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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.04.2022

PRONOUNCED ON : 21.04.2022

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.14071 & 24327 of 2014
and
M.P.No.1 of 2014 & WMP.No.8077 of 2016
&
M.P.Nos.2 & 3 of 2014 & WMP.No.8263 of 2016

In W.P.No.14071 of 2014

L.T.Palanisamy

... Petitioner

Vs.

1.The Secretary to Government of
Tamil Nadu,
Agricultural Department,
Fort St. George,
Chennai-600 009.

2.The Director of Horticulture &
Plantation Crops,
Chepauk, Chennai-600 005.

3.The Tribunal for Disciplinary Proceedings
rep. by its Commissioner,
5/1842-A, Trichy Road,
Market Committee Complex,
Ramanathapuram,
Coimbatore-641 045.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the proceedings of the third respondent Tribunal in TDP Case No.2 of 2013; Ref. No.130/2013/A1 dated 17.04.2014 and quash the same insofar as the petitioner is concerned.



For Petitioner : Mr.V.Vijay Shankar

For Respondents : Mr.T.Chezhiyan, AGP

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In W.P.No.24327 of 2014

1.G.Nithyanandan

2.M.Jothimani

3.M.Afrose Begum

4.N.Navaneetha

... Petitioners

Vs.

1.The Agricultural Production

Commissioner & the Secretary to Government,
Agriculture (Ve.Nee.8) Department,
Fort St. George,
Chennai-600 009.

2.The Director of Horticulture,

III Floor,
Agriculture Complex,
Chepauk, Chennai-600 005.

3.The Tribunal for Disciplinary Proceedings,

Coimbatore,
rep. by its Commissioner,
5/1842-A, Trichy Road,
Market Committee Complex,
Ramanathapuram,
Coimbatore-641 045.

... 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 relating to the proceedings of the Commissioner for Disciplinary Proceedings, Coimbatore, the third respondent herein in TDP. Case No.2 of 2013 dated 17.04.2014, quash the same insofar as the petitioners are concerned and direct the respondents 1 and 2 herein to promote the petitioners herein notionally to the post of Assistant Director of Horticulture on par with their immediate juniors in their appropriate place on a regular basis which has been withheld on account of the above charges with all consequential



service and monetary benefits within a short date as may be fixed by this Court.

For Petitioners : Mr.M.Ravi

For Respondents :Mr.T.Chezhiyan, AGP

C O M M O N O R D E R

All the petitioners herein have been implicated through a common charge memo dated 17.04.2014, alleging that while working as Horticulture Officers in the Horticulture Department, Coimbatore, they had approved ineligible applications and sanctioned the subsidy amounts, without verifying the genuineness of the beneficiaries and thereby misappropriated the subsidies intended for various development schemes during the year 2001-2002. Since all the petitioners have been implicated through a common charge memo with identical charges, both the Writ Petitions are disposed of through a common order.

2. Heard the learned counsel for the parties.

3. Some of the undisputed facts of the case are that, the incident for which the impugned charge memo was issued relates to the year 2001-2002 when the petitioners were working as Horticulture Officers in the Department of Horticulture, Coimbatore. Prior to the issuance of the present charge memo, they were earlier subjected to similar charges alleging identical lapses for the year 2002-2003, which was taken for adjudication in TDP Case No.9 of 2007 before the Tribunal for Disciplinary Proceedings, Coimbatore and through orders dated 04.11.2013, the charges came to be dropped, since the charges were held as "not proved" in the enquiry conducted by the Commissioner for Disciplinary Proceedings. It is also not in dispute that, when the TDP Case No.9 of 2007 relating to the year 2002-03 was initiated, the facts leading to the issuance of the present impugned charge memo was very much available at that time.

4. The powers of the Writ Court to interfere and quash a charge memo has been dealt with in various decisions of the Hon'ble Supreme Court, as well as this Court, wherein certain exceptions have been culled out for such an interference. Among these exceptions, the vagueness of the charge memo, the delay in initiation of the disciplinary proceedings, the fact that the pendency of the disciplinary proceedings will eventually result in favour of the delinquent or some of them.



