



W.P.No.16856 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	20.12.2023
Pronounced on	05.04.2024

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.16856 of 2022
and
W.M.P.No.16143 of 2022

V.Baskar

...Petitioner

Vs.

1.Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO),
Rep. by its Chairman,
No.144, Anna Salai, Chennai – 600 002.

2.The Chief Engineer (Personnel),
Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO),
No.144, Anna Salai, Chennai – 600 002.

3.The Superintendent Engineer,
Tamil Nadu Generation and Distribution Corporation Ltd. (TANGEDCO),
TANGEDCO-CEDC, Chennai South I,
K.K.Nagar, Chennai – 600 078.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,
praying to issue a Certiorari, calling for the entire records pertaining to



W.P.No.16856 of 2022

Ku.A.No.567/Ma Po/Sa Me Va/They-1/N.F.1/A3/Ko O Na/2022 dated 07.04.2022 of the 3rd respondent and to quash the same.

For Petitioner : Mr.K.M.Subrahmaniam

For Respondents : Mr.David Sundar Singh,
Standing Counsel

ORDER

Heard Mr.K.M.Subrahmaniam, learned counsel for the petitioner and Mr.David Sundar Singh, learned Standing Counsel appearing for the respondents.

2. Through the impugned charge memo dated 07.04.2022, it was alleged that the petitioner herein, while serving as a Foreman Grade-I with Tamil Nadu Generation and Distribution Corporation Limited (hereinafter referred to as 'TANGEDCO'), had demanded bribe from one T.Anandaraj for shifting 3 EB service meters inside the house. The second charge was that he had also demanded bribe from the same T.Anandaraj to convert the single phase EB connection into three phase connection in his house. This charge memo dated 07.04.2022 is put under challenge in the present Writ Petition.



W.P.No.16856 of 2022

3. For the same set of charges, a criminal case was also registered against the petitioner, wherein he was arrayed as the 1st accused and through a judgment dated 28.01.2022, passed in C.C.No.2 of 2017 by the Special Court for the Cases Under Prevention of Corruption Act, Chennai, the petitioner was acquitted from the criminal charges.

4. By referring to the judgment of acquittal, the learned counsel for the petitioner submitted that in view of the honorable acquittal by the Criminal Court, the present departmental charges cannot be proceeded with. He also submitted that for the delinquency that occurred on 16.04.2015, the charges have been levelled on 07.04.2022, after an inordinate delay of 7 years and therefore, the charge memo itself is liable to be quashed.

5. Per contra, the learned Standing Counsel for the respondents submitted that the appreciation of facts in a criminal proceeding is different from that of a departmental proceeding, since the strict standard of proof of evidence is required to be applied therein, whereas in a departmental proceedings, the preponderance of probability could be sufficient for holding the charges as proved and therefore, a mere acquittal in the



W.P.No.16856 of 2022

criminal proceedings will not preclude the TANGEDCO from proceeding against the petitioner. He also submitted that since the criminal proceedings had ended only on 28.01.2022 and TANGEDCO had framed the charges on 07.04.2022, within a very reasonable time, there is no delay in initiation of the proceedings.

6. It is a settled proposition of law that for the same set of charges, both the departmental enquiry, as well as the criminal proceedings, can be conducted parallelly. The reasoning behind this legal ratio is that when a trial for a criminal offence is conducted, it should be in accordance with the proof of the offence as per the evidence defined under the provisions of the Evidence Act. Converse is the case of a departmental enquiry, where the preponderance of probabilities that a delinquent could have committed a misconduct would be sufficient to hold the charges as proved. However, when the charges in both the criminal case, as well as in the departmental enquiry, are one and the same and the witnesses and other documentary evidences in the criminal case and the departmental enquiry are one and the same and the Criminal Court acquits the employee after due consideration of the evidences put forth against him in a regular trial, an exception is made for continuance of the departmental enquiry, after the



judgment of acquittal. This ratio has been laid down in several decisions,

including the decision of the Hon'ble Supreme Court in the case of

G.M.Tank Vs. State of Gujarat & Another reported in **(2006) 5 SCC**

446. The relevant portion of the judgment reads as follows:-

“30..... The nature of the case launched against the appellant on the basis of evidence and material collected against him during enquiry and investigation and as reflected in the charge-sheet, factors mentioned are one and the same. In other words, charges, evidence, witnesses and circumstances are one and the same. In the present case, criminal and departmental proceedings have already noticed or granted on the same set of facts, namely, raid conducted at the appellant's residence, recovery of articles therefrom. The Investigating Officer Mr V.B. Raval and other departmental witnesses were the only witnesses examined by the enquiry officer who by relying upon their statement came to the conclusion that the charges were established against the appellant. The same witnesses were examined in the criminal case and the criminal court on the examination came to the conclusion that the prosecution has not proved the guilt alleged against the appellant beyond any



W.P.No.16856 of 2022

reasonable doubt and acquitted the appellant by its judicial pronouncement with the finding that the charge has not been proved. It is also to be noticed that the judicial pronouncement was made after a regular trial and on hot contest. Under these circumstances, it would be unjust and unfair and rather oppressive to allow the findings recorded in the departmental proceedings to stand.”

