



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.03.2024

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CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

W.P.No.23883 of 2021
and W.M.P.Nos.25189 of 2021 & 2846 of 2022

A.Geetha,
W/o.Late C.Sengottuvelan,
Formerly Assistant Engineer (O&M) /
Mallamoopampatty Section,
West Division of Salem Electricity Distribution Circle,
Salem.
Now Assistant Engineer,
Development Section / Central Office /
Namakkal Electricity Distribution Circle,
Namakkal. ...

Petitioner

versus

- 1.The Tamil Nadu Generation
and Distribution Corporation Ltd.,
(TANGEDCO),
Rep. by its Chairman cum Managing Director,
No.144, Anna Salai,
Chennai - 600 002.
- 2.The Chief Engineer (Personal),
The Tamil Nadu Generation
and Distribution Corporation Ltd.,
(TANGEDCO),
No.144, Anna Salai,
Chennai - 600 002.



3. The Superintending Engineer,
Salem Electricity Distribution Circle,
Salem- 636 014. ...

Respondents

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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 3rd respondent in connection with the Charge Memo issued by him in his proceeding No.62/147/Adm.III/A2/F.DPNo.017/2021-1, dated 06.10.2021 and quash the same.

For Petitioner : Mr.S.Karthikeyan

For Respondents : Mr.K.Rajkumar
Standing Counsel for TNEB

ORDER

The petitioner has filed this Writ Petition, challenging the Charge Memo of the third respondent dated 06.10.2021.

2. Heard Mr.S.Karthikeyan, learned counsel for the petitioner and Mr.K.Rajkumar, learned Standing Counsel for the respondents and perused the materials available on record.

3. The petitioner has been appointed to the post of Assistant Engineer on 10.08.2007 in the first respondent Corporation. The petitioner



was facing a criminal case in Spl.C.C.No.58/2014 on the file of the Special Court for Trial of Cases under the Prevention of Corruption Act, Salem along with her superior officer namely, S.P.Senthilnathan on the allegations that they have demanded bribe and they were trapped. The said case was disposed on 31.10.2017 by acquitting both the petitioner and the other accused. Now the issue raised by the petitioner in this Writ Petition is with regard to the charge memo issued by the third respondent on 06.10.2021.

4. Mr.S.Karthikeyan, learned counsel for the petitioner submitted that the charge memo has been issued with the same allegations which was the subject matter of the criminal case and it has been given after 3 years from the date of judgment of the criminal case and also after several years from the date of the alleged occurrence. It is further submitted that the charges are one and the same.

5. Mr.K.Rajkumar, learned Standing Counsel for the respondents submitted that the scope of the criminal proceedings and the departmental enquiry are different and the disposal of the criminal case will not have any impact on the disciplinary proceedings that can be initiated by the



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Department. Further, the petitioner without facing the enquiry had chosen to challenge the charge memo, which is prematured. Acquittal of criminal case can be due to the benefit of doubt and the standard of proof in departmental proceedings is on the basis of preponderance of probabilities. Hence the petitioner cannot take advantage of her acquittal in the criminal proceedings.

6. The fact that the petitioner has been given with the charge memo for the same facts and incidents that is the subject matter of the criminal proceedings is not denied. So far as the 2nd charge is concerned, it is submitted that it does not have anything to do with the case involved in the criminal proceedings and it relates to the wrong estimate given in the year 2009. There cannot be any second opinion in respect of the settled law that the acquittal to the criminal proceedings cannot be the reason for withholding the disciplinary action for the same allegations.

7. However, when the material collected against the petitioner and the investigation reflected in the charge sheeted facts and the charges are one and the same, they can be charges given on same set of facts and on the



same materials. The guilt of the accused was not been proved before the Criminal Court. In fact, the criminal proceedings is not originated from any compliant given by any individual but it was based on the trap case by the Director of Vigilance and Anti Corruption Department.

