



W.P.No.19178 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	23.02.2023
Pronounced on	15.03.2023

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.19178 of 2018

N.Sivalingam

... Petitioner

Vs.

1.The State of Tamil Nadu

Rep. by its Principal Secretary to Government,
Home (Transport-II) Department,
Secretariat,
Chennai-600 009.

2.The Commissioner for Disciplinary Proceedings

Tribunal for Disciplinary Proceedings,
5/1842-A, Trichy Road,
Market Committee Complex,
Ramanathapuram,
Coimbatore-641 045.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorarified Mandamus, directing the first respondent to call for the records of the impugned charge memo of the second respondent issued to the petitioner in C.No.1266/2008/A1, dated 28.01.2010 in T.D.P.Case No.110/2008 and quash the same and consequently, direct the respondent to revoke his suspension and to settle his pensionary benefits and other benefits entitled to the petitioner.

For Petitioner	: Mr.K.M.Ramesh, Sr. Counsel for Mr.A.Ganesan
For Respondents	: MrT.Chezhiyan, AGP



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O R D E R

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In contemplation of a disciplinary proceedings by the Tribunal for Disciplinary Proceedings, Coimbatore [TDP] under Rule 17(b) of the Tamil Nadu Civil Services (Discipline & Appeal) Rules [hereinafter referred to as "Rules"], the petitioner herein, was placed under suspension on 28.10.2008 and was also not allowed to retire on the date of his superannuation (i.e.) on 28.01.2010, on the strength of the charges which came to be framed against him by the second respondent herein.

1.2. The nature of delinquency attributed in the charge memo in T.D.P. Case No.110 of 2008, was with regard to certain misconducts relating to the period between 12.04.1999 to 15.01.2002 when the petitioner was employed as a Regional Transport Officer.

1.3. Through the inquiry report dated 30.03.2012, the charges against the petitioner was held as "not proved". However, the first respondent herein had deviated from the Inquiry Officer's report and called for petitioner's further representation, which was also submitted on 02.08.2013.



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1.4. Since no final orders has been passed on the petitioner's further representation, even after a lapse of more than two years also, the petitioner had filed a Writ Petition before this Court and by an order dated 30.06.2015 passed in W.P.18917 of 2015 and this Court had directed the first respondent to pass final orders, within a period of eight weeks from the date of the said order. Inspite of the orders of this Court, no final orders have been passed till date, which prompted the petitioner to file the present Writ Petition.

2. Heard Mr.K.M.Ramesh, learned Senior Counsel for the petitioner and Mr.T.Chezhiyan, learned Additional Government Pleader appearing on behalf of the respondents.

3. Pending the Writ Petition, the petitioner, who was also subjected to another disciplinary proceedings in TDP. No.53 of 2008, was imposed with the punishment of 'removal from service' through G.O. (2D) No.20, Home (Transport-II) Department, dated 29.01.2021. In this background, the petitioner had challenged his charge memo dated 28.01.2010, together with the consequential benefits.



4. The learned Senior counsel for the petitioner submitted that, in view of G.O. (Ms) No.338, Personnel & Administrative Reforms (Personnel. N) Department, dated 09.04.1984, the petitioner who was removed from service earlier, cannot be proceeded with the present T.D.P case now. He also submitted that, the delinquency relates to a period about 10 years back from the charge memo and therefore, the charge memo, is liable to be set aside.

5. Per contra, the learned Additional Government Pleader placed reliance on the averments made in the counter affidavit and submitted that, various disciplinary proceedings against the petitioner herein, were all pending before the TDP. The cases which are pending before the TDP viz., Case Nos.53, 110, 46, 47 of 2008, are under process with the Government and therefore, the present TDP case, should come to a logical end.

6. As pointed out by the learned Senior counsel for the petitioner, the respondents herein had earlier imposed the punishment of removal from service against the petitioner on 29.01.2021 in TDP. Case No.53 of 2008. The Government in G.O.338, dated 09.04.1984, had held that when a Government servant is removed from service,



further departmental proceedings against him, cannot be continued.

The relevant paragraph of the Government Order reads as follows:

"2.The Government have examined this matter and issue of the following instructions on the above points:-

Point(i)- No disciplinary proceedings could either be initiated or continued against a person who has ceased to be a Government servant subject to the provisions of Rule 9 of the Tamil Nadu Pension Rules, 1978. Therefore, when once a Government Servant is served with an order of dismissal or removal from service, he ceased to be a Government servant and it would not be appropriate to continue another proceedings pending against him and serve on him an order of dismissal or removal from service."