7. Likewise, an Hon'ble Division Bench of this Court, in the case of ***P.Ramasamy Vs. Government of Tamil Nadu*** reported in ***(2006) 1 MLJ 146***, had also taken a similar view that, departmental enquiry cannot be proceeded with when the delinquent has been honorably acquitted on the same set of charges and evidences by the Criminal Court. Following the decision of the Hon'ble Division Bench, this Court had an occasion to consider these similar grounds in the case of ***K.P.Krishnamoorthy Vs. The District Collector, Trichy and others passed in W.P.(MD) No.16001 of 2018*** and in its order dated 07.01.2020, it was held that when the Criminal Court has acquitted the delinquent on the merits of the case, the departmental enquiry cannot be proceeded with. The relevant portion of the order reads as follows:-



“10. Apart from the aforesaid discussions, it is also seen that the criminal case initiated by the police against the petitioner herein, had ended in acquittal, through the judgment dated 28.03.2017 passed in Special Case No.12 of 2011 by the Special Court of Vigilance and Anti Corruption, Trichy. In the said decision, the Special Court had found that there was a previous enmity between the complainant and the petitioner herein and therefore the complaint itself could have been motivated. The fifth respondent in his Counter affidavit had taken a stand that the Directorate of Vigilance and Anti Corruption was of the view that the order of acquittal was not a fit case to be challenged in an appeal. Thus the judgment passed by the criminal Court had become final.

11. The reading of the judgment of the criminal court would reveal that the order itself has been passed after appreciation of the evidences, both oral and documentary. When the criminal Court has passed a judgment of acquittal based on the merits of the case, the subsequent continuation of the departmental proceedings would be impermissible in view of the decisions of this Court.



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W.P.No.16856 of 2022

12. In the case of S. Chinnadurai Vs. the Deputy Inspector General of Police, Trichy Range, Trichy city and others passed on 28.03.2018 in W.P.No.34799 of 2013 and W.P.No.27463 of 2016, the learned single Judge of this Court had relied on the decision of the Division Bench of this Court and held that the departmental action on the same set of charges as that of the criminal case is not permissible. Relevant portion of the order reads as follows:

“14. The learned counsel for the petitioner would also rely on the decision passed by the learned Division Bench of this Court in the case of P.Ramasamy Vs. Government of Tamil Nadu, reported in (2006) 1 MLJ 146. He would draw the attention of this Court to paragraph Nos.4 and 5 of the order of the learned Division Bench which dealt with the cases of similar circumstances, are reproduced hereunder:-

"4. Coming to the order of the Tribunal, though counsel appearing for the petitioner did not appear at the time when the case was taken up by the Tribunal, but the perusal of the Original Application shows that the petitioner/applicant has specifically referred to the judgment of the Sessions Court dated 2-11-95 acquitting him stating that the charges have not been proved beyond reasonable doubt. In such a circumstance, it is but proper on the part of the Tribunal to consider the same while passing the order in the Original Application. Instead, the Tribunal having gone into the enquiry



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W.P.No.16856 of 2022

proceedings, confirmed the order of the Original Authority without making any reference as to the pronouncement of judgment by the Sessions Court in favour of the petitioner/accused. Inasmuch as the charges both in the departmental enquiry and in the criminal case are one and the same, and the Criminal Court acquitted the accused on merits, we are of the view that the disciplinary authority and the Tribunal ought to have focussed their attention to the verdict of the criminal court and considered the same before passing the order. As a matter of fact, the Tamil Nadu Police Standing Orders and the instructions by the Government make it clear that if the charge in the departmental enquiry and the criminal case are identical, the dismissal of the criminal case acquitting the accused on merits is to be considered by the department before proceeding further. We are satisfied that inasmuch as the charge in the departmental enquiry and the grounds leading to the prosecution of the accused is on the same set of facts and in view of the fact that the criminal case ended in honourable acquittal on merits even as early as on 2-11-95, the disciplinary authority and the Tribunal ought to have considered the same before proceeding further. We are satisfied that the petitioner has made out a case for interference.

5. In the light of what is stated above, the impugned order of the Tribunal and all the orders of the respondents 3 and 5 are quashed. The Writ Petition is allowed. No costs."

The learned Division Bench had quashed the proceedings pending before the disciplinary Tribunal on the basis of the acquittal by the



Criminal Court of the delinquent Officer therein. This Court no doubt finds that the observations made by the learned Division Bench of this Court extracted supra, squarely covers the issues presented in these cases.

15. As stated above that once the Criminal Court has given a clear acquittal on merits to the accused viz., the petitioner herein, it is not open to the department to proceed with the same set of charges, be that the departmental charges and take departmental action. Such action of the department will not be in the interest of good administration continuing the departmental action in the above said circumstances of the case is per se cannot be justified and countenanced.