5. In the present case, the impugned charge memo does not contain any specific charges with regard to the allegations made against these petitioners. There are no statement of allegations supporting the charge memo and reading of the charge memo does not indicate as to the period of occurrence when the respondents had alleged the mal-practice. Apart from this, there are no list of witnesses or documents on which the Commissioner of Disciplinary Proceedings intended to rely upon to substantiate the charges.

6. The procedure for conducting the TDP proceedings is under Rule 17b of the Tamil Nadu Civil Services (Discipline & Appeal) Rules [hereinafter referred to as "the Rules"]. As per the Schedule, when it is proposed to impose a major penalty under Rule 8, the grounds on which it is proposed to take action should be reduced to definite charges, together with the statement of allegations on which each charge is based and on any other circumstances which it proposes in passing orders on the case. The Rule also envisages that charges should be accompanied by the list of witnesses and documents. The object behind this procedure under the Rule is to enable the delinquent to give an effective defense statement to the allegations in the charge memo. In the absence of of all these material requirements, the charge memo itself is deemed to be vague, thereby depriving the delinquent to effectively defend himself by way of an explanation.

7. In Anant R. Kulkarni Vs. Y.P. Education Society and Others reported in 2013 (6) SCC 515, the absence of statement of allegations, the Hon'ble Supreme Court relied on its earlier decisions and held that such a vague charge memo cannot be maintained in the following manner:-

"15. In Surath Chandra Chakravarty v. The State of West Bengal, AIR 1971 SC 752 this Court held, that it is not permissible to hold an enquiry on vague charges, as the same do not give a clear picture to the delinquent to make out an effective defence as he will be unaware of the exact nature of the allegations against him, and what kind of defence he should put up for rebuttal thereof. The Court observed as under:-

"5. ... The grounds on which it is proposed to take action have to be reduced to the form of a definite charge or charges which have to be communicated to the person charged together with a statement of the



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allegations on which each charge is based and any other circumstance which it is proposed to be taken into consideration in passing orders has to be stated. This rule embodies a principle which is one of the specific contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded, he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in the contemplation of the authorities to be established against him."

16. Where the charge sheet is accompanied by the statement of facts and the allegations are not specific in the charge sheet, but are crystal clear from the statement of facts, in such a situation, as both constitute the same document, it cannot be held that as the charges were not specific, definite and clear, the enquiry stood vitiated. Thus, nowhere should a delinquent be served a charge sheet, without providing to him, a clear, specific and definite description of the charge against him. When statement of allegations are not served with the charge sheet, the enquiry stands vitiated, as having been conducted in violation of the principles of natural justice. Evidence adduced should not be perfunctory, even if the delinquent does not take the defence of, or make a protest with against that the charges are vague, that does not save the enquiry from being vitiated, for the reason that there must be fair-play in action, particularly in respect of an order involving adverse or penal consequences. What is required to be examined is whether the delinquent knew the nature of accusation. The charges should be specific, definite and giving details of the incident which formed the basis of charges and no enquiry can be sustained on vague charges. (Vide: State of Andhra Pradesh & Ors. v. S. Sree Rama Rao, AIR 1963 SC 1723; Sawai Singh v. State of Rajasthan, AIR 1986 SC 995; U.P.S.R.T.C. & Ors. v. Ram Chandra Yadav, AIR



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2000 SC 3596; Union of India & Ors.v. Gyan Chand Chattar, (2009) 12 SCC 78; and Anil Gilurker v. Bilaspur Raipur Kshetria Gramin Bank & Anr., (2011) 14 SCC 379).

17. The purpose of holding an enquiry against any person is not only with a view to establish the charges levelled against him or to impose a penalty, but is also conducted with the object of such an enquiry recording the truth of the matter, and in that sense, the outcome of an enquiry may either result in establishing or vindicating his stand, and hence result in his exoneration. Therefore, fair action on the part of the authority concerned is a paramount necessity."

