



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.6864 of 2019

and

W.M.P. (MD) No.5470 of 2019

N.Sivagurunathan

... Petitioner

vs.

1.The Deputy Inspector General of Police
Dindigul Range
Dindigul

2.The Superintendent of Police
Dindigul District
Dindigul

3.R.Suhasini
Enquiry Officer
Additional Superintendent of Police
Prohibition Enforcement Wing
Dindigul District

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari and call for the records relating to the charge memo in P.R.No.58/2018, dated 29.09.2018 issued by the first respondent and quash the same.

For Petitioner : Mr.A.Thirumurthy

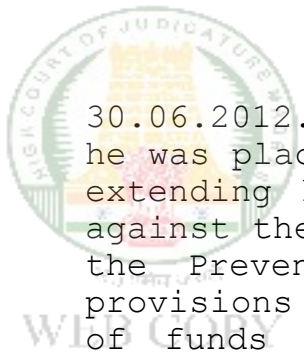
For Respondents : Mr.A.K.Manikkam
Special Government Pleader

O R D E R

The charge memo, dated 29.09.2018, issued by the first respondent, under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, is under challenge in this writ petition.

2. The petitioner was working as Office Superintendent in the office of the second respondent and he was due to retire on

<https://hcservices.civilservices.gov.in/hcservices/>



30.06.2012. The petitioner was allowed to retire from service and he was placed under suspension and consequently, an order was passed extending his service. While so, a criminal case was registered against the petitioner in F.I.R.No.7 of 2013 under the provisions of the Prevention of Corruption Act, 1988 as well as under the provisions of Indian Penal Code. The allegations of misappropriation of funds are regarding preparing false bills and vouchers for purchase of 24 UPS Batteries. The said criminal case is pending. The departmental disciplinary proceedings are simultaneously initiated under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955.

3. Annexure-I to the charge memo contains charges framed against the petitioner. Annexure-II provides the statement of allegations and the imputations and Annexure-III denotes the list of documents relied on for the purpose of establishing the charge memo. 19 documents were relied upon by the Department for the purpose of establishing the allegations. Annexure-IV provides the list of witnesses to be examined. Thus, there is no infirmity as such in respect of the impugned charge memo issued as against the petitioner.

4. This Court is of the considered opinion that no writ petition against a charge memo needs to be entertained in a routine manner. A writ against a charge memo may be entertained only on certain limited grounds, if the charge memo is issued by the Authority having no jurisdiction or the charge memo is wholly illegal. In all other circumstances, the delinquent official has to participate in the procedure of disciplinary proceedings and establish his innocence or otherwise.

5. The charge memo is not liable to be quashed as it does not adversely affect the rights of an employee and does not give rise to any cause of action. A writ lies only when some right of a party is infringed. The charge memo does not infringe the right of a party. It is only when a final order imposing punishment or otherwise, it may have a cause of action. Hence, writ petition challenging charge sheet by itself is not maintainable. However, it can be quashed on the ground that issuing authority being not competent to issue the same.

6. In the present case, no doubt, the allegations levelled against the petitioner are serious in nature. Thus, an enquiry is highly warranted in this matter.

7. The learned counsel for the petitioner made a submission that both the criminal case and departmental disciplinary proceedings need not be proceeded with simultaneously. Once the nature of allegations both in the criminal case and the departmental disciplinary proceedings are one and the same, the Department has to



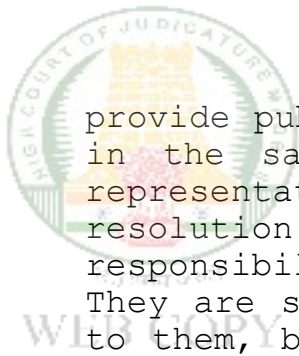
wait till the final decision is taken in the criminal case.

8. The legal principles, in this regard, are well-settled by the Courts. Simultaneous proceedings are certainly permissible and only in certain circumstances, the Competent Authorities have to take a decision as to whether to continue the departmental disciplinary proceedings during the pendency of the criminal case against an employee or not. If the files, documents and witnesses are available with the disciplinary authority, there is no impediment to continue the departmental disciplinary proceedings, conclude the same and pass final orders in the disciplinary proceedings. If no files are available with the disciplinary authority as well as in the department, then the Competent Authorities is empowered to keep the departmental disciplinary proceedings in abeyance till the final disposal of the criminal case by the Competent Criminal Court of Law. Thus mere pendency of criminal case is not a bar for continuance of departmental disciplinary proceedings.

9. To convict a person under criminal law, high standard of proof is required. Even the benefit of doubt would be a benefit for the accused in a criminal case. However, no such strict proof is required in the departmental disciplinary proceedings. Preponderance of probabilities are enough to punish an employee under the Discipline and Appeal Rules. Even a moral turpitude is sufficient to punish an employee under the conduct Rules. This being the distinct procedure in respect of the departmental disciplinary proceedings as well as criminal proceedings, this Court is of the opinion that, there is no bar for the disciplinary authorities to continue the departmental disciplinary proceedings, conclude the same and pass final orders without causing any undue delay.

10. The employees who all are involved in such allegations are bound to establish their innocence or otherwise by participating in the departmental disciplinary proceedings as well as by facing the trial. Contrarily, they are adopting a tactics to protract and prolong the issues, in order to frustrate the proceeding one way or other and finally take an attempt to escape from the clutches of law. This being the practice which is noticed by the Constitutional Courts frequently, the Courts are of the opinion that all such proceedings initiated ought to be continued simultaneously and the decision is to be taken based on the records available and by examining the witnesses by affording opportunity to the delinquent official.

