



W.P.No.23818 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04..09..2023

Coram

THE HON'BLE MR JUSTICE N.SATHISH KUMAR

Writ Petition No.23818 of 2022

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W.M.P.Nos.22801 & 22802 of 2022

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W.M.P.No.30920 of 2022

P.K.Udhayakumar

..... Petitioner

-Versus-

- 1.The Secretary to Government,
Personnel & Administrative Reforms Department,
Fort St. George, Chennai-9.
- 2.The Secretary to Government,
Environment & Forest Department,
Fort St. George, Chennai-9.
- 3.The Directorate of Vigilance & Anti-Corruption,
Alandur,Chennai-16.
- 4.The Commissioner,
Tamil Nadu Vigilance Commission,
Fort St. George, Chennai 600 009.
- 5.The District Forest Officer,
Rural Fire Wood Division,
Tiruppathur Forest Range II,
Tiruppathur, Vellore District.



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6.The Conservator of Forest,
Vellore Circle, Vellore-4.

7.The Principal Chief Conservator of Forests,
Chennai-15.

..... Respondent

Petition filed under Article 226 of The Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling or the records of the 4th respondent in connection with the impugned order passed in U.O.Note No.1551/VC-III/2020-1, dated 22.07.2020 and quashing the same and directing the respondents to pass final orders in the Departmental action taken against the petitioner in connection with the charge memo issued to him in charge sheet No.21/2004/V1 dated 26.07.2004 within a reasonable time.

For Petitioner : *Mr.K.Venkataramani,*
Senior Counsel for
Mr.M.Muhappan

For Respondent (s) : *Mr.S.Arumugham,*
Government Advocate
for RRI to 7

ORDER

This writ petition challenges the internal communication addressed by the Secretary, Tamil Nadu Vigilance Commission, Secretariat, Chennai 600009 to the Principal Secretary to Government, Environment and Forests Department, Chennai 600 009 directing letter No.RC.73/2006/FOR/VL, dated 23.03.2020 to be forwarded to the Principal Secretary to Government,



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Environment and Forests Department for taking departmental / disciplinary action against the petitioner, Forest Range Officer, Rural Fire Wood Division, Thirupathur Ranger, Vellore District, who was acquitted in the criminal cases and further directing the action taken report to be furnished to the Vigilance Commission at the appropriate stage.

2. The petitioner was a Forest Ranger in the respondent department. He is now aged 70 years. He joined the service of the department as Junior Assistant in December 1974 and thereafter promoted as Forest Ranger in October, 1980. He was due to retire on 31.01.2011.

3. While he was in service on 13.09.2010 he was placed under suspension for certain irregularities and he was proceeded with departmentally. He was issued with a charge memo on 26.07.2004 for minor penalty under Rule 17(a) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 by the department for which a reply was submitted. Based on his explanation, a report dated 30.11.2004 was also submitted. However, he was not permitted to retire from service on the date of superannuation owing to the pendency of departmental proceeding as per the order of the Principal Chief Conservator of Forests, Chennai dated 27.01.2011. The allegation against the petitioner is that he was not handling the accounts pertaining to the sanctioning loan to the



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Village Forest Committee. The specific allegation is that a sum of Rs.1,00,000/- was not actually distributed to the committee and not brought forward to the loan distribution register. The other allegations are that he had not opened the joint account, not taken any effort to recover the loan amount and not disbursed the revolving loan to the beneficiaries and that the Village Forest Committee was also not functioning properly. In the mean time, based on the same set of allegations, a criminal case in Crime No.1 of 2006 was registered by the Vigilance and Anti-corruption, Vellore for the alleged offence u/s 167, 467, 471 r/w 409 & 477(A) of IPC and Section 13(1)(a) and 13(1)(d) of the Prevention of Corruption Act. After completion of the investigation, a final report was filed before the Chief Judicial Magistrate, Vellore which was taken on file in C.C.No.3 of 2010 on the file of the Chief Judicial Magistrate, Vellore.

4. The said charge memo issued under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on 26.06.2004 was kept pending on the ground that criminal case was pending in C.C.No.3 of 2010 on the file of the Chief Judicial Magistrate, Vellore. Now, the case has been ended in acquittal by judgement dated 19.10.2019. The criminal court after considering both oral and documentary evidence held that the charges levelled against the



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petitioner for misappropriation of funds, forgery and falsification of records were not proved beyond all reasonable doubts. Thereafter, it appears that on the basis of the recommendations made by the Vigilance and Anti-Corruption, charge memo issued under Rule 17(a) has been converted into Rule 17(b) by proceedings dated 17.11.2022.

5. Now, the stand of the respondent in the status report furnished to the Special Government Pleader, High Court of Madras, is that charge under rule 17(a) has been withdrawn on 10.07.2023. It is also the stand of the respondents that the petitioner had already been punished in departmental proceedings on many occasions. Therefore, charge for major penalties under Rule 17(b) has been issued and the petitioner is liable to be proceeded with as per the rules.

