initiating the disciplinary proceedings, since for the occurrence which took place in the year 2000, disciplinary proceedings were initiated in the year 2011 against the petitioner. Further, as already discussed supra, the respondents have not taken steps to initiated the proceedings against the predecessors of the petitioner who were working during the year 2000 at the time when the Judgment of the Sub Court, Erode was passed and after a lapse of five years from the date of Judgment of the Sub Court, the respondents started to probe the matter. Moreover, even the charges framed against the petitioner merit no acceptance in view of the Judgment of the Division Bench of this Court holding that the award passed by the Sub court in the land acquisition proceedings regarding enhancement of compensation is just and proper and requires no interference."

19. In the judgment in K. Deivendran v. The District Collector, Dindigul, reported in 2012 (4) MLJ 576, this court had held as under:-

"18. The Hon'ble Supreme Court in the above said decision has held that the delay in concluding the domestic proceeding is not fatal and it depends on the facts and circumstances of each case. It is also held therein that unexplained protracted delay on the part of the employee may be one of the circumstances in not permitting the employer to continue the disciplinary enquiry proceedings. But, at the same time, if the delay is explained satisfactorily, then the proceedings should be permitted to continue. The learned Single Judge by following the said Judgment and based on the facts and circumstances of the case in W.P. No. 4453 of 2009 has found that the petitioner therein has not made out a case and consequently, dismissed the writ petition. Therefore, from the reading of the above two decisions relied on by the learned counsel for the respondent, it could be seen that while considering the issue with regard to the delay, each case has to be seen on its own facts and circumstances separately and there cannot be any uniform proposition that the delay in issuing the charge memo is always fatal. In this case the facts



WEB COPY

placed before this Court and the reading of the counter affidavit filed by the respondent, would only show that the respondent has not explained the delay properly as to why the investigating authority enquired into the allegation only in the year 2007 in respect of the alleged delinquencies took place in the year 2002 and even though such investigating authority after making such investigation sent a report in the year 2007, why there is a further delay of two years on the part of the Government to initiate the departmental proceedings. In the absence of any convincing and justifiable explanation given by the respondent in respect of those periods, the decisions relied on by the learned counsel for the respondent would not help him anyway. Consequently, I have no hesitation in holding that the charge memo issued after a period of 9 years, vitiates the entire proceedings and consequently, the same cannot be sustained in law."

20. In the light of the above judgments, there is a inordinate delay in framing the impugned charge memo and despite the direction of this Court, the 3rd respondent has not concluded the said disciplinary proceedings within the specified time. There is no initiation of action being taken by the 3rd respondent to conclude the disciplinary proceedings, pursuant to the charge memo has been framed. Therefore, at every stage, there is a inordinate delay on the part of the 3rd respondent. Hence, this Court has no hesitation to come to the conclusion that the aforesaid impugned charge memo is liable to be quashed. Hence, the impugned Charge Memorandum No.008805/NiPi/U4/Ko.O.Na/2010, dated 16.09.2020 issued by the 3rd respondent is quashed.

21. Accordingly, the writ petition stands allowed. The Chairman, Tamil Nadu Generation and Distribution Corporation Limited (TANGEDCO), Chennai, is directed to take appropriate action as against the erring officials for inordinate delay, in concluding the disciplinary proceedings. Consequently, the connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

dm/krk



To

1. The Chairman
Tamil Nadu Generation and Distribution
Corporation Ltd., (TANGEDCO)
NPKRR Maaligai,
144, Anna Salai,
Chennai - 600 002.
2. The Chief Engineer-Personnel
Tamil Nadu Generation and Distribution
Corporation Ltd., (TANGEDCO)
NPKRR Maaligai,
144, Anna Salai,
Chennai - 600 002.
3. The Superintending Engineer,
CEDC (South-I)
110/33 KVSS Complex
K.K.Nagar,
Chennai - 600 034.
4. The Executive Engineer (Civil)
Office of the Executive Engineer,
C.D.C, TANGEDCO
Chennai - 600 032.
5. The Assistant Executive Engineer (O& M),
Thirumudivakkam,
Enquiry Officer,
Thirumudivakkam SS Complex, SIDCO
Chennai - 600 044.

+1cc to Mr.P.S.Sivashanmugasundaram, Advocate, S.R.No.24378

+1cc to Mr.P..Subramanian, Advocate, S.R.No.24428

W.P.No.14652 of 2021

PVS (CO)
RGA (27/05/2022)