8. No doubt, the charges against the petitioner are very grave and serious. However, the Hon'ble Supreme Court in a relative circumstances has held in *G.M.Tank Vs. State of Gujarat* reported in (2006) 5 SCC 446 has held as under:-

“30.The judgments relied on by the learned counsel appearing for the respondents are distinguishable on facts and on law. In this case, the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in a departmental case against the appellant and the charge before the criminal court are one and the same. It is true that the nature of charge in the departmental proceedings and in the criminal case is grave. 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.



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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 reasonable doubt and acquitted the appellant by his 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."

9. In the instant case, for the reasons best known to the respondents, they did not choose to issue any charge memo until the completion of the criminal proceedings. In fact, they were waiting for 3 more years, after the criminal proceedings were over. If the respondents



claimed that the criminal proceedings cannot have any impact on the disciplinary proceedings, nothing would have prevented the respondents from initiating the disciplinary action irrespective of the pending criminal proceedings.

10. In this regard, attention was drawn to the Division Bench of this Court held in *W.A.No.2346 of 2019 dated 16.04.2021 [P.Shankar Vs. The Chairman, Tamil Nadu Electricity Generation and Distribution Corporation Ltd.and others]* wherein such a similar charge memo issued consequent to the acquittal in a criminal case was the subject matter. In the said case, it is held as under:-

“13. The said judgment dated 16.07.2019, rendered by a Division Bench of this Court in Writ Appeal No.2710 of 2018, filed against the order dated 26.06.2018 passed in Writ Petition No.14173 of 2013, applies to the facts of this case. Though pendency of the criminal case is not a bar for the department to proceed with the departmental enquiry against the appellant, in the instant case, the department, without any reason, waited for the conclusion of the criminal trial. It is not as though the charge memo was issued simultaneously when the criminal case was pending and on account of the pendency of the criminal case, they did not proceed with the



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departmental enquiry. On the other hand, the Department waited for the result of the criminal trial and when it turned in favour of the appellant, resorted to proceed with the departmental proceedings after acquittal by the criminal court, for the very same set of charges. Above all, the charges for which the appellant stood trial in the criminal case is verbatim the same in the departmental enquiry proposed by the respondents against the appellant. The delay in initiating the departmental proceedings against the appellant, in our opinion, vitiates the entire departmental proceedings proposed against the appellant. In the present case, the complaint was given in the year 2009 and the Criminal Court (Special Judge/Chief Judicial Magistrate, Thiruvallur, passed the Judgment of acquittal on 18.01.2017 in Special Case No.7 of 2009. Soon after the verdict of the criminal court, the instant charge memo was issued to the appellant on 15.11.2017. Thereafter, the appellant/writ petitioner was also reinstated in service and he joined the post of Assistant Engineer on 15.06.2018, without prejudice to the department proceedings proposed against him. Such a course of action resorted to by the department cannot be countenanced. We are therefore inclined to interfere with the order passed by the learned single Judge in the writ petition."



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11. In fact, the petitioner involved in the said case has been reinstated into service subsequent to his acquittal in the criminal proceedings, without prejudice to the proposed disciplinary proceedings. However, it is held that such a course of action resorted by the Department cannot be countenanced.

12. Attention was drawn to the Government Letter in Letter (Ms) No.91/N/2012-1, dated 19.06.2012 wherein the following clarifications had been issued in respect of disciplinary actions:-

"7. Similarly, immediately after the criminal case ended in acquittal in the trial court or in the criminal appeal or revision, immediate action may be taken to initiate departmental action against the public servant, if the acquittal is either on technical ground or on benefit of doubt, by following the instructions issued in G.O.Ms.No.251, Personnel and Administrative Reforms (N) Department, dated 21.4.1988, which is as follows:-

“(1) The Criminal Proceedings and Disciplinary Proceedings undoubtedly operate in different directions. The question of continuance of domestic inquiry, after acquittal by a Criminal Court on the same charge, has come up before the Courts of Law from time to time and it has been observed by



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taking a view that departmental disciplinary proceedings cannot be taken after the criminal case ended in favour of the delinquent can no longer be construed as good law.