16. This Court is conscious of the fact that the disciplinary action is not to be trifled with during its pendency. However, as far as the present case on hand is concerned that the Criminal Court has given a clear finding of innocence of the petitioner's involvement in the charges framed against him. It is therefore not just and proper for the departmental action to continue and proceed against the petitioner. Therefore, this Court finds that the petitioner has made out a clear case for interfering with the departmental proceedings pending against him."

13. Further, when it is stated that the witnesses in the criminal case and in the departmental enquiry are one and the same, this Court is unable to comprehend as to how any other



W.P.No.16856 of 2022

contradictory view can be elucidated during the course of the departmental enquiry from the same witnesses, who have already deposed before the criminal Court, when the acquittal order has been passed based on such statements. Hence, it would not be proper to permit the departmental action to continue as against the petitioner.”

8. In the instant case, out of the 13 witnesses, who were to be enquired in the departmental proceedings, 11 of them were examined as prosecution witnesses in the criminal case and most of the list of documents proposed to be produced in the enquiry were also marked as prosecution side exhibits in the criminal case. The Criminal Court, after a thorough trial, had come to the conclusion that PW.2, in the criminal case alone had demanded the bribe and not the petitioner and since no sanction was obtained to proceed against the real accused, as required under Section 319 of the Code of Criminal Procedure, the petitioner herein was acquitted from the criminal charges. Both the charges in the charge memo dated 07.04.2022 relate to a delinquency of demand of bribe by the petitioner herein on 16.04.2015, which are also the same charges against the petitioner by the Criminal Court. Since the charges, as well as the oral



W.P.No.16856 of 2022

and documentary evidences, which were contemplated to be produced before the Criminal Court, are one and the same, by applying the principles laid down in the aforesaid decisions, the further proceedings, pursuant to the charge memo, cannot be initiated, in view of the honorable acquittal of the petitioner from the criminal charges.

9. The learned counsel for the petitioner also took a ground that there is an inordinate delay in framing the charges. As stated above, the delinquency had occurred on 16.04.2015, for which the charges came to be framed after 7 years on 07.04.2022. When there is no legal impediment for TANGEDCO to simultaneously frame charges against the petitioner herein, without reference to the criminal proceedings, I am unable to comprehend as to why the Disciplinary Authority had chosen to wait for 7 long years to await the final outcome of the criminal case and thereafter frame charges, after an inordinate delay of 7 years.

10. It is needless to point out that by framing of the present charges, the petitioner would be deprived of all the regular service benefits, which he would be otherwise entitled to and thereby serious prejudice would be caused to him, if the departmental proceedings are allowed to be



continued. In view of the prejudice, the charge memo is also liable to be quashed, on the ground of inordinate delay in framing of the charges. This legal proposition has already come up for consideration in several decisions of the Hon'ble Supreme Court, as well as this Court, which are extracted below:-

“1. In the case of *State of Madhya Pradesh Vs. 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.

2. In the case of *State of A.P., Vs. 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."



3. In the case of ***Union of India Vs. CAT*** reported in **2005 (2) CTC 169**, 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....."

4. In the case of ***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



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W.P.No.16856 of 2022

with law. The retiral benefits shall be disbursed within three months from this date. No cost."

5. In the case of ***The Special Commissioner and Commissioner of Commercial Taxes, Chepauk Vs. 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."

6. In yet another decision in ***R.Tirupathy and others Vs. 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.

7. The Supreme Court, in the case of *M.V.Bijlani Vs. 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.

8. In the case of *M.Elangovan Vs. 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



W.P.No.16856 of 2022

decision in Parameswaran v. State of Tamil Nadu
reported in 2006 (1) CTC 476.”

11. For all the foregoing reasons, the impugned order passed by the 3rd respondent dated 07.04.2022 is quashed. Consequently, there shall be a direction to the respondents herein to forthwith extend all the service and monetary benefits that may have been deprived to the petitioner, in view of the pendency of the impugned charge memo dated 07.04.2022, within a period of four (4) weeks from the date of receipt of a copy of this order.

12. In the result, the Writ Petition stands allowed. No costs.
Consequently, connected miscellaneous petition is closed.

05.04.2024

Index:Yes
Neutral Citation:Yes
Speaking order
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To
1.The Chairman,
Tamil Nadu Generation and Distribution
Corporation Ltd. (TANGEDCO),
No.144, Anna Salai, Chennai – 600 002.

2.The Chief Engineer (Personnel),
Tamil Nadu Generation and Distribution



W.P.No.16856 of 2022

Corporation Ltd. (TANGEDCO),
No.144, Anna Salai, Chennai – 600 002.

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3.The Superintendent Engineer,
Tamil Nadu Generation and Distribution
Corporation Ltd. (TANGEDCO),
TANGEDCO-CEDC, Chennai South I,
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W.P.No.16856 of 2022

M.S.RAMESH,J.

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**PRE-DELIVERY ORDER MADE IN
W.P.No.16856 of 2022**

05.04.2024