By laying down the aforesaid ratio to the present charge memo, which is not specific with regard to the allegations against the petitioners, the charge memo itself, cannot be sustained.

8. Apart from the charge memo being vague and unspecified, for the similar set of allegations relating to the year 2002-03 in TDP Case No.9 of 2007, the petitioners herein were subjected to disciplinary proceedings by the Commissioner of Disciplinary Proceedings, which was held to be "not proved" and consequently the proceedings came to be dropped on 04.11.2014.

9. At the time of issuance of the charge memo for the incident that took place in the year 2002-03, the alleged lapses for the year 2001-02 was very much available, which the respondents failed to invoke when the first charge memo in the year 2007 was issued. Such a piece meal enquiry was held to be impermissible by a Hon'ble Division Bench of this Court in the case of R. Rajkumar Vs. The Commissioner of Police, Trichy City, Trichy reported in 2014 (2) CTC 769. In the said judgment, the Hon'ble Division Bench had also taken into account the delay in initiating the disciplinary proceedings, as another factor for quashing the proceedings. The relevant portion of the order reads as follows:-

"12. We have perused the cause of action for the proceedings initiated by the Department in the first charge memo as well as the second charge memo, which is the complaint of the said A. Roche, who approached the officers of the Police Department for getting 'No Objection Certificate' to set up a fire cracker shop. The Charge Memo dated 07.04.2005 is based on the



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Complaint given by A. Roche dated 08.11.2001, wherein he stated that the Police Authorities including the Appellant were delaying the issuance of 'No Objection Certificate' and also demanded bribe. It is the case of the complainant that a sum of Rs.8000/- (Rupees Eight Thousand Only) was demanded by the Appellant through Loganathan, Grade I-Police Constable. The Department in this case chose to proceed against the Appellant on various misconducts which include the complaint of the said A. Roche dated 08.11.2001, but for some reason or other, did not choose to issue a Charge Memo in respect of the allegation relating to illegal gratification. On the first charge memo dated 07.04.2005, enquiry was conducted and punishment was imposed and the matter was put to rest then and there. Thereafter, the matter has been resurrected after more than seven years and the second charge memo is issued and this is also based on the complaint of the said A. Roche dated 08.11.2001. it is, therefore, clear that the basis for the first charge memo and the present charge memo is one and the same. It is another matter that the first charge contained other issues as well. The fact remains that on the plea of illegal gratification, the Department did not choose to proceed and further. In any event the criminal case with regard to the demand of illegal gratification ended in acquittal. The decisions of the Hon'ble Apex Court in Capt. M. Paul Anthony's case referred to supra and G.M. Tank's case, respectively, would clearly cover the issue on hand. Furthermore, the Division Bench of this Court has clearly held that the fresh proceedings on the basis of the same issue and on the same set of allegations and corresponding materials, is not sustainable. Therefore, the learned Single Judge was not correct in dismissing the Writ Petition overlooking this legal plea.

13.The impugned proceedings is liable to be interfered with for the following reasons:

i)Comparison of two charge memos clearly reveals that both the charges are framed based on the same complaint dated 08.11.2001 given by the



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Complainant -A. Roche.

ii)The materials forming basis of the second charge memo was also available at the time of framing the first charge memo.

iii)The Respondent cannot conduct the Departmental enquiry in a piecemeal manner, according to their whims and fancies.

iv)The delay in framing charges will definitely cause prejudice to the Appellant, as he has put forth his defence during the first enquiry and also in the trial before the Criminal Court.

v)Pending Writ Appeal, the Appellant was acquitted by a Competent Criminal Court after full fledged trial. But acquittal in Criminal proceedings is not a bar for the Department to initiate Departmental proceedings on the same set of facts. But, in the present case, the acquittal in Criminal case has to be considered in favour of the Appellant, as he has faced domestic enquiry on earlier occasion and suffered punishment and the issue raised in the present charge memo was given by seven years ago.

vi)If the present charge memo is not quashed, the appellant will be forced to another enquiry on the basis of the complaint dated 08.11.2001 and on the same set of facts and materials."