7. The fact that the punishment of removal of service imposed on the petitioner has not been set aside, is not disputed. By applying the aforesaid Government Order, the present TDP case against the petitioner, cannot be continued since the petitioner had ceased to be a Government servant. On this ground, the charge memo requires to be quashed.



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8. This apart, the framing of charges is liable to be interfered with on the ground of delay and laches in initiating the disciplinary proceedings. As observed earlier, the delinquency against the petitioner in the charge memo relates to the period between 12.04.1999 and 15.01.2002, which is after more than 10 years. There is absolutely no explanation in the charge memo with regard to the delay in framing the charges.

9. In a recent Government Order in G.O.(Ms) No.111, Human Resources Management Department, dated 11.10.2021, orders were issued for avoidance of suspension on the last date of retirement of the Government servant, in which the Government had decided as a general principle, that the issuance of suspension orders on the date of retirement of a Government servant should be avoided by examination of the cases, atleast three months prior to the superannuation of the Government servant is concerned. However, the respondents herein had waited for 10 years to frame the charges against the petitioner and placed him under suspension and did not permit him to retire on the last date of superannuation. The delay in initiating the charges, would be fatal to the Department, in view of the various decisions



rendered by this Court on this aspect.

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10. A learned Single Judge of this Court, in the case of **Kootha Pillai Vs. The Commissioner, Municipal Administration and 4 others** passed in **W.P.No.15231 of 2006 dated 05.11.2008**, had an occasion to refer to various decisions of the Hon'ble Supreme Court and ultimately held that the inordinate delay in initiating the disciplinary proceedings, would cause prejudice to the delinquent and therefore, the proceedings itself cannot be continued. Some of the decisions referred to by the learned Single Judge in *Kootha Pillai's case (supra)* are as follows:-

"45. In **State of Madhya Pradesh v. Bani Singh and another reported in 1990 (Supp) SCC 738**, the Supreme Court had come down heavily against the laches on the part of the employer in conducting departmental enquiry and after finding out that there was no satisfactory explanation for the inordinate delay, held that it would be unfair to order departmental enquiry to proceed further.

46. In **State of A.P., v. N.Radhakrishnan reported in 1998 (4) SCC 154**, the Supreme Court, at Paragraph 19, held as follows:

"Normally, disciplinary proceedings should be allowed to take its course as per relevant rules but then delay defeats justice. Delay



causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations."

47. In **Union of India v. CAT reported in 2005 (2) CTC 169 (DB)**, this Court held that,

"The delay remains totally unexplained. Therefore, we have no hesitation at all in concluding that the ground of inordinate delay in proceeding with the departmental enquiry as referred to above by us, would come in the way of the Govt., to continue with the enquiry any further....."

48. In **P.V.Mahadevan v. M.D. Tamil Nadu Housing Board reported in 2005 (4) CTC 403**, this Court after referring to various decisions, held that,

"The protracted disciplinary enquiry against a government employee should, therefore be avoided not only in the interest of the government employee but in public interests and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by department in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

15. We therefore, have no hesitation to quash the charge issued against the appellant.



The appeal is allowed. The appellant will be entitled to all the retiral benefits in accordance with law. The retiral benefits shall be disbursed within three months from this date. No cost."

49. 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 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."

50. 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.

51. 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 particularly, on the ground that initiation of disciplinary proceedings after six years and continuance thereof, for a period of seven years prejudiced the delinquent officer.

52. 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 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.*"

11. In view of all the aforesaid decisions, the delay of 10 years in initiating the disciplinary action, would be fatal to the respondents.



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12. The learned Additional Government Pleader had stated that several other TDP cases are pending against the petitioner. Such a ground, may not be relevant for the purpose of interfering with the present charge memo. However, disbursement of the retirement benefits, would be subject to the final decision taken in the other TDP Cases.

13. In the light of the above findings, charge memo dated 28.01.2010 of the second respondent, is quashed. Consequently, there shall be direction to the respondents to pass appropriate orders for disbursement of the retirement benefits / arrears, after the finalisation of the other TDP cases, which are pending against the petitioner herein. Accordingly, the Writ Petition stands partly allowed. There shall be no order as to cost.

15.03.2023

Index : Yes
Order : Speaking
Neutral Citation : Yes

DP

Note: Issue order copy on 17.03.2023

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To

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State of Tamil Nadu
Home (Transport-II) Department,
Secretariat,
Chennai-600 009.
- 2.The Commissioner for Disciplinary Proceedings
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M.S.RAMESH,J.

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ORDER MADE IN

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