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IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDER RESERVED ON : 01.02.2022

ORDER PRONOUNCED ON : 17.03.2022

C O R A M

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

WRIT PETITION NO.35025 OF 2019

A N D

W.M.P.NO.35805 OF 2019

P. Suresh

... Petitioner

Vs

1. The Government of Tamil Nadu
rep. By its Additional Chief Secretary/
Secretary to Government
Home (Transport II) Department
Fort St. George, Secretariat
Chennai 600 009.

2. The Transport Commissioner
Chepauk
Chennai 5.

3. The Joint Transport Commissioner (Admin.)
Chepauk
Chennai 5.

... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari to call for the records of the impugned charge memo issued in Memo R.No.40407.VB2/2019 dated 31/10/2019 by the second respondent and to quash the same.

For petitioner

... Mr.V.Vijay Shankar
for Mr.AV.Radhakrishnan

For respondents

... Mr.G.Nanmaran
Special Government Pleader





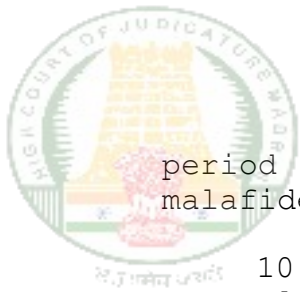
promoted, vide, G.O.(D) No.739, Home (Transport II) Department, dated 9/6/2017.

6. The petitioner being aggrieved, by the above promotion of his junior, approached this Court in W.P.No.15166 of 2017, challenging the G.O., dated 9/6/2017. This Court was not inclined to entertain the writ petition and the same came to be dismissed vide order dated 27/10/2017. As against the order of the learned Single Judge, W.A.No.1546 of 2017 was filed. The Division Bench which heard the appeal disposed of the same, on 6/12/2017, directing the competent authority therein, to decide the seniority of the petitioner and his junior, who was arrayed as respondent in the Proceedings, but directed the respondents to give promotion to the petitioner, in any one of the existing vacancies forthwith. In pursuance of the direction of the Division Bench, the petitioner was given promotion as Deputy Transport Commissioner, vide proceedings, dated 26/2/2018. However, the issue of seniority of the petitioner vis-a-vis his junior was not settled and no order was passed, notwithstanding the directions of the Hon'ble Division Bench.

7. As no orders were passed on the aspect of seniority, in terms of the directions of the Division Bench, the petitioner was constrained to file Contempt Petition, in C.P.No.1264 of 2018, in which the Home Secretary, first respondent was arrayed as party. According to the petitioner taking exception to the filing of the Contempt Petition against him and out of ill will to penalise the petitioner for approaching this Court, at his instance, a charge memo, dated 31/10/2019, came to be issued against the petitioner by the second respondent herein under 17 (b) of the Tamil Nadu Civil Services (Discipline & Appeal Rules.

8. The only allegation as contained in the above Charge Memorandum was that the petitioner was unauthorisedly absent from 9/8/1999 to 11/7/2000, not joined duty in the transferred place in terms of the original order of transfer dated 07.05.1999 and such unauthorised absence was in violation of rule 20 (1) of the Tamil Nadu Government Servant Conduct Rules, 1973 r/w. 18 (3) of the Fundamental rules. The period of the so called unauthorised absence, as alleged in the charge memorandum, was relating to the same period, wherein the petitioner had the benefit of stay of the transfer order granted by the learned Tribunal. Further, the petitioner was also not allowed to join back duty in the original place by the authorities concerned, at that relevant point of time.

9. In these circumstances, the present writ petition has been filed challenging the charge memorandum dated 31/10/2019, contending inter alia that issuance of charge memo for the alleged unauthorised absence from 9/8/1999 to 11/7/2000, after a



period of nineteen years was nothing but a colourable and mala fide exercise of power.

10. In the above factual and legal back drop, the learned counsel Mr.V.Vijay Shankar appeared and made his submissions, on behalf of the petitioner herein.

11. According to the learned counsel that the issuance of the charge memorandum for the so called unauthorised absence from 9/8/1999 to 11/7/2000 suffered from ex facie illegality and cannot be countenanced both in law and on facts. As the facts would disclose the original transfer dated 07/05/1999, which was the subject matter of challenge by the petitioner before the Tribunal was itself cancelled by the competent authority, subsequently, on 10/7/2000 and the petitioner was posted to a different station and he joined immediately, on 11/7/2000.

12. According to the learned counsel, there are two aspects to be examined in the matter. First, the transfer order was stayed by the learned Tribunal and the petitioner had the benefit of interim order for the entire period in question from 9/8/1999 till 10/7/2000. Second, the competent authority himself had recalled the order and posted the petitioner to a different place (Sangagiri) by order, dated 10/7/2000. While that being the case, the question of alleging unauthorised absence against the petitioner during the said period did not arise at all.

13. As a matter of fact, the petitioner after his rejoining duty, on 11/7/2000 was promoted as Regional Transport Officer in 2008, subsequently as Deputy Transport Commissioner, on 26/2/2018, and at no point of time, the issue of unauthorised absence was raised or come to the fore. Only when C.P.No.1264 of 2018 was filed, out of the blue, the charge memorandum came to be issued, on 31/10/2019, which clearly appeared to be a malicious action initiated against the petitioner to victimise him for filing Contempt Petition against higher official of the Department.

14. According to the learned counsel, the purported violation of Fundamental rule 18 (3) by the petitioner is also not valid or sustainable as Rule 18 (3) of the Fundamental rules was introduced only through G.O.Ms.No.154 P & AR Department, dated 8/8/2000 and the same cannot have any application in respect of the absence occurred prior to the date of the G.O. The fact of the matter is that the petitioner's seniority had not been fixed, despite direction by the Division Bench, resulting in denial of due promotion affecting his career progression. When his legitimate demand was not answered, the petitioner was constrained to approach this Court by filing C.P.No.1264 of 2018. In such circumstances, there was no valid



reason for the authorities being upset at the development.