11. Government servants play a significant role in running the administration of our great Nation. They are important constituents of the administrative setup of the Nation. They are pillars of the Government Departments on whose shoulders the responsibility to implement the Government policies lies. They



provide public services to the citizens at the grass root level and in the same way, they forward grievances of the public, their representations and demands to the higher for their effective resolution. The Government employees have different work culture and responsibilities as compared to the counterparts in private sector. They are smartly paid and they have some kind of perquisites given to them, but at the same time, they have heavy responsibilities to the Government in particular and public in general.

12. The principles broadly to be considered are that:

- (i) It is a settled law that criminal case and the departmental disciplinary proceedings may be initiated simultaneously as the case may be;
- (ii) An order of suspension, if required, may be issued in the prescribed format as per the rules;
- (iii) If the records and evidences are available with the disciplinary authority, then without any loss of time, charge memorandum shall be issued and the disciplinary proceedings may go on;
- (iv) The question to be considered is whether simultaneous proceedings may go on or not?;
- (v) The departmental domestic enquiry and the criminal trial shall proceed simultaneously and the decision in the criminal case would not materially affect the outcome of the domestic enquiry;
- (vi) The nature of both proceedings and the test applied to reach final conclusion in the matter are entirely different.
- (vii) If the case involves complicated questions of fact and law and the disciplinary authority is not in possession of the required materials for the purpose of conducting enquiry, then administrative decision may be taken to keep the departmental proceedings in abeyance. till the disposal of the criminal case. However, the advisability and desirability has to be determined considering the facts of each case by the authority concerned. Therefore, it would be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible.



(viii) There is no legal bar for both proceedings to go on simultaneously.

(ix) Acquittal by a criminal Court would not debar an employer from exercising power in accordance with service rules and regulations in force. The two proceedings, criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of departmental enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service rules.

(x) In the criminal case, the burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a Court of law. In departmental enquiry, on the other hand penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'. To convict a person under criminal law, high standard of proof is required. Even the benefit of doubt would be a benefit for the accused in a criminal case. However, no such strict proof is required in a departmental disciplinary proceedings. Therefore, there is absolutely no bar for the respondents to continue the departmental disciplinary proceedings and conclude the same and pass final orders.

(xi) An order of conviction if any passed in the criminal case or in criminal appeal, after disposal of the disciplinary proceedings, then if necessary the Head of the department or the Government may exercise the power of review as the case may be under the relevant rules.

(xii) Order of acquittal if at all passed in the criminal case or in criminal appeal, the same would not affect the final orders already passed in the departmental disciplinary proceedings based on the domestic enquiry conducted, in view of the fact that acquittal in a criminal case cannot be a ground for seeking exoneration from the departmental disciplinary proceedings.

(xiii) If the criminal case was registered under the Prevention of Corruption Act, 1988 and if the



original records are seized by the investigating agency, then the disciplinary authority may obtain the true copies of the documents and proceed with the departmental disciplinary proceedings.

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(xiv) As far as the departmental corruption allegations are concerned, it is not necessary that the disciplinary authority should wait for the final disposal of the criminal case registered under the Prevention of Corruption Act, 1988.

13. At this juncture, the learned counsel for the petitioner raised an apprehension that when the documents and the evidence both in the criminal case and the departmental proceedings are one and the same, there is every likelihood to cause prejudice to the genuine official. Such an apprehension is unnecessary in view of the fact that the procedures contemplated for the departmental proceedings are entirely different and even in case any statement is given by a witness before the Criminal Court, such a statement may be relied on by the departmental Authority and vice-versa. In the event of any contradiction in the statements, appropriate decision may be taken on merits. Contrarily, by raising such an apprehension, the departmental disciplinary proceedings need not be stalled for an indefinite period to defeat the very purpose and object of the disciplinary rules. To make it more clear, the statement made before the Criminal Court of law as well as in the departmental disciplinary proceedings shall be considered appropriately and even in case of contradictions or otherwise, the same shall also be relied upon and inference can be drawn by the competent Authority and a decision is to be taken on merits and in accordance with law.

14. This being the scope of simultaneous proceedings, there is no impediment for the respondents to continue the departmental disciplinary proceedings and conclude the same as expeditiously as possible. The petitioner is at liberty to submit his explanation/defence along with the documents, if any, to the Authorities concerned, within a period of two weeks from the date of receipt of a copy of this Order. On receipt of any such explanation or otherwise, the Disciplinary Authority / respondents are directed to proceed with the departmental disciplinary proceedings by affording due opportunity to the petitioner by following the procedures as contemplated under the Discipline and Appeal Rules and conclude the same as expeditiously as possible. It is made clear that the petitioner shall cooperate for the early disposal of the disciplinary proceedings. In the event of any non-cooperation, the same shall be recorded by the Authority concerned in the proceedings itself and the petitioner is not entitled for any relief on the ground of delay.



15. With the above observations and directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

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Sub Assistant Registrar(CS)

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To:

1.The Deputy Inspector General of Police,
Dindigul Range,
Dindigul.

2.The Superintendent of Police,
Dindigul District,
Dindigul.

3.The Enquiry Officer,
Additional Superintendent of Police,
Prohibition Enforcement Wing,
Dindigul District.

+1 CC to M/s.SPL GP (SR-5314[F] dated 10/02/2022)

+1 CC to M/s.A.THIRUMURTHY, Advocate (SR-5483[F] dated 10/02/2022)

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W.M.P. (MD) No.5470 of 2019

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