



W.P.No.16338 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.06.2024

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.16338 of 2024

S.Gundumani .. Petitioner
Vs.

1. The Transport Commissioner
Chepauk, Chennai – 600 005. .. Respondent

Prayer: Petition filed under Article 226 of the Constitution of India praying for a writ of certiorari, calling for the records of the respondent in connection with the impugned charge memo issued against the petitioner in his Memo.R.No.28689/VB1/2023, dated 21.08.2023 and quash the same.

For the Petitioner : Mr.K.M.Ramesh
Senior Counsel
for Mr.A.Ganesh
For the Respondent : Mr.Stalin Abimanyu
Additional Government Pleader

ORDER

The present writ petition is filed challenging the charge memorandum dated 21.08.2023, in and by which, the petitioner was served with a memo, containing two charges.



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2. The charge memorandum is challenged on the ground that the Transport Commissioner, who is the Appellant Authority in respect of the petitioner, himself has issued the charge memorandum.

3.1. Mr.K.M.Ramesh, learned Senior Counsel appearing on behalf of the petitioner would submit that in respect of the very same Department and as between the Joint Transport Commissioner and the Transport Commissioner, earlier, this Court has considered the matter in W.P.No.10444 of 2016 and by the judgment dated 30.10.2017, held that the Appellate Authority cannot exercise the power of the Disciplinary Authority.

3.2. Similarly, even when the review was filed in the Rev.Aplw.No.21 of 2018, the said position was confirmed. This Court had followed the judgment of the Hon'ble Supreme Court of India in the case of **Surjit Ghosh vs. Chairman & Managing Director, United Commercial Bank & Ors.**¹. Therefore, he would

¹ (1995) 2 SCC 474



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submit that when the position has been settled viz-a-viz the respondent Department, more specifically as between the Joint Transport Commissioner and the Transport Commissioner, this Court should interfere with the charge memorandum on the ground of jurisdiction.

3.3. This apart, he would also submit that by G.O.Ms.No.958 dated 02.05.1978, in respect of the cadre such as the petitioner, the Joint Transport Commissioner has been specifically mandated as the Appointing Authority as well as the Disciplinary Authority and therefore, when the issue goes to the root of the matter, this Court should interfere in the case. As a matter of fact, by a further communication dated 10.12.2008, it is stated that the said G.O. should be followed.

4. I have considered the submissions made by the learned Senior Counsel and have perused the material records of the case.



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5. When the matter came up for admission, Mr.Stalin Abimanyu, learned Additional Government Pleader, taking notice on behalf of the respondents, would submit that there is no error on the part of the Transport Commissioner in issuing the charge memorandum, as there is no bar in the Rules that the Appellate Authority should not issue the charge memorandum. He would further submit that the petitioner has already participated in the enquiry by submitting his explanation and the enquiry is going on, in between, the petitioner has approached this Court and this Court should not interject in between the continuation of the Disciplinary Proceedings.

6. On considering the submissions made, I hold that the contention made by the learned Senior Counsel appearing on behalf of the petitioner is fallacious for the following reasons. Firstly, there is no embargo in the Tamil Nadu Civil Services (Discipline and Appeal) Rules for any higher authority to issue a charge memorandum. The law relating to the subject as to imposing of punishment by an authority higher than the disciplinary authority



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has been categorically laid down by the Hon'ble Supreme Court of India in ***Sampuran Singh Vs. State of Punjab***² and it is essential to quote the relevant passage which reads thus:

"...27. It was further held that a dismissal by an officer subordinate to the appointing authority is null, and, void. This Article 311 however, does not require that dismissal or removal must be ordered by the same authority, who made the appointment. There is a compliance with Clause (1) of Article 311 if the dismissing authority is not lower in rank or grade than the appointing authority."

(emphasis supplied)

7.It is true that the Hon'ble Supreme Court of India in ***Surjit Ghosh case***, when the right of appeal is being vitiated, the appellate authority cannot pass the order of punishment. The relevant paragraph is extracted hereunder:

"...6. ... It is true that when an authority higher than the disciplinary authority itself imposes the punishment, the order of punishment suffers from no illegality when no appeal is provided to such authority. However, when an appeal is provided to the higher authority concerned against the order of the disciplinary authority or of a lower authority and the higher

² (1982) 3 SCC 200



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authority passes an order of punishment, the employee concerned is deprived of the remedy of appeal which is a substantive right given to him by the Rules/Regulations. An employee cannot be deprived of his substantive right. What is further, when there is a provision of appeal against the order of the disciplinary authority and when the appellate or the higher authority against whose order there is no appeal, exercises the powers of the disciplinary authority in a given case, it results in discrimination against the employee concerned. (emphasis supplied)

8. But however, it can be seen that the Judgment was rendered in the specific facts where under the rules of the bank, the right of appeal is lost. However, Section 66 of the Tamil Nadu Government Servants (Conditions and Service) Act, even if the appeal is not specifically provided, an appeal would lie to the next higher authority. In this case, the transport commissioner has issued the charge memorandum and even further he acts as a Disciplinary Authority and imposes a punishment, still the opportunity to file an appeal is not lost.