15. In any event, de hors the pleading of mala fides, the issuance of charge memo after a period of nineteen years by itself cannot be countenanced in law, as the Courts have held that inordinate delay in initiation or completion of disciplinary action vitiate the entire proceedings.

16. The learned counsel in support of his above legal contention would refer to the following decisions:-

(i). 2005 (6) SCC - 636 (P.V.MAHADEVAN Vs. MD.T.N.HOUSING BOARD), this Court's attention has been drawn to paragraph Nos.3,4, 5, 11 and 12 which are extracted hereunder:-

3. Mr.V.Prabhakar, learned counsel for the appellant submitted that the charge memo had been issued in the year 2000 for the irregularity in issuing a sale deed in 1990 to one Mr.A.N.Beemaiah who was an employee of the Housing Board and was to superannuate shortly. Mr.Prabhakar also submitted that though the records were very much available with the respondent, no action has been taken against the appellant since 1990 for about 10 years; that no explanation whatsoever was offered by the Housing Board for the inordinate delay in initiating the disciplinary action against the appellant. Mr.Prabhakar placed strong reliance on the following two decision of this Court in (i) State of M.P.Vs. Bani Singh 1990 (Supp) SCC 738 and (ii). State of Andhra Pradesh Vs.N.Radhakrishnan (1998) 4 SCC 154 and submitted that the High Court did not even consider any of these judgments, which were specifically referred in the writ petition.

4. In the first case of Bani Singh [1990 Supp SCC 738 : 1991 SCC (L&S) 638 : (1991) 16 ATC 514] , an OA was filed by the officer concerned against initiation of departmental enquiry proceedings and issue of charge-sheet on 22-4-1987 in respect of certain incidents that happened in 1975-76 when the said officer was posted as Commandant, 14th Battalion, SAF, Gwalior. The Tribunal quashed the charge memo and the departmental enquiry on the ground of inordinate delay of over 12 years in the initiation of the departmental proceedings with reference to an incident that took place in 1975-76. The appeal against the said order



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was filed in this Court on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits. This Court rejected the contention of the learned counsel. While dismissing the appeal this Court observed as follows: (SCC p. 740, para 4)

"The irregularities which were the subject-matter of the enquiry are said to have taken place between the years 1975-77. It is not the case of the department that they were not aware of the said irregularities, if any, and came to know it only in 1987. According to them even in April 1977 there was doubt about the involvement of the officer in the said irregularities and the investigations were going on since then. If that is so, it is unreasonable to think that they would have taken more than 12 years to initiate the disciplinary proceedings as stated by the Tribunal. There is no satisfactory explanation for the inordinate delay in issuing the charge memo and we are also of the view that it will be unfair to permit the departmental enquiry to be proceeded with at this stage. In any case there are no grounds to interfere with the Tribunal's orders and accordingly we dismiss this appeal."

5. In the second case of N. Radhakishan [(1998) 4 SCC 154 : 1998 SCC (L&S) 1044] the respondent was appointed as Assistant Director of Town Planning in the year 1976. A report dated 7-11-1987 was sent by the Director General, Anti-Corruption Bureau, Andhra Pradesh, Hyderabad to the Secretary to the Government, Housing, Municipal Administration and Urban Development Department, Andhra Pradesh, Hyderabad about the irregularities in



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deviations and unauthorised constructions in multi-storeyed complexes in the twin cities of Hyderabad and Secunderabad in collusion with Municipal Authorities. On the basis of the report, the State issued two memos both dated 12-12-1987 in respect of three officials including the respondent Radhakishan, the then Assistant City Planner. In this case, till 31-7-1995 the articles of charges had not been served on the respondent. The Tribunal, however, held that the memo dated 31-7-1995 related to incidents that happened ten years or more prior to the date of the memo and that there was absolutely no explanation by the Government for this inordinate delay in framing the charges and conducting the enquiry against the respondent and that there was no justification on the part of the State now conducting the enquiry against the respondent in respect of the incidents at this late stage. This Court, in para 19, has observed as follows: (SCC p. 165)

"19. It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In



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considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

This Court held that there was hardly any explanation worth consideration as to why the delay occurred. In the circumstances, this Court held that the Tribunal was justified in quashing the charge memo dated 31-7-1995 and directing the State to promote the respondent as per recommendation of the DPC ignoring memos dated 27-10-1995 and 1-6-1996. Accordingly, the appeal filed by the State of Andhra Pradesh was dismissed.

11. 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 disputed 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



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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.

12. We, therefore, have no hesitation to quash the charge memo 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 costs."

A. In the above case, the Hon'ble Supreme Court was dealing with the issuance of charge memo against the official of Tamil Nadu Housing Board, in the year 2000, for the alleged irregularity that happened in the year 1990. After referring to a few of its earlier decisions, the Hon'ble Supreme Court, ultimately quashed the charge memorandum. The Hon'ble Supreme Court reasoned that keeping an Officer under the charges of corruption and disputed integrity for a long period would cause unbearable mental agony and distress to the Officer concerned. The Hon'ble Supreme Court further reasoned that the suffering of the Officer due to the protracted disciplinary proceeding would be much more than the punishment.

