



W.P.No.19803 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.11.2023

CORAM

THE HONOURABLE MS. JUSTICE R.N.MANJULA

W.P.No.19803 of 2021 and
W.M.P.Nos.21083 & 21084 of 2021

Dr.K.Asokan

... Petitioner

Vs.

1.The Chief Conservator of Forests & Field Director,
Sathyamangalam Tiger Reserve,
Erode Circle, Erode District.

2.The Deputy Director,
Sathyamangalam Tiger Reserve,
Sathyamangalam Forest Division,
Sathyamangalam,
Erode District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records of the second respondent in relation to the impugned charge memo in Na.Ka.No.P2/4062/2021 dated 13.08.2021 and quash the same as being without jurisdiction.

For Petitioner : Mr.P.Nethaji

For Respondents : Mr.Haja Naziruddin, AAG-I Assisted by
Mr.T.Arunkumar, AGP



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ORDER

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This Writ Petition has been filed seeking to issue a Writ of Certiorari, to call for the records of the second respondent in relation to the impugned charge memo in Na.Ka.No.P2/4062/2021 dated 13.08.2021 and quash the same as being without jurisdiction.

2. Heard Mr.P.Nethaji, learned counsel for the petitioner and Mr.Haja Naziruddin, learned Additional Advocate General - I, assisted by Mr.T.Arunkumar, learned Additional Government Pleader for the respondents.

3. The petitioner has been initially appointed as Veterinary Assistant Surgeon in the Animal Husbandry Department and subsequently, he was deputed to Forest Department. He has been given with a charge memo by the Deputy Director of the Forest Department. Aggrieved over the same, the petitioner is before this Court.

4. Mr.P.Nethaji, learned counsel for the petitioner submitted that the competent authority to give charge memo against the petitioner is the



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Director of Animal Husbandry Department and not the Deputy Director of Forest Department. The petitioner claims that his controlling officer is the Forest Veterinary Officer who is technically qualified and has got a technical degree. The post of Forest Veterinary Officer corresponds to the Assistant Director of Animal Husbandry. It is further submitted that the Deputy Director who has given the charge memo to the petitioner does not possess any technical qualification and he is not connected with the Forest Veterinary Unit and further he does not possess any technical qualification equivalent to the qualification possessed by the petitioner or his immediate superior officer *viz.*, Forest Veterinary Officer / Assistant Director of the Animal Husbandry.

4.1. The learned counsel for the petitioner also submitted that the functions of the petitioner has to be directly supervised by his own higher officer who is involved in Animal Husbandry Department and the Deputy Director of the Forest Department has got nothing to do with that. The attention of this Court was drawn to the duties and responsibilities of the Veterinary Units which reads as follows:



"Duties and responsibilities of the Forest Veterinary

Units:

The proposed veterinary units will be responsible for the issues related to wildlife health and disease management including handling the conflicts, rescue operations. The unit will travel and conduct surveillance and tests against outbreak of various diseases such as foot and mouth, anthrax, hemorrhagic Septicemia and enterotoxaemia from affected wild animals as well as in the fringe villages and taking up prophylactic immunization with the active involvement of Animal Husbandry Department officials. This unit will also train the front line staff in monitoring possible disease symptoms and proper reporting. The tests will be conducted in the laboratory or where ever possible on the spot. The units which have jurisdiction over the Elephant camps will have the additional responsibilities as under:

- Daily health checks of department elephants including "Musth" management in males.*
- Prescribing the diet schedule for the captive elephants.*



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- *Recording the morphometric measurements of the departmental elephants.*
- *Suggesting appropriate husbandry practices and treatment protocol to the camp in charge.*
- *Any other emerging and specific issues of camp management."*

4.2. The contention of the learned counsel for the petitioner is that the petitioner was serving on deputation in the Forest Department. For the same set of allegations, the second respondent has already given two charge memos. According to the petitioner, the impugned charge memo is the third one.

