



WP(MD)No.7527 of 2019

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **02.08.2022**

CORAM:

THE HONOURABLE **MR.JUSTICE M.S.RAMESH**

W.P.(MD)No.7527 of 2019
W.M.P.(MD)Nos.6009 & 6010 of 2019

S.Kumaraguru

... Petitioner

/vs./

The District Revenue Officer,
Tirunelveli,
Tirunelveli District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records on the file of the respondent pertaining to its charge memo bearing Na.Ka.A5/24658/2017 dated 03.01.2019 and to quash the same and consequently direct the respondent to grant promotion and all monitory and service benefits on par with his immediate juniors.

For Petitioner : Mr.Ayiram K.Selvakumar
for Mr.S.C.Herold Singh

For Respondent : Mr.R.Ragavendran,
Government Advocate.



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ORDER

Through the impugned charge memo dated 03.01.2019, the petitioner is alleged to have demanded bribe on an occurrence that took place on 23.01.2002 and in connection with the same allegations, a criminal case was also registered against the petitioner, which culminated into framing of charges and taken on file as Spl.Case No.3 of 2014 on the file of Chief Judicial Magistrate, Tirunelveli, which ended in acquittal through a judgment dated 20.09.2016, on the ground that there was an inordinate delay in initiation of the charges and initiation of the disciplinary proceedings as well as that the charges of the criminal proceedings and the departmental proceedings are one and the same.

2. It is not in dispute that the charges relating to the present impugned charge memo is the same as that of the criminal charges levelled against the petitioner in Spl.Case No.3 of 2014. Admittedly, the incident, for which the petitioner has now been charged, relates to the year 2002. Thus, there is absolutely no explanation in the statement of the allegations annexed to the charge memo with regard to the inordinate delay of 17 years for framing charges.



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3. This Court, in catena of decisions, has held that such inordinate delay in initiation of disciplinary proceedings, would be fatal to the department and consequently, such charge memos were quashed on the ground of delay in initiation. One such decision is in the case of ***L.T.Palanisamy Vs. The Secretary to Government of Tamil Nadu, Agricultural Department, Chennai – 600 009***, passed in ***W.P.Nos.14071 & 24327 of 2014, dated 21.04.2022*** whereby, this proposition was laid down in the following manner:

“11. The delay in initiating the proceedings also contributes to the lapses committed by the Commissioner of Disciplinary Proceedings in framing the charge memo. This Court in many cases have held that the charge memo can be quashed on the ground of delay. Some of such cases are quoted below:-

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

"Though the alleged lapse occurred in the year 1995 and certain charges related to the period 1993-94, the charge memo was issued on 15.07.1997 and served on 23.07.1997, just 7 days before the date of retirement. The contention of the appellant that only with a view to cause hardship, agony and anguish, the charge memo was issued cannot be ignored..... We have already pointed out that though the applicant failed Original Application No.6284/97, challenging



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the charge memo, dated 15.07.1997, admittedly, no stay was granted. Despite the above fact that the department had not proceeded with the disciplinary proceedings, there is an inordinate and unexplained delay on the part of the department. According to the applicant, he is 67 years of age as on the date and had rendered 38 years of service in the department. He had undergone sufferings from mental worry, agony, anguish and hardship for all these years. We are satisfied that there is no need to pursue the charge memo, dated 15.07.1997."

13. In yet another decision in R.Tirupathy and others v. the District Collector, Madurai District and others reported in 2006 (2) CTC 574, this Court was pleased to quash the charge memo, dated 02.02.2005 on the ground that the charges relate to purchase of uniforms during the year 1994-95 and 1995-96 and the inordinate delay on the part of the department in issuing a charge memo was not properly explained.

14. The Supreme Court in M.V.Bijlani v. Union of India and other reported in 2006 (5) SCC 88, quashed the order of removal from service, confirmed by the appellate authority on various grounds and in particular, on the ground that initiation of disciplinary proceedings after six years and continuance thereof, for a period of seven years prejudiced the delinquent officer.

15. In M.Elangovan v. The Trichy District Central Co-operative Bank Ltd., reported in 2006 (2) CTC 635, this Court, while quashing the second show cause notice on the ground of



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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.

16. Though the charge memo does not refer to the incident for which the petitioners are charged relates to the year 2001 to 2002, such a ground is not disputed by the respondents also. Admittedly, the incident relates to the year 2001-2002, the respondents have chosen to initiate disciplinary proceedings in the year 2014, which is more than 13 years and when there is no explanation by the respondents for the delay in initiation, such a delay can be termed to be “inordinate” in nature.”