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9. As a matter of fact, the Judgment in **Surjit Ghosh case** has been specifically referred to and has been clarified to be with reference to the facts of that case alone by the Hon'ble Supreme Court of India in **Balbir Chand Vs. Food Corporation of India Limited & Ors.**³ and it is relevant to quote the paragraphs which reads thus:

"...3. The learned counsel for the petitioner has raised the contention that since the petitioner was required to be dismissed by the disciplinary authority, namely, Zonal Manager, who alone is competent to remove him, the order of dismissal passed by the Managing Director is bad in law. In support thereof, he placed reliance on a judgment of this Court in Surjit Ghosh v. Chairman & Managing Director, United Commercial Bank and others [(1995) 2 SCC 474 : 1995 SCC (L&S) 529 : (1995) 29 ATC 373 : AIR 1995 SC 1053]. It is an admitted position that as a joint enquiry was conducted against all the delinquent officials, the highest in the hierarchy of competent authority who could take disciplinary action against the delinquents was none other than the Managing Director of the Corporation. In normal circumstances the Managing Director being the appellate authority should not pass

³ (1997) 3 SCC 371



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the order of punishment so as to enable the delinquent employee to avail of right of appeal. It is now a well-settled legal position that an authority lower than the appointing authority cannot take any decision in the matter of disciplinary action. But there is no prohibition in law that the higher authority should not take decision or impose the penalty as the primary authority in the matter of disciplinary action. On that basis, it cannot be said that there will be discrimination violating Article 14 of the Constitution or causing material prejudice. In the judgment relied on by the counsel, it would appear that in the Rules, officer lower in hierarchy was the disciplinary authority but the appellate authority had passed the order removing the officer from service. Thereby, the appellate remedy provided under the Rules was denied. In those circumstances, this Court opined that it caused prejudice to the delinquent as he would have otherwise availed of the appellate remedy and his right to consider his case by an appellate authority on question of fact was not available. But it cannot be laid as a rule of law that in all circumstances the higher authority should consider and decide the case imposing penalty as a primary authority under the Rules. In this case, a right of second appeal/revision also was provided to the Board. In fact, appeal was preferred to the Board. The Board elaborately considered the matter through the Chairman. It is not violative of Article 14 of the Constitution."

(emphasis supplied)



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10. Further, in **A.Sudhakar Vs. The Post Master General, Hyderabad⁴** again the Judgment in Surjit Ghosh case has been distinguished and the relevant passage reads thus:

"Clause (2) of Article 311 of the Constitution of India puts an embargo upon passing of an order of dismissal, removal or reduction of rank in services by an authority below the rank of the appointing authority. There does not appear to be an embargo in terms of the said provision that a higher authority would not act as a disciplinary authority. In the instant case, the Appellant has not been deprived of an opportunity of preferring an appeal against the order of the Director of Postal Services. He admittedly preferred an appeal before the Post Master General which was duly considered. In a matter of this nature, it would be obligatory on the part of the delinquent officer to show prejudice. [See Surjit Ghosh v. Chairman & Managing Director, United Commercial Bank and others, (1995) 2 SCC 474 : AIR 1995 SC 1053 and Balbir Chand v. Food Corporation of India Ltd. and Others (1997) 3 SCC 371]"

(emphasis supplied)

11. The above subsequent Judgments of the Hon'ble Supreme Court of India have categorically clarified and laid down the law.

⁴ AIR ONLINE 2006 SC 634



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The same were not brought to the notice of the Co-ordinate Single Bench while rendering the Judgment in W.P.No.10444 of 2016, the same cannot be relied upon by this Court. Further, the instant case, is not even a case relating to imposition of punishment but initiation of disciplinary proceedings.

12. In view thereof, finding no merits, the writ petition stands dismissed. The petitioner will be at liberty to defend the charges on merits before the respondents and the respondents shall endeavour to complete the proceedings as expeditiously as possible. There shall be no order as to costs. Consequently, W.M.P.Nos.17884 and 17887 of 2024 are closed.

25.06.2024

NCC : Yes
Index : Yes/No
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To:

1. The Transport Commissioner
Chepauk, Chennai – 600 005.



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D.BHARATHA CHAKRAVARTHY,J.

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