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W.P. No.14471 of 2011

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 30.06.2023

Pronounced on : 03.08.2023

CORAM

THE HONOURABLE MR.JUSTICE MOHAMMED SHAFFIQ

W.P. No.14471 of 2011

C.R.Radhamani

...Petitioner

v.

1.The Commissioner of Commercial Taxes,
Chennai 600 005.

2.The Joint Commissioner (CT),
Enforcement, Coimbatore.

...Respondents

Prayer: The writ petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the records of the 1st respondent relating to the order in Pro.Ref.No.p2/13192/2011, dated 05.05.2011, to quash the same and to issue consequential directions to the 1st respondent to include the name of the petitioner in the panel for the year 2009 for promotion as Assistant Commercial Tax Officer, between S.No.93 and 94 of the panel approved by the 1st respondent in Pro.No.P2/28377/2009-1, dated 18.12.2009 and to promote him with retrospective effect from the date of promotion of his immediate junior with consequential benefits.

For Petitioner : Mr.M.Ravi

For Respondents : Ms.E.Ranganayaki,
Additional Government Pleader (for R1, R2)



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ORDER

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The writ petition is filed praying for a writ of Certiorari Mandamus challenging the order of the 1st Respondent dated 05.05.2011 in Pro.Ref.No. P2/13192/2011 and to issue consequential directions to the 1st Respondent to include the name of the petitioner in the panel for the year 2009 for promotion as Assistant Commercial Tax Officer, at S.No.93 or 94 of the panel approved by the 1st Respondent in Pro.No.P2/28377/2009-1 dated 18.12.2009 and to promote him with retrospective effect from the date of promotion of his immediate junior with consequential benefits.

2. Facts of the case:

2.1. The petitioner had joined the service as Typist on 15.02.1993 and was promoted as Assistant on 23.05.2000 and on the date of filing of the writ petition, the petitioner was serving as Assistant in the Office of the Assistant Commissioner (Commercial Taxes), R.S.Puram West Circle, Coimbatore. Whiles, the 2nd Respondent issued a charge memo dated 19.01.2009 vide proceedings No.A1/5812/2008, initiating disciplinary proceedings against the petitioner under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules (hereinafter referred to as the "Rules"), wherein the following charges were framed:



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Charge 1:

"During the duty hours on KG Chavad (Incoming Check post the officers of DVAC had conducted a surprise check and found an excess amount of Rs.300/- on 20 12 2008 at the (Rupees Three Hundred Only) with the possession of TmiRadhamani, UDI apart from the one disclosed by her in the "cash in hand registrar maintained at the check post. She was not able to explain convincingly the difference of amount in her possession and hence it was seized by the DVAC of officials

Charge 2:

Tmt.C.Radhamani, UDI/Assistant, while performing her duty in the Commercial Taxes Checkpost, KG Chavady (Incoming) had failed to discharge her duties with expected care, sincerity and devotion and thereby failed to maintain absolute integrity in violation of Rule 20(1) of Tamil Nadu Government Servant Conduct Rules, 1973"

2.2. The petitioner submitted its explanation vide letters dated 27.07.2009 and 10.09.2009 and requested to drop the proposal. In the meanwhile, a panel for promotion to the post of Assistant Commercial Tax Officer for the year 2009 vide proceedings dated 01.03.2010 was drawn, in which the petitioner's name was not included. The non-inclusion of the petitioner's name in the panel was admittedly in view of the pendency of charge memo dated 19.01.2009 under Rule 17(b) of the Rules.

2.3. In the meanwhile another charge memo dated 18.03.2010 came to be issued on the basis of the very same checks/inspection by DVAC at the check post on 20.12.2008. The charges are extracted hereunder:



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Charge No. 1:

"That the said Tmt. G.R.Radhamani Assistant Upper Division Inspector(A2), Thiru A.Subramanakalanidhi, Assistant Commercial Tax Officer (A1).

Thiru N.Dhandapani, Assistant / Upper Division Inspector (A3), Thiru M. Michaelrai Record clerk (A4), and Thiru P. Kuppuraj Office Assistant (A5) being a public Servants while on duty at the CT Check post (Incoming) K.G.Chavady, Coimbatore on 20.12.2008 had failed to maintain absolute integrity and they could not satisfactorily account for the possession of Rs 4,900 Rs 3,410/-, RS 2770/- Rs 300/- and RS 300/- respectively.

Charge No.2:

That the said, Tmt.C.R.Radhamani, while working as Assistant/Upper Division Inspector, K.G.Chavady (Incoming) Check post by committing the aforesaid lapses has failed to maintain absolute integrity and devotion to duty and conducted herself in a manner unbecoming of a Government Servant and thus violated Rule 20(1) of the Tamil Nadu Government Servant Conduct Rules 1973."