5. It is submitted by Mr.Haja Naziruddin, learned Additional Advocate General for the respondents that as per Rule 12(2) of the Tamil Nadu Civil Service (Disciplinary & Appeal) Rules, the second respondent is the administrative authority for the petitioner. Proviso to Rule 12(2) and Rule 16 reads as under:



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"Rule 12(2)

Provided also that all authorities directly higher to the members holding the posts included in the State Services may frame charges against such members of the State Services under Rule 17(b) or issue show cause notice under Rule 17(a) even if they are not the competent authority to impose the penalty and they may conduct the inquiry themselves or request the competent authority to appoint an officer to conduct the inquiry. They shall remit the papers to the competent authority for passing final orders, after the case is processed up to the level of completion of inquiry or after receipt of explanation to show cause notice, as the case may be.

Rule 16

Where a person to be punished has been lent to the punishing authority--

(i) the power to impose the penalty of compulsory retirement or removal or dismissal, shall not lie with any authority other than the lending authority; the borrowing authority shall, in a case where it considers that the punishment of compulsory retirement, removal or dismissal should be imposed, complete the inquiry



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and revert the person concerned to the lending authority for such action as that authority may consider necessary.

Provided that the provision in this clause requiring the reversion of the person concerned to the lending authority shall not apply where the person has been lent by one department to another and both the departments are under the same administrative authority and

(i) Unless in any case it be otherwise provided by specific orders by the Governor of Tamil Nadu the punishing authority shall consult the lending authority before imposing any lesser penalty and in the case of suspension shall report forthwith to the lending authority the circumstances leading to the imposition of that penalty.

5.1. So it is claimed that the second respondent stands superior to the petitioner and he can frame charges against the members of the State servants under Rule 17(b) or issue show cause notice under Rule 17(a). Even though there is no competent authority to impose penalty, the rule however reads that the officers like the second respondent can conduct



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enquiry by himself or request the competent authority to appoint an Officer to conduct enquiry. However at the conclusion of the enquiry, the papers have to be remitted to the competent authority for passing final orders. The rule specifically clarifies the stage to which the files can be handled by the second respondent and thereafter, to be handled over to the competent authority. It states upto the level of completion of enquiry or after receipt of explanation to show cause notice. Thereafter, the files have to be transmitted to the competent authority who will take a call thereafter by appointing an Enquiry Officer for conducting the disciplinary proceedings.

6. The very same provision was put to test by this Court in W.P.No.19578 of 2018 where the petitioner belonged to Commercial Taxes Department. In the said case, it is concluded that the provision of the Rules unambiguously reads that the next higher authority shall proceed with the enquiry. After receiving the final enquiry report, the authority shall remit the papers to the competent authority for passing final orders. The Rule explicitly makes a mention that the next higher



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authority can hold the file upto the level of completion of enquiry, if the charges are under Rule 17(b). If the charges are under Rule 17(a), the higher officer concerned can deal the file till the receipt of the explanation submitted to show cause notice.

7. In the instant case, the petitioner was issued with the charges under Rule 17(b). Though the petitioner is on deputation, he is under the control of the second respondent who is his next level higher authority. In his capacity as Control Officer, the second respondent is competent enough to frame charges and conduct enquiry and he needs to send the file only along with the enquiry report to the competent authority for passing final orders. Hence so far as the competency is concerned, the petitioner cannot claim that the charge memo has been issued by the authority who has got no power to issue the same. The charge memo issued by the second respondent is well within his power as prescribed under proviso to 12(2) of the Tamil Nadu Civil Services (Disciplinary and Appeal) Rules.



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8. It appears from the counter of the second respondent that before framing the charges, the second respondent has obtained permission from the parent department of the petitioner i.e., the Directorate of Animal Husbandry Department, Chennai. Had it been a case of show cause notice issued under Rule 17(a), the second respondent could have not continued the enquiry without having an Enquiry Officer appointed by the competent authority. As the charges have been issued under Rule 17(b) which would contemplate severe punishment if the charges are proved, the second respondent has used his powers for framing the charges against the petitioner. So the petitioner's claim that the second respondent is incompetent or without jurisdiction to frame the charges against him falls to the ground.

