



W.P.No.17515 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.07.2024

CORAM

THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HON'BLE MR.JUSTICE C.KUMARAPPAN

W.P.No.17515 of 2024

D.Deepa

.. Petitioner

Vs.

1. The Principal District and Sessions Judge
Truvannamalai, Tiruvannamalai District.

2. The District Munsif cum Judicial Magistrate Court
Kalasapakkam, Tiruvannamalai District.

3. The Inspector of Police
Kalasapakkam Police Station
Tiruvannamalai District.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, seeking a writ of certiorarified mandamus, calling for the records relating to the impugned order in Dis. No.No.309/2024, 17(b) Charges issued by the second respondent, dated 14.03.2024, which was served to the petitioner on 20.03.2024 and to quash the same as arbitrary and illegal and to pass a further direction Speedy investigation and trial in Crime No.39/2024, dated 14.02.2024 pending before Third respondent in a time bound manner as fixed by this Court and to pay all consequential benefit to the petitioner.

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For the Petitioner : Mr.R.Naresh Kumar

For the Respondents : Mr.Durai Eswar
for R1 and R2

Mr.T.Chezhiyan
Additional Government Pleader
for R3

ORDER

(Delivered by the Hon'ble Mr. Justice S.M.SUBRAMANIAM)

A writ against a charge memorandum is not entertainable in a routine manner unless the charge memorandum has been issued by an incompetent authority, having no jurisdiction or tainted with the allegations of *malafides*.

2. On receipt of the charge memorandum, the delinquent Officer has the liberty to defend his case by availing the opportunities being provided by the Disciplinary Authority under the provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules [corrected upto February, 2013].



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3. In the present case, the charge memorandum dated 14.03.2024 has been issued to the petitioner. Annexure II provides for charges, Annexure III denotes the list of documents relied upon and Annexure IV indicates the witnesses to be examined.

4. Learned counsel for the petitioner, *Mr.R.Naresh Kumar*, would submit that the petitioner submitted his explanation, denying the charges on 08.06.2024.

5. Therefore, the Disciplinary Authority has to take a decision and proceed with the enquiry by following the due process. High Court cannot adjudicate the issues on merits at this stage.

6. *Mr.Durai Eswar*, learned counsel for respondents 1 and 2 would submit that a criminal case has been registered against the petitioner.



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7. Pendency of a criminal case is not a bar for continuing with the Departmental Disciplinary Proceedings. The procedures to be followed in Departmental Disciplinary Proceedings and a criminal case are distinct and different. Strict proof is required to convict a person in a criminal law. However, preponderance of probabilities are sufficient to punish an employee under the Tamil Nadu Civil Services (Discipline and Appeal) Rules [corrected upto February, 2013]. In the event of availability of records, the Disciplinary Authority is empowered to continue with the Disciplinary Proceedings and pass final orders on merits and in accordance with law by following due process. Therefore, the pendency of a criminal case is not a bar and the Delinquent Officer cannot seek the relief to keep the proceedings in abeyance till such time, the criminal case is disposed of.

8. The said position has been clarified by the Government, based on the directions issued by the High Court, in G.O.Ms.No.66, Human Resources Management (N) Department dated 06.07.2022



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and the guidelines issued reads as under:

"9. The Government have examined the case with the existing instructions along with the directions and principles made by the Hon'ble High Court. After detailed examination, the Government issue the following guidelines with regard to simultaneous departmental disciplinary action against the Government Servants for the same set of charges as in the criminal cases connected with discharge of their official duty (including Trap and Arrest Case) in supersession of Government Letter fifth read above:-

(1)	<i>It is a settled law that criminal case and the departmental disciplinary proceedings may be initiated simultaneously, for a criminal misconduct committed by a Government Servant in connection with the discharge of his official duties;</i>
(2)	<i>The nature of both proceedings and the test applied to reach final conclusion in the criminal case and in the departmental action are entire[y different;</i>
(3)	<i>In the criminal case, the burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', the accused cannot be convicted by a Court of Law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer by taking decision on a finding recorded on the basis of</i>



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	<i>'preponderance of probability'. To convict a person under criminal law, high standard of proof is required. Even the benefit of doubt would be a benefit for the accused in a criminal case. However, no such rigidity is required in a departmental disciplinary proceedings. Therefore, there is absolutely no bar to continue the departmental disciplinary proceedings, for the same set of charges as in the criminal case pending before the Court of Law and the same may be conducted without awaiting the outcome of the said criminal case. There is no legal bar for both proceedings to go on simultaneously;</i>
(4)	<i>The departmental enquiry and the criminal trial shall proceed simultaneously and the decision in the criminal case would not materially affect the outcome of the departmental enquiry;</i>
(5)	<i>Particular care need to be taken for retention of copies of documents while handing over the same to an investigating agency. These documents may be attested after comparison with the originals;</i>
(6)	<i>If the records and evidences are available with the disciplinary authority, then without any loss of time, charge memorandum shall be issued and the disciplinary proceedings may go on;</i>
(7)	<i>If the criminal case is registered under the Prevention of Corruption Act, 1988 (Central Act No 49 of 1988) and if the original records are seized by the investigating authority, then the disciplinary authority may obtain the true copies of the documents and proceed with the departmental disciplinary proceedings. As per</i>