2.4. The petitioner challenged both the above proceedings viz., Charge memo dated 19.01.2009 and 18.03.2010 by way of Writ Petition in W.P.No. 1461 of 2001 and this Court dismissed the same vide order dated 14.03.2011.

The relevant portions of the order is extracted hereunder:

"3. Perhaps the charge memo came to be issued by the 1st Respondent in order to proceed against all of them in a joint enquiry under Section 9(A) The petitioner has now come forward to challenge the charge memos and after setting aside the same seeks for inclusion of her name in the panel for promotion to the post of Assistnat Commercial Tax Officer for the year 2009 and wants her seniority to be kept between Serial Nos 93 and 94

4. The grounds of challenge against the charge memo was that the two charge memos were based on the same set of allegations and the earlier charge memo was not cancelled and since the respondents have not followed the principles laid down in Sambandam vs Government of Tamil Nadu a judgment rendered by this Court, the charge memos were liable to be



interfered with. It is also stated that by the issuance of the charge memo, she has been denied legislative right to get promotion to the higher post

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5. The 1st charge memo was issued by an authority, who is subordinate to the 1st respondent and he is not competent to frame first charge against all the persons who are manning the checkpoint and perhaps that may be the reason the second charge memo came to be issued by a competent authority. Secondly, the second charge memo contains the recovery charges against the petitioner and it is not as if the charge memos were issued by an incompetent authority. There are no allegations of mala fides against any particular officer in framing of the charges. On the other hand, the petitioner being an employee is bound to explain cash in her possession and if the second charge memo is read carefully, it shows that the check post has been manned by five persons and all of them could not satisfactorily account for the possession of cash, which they are bound to explain. The allegation is that when they have been questioned by the Vigilance Department, they were unable to give satisfactory reasons. Therefore, it cannot be said that the charge memos have been framed without any basis. It is for the petitioner to give suitable explanation, explaining the cash in her possession. In challenging the charge memo, even the best defence of charge sheeted Government official cannot be looked into as ultimately in a regular enquiry, she has to establish her innocence after the department's production of all the materials against her and she has opportunity to cross-examine.

6. Under the circumstances, this Court is not inclined to interfere with the charge memos, which disclose a grave offence against the petitioner tried to explain by saying that a Government Servant normally will have such amounts in her possession, that is not a ground under which the charge memos can be set aside at this time. When once the disciplinary proceedings under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules are pending, the question of such Government servant being promoted pending the charge memo will not arise, especially in the context of Government guidelines in GO Ms No 368, P&AR Department dated 18.10.1993. Under the circumstances, there is no case made out. Hence, the writ petition stands dismissed. No costs. The connected Miscellaneous Petitions are closed.

(emphasis supplied)

2.5. Thereafter, the charge memo dated 19.01.2009 was withdrawn on 30.03.2011, by the 2nd Respondent. On the basis of the above withdrawal,

the learned counsel for the petitioner would submit that once the charge memo



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dated 19.01.2009 was withdrawn, then, on the crucial date which is admittedly 01.03.2009 there was no charge memo pending against the petitioner inasmuch as withdrawal would result in obliterating the proceeding from inception/ commencement.

3. To the contrary, it is submitted by the learned counsel for the Respondents that even before the withdrawal/ cancellation of 1st charge memo another charge memo dated 18.03.2010 came to be issued and thus there is a continuation of the proceeding without any hiatus and it is not as though the 1st charge memo stood obliterated but the 2nd charge memo must be understood as continuation of the 1st charge memo in view of the peculiar facts of the case. This would be evident if we keep in mind that the 2nd charge memo came to be issued in view of certain procedural irregularities, in particular, non-compliance with Rule 9A of the Tamil Nadu Service (Discipline and Appeal) Rules, and the 1st charge memo was cancelled. However, that is not to be understood as resulting in obliteration of the 1st charge memo. Thus, the submission of the learned counsel for the petitioner cannot be sustained.

4. Heard both sides, pursued the materials available on record.



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5. The thrust of the petitioner's argument appears to be that it is not permissible to charge an employee with the same misconduct twice by issuing two charge memos. The above submission though well founded is not without exceptions, there are at least two well recognised exceptions to the above rule viz.,

i) Where the charge memo or enquiry proceedings is quashed by a Court or Tribunal on technical grounds, reserving liberty to issue a fresh charge memo or hold a fresh enquiry.

ii) Where the charge memo is withdrawn in view of a technical defect by disclosing the reason for such withdrawal, reserving liberty to issue a fresh charge memo in regard to the very same misconduct.