(ii). W.A.No.419 of 2013, decided on 21/2/2014, the learned counsel would draw the attention of this Court to paragraph Nos.14 and 15 and the same are reproduced hereunder:-

"14. It is pertinent to mention here that no proper reasoning is forthcoming from the appellant / respondent as to the inordinate and unexplained delay in issuance of charge memo belatedly after a lapse of 22 years. Moreover, it is obligatory on the part of every authority to decide the matter one way or the other, as and when any representation / application is received at their end and they have no right at all to sit over the same, causing serious



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prejudice to dutiful employees, who duly seek permission before going ahead. The contention of learned Special Government Pleader to the effect that the respondent / petitioner must have waited till the outcome of application is not acceptable firstly for the reason that the respondent / 10 petitioner was kept in dark with respect to the specific period of disposal of her husband's application and secondly that in order to meet the compelling situation, she was constrained to take such a decision of marrying her maternal uncle solely for the welfare of her family. The case would be different in case the factum of marriage was not brought to the knowledge of the department or the previous marriage of her husband with one Kannagi was conveniently hidden. In absence of any such pleadings by the appellant / respondent herein, we find no justification to interfere with the order of the learned Single Judge, who, finding arbitrariness and no proper explanation for the inordinate delay in issuance of charge memo, has rightly quashed the same.

15. The Hon'ble Apex Court as well as this Court have time and again held that for initiation of disciplinary action against a Government servant over the misconduct committed by him / her, it is the bounden duty of every authority to follow the procedures as contemplated under the provisions of the Conduct Rules to initiate proceedings in a reasonable time. Admittedly, in the present case, the charge memo was issued only on 07.08.2007 for the occurrence alleged to have taken place on 11.06.1985, the date of solemnisation of marriage and reasons for such inordinate delay have also not been explained properly, which would definitely deprive the respondent / petitioner in defending herself over the happenings that had taken place 22 years ago, thereby causing mental agony and sufferings all along. If the ratio laid down by the Hon'ble Supreme Court vide judgments stated supra is applied to the case on hand, then no other conclusion is arrived at than holding that the delay caused by the disciplinary authority cannot be allowed to stand."



B. The Division Bench in the above order, confirmed the order of the learned Single Judge, quashing the charge memo issued against the delinquent/ Government servant therein, on the ground of delay. The delay in that case was 22 years. The Division Bench while ruling as above, has relied upon the decision of the Supreme Court viz., State of Madhya Pradesh Vs. Bani Singh and another reported in 1990 (Supp) SCC 738, at P.V.Mahadevean's case as extracted supra.

(iii). 2018-2-Writ L.R.190 (K.G.THULASIRANGAN Vs. THE SECRETARY TO GOVERNMENT, REVENUE DEPARTMENT, FORT ST. GEORGE, CHENNAI 600 009 & Another), the learned Judge of this Court allowed a similar challenge to the charge memo issued after a delay of 12 years. The learned counsel would draw attention of this Court to paragraph Nos.10 to 12 and 19.

"10. The learned counsel for the petitioner in support of her contentions would rely on the following decisions in W.A(MD).No.1009 of 2014 dated 22.04.2016, wherein, the learned Division Bench of this Court has adverted to various decisions on the aspect of delay in framing charges and ultimately, held that such long delay had vitiated the disciplinary proceedings. The lengthy observation of the learned Division Bench of this Court and its reference to various judgments on the subject matter as found in paragraph No.12, is reproduced below:-

"12.On the aspect of the delay in framing charges, this Court deems it fit to consider the following decisions.

(i)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 laches 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.

(ii)In State of Punjab and others Vs. Chaman Lal Goyal, reported in 1995 (2) SCC 570, the Hon'ble Supreme Court held as follows:

"9.Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in this case. It is trite to say that such disciplinary proceeding must be



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conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the court has to indulge in a process of balancing... "

(iii) In M. Balakrishnan and 7 others Vs. The Corporation of Madurai and another, reported in 1995 (II) CTC 589, for certain improper acts on the part of the petitioners therein, departmental proceedings were initiated after 14 years. While quashing the said proceedings, a learned single Judge has observed that such proceedings after a long period would result in great prejudice and amount to violation of the principles of natural justice.

(iv) In Commissioner, Sankarapuram Panchayat Union etc. Vs. S.A. Abdul Wahab and others, reported in 1996 W.L.R. 677, a Division Bench of this Court held that if there is unnecessary, unexplained and unjustifiably long delay in initiating departmental proceedings, it would result in causing great prejudice to the person against whom such a proceeding is initiated and it will be a ground for quashing the proceedings.

(v) In B. Loganathan Vs. The Union of India, rep. by the Secretary to Government of Union Territory of Pondicherry, Department of Local Administration, Pondicherry and another, reported in 2000 (III) CTC 351, for the



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allegations relating to the period of the year 1982, based on a vigilance report, a charge memo was issued in 1997 and the said proceedings were put to challenge. While quashing the charge memo on the ground of inordinate and unexplained delay, this Court has observed that the delay in initiating disciplinary proceedings constitutes denial of reasonable opportunity to defend himself and that the same, violates principles of natural justice. At Paragraph 12 has held as follows:

"12.Learned counsel appearing for the second respondent by relying on a decision of the Supreme Court in Secretary to Government, Prohibition and Excise Department v. L.Srinivasan , 1996 (3) S.C.C. 15 would contend that the scope of judicial review is very limited and sought to distinguish the above referred decisions. No doubt, in the said decision. Their Lordships have observed that it would not be open to the Tribunal or the court to quash the suspension order and charges even at the threshold. The perusal of the judgment does not show the details such as when the incident had taken place and when the Government have initiated action etc. In Union of India v. Ashok Kacker , 1995 Supp (1) S.C.C. 180, no doubt, Their Lordships have observed that it is open to the delinquent to file his reply to charge-sheet and raise all objections and also invite the decision of the disciplinary authority thereon. In this case also, no other details have been furnished such the date of occurrence, steps taken by the Government etc. In such circumstances, I am of the view that both the decisions relied on by the Government Pleader are not helpful to their case. I have already stated that even according to the 2nd respondent, the alleged irregularities had taken place in the year 1982 and even after receipt of the report from the Vigilance and Anti- Corruption, Pondicherry Government in the year 1993 the impugned charge memo was issued only on 5.11.97. The inordinate and unexplained delay vitiates the impugned charge memo and the same is liable to be quashed. As observed by Their Lordships of the Supreme Court in State of Punjab and others v. Chaman Lal Goyal, 1995 (2) S.C.C. 570, the disciplinary proceedings cannot be initiated