10. In the light of the aforesaid pronouncements in Anant R. Kulkarni's case (supra), the circumstances and the manner in which the charges came to be framed against the petitioners are weighed. Apart from the delay in initiating the departmental proceedings, the charges have also been found to be vague and unspecified, which is contrary to the procedure contemplated under the Rules. Moreover, when the Hon'ble Division Bench of this Court has held that the disciplinary proceedings cannot be held in piecemeal manner, splitting the charges for the year 2002-2003 and then for the year 2001-2002, is impermissible.

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:-



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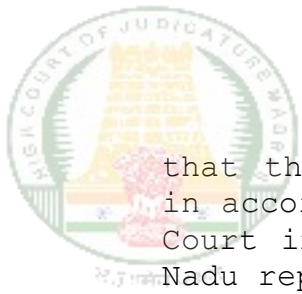
12. In the Special Commissioner and Commissioner of Commercial Taxes, Chepauk v. N.Sivasamy reported in 2005 (5) CTC 451, the Division Bench of this Court held as follows:

"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.

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.

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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 termed to be "inordinate" in nature.

17. I am conscious of the fact that the Court should not generally set aside the departmental enquiry on the ground of delay in initiation of disciplinary proceedings. However, when the delay is also one of the factors, among various other grounds for quashing the charge memo, it has been held in Anant R. Kulkarni (supra), that the Court has to consider the seriousness and magnitude of the charges and while doing so, the Court may weigh all the facts, both for and against the delinquent officers and come to the conclusion which is just and proper, considering the circumstances involved. The essence of the matter is that the Court must take into consideration all the relevant facts and balance and weigh the same, so as to determine, if it is in fact, in the interest of clean and honest administration that the said proceedings are allowed to be terminated only on the ground of delay in conclusion.

18. Thus, on an overall consideration of the vagueness of the charge memo, the impermissibility in conducting disciplinary proceedings in a piecemeal manner and the inordinate delay of about 13 years in initiating the disciplinary proceedings, this Court is of the affirmed view that the petitioners herein should not be subjected to face the disciplinary proceedings instituted on the basis of the defective and illegal charge memo.

19. It is submitted by the learned counsel for the petitioners that the charge memo was instituted in order to disentitle the petitioners herein for consideration for promotion to the post of Assistant Directors of Horticulture at that relevant point of time. Now that, this Court is inclined to quash the charge memo, the petitioners herein would be entitled for notional promotion to the post of Assistant Directors of Horticulture from the date on which their immediate juniors were promoted.



20. For all the reasons stated above, the impugned charge memo dated 17.04.2014, insofar as it implicates the petitioners herein, is quashed. Consequently, there shall be a direction to the respondents 1 and 2 to pass appropriate orders, granting notional promotion to the petitioners to the post of Assistant Directors of Horticulture, on par with their immediate juniors, in their appropriate place, on a regular basis, without reference to the initiation of the disciplinary proceedings against them, within a period of four weeks from the date of receipt of a copy of this order. Both the Writ Petitions stands allowed accordingly. Consequently, the connected Miscellaneous Petitions are closed. There shall be no orders as to costs.

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

DP
To

1.The Agricultural Production
Commissioner & the Secretary to Government,
Agriculture (Ve.Nee.8) Department,
Fort St. George, Chennai-600 009.

2.The Director of Horticulture,
III Floor,
Agriculture Complex,
Chepauk, Chennai-600 005.

3.The Commissioner,
Tribunal for Disciplinary Proceedings,
Coimbatore,
5/1842-A, Trichy Road,
Market Committee Complex,
Ramanathapuram, Coimbatore-641 045.

+1cc to Mr.V.Vijay Shankar, Advocate Sr.27228
+1cc to the Government Pleader Sr.28170

W.P.Nos.14071 & 24327 of 2014 and
M.P.No.1 of 2014 & WMP.No.8077 of 2016 &
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