



WEB COPY

W.P.No.25204 of 2021
& W.M.P.No.26577 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.10.2023

PRONOUNCED ON : 06.11.2023

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.25204 of 2021
& W.M.P.No.26577 of 2021

R.Chandrasekaran

...

Petitioner

versus

1.Tamilnadu Generation and Distribution Corporation Ltd.

TANGEDCO,

Represented by the Chairman,

144, Anna Salai,

Chennai - 600 002.

2.Tamilnadu Generation and Distribution Corporation Ltd.

TANGEDCO,

Represented by the Chief Engineer (Personal)

Anna Salai,

Chennai - 600 002.

3.The Superintendent Engineer,

Chennai CEDC South - I,

Tamilnadu Generation and Distribution Corporation Ltd.

TANGEDCO,

KK Nagar

Chennai - 600 078.

...

Respondents



Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records on the file of the third respondent in Charge Memo No.1446/SE/CEDC/S-I/Adm.I/A2/F8(b)/2021 dated 16.10.2021 and quash the same and to direct the respondents herein to include the name of the petitioner in the appropriate place in the panel for promotion to the post of Assistant Executive Engineer for the year 2013 approved by the second respondent in Proceeding Memo No.75295/467/G1/G11/2012-65 dated 27.03.2013 and to consequently promote the petitioner to the said post w.e.f. the date of promotion of his immediate junior on 27.03.2013 and to grant him all consequential benefits on account of his regulation of the period of suspension as duty period for all purposes as well as the retrospective promotion within a limited time frame as deemed fit by this Court.

For Petitioner : Mr.M.Ravi

For Respondents : Mr.David Sundar Singh
Standing Counsel for TNEB

ORDER

The petitioner, who has been facing a criminal trial in Special Case No.14 of 2010 before the learned Special Judge and Chief Judicial Magistrate, Tiruvallur, has filed this petition to quash the Charge Memo No.1446/SE/CEDC/S-I/Adm.I/A2/F8(b)/2021 dated 16.10.2021 and also direct the respondents to include him in the promotion of panel with attendant and consequential benefits.



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2. Heard Mr.M.Ravi, learned counsel for the petitioner; Mr.David Sundar Singh, learned Standing Counsel for TNEB and perused the materials available on record.

3. Since the charge sheet has filed against the petitioner by the Inspector of Police, Vigilance and Anti Corruption, Special Investigation Cell, Chennai, a case was taken on file in Special Case No.14 of 2010 on the file of the learned Special Judge and Chief Judicial Magistrate, Tiruvallur. By virtue of the order dated 24.02.2020 made in the said case, the petitioner got acquitted. Subsequently, on 16.10.2021, the petitioner has been given with a charge memo on the very same set of allegations. Aggrieved over the same, the petitioner has filed this Writ Petition.

4. In catena of decisions, it has been held that the respondents Department cannot initiate disciplinary action after several years without giving any explanation for the undue delay. The respondents has not stated any reason as to why there was a delay of 12 years from the date of suspending the petitioner in the year 2009. The suspension against the petitioner was revoked on 04.03.2019. On 13.08.2021, the third respondent



has passed an order stating that the suspension period of the petitioner from 17.07.2009 to 05.03.2019 were regularised and treated as duty.

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5. In fact, in an identical case, the petitioner therein had filed Writ Petition in W.P.No.17616 of 2018 to quash the charge memo issued to him on 15.11.2017 in connection with the allegations on which he was facing the criminal trial. Even though the writ petition was dismissed, the writ appeal filed by him challenging the order of the writ petition has been allowed and thereby the charge memo issued to him on 15.11.2017 got set aside.

6. After having put the matter at rest, the respondents once again has given another impugned charge memo to the petitioner on 16.10.2021 on the very same set of allegations and about the occurrence is said to have been taken place on 17.07.2009. As per the ratio laid down by the Division Bench of this Court in W.A.No.2346 of 2019 dated 13.08.2021, the respondents are expected to obey the order and it is not within the jurisdiction of the respondents to issue a charge memo on the very same set of facts and allegations once again.



7. The action of the third respondent is not only incompetent and without jurisdiction but it would also amount to contempt. No doubt the criminal proceedings cannot operate as a bar for disciplinary proceedings but the respondents has not chosen to initiate any disciplinary action against the petitioner so long as the criminal case was pending. After the petitioner was acquitted in the criminal case and after waiting for 1½ years, a charge memo was issued on the same set of facts.

8. The third respondent cannot issue such charge memos on the very same set of facts as per his whims without having regard to the orders of this Court. This Court has held in several decisions that no second charge can be issued for the very same set of facts. And in this case the petitioner was already given with the charge and that has been already set aside and in fact the spirit of the order has also been rightly understood and only in view of that the third respondent has regularised the suspension period of the petitioner also as duty.

9. It cannot be at the option of each of the Officer who is succeeding the office of the third respondent to open the file as per his



whims irrespective of the earlier court orders and its impact. Since the respondents did not challenge the judgment of the criminal court made in Spl.Case No.14 of 2010 and the order of the Division Bench of this Court made in W.A.No.2346 of 2019 and accepted the judgments of the Court, the respondents cannot indirectly violate the same at some other point of time. Since the petitioner has already been given with the benefit of regularisation of service, he is entitled to get the consequential benefits.

10. For the reasons stated above, this Writ Petition is allowed and the order passed by the third respondent in Charge Memo No.1446/SE/CEDC/S-I/Adm.I/A2/F8(b)/2021 dated 16.10.2021 is quashed and the respondents are directed to include the petitioner in the promotion panel with attendant and consequential benefits and pass orders in accordance with law, within a period of eight (8) weeks from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

06.11.2023

Speaking order /Non-Speaking order

Index : Yes / No

Neutral Citation : Yes / No

sri



To

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2. Tamilnadu Generation and Distribution Corporation Ltd.
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R.N.MANJULA, J.

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Pre-Delivery Order made in
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06.11.2023