(2) Government have therefore ordered:

(i) that, in the case of an accused official acquitted by the Courts of Law, whether on merits or on technical grounds or otherwise, it is open to the competent disciplinary authority to institute or to continue the disciplinary proceedings against the accused official for the same charges from which he was acquitted by the Court, if the competent disciplinary authority is of the view that there are good grounds and sufficient evidence to proceed with the departmental disciplinary proceedings;

and

(ii) that, in cases of acquittal of an accused official by a court, the competent disciplinary authority is of the opinion that the departmental proceedings need not be instituted / continued against him, the competent authority shall, within one month from the date of the Judgement (exclusive of the period required for obtaining the copy), shall send a report of such cases to the government containing justification for the stand taken. Every case so reported shall be accompanied by a copy of the relevant judgment of the Court.”



13. The clarifications have been given that, in the case when an employee has been acquitted by the Courts, it is open to the competent disciplinary authority to institute or to continue the disciplinary proceedings against the employee for the same charges from which he was acquitted by the Court, if the competent authority is of the view that there are good grounds and sufficient evidence to proceed with the departmental proceedings. And if the competent disciplinary authority is of the opinion that the departmental proceedings need not be instituted / continued against him, the competent authority shall send a report to the Government containing justification within one month from the date of the judgment. In the instant case, the disciplinary authority had not chosen to send a report to the Government for initiating the departmental proceedings immediately after the conclusion of the criminal proceedings.

14. No doubt, the delay will frustrate every action and in fact, as per the recent Government Order issued in G.O.(Ms.)No.66, Human Resources Management (N) Department, dated 06.07.2022, it has been categorically made clear that there is no legal bar for both proceedings to go on simultaneously. It is on the observation that the standard of proof in the



criminal case is beyond reasonable doubt, but the findings of the disciplinary authority will be based on the preponderance of probabilities. The guidelines of the above Government Order would make it crystal clear that so 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.

15. For a better appreciation, the relevant guidelines of the above Government Order are extracted as under:-

“12. 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 1988).

18. 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



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to deal with the delinquent departmentally and to impose penalty in accordance with service rules, if the charges are held proved;

19. 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.

22. 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 Cases) will be viewed seriously and it will entail severe action to be initiated against the officials responsible for it.”

16. But for the reasons best known to the respondents, those guidelines were not taken seriously and simultaneous disciplinary proceedings had not been initiated against the petitioner in compliance with the above direction.



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17. The recent judgment of the Hon'ble Supreme Court in **Ram Lal Vs. State of Rajasthan** reported in (2024) 1 SCC 175 wherein it is held as under:-

*“30. We are additionally satisfied that in the teeth of the finding of the Appellate Judge, the disciplinary proceedings and the orders passed thereon cannot be allowed to stand. The charges were not just similar but identical and the evidence, witnesses and circumstances were all the same. This is a case where in exercise of our discretion, we quash the orders of the disciplinary authority and the appellate authority as allowing them to stand will be unjust, unfair and oppressive. This case is very similar to the situation that arose in **G.M.Tank Vs. State of Gujarat** reported in (2006) 5 SCC 446 .”*

18. As per the dictum laid down by the Hon'ble Supreme Court in **G.M.Tank Vs. State of Gujarat** reported in (2006) 5 SCC 446 which has been followed in several other subsequent cases would only require the test to be adopted is, whether the charges are not just similar but identical and that the list of the witnesses, materials and other circumstances are also going to be one and the same.



19. The petitioner appears to have been tried for the same charges before the Criminal Court. On perusal of the charge memo, it is seen that the charges framed against the petitioner in the criminal case are identical to that of the charge nos.1 and 3. So far as the charge no.4 is concerned, it is about unbecoming conduct of the Government Servant in view of receiving bribe amount as described in charge nos.1 and 3.

