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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	15.12.2023
Pronounced on	08.03.2024

CORAM

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P.No.30607 of 2023
and
W.M.P.Nos.30264 & 30265 of 2023

P.Mohandoss

...Petitioner

Vs.

1.State of Tamilnadu,
 Rep. by its Additional Chief Secretary,
 Home (Pol.2) Department,
 Fort St. George, Chennai – 600 009.

2.The Commissioner of Police,
 Madurai City, Madurai.

3.The Deputy Commissioner of Police
 (Enquiry Officer),
 Madurai City, Madurai.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Certiorari, calling for the records of the impugned charge memo issued by the 2nd respondent in T1(2).Tha.Pa.No.109/2020 dated 20.10.2020 and quash the same.



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For Petitioner : Mr.S.Harshavardhan

For Respondents : Mrs.V.Yamuna Devi,
Special Government Pleader

ORDER

Heard Mr.S.Harshavardhan, learned counsel appearing for the petitioner and Mrs.V.Yamuna Devi, learned Special Government Pleader for the respondents.

2. Through a charge memo dated 20.10.2020, two charges came to be framed against the petitioner herein under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The first charge against the petitioner is that, on 20.04.2019, while he was serving as an Assistant Commissioner of Police, he was not present in the room in which the ballot boxes were kept for the 194 Madurai West Parliament Election, when the Tahsildar of the Excise Department and others entered the storage room, and further that he had failed to give suitable instructions to the Police personnel on duty in this regard and thereby violated Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules. The second charge is that he had failed



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to stop the Tahsildar of the Excise Department and others from entering the storage room where the ballot boxes were kept and stop them from taking certain copies of the documents. This charge memo is put under challenge in the present Writ Petition.

3. According to the learned counsel for the petitioner, there is an inordinate delay in initiation and completion of the disciplinary proceedings under Rule 17(b) and therefore, the charge memo is liable to be quashed on the ground of delay and laches.

4. The learned Special Government Pleader, however, submitted that the delay is not inordinate and since the Enquiry Officer had also conducted a full fledged enquiry and held the charges against the petitioner as proved and further opportunity was also given to the petitioner for rendering his objections to the enquiry report, there is no infirmity in the enquiry proceedings.

5. The delinquency stated in the charge memo relates to an incident that had occurred on 20.04.2019. The charges, however, came to be framed



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on 20.10.2020, after about 18 months. There is absolutely no explanation as to why this inordinate delay had occurred for initiation of the disciplinary proceedings. The respondents have not filed their counter affidavit, explaining the delay. Apart from the delay in initiation of the proceedings, the enquiry seems to have been continued for almost three years, without passing any final orders. In the meantime, the petitioner had also attained the age of superannuation on 31.05.2022, on which date, the Government had passed G.O.(2D) No.193, Home (Police.2) Department, permitting him to retire from service on 31.05.2022 and for continuance of the disciplinary proceedings under Rule 9 of the Tamil Nadu Pension Rules, 1978.

6. The delay in initiation, as well as conclusion, of the disciplinary proceedings, have been subject of challenge before this Court and in various orders passed, such a delay was frowned upon. Some of the decisions are referred hereunder:-

“1. In the case of *Union of India v. CAT reported in 2005 (2) CTC 169 (DB)*, 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....."

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

3. In ***The Special Commissioner and Commissioner of Commercial Taxes, Chepauk v.***



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."

4. In yet another decision in ***R.Tirupathy and others v. 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



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a charge memo was not properly explained.

5. In ***M.Elangovan v. 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 decision in *Parameswaran v. State of Tamil Nadu* reported in 2006 (1) CTC 476.”

7. In the Government Letter (Ms.) No.1118/Per-N/1987, Personnel and Administrative Reforms (Per-N) Department, dated 22.12.1987, time limits were specified for the various procedures to be followed in disciplinary proceedings, so as to avoid delay in processing the disciplinary proceedings against the Government servants. Through a Letter No.44626/2004-1, Personnel and Administrative Reforms (N) Department, dated 03.08.2004, instructions were also issued to make a bimonthly review of all the disciplinary cases pending at all levels including at the Government levels to speed up the disciplinary cases. In spite of these instructions, several



disciplinary cases were kept pending for a long time, resulting in issuance of suspension orders on the date of retirement of the Government servants, causing much hardships to them. Accordingly, through G.O.(Ms.) No.144, Personnel and Administrative Reforms (N) Department, dated 08.06.2007, detailed guidelines were issued to avoid placing the Government servants under suspension on the date of retirement and to examine each and every case and to take a decision as to whether the Government servants be allowed to retire or otherwise well in advance, i.e., three months prior to the date of retirement of the Government servant concerned.

8. Ultimately, through G.O.(Ms.) No.111, Human Resources Management (N) Department, dated 11.10.2021, all these instructions were once again reiterated and guidelines were issued for strict observance. As per Clause 7(vi) of the said Government Order, the Disciplinary Authorities were required to complete the disciplinary proceedings at least three months before the date of retirement of the concerned Government servant. The said clause reads as follows:-

“7. (vi) Any failure on the part of the disciplinary authority to issue final orders three months before the



date of retirement of a delinquent officer will be viewed seriously and it will entail severe action to be initiated against the officials responsible for dragging on the case to the date of retirement of Government servant concerned.”

9. It is not the case of the respondents that the delay in initiating the proceedings or the conclusion of the same was due to the part of the petitioner herein. When the Government themselves have viewed the delay very strictly and have also warned the Disciplinary Authorities with a severe action against the officials responsible for dragging on the case to the date of retirement of the Government servant concerned, I do not find any justification on the part of the Disciplinary Authority in having prolonged the disciplinary proceedings against the petitioner herein, for almost three years and continued the same, after he had attained the age of superannuation.

10. It is needless to point out that serious prejudice would have been caused to the petitioner herein, owing to his prolonged action. This apart, the delayed initiation, as well as conclusion of the disciplinary proceedings, would also have caused unbearable mental agony and distress to the officer



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concerned. In this background of the matter, I am of the view that such belated action requires interference.

11. In the light of the above observations, the impugned charge memo issued by the 2nd respondent dated 20.10.2020 is quashed. Consequently, there shall be a direction to the respondents herein to pass appropriate orders, extending all the service and monetary benefits to the petitioner, including disbursement of his retirement and pensionary benefits, if not already disbursed, 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 petitions are closed.

08.03.2024

Index:Yes
Neutral Citation:Yes
Speaking order
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- To
- 1.The Additional Chief Secretary,
Home (Pol.2) Department,
Fort St. George, Chennai – 600 009.
 - 2.The Commissioner of Police,
Madurai City, Madurai.
 - 3.The Deputy Commissioner of Police
(Enquiry Officer),
Madurai City, Madurai.



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M.S.RAMESH,J.

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**PRE-DELIVERY ORDER MADE IN
W.P.No.30607 of 2023**

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