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after a lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, mala fides and misuse of power. If the delay is too long and is unexplained, the Court may well interfere and quash the charges. Here, in our case, the petitioner has raised a plea that the delay is likely to cause prejudice to him in defending himself. If such plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. I have already stated that the first charge states that the petitioner did not disburse cash from January, 1982 and, as rightly contended by the learned counsel for the petitioner, not even the period is mentioned clearly and like-wise, the statement that cash book was not maintained properly is a bald statement. Further, the nature of the charges relate to day-to-day activities of disbursement of cash and maintenance of registers, which are routine affairs, hence the unexplained delay of 15 years cannot be accepted. It would be impossible for the petitioner to remember the identity of witnesses whom he could summon to appear before the enquiring authority to support his case. Even If he could summon their presence, it would be a doubtful proposition whether they would be in a position to remember that happened more than 15 years back and help him in his defence. Further more, the petitioner may not be in a position to effectively cross-examine the witnesses to be examined on the side of the second respondent in support of the charges. Practically, it would be a doubtful proposition that either the prosecution witnesses or the defence witnesses would be in a position to remember the facts of the case and advance the case of either the department or the petitioner. Under these circumstances and on the facts and circumstances disclosed, I hold that the unexplained inordinate delay will constitute denial of reasonable opportunity to the petitioner to defend himself that it would



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amount to violation of principles of natural justice and as such, the impugned charge memo must be struck down on this ground alone. By weighing all the factors both for and against the petitioner/delinquent officer quashing the charge memo is just and proper in the circumstances".

(vi) In C.P. Harish Vs. The Central Warehousing, represented by its Managing Director, 4/1, Siri Institutional Area, New Delhi, reported in 2000 (IV) CTC 517, for the alleged lapses of the year 1982-1983, charge memos were issued on 20.06.1995 and 14.07.1998 respectively, nearly after 15 years. By observing that disciplinary proceedings cannot be initiated after lapse of considerable time, which would give room for allegations of bias, mala fides and misuse of power and that it would be impossible for the delinquent to remember and identify the witnesses, this Court has held that delay constitutes denial of reasonable opportunity to defend herself and it also violates the principles of natural justice and quashed the charges impugned in the above writ petition.

(vii) In A. Obaidullah Vs. The State of Tamil Nadu, rep. by the Secretary to Government, Home Department, Secretariat, Chennai and another reported in 2005 (5) CTC 380, a Division Bench of this Court, after considering the decisions in State of Uttar Pradesh Vs. N. Radhakishan reported in 1998 (4) SCC 154 and P.V. Mahadevan Vs. Managing Director, Tamil Nadu Housing Board, 2005 (4) CTC 403:2005 SCC (L&S) 861, quashed a disciplinary proceeding which was initiated after 12 years, holding that inordinate and unexplained delay defeats justice.

(viii) In Union of India v. Central Administrative Tribunal 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....."



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(ix) 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.

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."

(x) 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 filed 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



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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."

(xi) 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.

(xii) 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.

(xiii) 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.

(xiv) In G.Anand Vs. The Principal Commissioner and Commissioner of Revenue Administration, Chepauk, Chennai-5 and others reported in 2006 (5) CTC 723, the alleged lapses on the part of the petitioner therein was of the year 1994. Disciplinary action was initiated in the year 2005. Finding that the charge memo had been issued with an inordinate delay, this Court set aside the charge memo impugned in the said writ petition.

(xv) In A.Bommusamy Vs. The Government of



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Tamil Nadu and others reported in 2007 (3) CTC 518, a Division Bench of this Court has considered a case where disciplinary proceedings was initiated on the verge of retirement. The petitioner was to retire on 31.03.1987. By proceedings dated, 27.02.1987, disciplinary proceedings were initiated under Rule 17-a of the Tamil Nadu Civil Services (Discipline and Appeal) Rules for imposing minor penalty. On receipt of the petitioner's explanation, a revised charge memo dated 13.03.1987, involving a procedure for imposing major penalty was issued, just 17 days before retirement. Though, an enquiry was initiated as early as on 10.08.1987, the passing of an order of punishment was kept pending for about five years and finally a punishment was imposed on 21.01.1993. Having regard to the ratio decidendi of the Courts in the matter, where no reasonable explanation is offered, the Division Bench, at paragraph 13 observed as follows:

"13. Further, there was inordinate delay in passing the order of punishment. Though the enquiry was initiated as early as on 10.8.1987, the passing of the order of punishment was kept pending for about five years and finally the punishment was imposed on 21.1.1993. There is no explanation for such an inordinate delay in passing the final order. Time and again, the Supreme Court and this Court has deprecated the initiation of Disciplinary Proceedings against an employee or the fag end of his retirement and keeping the matter pending for a long time by keeping the matter pending for a long time by keeping the employee under suspension. Further when the petitioner had pleaded that there was official prejudice and enmity between him and the third respondent in the matter of use and maintenance of the official vehicle, the Tribunal has failed to consider this aspect of the case in proper perspective while dismissing the Original Applications. The Disciplinary Proceedings were initiated against the petitioner when there was hardly fifteen days left for his retirement. More over, when his date of retirement is on 11.3.1987 and the order of suspension was passed on 25.3.1987 by invoking G.O. No. 173. Therefore, when once the petitioner has reached the age of superannuation on 11.3.1987, the placing the



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petitioner under suspension after his date of superannuation is without authority and that when the relationship of master-servant ceased to exist, no Disciplinary Proceedings could be initiated against the petitioner. On this ground also, the impugned order of the Tribunal is liable to be set aside."