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	<i>the Instructions issued in the Government Order and the Letter second and third read above, there is no objection to use the xerox or photo copies in disciplinary cases, if they are duly authenticated;</i>
(8)	<i>In disciplinary proceedings the delinquent officers should be allowed to peruse all or any of the records pertaining to that copy or be furnished with copy thereof, if he so desires, either before or after the enquiry;</i>
(9)	<i>If a Government Servant does not submit the written statement of defence or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the inquiring authority may hold the inquiry ex-parte as per Rule 17(f) of the said Rules;</i>
(10)	<i>An order of suspension, if required, may be issued in the prescribed format as per the rules;</i>
(11)	<i>As per Rule 53(3) of the Fundamental Rules, no payment under sub-rule (1) shall be made unless the Government Servant continues to reside in the place fixed from time to time, by the authority which made (or) deemed to have made the order of suspension. The above said rule provision to be adhered strictly while sanctioning the subsistence allowance;</i>
(12)	<i>As far as the departmental action on corruption allegations are concerned, it is not necessary that the disciplinary authority should wait for the final disposal of the criminal case registered under the Prevention of Corruption Act, 1988 (Central Act No.49 of</i>



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	1988);
(13)	<i>The disciplinary proceedings should be finalized within the time limits set out in the Government Letter (Ms.) No. 1118/Per N/87, Personnel and Administrative Reforms (N) Department, dated 22.12.1987 by following the procedure laid down in the rules so as to avoid delay in processing of disciplinary cases pending against the Government Servants;</i>
(14)	<i>In the cases where the corruption charges are proved against a Government Servant in the simultaneous disciplinary case initiated against him on the same set of charges as in the criminal case, the punishment prescribed under the provisos to Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules shall be imposed;</i>
(15)	<i>In the cases, where the departmental disciplinary action is initiated against the Government Servant for the same set of charges as in the criminal case, if the disciplinary authority considers that the exoneration in the departmental disciplinary action based on the "not proved" findings of the Inquiry Officer, could affect the criminal case pending against him, the Vigilance Commission and Directorate of Vigilance and Anti-Corruption, as the case may be, has to be consulted before finalizing the disciplinary proceedings as per the instructions issued in Government Order (D) No.98, Personnel and Administrative Reforms (N) Department, dated 04.06.2010;</i>
(16)	<i>In the cases, where charges are "proved" and the Government Servant is retained in service</i>



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	<i>under the Fundamental Rule 56(1)(c), if the punishment is other than major punishment (Dismissal, Removal), such cases may be kept in abeyance till the disposal of the criminal case;</i>
(17)	<i>An Order of conviction, if any, passed in the criminal case or in criminal appeal, after disposal of the disciplinary proceedings, then, if necessary, the Head of the Department or the Government may examine to exercise the power of revision / review as the case may be under the relevant rules;</i>
(18)	<i>Acquittal by a criminal Court would not debar an employer from exercising power in accordance with service rules and regulations in force. The two proceedings, criminal and departmental, are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on offender, the purpose of departmental enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service rules, if the charges are held proved;</i>
(19)	<i>Order of acquittal if at all passed in the criminal case or in criminal appeal, the same would not affect the final orders already passed in the departmental disciplinary proceedings based on the departmental enquiry conducted, in view of the fact that acquittal in a criminal case cannot be a ground for seeking exoneration from the departmental disciplinary proceedings;</i>
(20)	<i>The pendency of the appeal filed against the conviction in a criminal case or a stay on the</i>



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	<i>sentence will have no effect on the initiation of disciplinary proceedings under Rule 17(c)i)(1) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules;</i>
(21)	<i>If a case involves complicated questions of the fact and law or examination of any witness in the departmental enquiry prior to the examination of the said witness before the Court in the connected criminal case would cause prejudice to the interest of the prosecution case pending in the Court and the disciplinary authority is not in possession of the required materials for the purpose of conducting enquiry, then administrative decision may be taken to keep the departmental proceedings in abeyance, till the disposal of the criminal case. However, the advisability and desirability has to be determined considering the facts of each case by the authority concerned. Therefore, it would be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible;</i>
(22)	<i>Any failure on the part of the disciplinary authority to initiate simultaneous departmental proceedings against the Government Servants in criminal cases connected with the discharge of their official duties (including Trap and Arrest Case) will be viewed seriously and it will entail severe action to be initiated against the officials responsible for it.</i>

9. The Government Order was issued with reference to the provisions of the Tamil Nadu Civil Services (Discipline and Appeal)



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Rules. Therefore, the Disciplinary Authority shall follow the procedure and continue the Departmental Disciplinary Proceedings already initiated and conclude the same as expeditiously as possible.

10. With these observations, the writ petition stands dismissed. There shall be no order as to costs. Consequently, W.M.P.No.19293 of 2024 is closed.

(S.M.S., J.)

(C.K., J.)

02.07.2024

Index : Yes/No

Neutral Citation : Yes/No

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S.M.SUBRAMANIAM, J.

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C.KUMARAPPAN, J.

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