6. The learned counsel for the petitioner would contend that the petitioner was departmentally proceeded with by issuing with a charge memo in 2004 for minor penalties under rule 17(a) mainly on the allegations of misappropriation of funds and non-maintenance of loan accounts and based on the explanation submitted by the petitioner, the District Forest Officer who had issued the charge memo had recommended for dropping of the charges. Despite the same, the charge memo under rule 17(a) was kept pending on the ground



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that criminal cases was pending against the petitioner. After acquittal of the petitioner in the criminal case in 2019, action was sought to be taken on the same set of allegations under rule 17(b) which cannot be sustained in the eye of law.

7. The learned counsel for the petitioner further submitted that the departmental proceedings and the criminal case are based on identical and similar set of facts and evidence and when the appellant had been honourably acquitted by the criminal court on the same set of facts, evidence and witness, the petitioner cannot be proceeded with departmentally based on same set of facts and evidence and therefore, the departmental action has to be dropped in the interest of justice.

8. The learned Government Advocate appearing for the respondents would on the other hand contend that charge memo issued earlier under rule 17(a) has been converted to rule 17(b) on 17.11.2022. Since the petitioner was not cooperative in the enquiry, final orders could not be passed.

9. I have considered the rival submission and also perused the records carefully.

10. The allegations in the charge memo are that the petitioner had not distributed the loan amount to the tune of Rs.1,10,000/- to Village Forest



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Committee Members; not actually distributed the loan amount of Rs.1,00,000/- and brought forward the loan amounts disbursed in the loan register; not opened the joint account from 1999; not taken any effort to recover the loan amount and not given revolving loan to the beneficiaries; and village forest Committees were not functioning properly.

11. On the above allegations and since there was also a criminal case pending against the petitioner, he was not permitted to retire from service in 2010. The charges in the criminal case was levelled on the same allegations which were set out in the charge memo under rule 17(b). The criminal case had been ended in acquittal and the criminal court on considering both oral and documentary evidence had come to the conclusion that the charges were not proved beyond all reasonable doubts. The charge memo issued under rule 17(a) was kept pending for all these years on account of the fact that criminal case was pending.

12. Be that as it may, when the criminal case against the petitioner ended in acquittal and when there was already a recommendation made by the Divisional Forest Officer concerned to drop the further proceedings on charge memo issued earlier under rule 17(a) on being satisfied with the explanation submitted by the petitioner, on the same set of allegations, now, a charge under



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rule 17(b) is sought to be framed against the petitioner.

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13. It is relevant to note that charge memo issued under rule 17(a) has been converted into rule 17(b) on 17.11.2022 without even passing any order withdrawing the charges under rule 17(a). No doubt, being disciplinary authority, the Divisional Forest Officer has discretion to convert the charge from minor penalties to major penalties. However, before framing any charge under rule 17(b), the disciplinary authority or the authority competent to proceed with against the petitioner departmentally ought to have withdrawn the charge under rule 17(a) issued to the petitioner as early as in 2004. Without doing so, no charge under rule 17(b) could be framed against the petitioner. In this case, the charge memo issued earlier under rule 17(a) was not withdrawn on the date when the charges under rule 17(b) were framed against the petitioner. The status report would further indicate that charge issued earlier under rule 17(a) was withdrawn only on 10.07.2023 after the interim orders of this court to file an action taken report.

14. It is well-settled law that there is no bar for initiation of departmental proceedings after the acquittal of the delinquent in the criminal cases.



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15. Having regard to the nature of the allegations and when the charges levelled against the petitioner in the departmental proceedings and the criminal proceedings are grounded on the same set of facts and in the criminal case, it was held by the criminal court that the charges were not proved beyond all reasonable doubts, after twelve years of acquittal of the petitioner from the criminal charges, it may not be proper for the disciplinary authority or the authority competent to convert charge memo issued earlier under rule 17(a) into rule 17(b) that too without withdrawing the earlier charge memo. In fact, as early as in 2010, the District Forest Officer concerned had remarked based on the explanation of the petitioner that further action may be dropped. Such a proceedings in the considered view of this court cannot be allowed to be proceeded with further for the simple reason that the charge framed in the disciplinary proceedings and charge framed in the criminal proceeding would clearly go to show that both the charges are grounded upon the same set of facts and evidence. Mere fact that the petitioner was earlier imposed with punishments in various departmental proceedings cannot be a ground to proceed against him departmentally for major penalties under rule 17(b).

16. Considering the facts and circumstances of the case and age of the petitioner who is already 70 years old and he has been under suspension till date, as a special case this court is inclined to set aside the charge under rule



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17(b).

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17. For all the foregoing reasons, this court is of the view that the charge memo issued under rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules against the petitioner is liable to be quashed.

In the result, the writ petition is allowed. The charge framed on 17.11.2022 against the petitioner under rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules is quashed. No costs. Consequently, connected WMPs are closed.

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Index : yes / no
Neutral Citation : yes / no
Speaking / Non Speaking Order
kmk

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N.SATHISH KUMAR.J.,
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