20. The list of witnesses and documents that are going to be relied upon by the disciplinary authority would show that the very same witnesses and very same documents have been produced before the Criminal Court as well. So the charges in respect of demanding bribe and receiving the same for which the petitioner is answerable before the Criminal Court, I feel there is no difference in the proposed disciplinary action taken through the charge memo dated 06.10.2021. So no purpose is going to be served by examining the very same witnesses and by perusing the very same documents, just in order to arrive at a same conclusion.

21. The petitioner, who stood criminal trial on the same set of facts and on the basis of the same witnesses and materials need not be subjected



to disciplinary proceedings to achieve the same end. Even though there is no point for disciplinary proceedings against the employee who had faced the criminal proceedings as well and got acquittal. It is a trite law that the disciplinary proceedings shall not be initiated on the very same set of facts and by relying on the very same witnesses and documents. In fact, the disciplinary proceedings have not been initiated until the trial is ended before the Criminal Court. So in all probabilities, the respondents themselves were not sure about the charges in respect of the corruption allegations until they get the verdict from the criminal Court.

22. Mr.K.Rajkumar, learned Standing Counsel for the respondents submitted that the earlier cases referred by the learned counsel for the petitioner as detailed above and in which the disciplinary proceedings got quashed are all at the stage subsequent to the completion of enquiry. In the instant case, charge memo alone has been issued and the petitioner had chosen to come to the Court by challenging the charge memo itself. But that does not make much difference when the materials that are going to be relied upon by the Department to substantiate the identical charge nos.1, 3 and 4.



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23. In fact, the Division Bench of this Court in *W.A.No.2346 of 2019* dated 16.04.2021 (cited supra), the subject matter involved is quashing the charge memo alone. So the said Writ Appeal was allowed to the effect of quashing the charge memo only on the basis of the above reason. But so far as the 2nd charge is concerned, that will not attract any criminal charges or criminal trial. The 2nd charge is a stand alone charge without any consequence for a criminal case.

24. So the petitioner has to subject herself for disciplinary proceedings by offering her explanation, if any, so far as the 2nd charge is concerned. Just because the witnesses had spoken about the subject matter involved in the 2nd charge, it cannot be concluded that the criminal court has dealt with the above charge and the petitioner was given with the clean chit in respect of 2nd charge also. In fact, the trial before the criminal Court does not have anything to do with the allegations made in the 2nd charge. Even if any discussion is made by the criminal Court on this issue that is independent of the charges of demanding and receiving bribe.



25. So nothing will prevent the disciplinary authority to make the petitioner answerable on the allegations that she had prepared an estimate higher than the actual estimate with an intention of receiving bribe. But these matters are to be enquired in detail in order to find out the truth behind the same. So far as the 2nd charge is concerned, the petitioner cannot claim that it is identical to that of criminal charges for which she has been bribed. So the petitioner cannot claim that the 2nd charge should be quashed without subjecting herself to the disciplinary proceedings.

26. In view of the above discussions, the charges 1, 3 and 4 framed against the petitioner *vide* charge memo dated 06.10.2021 are hereby quashed and the respondents are at liberty to initiate departmental proceedings against the petitioner by giving a fair opportunity at every stage of the proceedings and complete the same as against the 2nd charge, within a period of two months from the date of receipt of a copy of this order and thus, this Writ Petition is **partly allowed** accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Speaking order

26.03.2024

Index : Yes

Neutral Citation : Yes

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To
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- 1.The Chairman cum Managing Director,
The Tamil Nadu Generation
and Distribution Corporation Ltd.,
(TANGEDCO),
No.144, Anna Salai,
Chennai - 600 002.
- 2.The Chief Engineer (Personal),
The Tamil Nadu Generation
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