(xvi) In K. Kumaran Vs. The State of Tamil Nadu by Secretary to Government, Agricultural Department, Chennai and another reported in 2007(3) CTC 763, the alleged lapses relate to the period 1987-1988. A charge memo was issued on 08.05.2004, after nearly 16 years. By observing that delay causes prejudice to the charged officer, unless it can be shown that he was to be blamed for the delay or when there was proper explanation for the delay in conducting the disciplinary proceedings, this Court quashed the charges, issued belatedly.

(xvii) In Ranjeet Singh Vs. State of Haryana & others reported in 2008 (3) CTC 781, the Hon'ble Supreme Court considered the correctness of a judgment made in a second appeal, dismissing the plea that there was no substantial question of law in interfering with the judgment and decree made by the District Court, which reversed a decree passed in a suit for declaration, declaring a show cause notice issued after a delay of 7 years after concluding the departmental enquiry, as illegal. There was also a delay of 9 years in initiating disciplinary proceedings. In the above reported case, for an allegation of the year 1974, a charge memo was issued in 1983, after 9 years. The Enquiry Officer submitted his report on 01.01.1985. After a delay of nearly 7 years, the department issued a show cause notice with a copy of the report, proposing to impose a penalty. After submission of the explanation, the Government servant preferred a suit to declare a show cause notice proposing to impose a punishment as invalid. The trial Court decreed the suit holding that the action of the employer imposing punishment as illegal. The State preferred an appeal to the District Court. The first appellate Court allowed the appeal and dismissed the suit. Aggrieved by the same, the Government servant filed a second appeal to the High Court. The



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decision made by the District Court was confirmed. Testing the correctness of the judgment and decree and following the decision in State of Andhra Pradesh Vs. N. Radhakrishnan reported in AIR 1998 SCC 1833 : 1998 (4) SCC 154 and P.V. Mahadevan V. Managing Director, Tamil Nadu Housing Board reported in 2005 (4) CTC 403, the Hon'ble Supreme Court, at paragraph 9 has held as follows:

"We have extracted the charges against the appellant. These charges did not require any detailed investigation. In view of the unexplained delay of nine years the Trial Court was justified in holding that the entire enquiry was vitiated and in declaring that the order of punishment to be null and void. The Appellate Court did not have any justifiable reason to interfere with the said finding. In the circumstance, we are of the view that the High Court ought to have interfered in the matter as the Appeal involved a substantial question of law, i.e. whether issue of charge sheet after nine years when there are no special circumstance to explain the delay vitiated the enquiry. As the matter is old and as we have already found that the delay vitiated the enquiry, no purpose will be served by remitting the matter. We propose to dispose of the Appeal on merits".

The Hon'ble Supreme Court reversed the judgment and decree of the High Court and the first appellate Court and consequently, restored the judgment of the decree of the trial Court, setting aside the penalty.

(xviii) In S. Rathinavelu Vs. The Chairman, Tamil Nadu Water Supply and Drainage Board, 31, Chepauk, Chennai-5 and another reported in 2009 (2) CTC 513, for certain incidents alleged to have occurred in 1988-1989, disciplinary proceedings were initiated, after 10 years. After considering a catena of decisions, this Court set aside the punishment on the ground of inordinate delay of 10 years in initiating the disciplinary proceedings.

(xix) In Kootha Pillai Vs. Commissioner, Municipal Administration, Chennai and others reported in 2009 (1) MLJ 761, this Court has quashed the disciplinary proceedings on the



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ground of inordinate delay.

(xx) Following the ratio decidendi in N.Radhakrishnan's case cited supra, a recent judgment reported in S.Sekar Vs. Commissioner of Social Welfare, Ezhilagam, Chennai reported in 2010 (1) MLJ 708, a learned Judge at paragraph 11 has observed as follows:

"11.Also, it is a settled proposition that while considering whether the delay has vitiated the disciplinary proceedings, the Court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained, prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path, he is to suffer a penalty prescribed. 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 officers unless it can be 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". In the above reported case, there was a delay of 12 years in concluding the disciplinary proceedings and that there was no explanation for such delay.

11. The learned counsel would further rely on yet another decision of the learned Division Bench of this Court in the case of A.Obaidhullah Vs. The State of Tamil Nadu and another, reported in 2005 (5) CTC 380, she would draw the attention of this Court to paragraph Nos.11 to 14, which are reproduced below:-

11. Coming to the delay in both the writ petitions, it is the claim of A. Obaidhullah, petitioner before the Tribunal that there had been inordinate delay on the part of the department/ Government and in the absence of proper explanation or the delay had been



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caused at the instance of the petitioner himself, the charge memo cannot be proceeded. Though the Tribunal has referred to the fact that charge memos have been issued as early as on 5-6-78 in respect of the events that had taken place during February, 1976 and February, 1977 and absolutely there is no explanation at all for not pursuing the charge and the need for issuing a fresh charge memo on 5-12-90 i.e., after a period of 12 years. The Tribunal proceeded on the assumption that inasmuch as the enquiry was headed by a sitting Judge of the High Court and based on the findings of the Commission, charge memos had been framed, the same cannot be lightly ignored. We are unable to accept the said conclusion. In T.T. ANTONY v. STATE OF KERALA AND OTHERS, reported in J.T. 2001 (5) SC 440, the Honourable Supreme Court has held that the report and findings of the Commission of Inquiry are meant for information of the Government. Acceptance of the report of the Commission by the Government would only suggest that being bound by the Rule of law and having duty to act fairly it has endorsed to act upon it. The Court has further held that the duty of the police/ investigating agency of the State is to act in accordance with the law of the land. The Courts civil or criminal are not bound by the report or findings of the Commission of inquiry as they have to arrive at their own decision on the evidence placed before them in accordance with law. The Tribunal failed to consider the said relevant fact while considering the delay.