4. This apart, when the charges in the criminal proceedings and the disciplinary proceedings are one and the same and the witnesses and evidences let in in the criminal case would also form part of the departmental proceedings, this Court in the case of ***D.Sridhar Vs. The Tamil Nadu Generation and Distribution Corporation Ltd., (TANGEDCO), Rep. by its Chairman, Chennai in W.P.No. 18781 of 2018, dated 27.09.2021***, has held that such similar charges based on the



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same evidences, cannot be sustained. The relevant portion of the order reads as follows:

9. However, the issue that arises for consideration in the present case is as to whether the respondents can initiate departmental proceedings on the same set of charges for which the employee was tried and acquitted by the Criminal Court, particularly, after lapse of almost 11 years. The issue has been answered in favour of the petitioner herein in the decision cited by the learned counsel for the petitioner in G.M.Tank's case (supra), wherein, such an initiation of the departmental action was held to be impermissible. The relevant portion of the order reads as follows:-

“... In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a Departmental case against the appellant and the charge before the Criminal Court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer, Mr. V.B.Raval and other departmental witnesses were the only witnesses examined by the Enquiry



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Officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand. In our opinion, such facts and evidence in the department as well as criminal proceedings were the same without there being any iota of difference, the appellant should succeed. The distinction which is usually proved between the departmental and criminal proceedings on the basis of the approach and burden of proof would not be applicable in the instant case. ...”

10. Likewise, a learned Single Judge of this Court in P.Siva Shanmugam's case (supra), took a similar view in the following manner:

“16. In the above said circumstances, this Court does not see as to how the departmental action can be allowed to proceed when the petitioner was acquitted of the charges on the basis of evidence adduced in the criminal trial. This Court does not see as to how the Department can at this distance of time let in any worthwhile oral evidence in establishing the charge of demanding illegal gratification by the petitioner. As stated above, once the complainant himself turned hostile and retracted his statement and the members of the trap team did not depose anything directly against the petitioner



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in the criminal trial, this Court does not see any justification for the Department to proceed with the departmental action against the petitioner, as the same would not serve any purpose except subjecting the petitioner to the ordeal of facing the departmental action. In such view of the matter, departmental action against the petitioner will lead to miscarriage of justice and the same cannot be countenanced in law.

17. Learned counsel for the petitioner would also rely on the decision reported in the case of V.Bhoopathy v. Union of India & Another reported in 2015 (3) LW 27. He would draw the attention of this Court to paragraph 9 of the judgment, in which the Court found fault with the initiation of departmental action after considerable delay and after conclusion of the criminal trial. This Court however does not see how the decision relied on by the petitioner advance the case of the petitioner.”

The aforesaid decision was affirmed by the Hon'ble Division Bench of this Court in W.A.No.2710 of 2018, dated 16.07.2019, in the following manner:

“6. The evidence produced by the prosecution was considered by the criminal Court threadbare and it was only thereafter, the respondent was acquitted honorably. The appellants would be justified in their contention in case the disciplinary proceedings were initiated well before the conclusion of the criminal case. The appellants waited till a decision was taken by the criminal Court. Thereafter, the very same charges framed against the respondent in Spl.C.C.No. 4/2006 was converted as a charge memo and disciplinary proceedings were initiated. The learned Single Judge considered the entire factual matrix and



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arrived at a correct conclusion that the very initiation of disciplinary proceedings would lead to miscarriage of justice.

7. The Hon'ble Supreme Court in G.M.Tank vs. State of Gujarat and Ors. (2006 (5) SCC 446), considered the issue relating to departmental proceedings after the acquittal of the accused. The departmental proceedings and the criminal case were based on similar set of facts and the charge in the department case and the charge before the criminal court were one and the same. The Supreme Court found that the Investigating Officer and other departmental officials were the witnesses, examined by the Enquiry Officer. The same witnesses were examined in the criminal case, resulting in acquitting the accused. The Supreme Court, by placing reliance on the earlier judgment held that it would not be prudent to continue the disciplinary proceedings after the acquittal by the criminal Court on the basis of the very same charges and evidence.

8. The facts are identical here. The charge sheet issued to the appellant in the criminal case was converted as a charge memo to initiate disciplinary proceedings. The witnesses are one and the same. There is no question of re-appreciating the evidence by the Enquiry Officer to punish the respondent. The incident is of the year 2002. Nothing prevented the appellants from initiating disciplinary proceedings against the respondent even before the disposal of the criminal case.”

5. For all the foregoing reasons, the impugned charge memo dated 03.01.2019, cannot be sustained on the ground of inordinate delay of 17 years for



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framing of charges, as well as on the ground that the same set of charges in the criminal proceedings as well as in the present departmental proceedings, being one and the same, cannot be sustained in view of the ruling in ***D.Sridhar's case*** (supra).

6. Accordingly, the impugned charge memo dated 03.01.2019 is quashed. This writ petition stands allowed. In view of the quashing of charge memo, there shall be a direction to the respondent herein to forthwith pass orders, extending all service and monetary benefits, including the promotional benefits to the petitioner herein, within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

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To

The District Revenue Officer,
Tirunelveli,
Tirunelveli District.



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M.S.RAMESH, J.

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Order made in
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Dated:
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