9. The next submission of the petitioner is that the second respondent is in the habit of harassing the petitioner and he was given with repeated charges on the same set of allegations. No doubt if an



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earlier charge memo is given, no new charge memo can be once again given without dropping the first charge memo by adducing valid and acceptable reason for the issuance of the second charge memo. Each time when the charge memo is issued, the petitioner has been filing Writ Petitions.

10. However, the above fact is denied by the respondents in the counter of the respondents and the charge memos dated 13.08.2021, 12.01.2022 and 24.01.2022. The first respondent had issued the proceedings dated 01.02.2021 by stating that some serious irregularities in the functions of the petitioner has been noticed during his inspection on 30.01.2021. Hence, instructions have been issued to the second respondent to initiate disciplinary action against the petitioner. In fact, the second respondent had to be called upon to submit his explanation, if he failed to initiate any action against the petitioner despite serious lapses were noticed. By citing the proceedings of the first respondent dated 01.02.2021, the second respondent has given a memo on 03.02.2021. But the said memo cannot be considered as a charge memo



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but only a show cause notice calling for explanation for the lapse already noticed by the first respondent himself during his inspection and issued a proceedings in this regard on 01.02.2021.

11. On 25.03.2021, the first respondent has also issued a memo for the same lapse by stating his earlier proceedings dated 01.02.2021 and the show cause notice issued by the second respondent dated 03.02.2021 in the reference. Even though both the memos are for the same lapse, they were issued by the first and second respondent individually. The impugned proceedings dated 13.08.2021 has been issued by not being satisfied with the explanation submitted by the petitioner for the earlier memos issued by the second respondent on 03.02.2021 and the first respondent on 25.03.2021 for the very same allegations. Hence, the petitioner cannot call the impugned charge memo as the third charge memo.

12. Since the second respondent has chosen to issue a show cause notice and the explanation submitted by the petitioner was not



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satisfactory and the charges have been contemplated to be framed against the petitioner under Rule 17(b), the second respondent is well within his power as derived from proviso 12(2) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules and has given the charge memo by framing the charges. So the proceedings on various dates which have been culminated into the charge memo cannot be considered by the petitioner as repeated charge memos issued to him for the very same allegations noticed on his part. Hence, the second ground made by the petitioner has not made out a case in order to consider the prayer sought by the petitioner.

13. Since certain serious violations have been noticed by the first respondent and in pursuant to which, he has directed the second respondent to call for explanation from the petitioner, he abided the instructions of the first respondent. The simultaneous charge memo issued by the first respondent may be superfluous, but not a repetitive one. It merges with the show cause notice given by the second respondent. So far as the petitioner is concerned, he is going to submit



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one explanation for either of the show cause notices. On consideration of the same, the respondents will go to the next level of framing the charges. As the explanation submitted by the petitioner was not found satisfactory, the second respondent has gone to the level of framing charges and hence, that cannot be considered as a repeated charge memo for the very same reasons. Hence the next ground on which the petitioner attacked the charge memo also lacks merits.

14. In the result, this Writ Petition is dismissed. The petitioner has to participate in the disciplinary proceedings and the respondents shall conduct the enquiry proceedings in the manner known to law. Consequently, connected miscellaneous petition are closed. No costs.

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Index : Yes
Internet : Yes/No
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To

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- 1.The Chief Conservator of Forests & Field Director,
Sathyamangalam Tiger Reserve,
Erode Circle, Erode District.

- 2.The Deputy Director,
Sathyamangalam Tiger Reserve,
Sathyamangalam Forest Division,
Sathyamangalam,
Erode District.



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R.N.MANJULA, J.

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