12. As rightly pointed out by Mr.K.V. Srinivasaraghavan, the Tribunal by pointing out various writ petitions filed by one K. Vidyasagar, the then Superintendent, Central Prison, Madras, questioning the enquiry proceedings, ignored the claim of the petitioner-A. Obaidhullah and projected that the delay was caused only at his instance.

13. In STATE OF U.P. v. N. RADHAKISHAN, reported in (19 98) 4 Supreme Court Cases 154, the following conclusion in para 19 is relevant: "It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is



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delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations."

After holding so, the Honourable Supreme Court finding that the respondent (delinquent) at any stage tried to obstruct or delay the enquiry proceedings, confirmed the order of the Tribunal in quashing the charge memo dated 31-7-1995. As observed by the Supreme Court, whether the delay has vitiated the



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disciplinary proceedings, the Court has to consider a) the nature of charge; b) its complexity; and c) on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. As pointed out by the Supreme Court, it is the duty of the Court to verify how much the disciplinary authority is serious in pursuing the charges against the delinquent. Though disciplinary proceedings should be allowed to take their course, as pointed out, undoubtedly, the delay defeats justice and causes prejudice to the charged officer.

14. In recent judgement in the case of P.V. MAHADEVAN v. MD. T.N. HOUSING BOARD, reported in 2005 Supreme Court Cases (L&S) 861, the Supreme Court after finding that there is inordinate delay of 10 years in initiating the departmental enquiry against the appellant P.V. Mahadevan, in the absence of explanation from his employer Tamil Nadu Housing Board, concluded that allowing the Housing Board to proceed with the departmental proceedings at this distance of time would be very prejudicial to the appellant and consequently quashed the charge memo issued against him. While arriving such a conclusion, Their Lordships made a reference to N. Radhakrishnan's case (1998) 4 SCC 154 (cited supra). After considering the factual details and rival contentions, the Supreme Court has concluded that: (para 11)

"11. 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 disputed 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



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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." After holding so, the Supreme Court quashed the charge memo issued against the appellant and also directed settlement of all retiral benefits in accordance with law within 3 months from the date of the order."

12. The above two decisions have laid down the law in categorical terms that the undue and unexplained delay would be a vitiating factor and such delay would be fatal to the disciplinary proceedings against the Government employees. The Courts have thus interfered with such disciplinary action on the ground of delay alone. The learned counsel would further submit that in this case, there cannot be any valid or proper explanation for such a long delay of 12 years in framing the charges and completion of disciplinary proceedings in 2015. Moreover, the charge against the petitioner is not a one of moral turpitude or corruption and therefore, it is not open to the respondents to frame charge after a period of 12 years. Such belated framing of charge as would itself constitute a grave prejudice to the interest of the employee and therefore, on this ground alone, the learned counsel would impress upon this Court to interfere with the disciplinary action against the petitioner.

19. Upon consideration of the relevant materials and pleadings and the legal submissions made on behalf of the petitioner as well as the respondents, this Court is of the view that there has been no proper explanation forthcoming from the respondents to the enormous delay in framing charges against the petitioner, this is particularly so, when the petitioner was not charged with for any act of moral turpitude or corruption. Atmost, the allegation can be construed to be one of negligence or minor dereliction of duty. Therefore, such act of misconduct even assuming that it was committed by the petitioner, cannot invite disciplinary action after a passage of 12 long years. As rightly contended by the



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learned counsel for the petitioner that such long delay by itself would constitute prejudice and therefore, the petitioner herein is entitled to the benefit of the ratio laid down by the learned Division Bench of this Court as cited supra."

17. In the above decision, this Court extensively referred to twenty decisions wherein the Court felt legally compelled to interfere with the disciplinary proceeding on the ground of delay also. The learned counsel further submitted that the Courts have consistently held that inordinate delay, in issuing charge memorandum or completion of disciplinary action would by itself constitute grave prejudice and the same would thus vitiate the very disciplinary proceedings initiated against Government servant. In this case, the charge against the petitioner is not one of serious irregularity or any act of misconduct touching upon corrupt practices, compelling the Government to take a serious view, despite lapse of considerable length of time. The charge against the petitioner is one of unauthorised absence from 9/8/1999 to 11/7/2000 and the fact would disclose that the absence of the petitioner was due to the respondents not allowing him to join back duty, after he obtained stay order from the Tribunal during the said period. In the said circumstances, the charges framed against the petitioner for the so called unauthorised absence is liable to be interfered with.

18. After notice, Mr.G.Nanmaran, learned Special Government Pleader entered appearance. On behalf of the respondents, a detailed counter affidavit has been filed. In the counter affidavit, it is contended that charge memo was issued, based on the service register and previous history of the petitioner and therefore, the same is valid in law. According to the respondents, the petitioner had not joined duty in the transferred station and remained absent without sanction from 9/8/1999 to 11/7/2000 and therefore, the period was treated as unauthorised absence.

19. As far as the interim stay granted by the State Administrative Tribunal, according to the respondents, the same cannot be given effect to, as eventually the application was not allowed and ended in favour of the respondent Department. In that circumstances, interim stay had no validity in its operation. It is further contended that the file relating to regularisation of unauthorised absence of the petitioner was in continuous process and now only it was concluded to take disciplinary action against the petitioner. In this regard, it is further added that in terms of Rule 12 (2) of the Tamil Nadu Services (Discipline and Appeal) Rules, Head of the Department is empowered to take disciplinary action against Subordinate



officials at any time.

