



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.06.2022

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THE HONOURABLE MR. JUSTICE M. S. RAMESH

W.P. (MD) No.8933 of 2021
and W.M.P. (MD).No.6732 of 2021

K.Paramasivan

... Petitioner

Vs.

1.The Additional Chief Secretary to Government,
Rural Development and Panchayat Raj (E2) Department,
Secretariat,
Chennai - 600 009.

2.The Director of Rural Development and Panchayat Raj,
Panagal Buildings,
Saidapet,
Chennai - 600 015.

... Respondents

PRAYER : Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records of the 1st respondent i.e. the Addl. Chief Secretary to Government Rural Development and panchayat Raj (E2) Dept. Chennai in G.O(2D) No.75 Rural Development and panchayat Raj (E2) Department, dated 05.04.2021 and to quash the same.

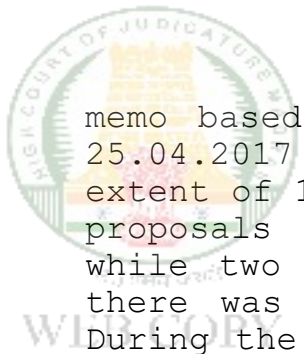
For Petitioner : Mr.S.Visvalingam
For Respondents : Mrs.D.Farjana Ghoushia
Special Government Pleader

O R D E R

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

2.The punishment of stoppage of increment for a period of one year with cumulative effect imposed on the petitioner is under challenge in the present writ petition.

3.Earlier, the petitioner herein was implicated for a charge of misappropriation in connection with the maintenance of a Black Topping Road in Friends Nagar, Kondur Panchayat, Cuddalore District for a stretch of 1 k.m. and the charge came to be dropped through G.O.Ms.No.40, Rural Development and Panchayat Raj (E2) Department, dated 21.01.2015. In connection with the same extent, the charge



memo based on which the present punishment imposed was issued on 25.04.2017 by stating that the maintenance of the BT Road to the extent of 1 k.m., was extended beyond Friends Nagar without modified proposals and estimates. To the charge memo, dated 25.04.2017, while two documents were proposed to be examined in the enquiry, there was no witnesses cited in Annexure IV of the charge memo. During the course of enquiry also no witnesses were examined. But however, the Enquiry Officer has held the charges to be proved. It is on the basis of the proven charges, the present punishment of stoppage of increment of one year with cumulative effect was imposed.

4.The statement of allegations supporting the charge memo seems to be very vague in nature. There is no reference to the date or period when the work was undertaken for maintenance of the BT Road. This apart, the charge goes to state that, some stretches beyond the Friends Nagar was maintained, without disclosing the extent of such stretches. This apart, the present charge memo relates to the incident which was in existence when the first charge memo was levelled and which came to be dropped on 21.01.2015. In other words, the respondents have chosen to subject the petitioner to Disciplinary Action on a piecemeal basis.

5.In a recent decision, in the case of ***L.T.Palanisamy Vs. The Secretary to Government of Tamil Nadu, Agricultural Department and others***, passed in W.P.Nos.14071 and 24327 of 2014, dated 21.04.2022, I had an occasion to consider the grounds of vagueness of a charge memo, inadmissibility to split the charges and the conduct of enquiries on piecemeal basis, as well as the procedural irregularity of Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, when the list of witnesses are omitted in the charge memo. On all these three grounds, I had found that the disciplinary proceedings to be vitiated. The relevant portion of the order reads as follows:

"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 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 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



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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 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."



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 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



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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

<https://hcservices.ecourts.gov.in/hcservices/> in favour of the Appellant, as he has faced



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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."

6. The aforesaid extract is self explanatory. As such, the omission to mention the list of witnesses, the vagueness of the charges, as well as the respondents having chosen to conduct the disciplinary proceedings in a piecemeal manner, are impermissible as held above. Accordingly, the consequent punishment, dated 05.04.2021 cannot be sustained.

7. In the result, the impugned order passed by the first respondent in G.O(2D) No.75, Rural Development and panchayat Raj (E2) Department, dated 05.04.2021 stands quashed. Consequently, the respondents shall pass appropriate orders, disbursing all the monetary benefits that may have been denied to the petitioner, owing to the punishment imposed to the impugned order, dated 05.04.2021, within a period of four weeks from the date of receipt of a copy of this order.

8. This writ petition stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar (CS)



1.The Additional Chief Secretary to Government,
Rural Development and Panchayat Raj (E2) Department,
Secretariat,
Chennai - 600 009.

2.The Director of Rural Development and Panchayat Raj,
Panagal Buildings,
Saidapet,
Chennai - 600 015.

+1 CC to M/s.SPL.GP (SR-25173[F] dated 10/06/2022)

+1 CC to M/s.S. VISVALINGAM, Advocate (SR-25456[F] dated 13/06/2022

W.P.(MD) No.8933 of 2021
09.06.2022

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