BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.06.2022

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.(MD) No.4706 of 2020
and W.M.P.(MD)No.4081 of 2020

L.Subramanian ... Petitioner

Vs.

1.The Principal Secretary to Government,
Commercial Taxes and Registration (A1) Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Principal Secretary / Commissioner of Commercial Taxes,
O/o. The Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005.

3.The Deputy Commissioner (State Tax),
O/o. The Office of the Deputy Commissioner (CT),
Virudhunagar,
Virudhunagar District. ... Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a writ of Certiorari, calling for the records pertaining to the impugned charge memo in CD 2/28673/2014-II, dated 04.02.2020, on the file of the respondent No.2 and quash the same as illegal, since the charges are repetition of the same charges in the previous disciplinary proceedings, initiated vide Charge Memo in CD2/25880/2015, dated 21.07.2016, which ended in imposition of minor punishment.

For Petitioner : Mr.S.Louis
For Respondents : Mrs.D.Farjana Ghoushia,
Special Government Pleader

O R D E R

Heard the learned counsel for the petitioner and the learned Special Government Pleader appearing for the respondents.

2. Through the impugned charge memo dated 04.02.2020, the first respondent herein had implicated the petitioner with on charges, alleging demand of illegal gratification.

3. The petitioner challenges this charge memo, predominantly on the ground that for the same cause of action he was already subjected to departmental action through a charge memo, dated 21.07.2016, whereby, the Enquiry Officer had held the charges to be proved and consequently, the Disciplinary Authority had awarded the punishment of stoppage of increment for a period of one year with cumulative effect through an order, dated 26.09.2019. According to the learned counsel for the petitioner, the present charge memo cannot be sustained, since the petitioner was already subjected to the disciplinary proceedings and also awarded with the punishment for the same cause of action.

4. Per contra, the learned Special Government Pleader placed reliance on the averments in the counter affidavit and submitted that the charges in the present impugned order is different from that of the earlier charge memo, dated 21.07.2016. Since the present charges are serious in nature and amounts to illegal gratification, the petitioner requires to be enquired and therefore, interference to the present charge memo is unwarranted.

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

6. Since the main ground raised by the petitioner is that the earlier charge memo, dated 21.07.2016 as well as the impugned charge memo, dated 04.02.2020 are one and the same, it would be appropriate to compare both the charges. As per the charge memo, dated 21.07.2016, the petitioner was implicated with three charges which reads as follows:

> "*<u>Charge No.1:</u>*
>
> *You, Thiru L.Subramanian, (under suspension) while working as DCTO, Rajapalayam-I, Assessment Circle, Tirunelveli Division, during the period from 06.03.2014 to 10.09.2014, have visited place of Thiru M.Balasubramanian (who had applied for new TIN) at his residence at No.201, Pannagaram PACR Salai, Rajaplayam-1 along with Thiru R.Mahendran, AC (CT) (U/s.) Rajapalayam-I Assmt.Circle, has enquired on 27.08.2014, but falsely recorded the statement as if it was made on on 28.08.2014 by making correction on the date as 27.08.2014 in the enquiry report, by tampering of Govt. records.*
>
> *Thus, you have violated TNCS (D&A) Rules by falsification of records and misuse of official position for personal gains.*
>
> *<u>Charge No.2:</u>*
>
> *You, Thiru L.Subramanian, (under suspension) while working as DCTO, Rajapalayam-I, Assessment Circle, Tirunelveli Division, during the period from 06.03.2014 to 10.09.2014, have failed to submit the weekly diary to the Deputy Commissioner (CT), Sivakasi, which is mandatory and required to*

be filed to the controlling authority in a periodical manner.

Thus, you have violated TNCS (D&A) Rules in discharging the official duties with a dishonest motive.

Charge No.3:

You, Thiru L.Subramanian, (under suspension) while working as DCTO, Rajapalayam-I, Assessment Circle, Tirunelveli Division, by your aforesaid lapses, of culpable negligence and recklessness in the discharge as an assessing officer, has violated the CT Acts and Rules, thereby, acted in a manner unbecoming of a Government Servant, violative of Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973"

As per the impugned order, dated 04.02.2020, the petitioner was implicated with two charges which reads as follows:

"Charge No.1:

You, Thiru L.Subramanian, formerly Deputy Commercial Tax Officer, Rajapalayam - 1 Assessment Circle, now Deputy Commercial Tax Officer, O/o the Deputy Commissioner (CT), Virudhunagar, while working as Deputy Commercial Tax Officer, Rajapalayam - 1 Assessment Circle, on 28.08.2014 and 08.09.2014 at 11.00 hrs. at your office, you demanded Rs.5,000/- and Rs.3,000/- from a dealer (Complainant) Thiru.Balasubramanian in Rajapalayam, in connection with allotting TIN number. After that on 10.09.2014 at about 15.54 hours when the complainant Tr.Balasubramanian met you, you reiterated your earlier demand Rs.3,000/- as illegal gratification and you directed the complainant to give the bribe amount of Rs.3,000/- to your subordinate Office Assistant Tr.M.Thavasilingam, in the presence of official witness Tr.Vinayaga Arasan.

Charge No.2:

Thus, You Thiru L.Subramanian, formerly Deputy Commercial Tax Officer, Rajapalayam - 1 Assessment Circle, now Deputy Commercial Tax Officer, O/o the Deputy Commissioner (CT), Virudhunagar, have failed to properly function as a assessing officer thereby failed to maintain absolute integrity and devotion to duty, in your public service and violated the Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973)"

7. A comparison of both the aforesaid charge memos, indicates that both the charges are predominantly one and the same, except for some insignificant additions. In both the charge memos, petitioner herein is alleged to have demanded bribe from one Balasubramanian. It is on the basis of the charges against the petitioner levelled in both the charge memos. Thus, the submissions of the learned Special Government Pleader that both the charges are different, is unacceptable. This apart, the list of documents and the list of witnesses in Annexures 3 and 4 respectively to both the charge memos are one and the same, whereby, six documents sought to be produced before the Enquiry Officer and seven witnesses, who were proposed for examination are the same in both the charge memos.

8. The Honourable Supreme Court in the case of ***Lt.Governor, Delhi and others Vs. HC Narinder Singh*** reported in ***(2004) 13 SCC 342***, has held that two proposed actions on the same cause of action would amount to double jeopardy, which is impermissible. In line with the ruling of the Honourable Supreme Court in *HC Narinder Singh's case (Supra)*, the present impugned order for the same cause of action, which arose when the first charge memo dated 21.07.2016 was issued, cannot be sustained.

9. There is yet another aspect to the case in hand. Even assuming that the present charges differ from the earlier charge memo, dated 21.07.2016, it could be seen that the cause of action, for which the present charge memo, dated 04.02.2020, has been issued was in existence when the earlier charge memo, dated 21.07.2016, came to be issued. While that being so, if the second charge memo is even assumed to be different from the first charge memo, nothing prevented the respondents from implicating the petitioner with the present impugned charges, when the earlier disciplinary proceedings came to be initiated through the charge memo, dated 21.07.2016. In other words, the respondents are now conducting the disciplinary proceedings on a piece-meal basis, which impermissible.

10. I had an occasion to consider this aspect in the case of ***L.T.Palanisamy Vs. The Secretary to Government of Tamil Nadu, Agricultural Department and others***, in W.P.Nos.14071 and 24327 of 2014 and passed an order, dated 21.04.2022, by placing reliance on a decision of the Honourable Division Bench of this Court. The relevant portion of the order reads as follows:

> "*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 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 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 peace meal 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 aforesaid extract is self explanatory. Thus, when the law does not permit the respondents to conduct disciplinary proceedings in installments, for the cause of action that existed even when the first disciplinary proceedings were initiated, the present impugned charge memo cannot be sustained.

12. For all the foregoing reasons, the impugned order in CD 2/28673/2014-II, dated 04.02.2020, passed by the second respondent, is hereby quashed.

13. Accordingly, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/07/2022

Sub Assistant Registrar(CS)

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To

1.The Principal Secretary to Government,
Commercial Taxes and Registration (A1) Department,
Secretariat, Fort St. George,
Chennai - 600 009.

2.The Principal Secretary / Commissioner of Commercial Taxes,
O/o. The Commissioner of Commercial Taxes,
Chepauk, Chennai - 600 005.

3.The Deputy Commissioner (State Tax),
O/o. The Office of the Deputy Commissioner (CT),
Virudhunagar,
Virudhunagar District.

+1 CC to M/s.S. LOUIS, Advocate (SR-25980[F] dated 15/06/2022)

+1 CC to M/s.SPL.GP (SR-26194[F] dated 16/06/2022)

W.P.(MD) No.4706 of 2020
15.06.2022

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