6. In this regard, it may be relevant to refer to the judgement of the Hon'ble Supreme Court in the case of *P. Balu v. Central Administrative Tribunal*, reported in *2016 SCC Online Mad 5784*, wherein it was held as under:

"11. It is seen that the Karnataka High Court in the above said decision, while dealing with the disciplinary proceedings under Rule 14 of the CCS (CCA) Rules, 1965, held as follows:

"5. It is well-settled that an employee cannot be charged with the same misconduct twice, either by issuing two charge memos or by conducting two departmental enquiries. There are, however, two recognised exceptions. The first is, where the



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charge memo or enquiry proceedings is quashed by a Court or Tribunal on technical grounds, reserving liberty to issue a fresh charge memo or hold a fresh enquiry. The second is, where the charge memo is withdrawn in view of a technical defect by disclosing the reason for such withdrawal, reserving liberty to issue a fresh charge memo in regard to the very same misconduct. The reason given for withdrawal should necessarily be such, which requires or necessitates withdrawal of the charge memo. On the other hand if the charge memo/enquiry is withdrawn/dropped reserving liberty to initiate fresh action, but without assigning any reason, or by assigning reasons which are not relevant or by assigning wholly inadequate or inappropriate reasons for issued of a fresh charge memo or revival of the enquiry, a fresh charge memo cannot be issued in regard to the very same charges. The principle underlying Order 23, Rule 1 of the CPC will generally apply in such a situation.”

12. *The above-said contention of the learned counsel appearing for the petitioners has been considered by the Tribunal in paragraph Nos. 11, which reads as follows:*

“11. We have carefully considered the matter in terms of the citations provided by the learned counsel for the applicant. It is seen that the Tribunal/Hon'ble High Court of Karnataka have gone into the effect of non-observance of the instructions dated 5.7.1979 in each case based on the facts and circumstances of that case. In TA.44 of 1986, it was observed that the disciplinary authority while cancelling the memo of the charge issued earlier never indicated his intention to issue a subsequent fresh charge memo. It was, therefore, held that action of the disciplinary authority in issuing a fresh charge memo and consequently passing an order imposing a certain penalty on the applicant therein was bad in law. However, in the instant case, the intention to issue a fresh charge memo has been made abundantly clear in the memo dated 1.8.2013 itself by which the previous charge memo was treated as withdrawn.”

13. *If the Disciplinary Authority, for some reason or other, decided to drop the proceedings and thereafter proceeds further with an intention to issue a fresh charge memo, then the question of giving reasons would arise. In the instant case, the Disciplinary Authority has clearly stated that the first charge memo issued was treated as withdrawn with an intention to issue a fresh charge memo, which*



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means, the Disciplinary Authority has not dropped the proceedings. Therefore, the term 'withdrawing the proceedings' is different from 'dropping the proceedings'. Hence, the reliance placed on the DGP&T's letter dated 05.07.1979 does not apply to the facts of the present case. Further more, we find that this letter is only an instruction under Rule 16 of CCS(CCA) Rules and not a Rule, by itself.

.....

15. Admittedly, the petitioners have not challenged the memo dated 01.08.2013 withdrawing the first charge memo with an intention to issue fresh charge memo. Having decided not to challenge the memo dated 01.08.2013, the petitioners could not challenge the second charge memo dated 29.08.2013, which is consequential to the memo dated 01.08.2013."

7. Thus, in the facts of the present case, the 2nd charge memo must be understood as continuation of the 1st charge memo and inasmuch as there is no hiatus between the 1st charge memo and the 2nd charge memo. As a matter of fact, the 2nd charge memo came to be issued even during the pendency of the 1st charge memo which was withdrawn only thereafter. In the circumstances, this Court is unable to agree with the submissions of the learned counsel for the petitioner that the 1st charge memo gets obliterated on being withdrawn and thus there was no charge memo pending on the crucial date. The 1st charge memo was pending on the crucial date and the 2nd charge memo was issued as a matter of continuation of the 1st charge memo which this Court was informed has ended in punishment, thus there is no merit in the submission of the learned counsel for the petitioner. Importantly, this Court



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also finds that in the earlier round of litigation in W.P.No.1461 of 2011, it was found that once the disciplinary proceedings under Rule 17(b) of the Rules are pending, the question of such Government servant being promoted pending the charge memo will not arise, especially in the context of Government guidelines in G.O.Ms.No.368, P&AR Department dated 18.10.1993. Under the circumstances, there is no merit in the writ petition and the same stands dismissed. No costs.

03.08.2023

Index: Yes/ No
Speaking / Non-Speaking order
Neutral Citation: Yes/ No
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To:

1.The Commissioner of Commercial Taxes,
Chennai 600 005.

2.The Joint Commissioner (CT),
Enforcement, Coimbatore.



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MOHAMMED SHAFFIQ, J.

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Pre-delivery order made in
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