20. Lastly, it is contended that as regards the inapplicability of Rule 18 (3) of the Fundamental rule, as canvassed on behalf of the petitioner, the charge memo was in fact served on the petitioner only on 6/11/2019. At that point of time, Fundamental Rule 18 (3) had very much come into fore. In the counter rule 18 (3) is also reproduced, which is extracted hereunder, for this Court's appreciation also.

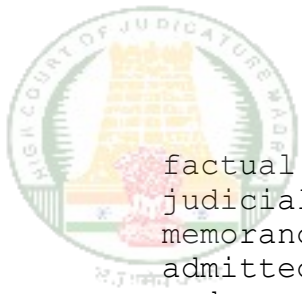
"When a Government servant (Permanent or Approved Probationer) does not resume after remaining on leave for a continuous period of six months or one year, as the case may be, under sub-Rules (1) or (2), or remains absent from duty after the expiry of his leave otherwise than on foreign service; or on account of suspension or on account of leave for employment abroad under Section II-A of the Tamil Nadu Leave Rules, 1933 for any period which together with the period of leave granted to him, exceeds the limit, he shall be liable for disciplinary action under Tamil Nadu Civil Services (Discipline and Appeal) Rules.

21. For the foregoing contentions and reasons, the respondents justified their action in issuing charge memorandum on 31/10/2019.

22. The learned Special Government Pleader who appeared in this case reiterated the above facts and contentions. According to him that the petitioner having remained absent during the period in question cannot claim immunity from being proceeded against, particularly, the period of unauthorised absence was 338 days. If such absence was to be condoned, the same could only result in demoralising the other officials of the Department, having regular attendance record. The learned Special Government Pleader further submitted that having committed the grave act of misconduct by remaining absent for nearly an year, the petitioner cannot claim any legitimate right to challenge the present charge memo issued against him. However, on behalf of the respondents, no decision has been cited or relied upon.

23. Heard Mr.V.Vijay Shankar, learned counsel for the petitioner and Mr.G.Nanmaran, learned Special Government Pleader for the respondents and perused the pleadings, materials and case laws cited on behalf of the petitioner.

24. In consideration of the controversy, in terms of the



factual and the legal rival narrative, the issues that arise for judicial scrutiny are (i). validity of the impugned charge memorandum, dated 31/10/2019, on its merits, in the face of the admitted fact that the petitioner had the benefit of interim order of stay during the entire period of the so called unauthorised absence ie., 9/8/1999 to 11/7/2000 (ii). De hors sustainability of the charge on merits, the charge could said to be maintainable even otherwise with particular reference to Rule 18 (3) of the Fundamental rules (iii). Most importantly the charge memorandum issued after a period of nineteen long years can be countenanced in law, at all, with reference to the evolved binding legal precedents. (iv). In the cumulative reading of the circumstances, the issuance of charge memo could said to be tainted with malice in law and in fact, amounting colourable exercise of power.

25. In consideration of the first issue viz., examining the charge on the touch stone of its merits, admittedly, the period of the so called unauthorised absence from 9/8/1999 to 11/7/2000 was covered by the orders of stay granted by the then State Administrative Tribunal, in O.A.Nos.10775 of 1999 and 510 of 2000. This has not been disputed at all in the counter affidavit filed on behalf of the respondents. However, the stand of the respondents is that since the applications before the Tribunal ended in favour of the Department, as the petitioner was not successful before the Tribunal, the stay which was in operation during the said period has lost its validity. In effect, the pleading of the respondents is that the application of Doctrine of Restitution.

26. This Court is unable to appreciate or countenance the above stand or contention of the respondents that the Doctrine of Restitution which appeared to have been tacitly pleaded can have an application in this case. According to the petitioner, when he attempted to rejoin duty after the interim orders were passed twice, he was not allowed to rejoin duty and he was forcibly kept out of employment. The statement to that effect by the petitioner has not been specifically denied or whispered about anywhere in the counter affidavit. The consequent fault of the Department in not complying with the interim orders passed by the learned Tribunal cannot therefore befall the petitioner, even though the petitioner did not ultimately succeed before the Tribunal. Further the department itself subsequently vide proceedings of the second respondent dated 10/7/2000 cancelled its earlier disputed transfer order, dated 07.05.1999 and posted petitioner to a different station to which the petitioner obeyed. When the controversial transfer order came to be recalled by the authority concerned, restitution principle cannot be pressed into service, even though it was not specifically pleaded by the respondents. Therefore,



the fact that the petitioner was unsuccessful before the Tribunal finally, was immaterial, as he nevertheless had the benefit of interim order during the relevant period. In such circumstances, the absence of the petitioner by no stretch of legal standards can be considered as unauthorised absence warranting initiation of disciplinary action, construing the absence as mis conduct. This Court therefore, holds that the charge framed against the petitioner is unsustainable on merits.

27. The second issue for scrutiny is that the petitioner stated to have violated Rule 18 (3) of the Fundamental rules. According to the respondents, said rule though was introduced in August 2000, charge memorandum was served only on 6/11/2019. On the day of service of charge memorandum, the amended rule was very much in force. Rule 18 (3) as extracted above, provided for disciplinary action to be taken against the Government Servant, who does not resume duty on continuous period of six months or one year, as the case may be. This Court has to consider two aspects emerging from the contentions with reference to the rule.

28. One, the applicability of the newly introduced rule, on merits and the other retrospective application in respect of the absence occurred prior to the introduction of the rule, vide G.O.Ms.No.154, P & AR Department, dated 8/8/2000.

