



W.P.(MD)No.16468 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.09.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.16468 of 2021

and

W.M.P(MD)Nos.13347 & 19615 of 2021

S.Elenchezian

... Petitioner

Vs

The Deputy Inspector General of Police,
Tirunelveli Range,
Tirunelveli.

... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records relating to the impugned charge memo in Tha.Pa.No.17/2021 dated 19.08.2021 and quash the same as illegal.

For Petitioner : Mr.G.Prabhu Rajadurai
for Mr.M.Karthikeyavenkatachalapathy

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



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prosecuted in Spl.C.C.No.01 of 2016 on the file of Special Court for Trial of the cases under Prevention of Corruption Act, Tirunelveli and vide judgment dated 27.08.2020 the petitioner was acquitted of all the charges. The learned counsel strongly submitted that even though in the final paragraph, it has been held that the prosecution failed to prove the charges against the petitioner beyond reasonable doubt, a careful reading of the entire judgment would show that it was virtually a honourable acquittal. While acquittal in a criminal case will not come in the way of disciplinary authority from initiating departmental action, duty is cast on the disciplinary authority to apply his mind and record reasons as to why disciplinary action is warranted. In this case, no such speaking order has been passed. There is nothing on record to show that the disciplinary authority applied his mind.

4. The learned counsel appearing for the petitioner also pointed out that the defacto complaint did not support the case of the prosecution both in the criminal trial as well as in the departmental enquiry. At this stage, a new enquiry officer came to be appointed. The new enquiry officer has issued a memo to the writ petitioner proposing to re-examine all the witnesses. In the said memo, the new enquiry officer has stated that he came across discrepancies in recording the testimony of the witnesses.



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5. The learned counsel appearing for the petitioner called upon this Court to infer from this that the Department is bent on vexing and harassing the petitioner. The petitioner's batchmets had already been promoted. On account of the pendency of the criminal case, the petitioner was under suspension. Even though he has been reinstated he continues to work only in the post of Inspector of Police. Only to stall his claim of promotion, the disciplinary action had been initiated and it is kept pending. Since the petitioner's rights have been seriously infringed, he wants this Court to interfere at this stage itself.

6. The respondents have filed counter affidavit. The learned Special Government Pleader took me through its contents. The contention of the learned Special Government Pleader is two fold.

a) Placing reliance on the decision of the Hon'ble Supreme Court reported in **(2006) 12 SCC 28 (Union of India Vs Kunisetty Satyanarayana)**, he submitted that the writ Court in exercise of jurisdiction under Article 226 of the Constitution of India, should be reluctant to interfere at the charge memo stage. He pointed out that mere issuance of charge memo does not violate the writ petitioner's rights. If the writ petitioner comes clean in the departmental enquiry, he will be granted all the service benefits with retrospective effect and therefore, this Court need not examine the charge memo on merits.



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b) His second contention is anchored on the decision of the Hon'ble Supreme Court reported in **(2016) 9 SCC 491 (State Bank of India & Others Vs Neelam Nag & Another)**. He pointed out that the acquittal of the employee in the criminal trial need not come in the way of the disciplinary authority from initiating an independent departmental action. He called upon this Court to dismiss this writ petition.

7. I carefully considered the rival contentions and went through the materials on record.

8. The prerogative of the disciplinary authority to initiate departmental action even after the employee concerned is acquitted in the criminal case is beyond doubt. But there could be certain cases where such a power ought not to be exercised. In the case on hand, the charge against the writ petitioner is that he had demanded payment of illegal gratification and that he also accepted the same. It is well settled that in vigilance cases, mere recovery of the tainted money is not sufficient and demand for payment of illegal gratification must be established (Vide **(2014) 13 SCC 55 (B.Jeyaraj Vs State of Andhra Pradesh)**). In this case, the allegation is that the writ petitioner demanded bribe on 06.11.2014 at 09.00 a.m. The petitioner had conclusively proved that he was away from the station and that he was in Chennai during the relevant time. He had left Sivagiri on the night of 04.11.2014 for Chennai to meet the Public



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Prosecutor for preparing counter and he returned only on 07.11.2014. He had produced not only his case diary and movement register, but also the telephone records. He had also pointed out that in respect of the case which triggered the criminal prosecution, he had already taken action and also filed final report and that is why, when the complaint was lodged before him on 21.10.2014, he had returned it on 04.11.2014. He had also specifically alleged that since he took action against some powerful persons, they had instigated Arumugam to lodge a complaint. Arumugam turned hostile during criminal case.

10. During departmental enquiry also, Arumugam did not support the allegation set out in the charge memo. If demand could not be proved, the entire case will go. If the defacto complainant had stood his ground before the Criminal Court, then probably there would be some justification for the disciplinary authority to take independent action notwithstanding the acquittal. When the defacto complainant / Arumugam himself did not support the allegation of demand, there was absolutely no possibility for the prosecution to succeed. The power of the disciplinary authority to initiate departmental action notwithstanding acquittal in vigilance case is well settled. But where the defacto complainant himself did not support the prosecution and where the acquittal had been on merits, the disciplinary authority ought not to initiate departmental action on the same set of facts and on the same cause of action.



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11. The learned counsel appearing for the petitioner drew my attention to G.O(Ms)No.251 (Personnel and Administrative Reforms (N) Department), dated 21.04.1988 in which it had been stated that the competent authority must express his view that there are good grounds and sufficient evidence to proceed with the departmental / disciplinary proceedings. This Government Order had been extensively dealt with by the Hon'ble Division Bench in the decision reported in ***W.A.No.1573 of 2017 dated 30.11.2017 (N.Gokulakrishnan Vs The Regional Transport Officer, Nagapattinam)***. The Hon'ble Division Bench quashed the charge memo on the ground that there was no independent application of mind by the competent authority and that the charge memo was mechanically framed. The ratio laid down by the Hon'ble Division Bench is squarely applicable to the case on hand. I called upon the learned Special Government Pleader to produce the relevant file indicating that the disciplinary authority had independently applied his mind and come to the conclusion that notwithstanding the writ petitioner's acquittal in the criminal case, there are good grounds for initiating departmental action and framing charge memo. But no such material has been placed before me.



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12. In this view of the matter, the impugned charge memo is quashed.

This writ petition is allowed. Consequently, connected miscellaneous petitions are closed. No costs.

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Index : Yes / No

Internet : Yes/ No

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To

The Deputy Inspector General of Police,
Tirunelveli range,
Tirunelveli.



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G.R.SWAMINATHAN, J.

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