29. As regards the first limb of consideration is concerned, rule per say contemplate disciplinary action against a Government Servant who does not resume duty after remaining absent for a continuous period of six months or one year, as the case may be. In the case on hand, when the legality of the transfer order was being questioned and the Tribunal on a prima facie consideration granted protective interim order, coupled with the fact that the petitioner was not permitted or allowed to rejoin duty in the original place on the strength of interim orders, the forced absence cannot said to attract the mischief of the said rule, at all. As stated above, it has not been specifically referred to and denied in the counter affidavit in regard to the statement of the petitioner that when he attempted to rejoin duty, he was not permitted by the officials concerned. In the face of the interim orders, covering the entire period of absence, the petitioner is legally shielded from being proceeded against by invoking the said rule. As a matter of fact, even before the introduction of the rule, on 8th of August 2000, the department on its own volition cancelled its earlier order of transfer and reposted the petitioner to a different place, vide, order, dated 10/7/2000 and the petitioner joined duty forthwith. Therefore, the respondents are estopped from invoking the rule, in any case. Therefore, on merits, it is to be held that invoking rule 18 (3) of the Fundamental rules is untenable.



30. In regard to the second limb of contention as to the applicability of the very rule to the so called unauthorised absence, being anterior to the date of introduction of the rule, this Court finds considerable force in the contention of the learned counsel for the petitioner. The rule was introduced in 8th August 2000 and it can only have prospective application for the simple reason when the Government servant remained absent for some reason or the other he or she remain so on the strength of the then existing rules that govern such absence. Therefore, any subsequent change in the rule position ought not impact adversely the Government Servant, by giving retrospective effect to the rule. This Court is therefore, unable to countenance the contention of the respondents that on the day when the charge memo was served on the petitioner, the rule had come into force and therefore, the same was said to be applicable. It would be a travesty to apply the newly introduced rule in August 2000 to all cases of absence prior to that date, even in the face of the fact that the Government servant concerned had joined duty before coming into force of the rule. Such contention is to be rejected outright as being without substance.

31. The third and the primal issue is the aspect of inordinate delay in issuance of the impugned charge memo. On behalf of the petitioner, the learned counsel relied upon three decisions one each from the Hon'ble Supreme Court a Division Bench and a single Judge of this Court. The Courts have been taking consistent view that issuance of charge memorandum after delay of several years vitiates entire disciplinary action. This Court need not give any elaborate reasons for holding as such. The petitioner has far better claim on merits, as he was not proceeded against for any grave irregularities or any act of misconduct touching upon corrupt practices. The allegation is the so called unauthorised absence for the period covered by interim orders of stay of transfer by the learned Tribunal.

32. The answer to the inordinate delay by the respondents is that the file relating to regularisation of unauthorised absence was in continuous process and only now it was concluded to take action against him. The statement made in the counter affidavit, in the opinion of this Court, is an attempt to belittle the judicial sagacity of this Court. The delay of 19 years in issuing charge memo for the so called unauthorised absence for the period from 9/8/1999 to 11/7/2000 in 2019, and the explanation for the delay is a mockery of sane administration. Under what conviction such explanation is offered before the Court incomprehensible and it is nothing but reflection of manifest insouciance on the part of the administration. Such impudent response to the challenge by the



respondents is to be rejected forthwith.

33. The learned counsel for the petitioner as stated above has relied upon three decisions and in those decisions several other decisions have been referred to. There cannot be a better case than the present one for application of the settled cast iron legal principle, namely long and inordinate unexplained delay in issuance of charge memo or completion of disciplinary proceedings is a grave and fatal legal infirmity, calling for interference of the Courts invariably. This Court is of the considered view that the petitioner herein is entitled to succeed on this ground also.

34. One other contention has also been raised stating that the Government is empowered to take action against its servant at any time in terms of the relevant Rule. This Court is once again unable to countenance how serious this statement is made on behalf of the respondents, a trifle attempt to justify its illegal and unjust action. The claim to open ended right without being circumscribed by any time factor would only lead to arbitrary exercise of power.

35. As regards the fourth issue is concerned, the issuance of charge memo in the facts and circumstances of the case, this Court without any hesitation would hold that it is nothing but a colourable exercise of power and the same is tainted with mala fides. The contention raised on behalf of the respondents that Government is empowered to take action against any Government servant and the charge memo was issued on the basis of the service record of the petitioner does not inspire confidence and carry any iota of conviction with this Court. The very fact that charge memorandum was issued on a close proximity of time when the Contempt Petition was filed against the first respondent in C.P.No.1264 of 2018, this Court with certainty can conclude that the impugned order was founded on extraneous consideration and liable to be interfered with both on the grounds of malice in fact and malice in law. The facts as disclosed and narrated in this proceedings would leave no option to this Court except to come to an inevitable conclusion that charge memorandum has been issued as a vindictive measure, seeking to achieve a collateral purpose. At the risk of repetition, this Court, has no hesitation to hold that resurrection of the charges against the petitioner in 2019 in respect of the so called act of misconduct relating to his unauthorised absence nearly nineteen years before amounted to blatant misuse of power, which under the circumstances can be countenanced in law or on facts.

36. In the conspectus of the above discussion, this Court holds that the the impugned charge memo has to go lock, stock and barrel. Accordingly, the writ petition is allowed and



the impugned charge memo in Memo R.No.40407.VB2/2019, dated 31/10/2019 issued by the second respondent is hereby quashed. No costs. Consequently, the connected W.M.P.No.35805 of 2019 is closed.

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Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Additional Chief Secretary/
Secretary to Government
Government of Tamil Nadu
Home (Transport II) Department
Fort St. George, Secretariat
Chennai 600 009.
2. The Transport Commissioner
Chepauk
Chennai 5.
3. The Joint Transport Commissioner (Admin.)
Chepauk
Chennai 5.

+1cc to Mr.A.V.Radha Krishnan, Advocate, S.R.No.17979
+1cc to the Government Pleader, S.R.No.18597

W.P.No.35025 of 2019

NR(CO)
PM/05/04/2022