



WP(MD)No.27232 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 19.11.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

WP(MD)No.27232 of 2022
and
WMP(MD)No.21368 of 2022

K.Madasamy

.. Petitioner

v.

1.The Superintending Engineer,
O/o.Superintending Engineer,
TNEB / TAN TRANSCO,
Tirunelveli Electricity Distribution Circle,
Maharaja Nagar,
Tirunelveli District – 11.

2.The Chairman,
TANTRANSCO,
NPKRR Maaligai,
Chennai.

.. Respondents

[R.2 suo-motu impleaded vide order dated 19.11.2024]

PRAYER: Petition filed under Article 226 of the Constitution of India seeking issuance of a Writ of Certiorari calling for the records relating to the impugned charge memo in Ku.Aa.No.023946/1067/NiPi-IV/U.



WP(MD)No.27232 of 2022

1/Ko.O.Na (Vigilance)/2022 dated 09.11.2022 (served on 21.11.2022) on the file of the respondent and quash the same.

For Petitioner : Mr.I.Pinaygash

For Respondents : Mr.S.Arivalagan
Standing Counsel

ORDER

The petitioner, a Junior Engineer, was placed under suspension pursuant to a criminal case registered as against him in Crime No.5 of 2010 dated 18.06.2010 and he was also issued with a charge memo on 09.11.2022. This charge memo is challenged in this writ petition that the charge memo has been issued belatedly after 12 years.

2.Learned Counsel for the petitioner, by referring various decisions of this Court, submitted that the charge memo issued belatedly is liable to be quashed. He has also relied on the Board Proceedings in Ms.(Ch)No.142, dated 13.04.1987 and submitted that clear instructions has been provided in the Board Proceedings with a direction to the disciplinary authorities to



complete the disciplinary proceedings, if any, within a period of 180 days.

In this case, for the delinquency said to have been committed by the petitioner in the year 2010, a charge memo was issued in the year 2022 and they have not conducted any enquiry so far.

3.Learned Counsel has also pointed out that the criminal case, based on which the petitioner was placed under suspension, ended in acquittal on 24.12.2023. The criminal prosecution and the impugned charge memo are on the same set of charges and also based on the same witnesses. Therefore, he prayed for appropriate orders.

4.This writ petition, challenging the charge memo, was entertained by this Court by order dated 01.12.2022. Though the respondent has taken notice in this writ petition, the respondent has not filed any counter affidavit. This Court, by order dated 12.11.2024, directed the respondent to file the counter affidavit assigning the reasons for the delay in initiating the departmental proceedings and for not filing the counter affidavit so far. Only thereafter, a counter affidavit has been filed by the respondent.



5.Learned Standing Counsel for the respondent submitted that since the charges and the witnesses are one and the same in the criminal as well as departmental proceedings, the department has waited for the outcome of the criminal case. By relying upon G.O.Ms.No.66, Human Resources Management Department, dated 06.07.2022, he submitted that the Government has issued certain guidelines that the departmental disciplinary proceedings for the same set of charges as that of a criminal proceedings can be proceeded with simultaneously. Therefore, they have issued the charge memo on 09.11.2022.

6.This Court considered the rival submissions made on either side and perused the materials placed on record.

7.The petitioner has raised two grounds for quashing the impugned charge memo. They are

- i) delay in issuing the charge memo; and
- ii) the criminal case, based on which the departmental proceedings was initiated, itself has been ended in acquittal.



8.The petitioner, while he was working as a Junior Engineer at Sangankulam, said to have demanded illegal gratification of Rs.1000/- from one Mariyappan to erect an electric pole for providing electricity service connection to his newly built house. The said Mariyappan has lodged a complaint before the Vigilance and Anti Corruption Department and a trap was arranged. The petitioner was trapped on 18.06.2010 and the Vigilance and Anti Corruption Department has registered a criminal case as against this petitioner in Crime No.5 of 2010 for the offences punishable under Sections 7, 13(2), 13(1)(d) of the Prevention of Corruption Act. A final report was also filed and the case was tried in Special Case No.55 of 2014. During trial, the complainant Mariyappan turned hostile and therefore, the trial Court, by judgment dated 24.12.2023, has acquitted the petitioner from the criminal charges.

9.It is a settled position that acquittal in a criminal case, by itself, is not a ground to interfere with the departmental proceeding, inasmuch the disciplinary enquiry is not governed by proof beyond reasonable doubt or by the rules of evidence which is governing the criminal trial.



10. The Hon'ble Supreme Court in *State of Rajasthan and Others v.*

Heem Singh [2021 (2) CTC 332] has discussed about the effect of an acquittal in a disciplinary proceedings as under:-

“34. In the present case, we have an acquittal in a criminal trial on a charge of murder. The judgment of the Sessions Court is a reflection of the vagaries of the administration of criminal justice. The judgment contains a litany of hostile witnesses, and of the star witness resiling from his statements. Our precedents indicate that acquittal in a criminal trial in such circumstances does not conclude a disciplinary enquiry. In Southern Railway Officers Association v. Union of India, this Court held:

“37. Acquittal in a criminal case by itself cannot be a ground for interfering with an order of punishment imposed by the disciplinary authority. The High Court did not say that the said fact had not been taken into consideration. The revisional authority did so. It is now a well-settled principle of law that the order of dismissal can be passed even if the delinquent official had been acquitted of the criminal charge.”

In Inspector General of Police v. S. Samuthiram, a two-Judge Bench of this Court held that unless the accused has an “honorable acquittal” in their criminal trial, as opposed to an acquittal due to witnesses turning hostile or for technical reasons, the acquittal shall not



affect the decision in the disciplinary proceedings and lead to automatic reinstatement. But the penal statutes governing substance or procedure do not allude to an “honourable acquittal”. Noticing this, the Court observed:

“Honourable acquittal:

24.The meaning of the expression “honourable acquittal” came up for consideration before this Court in RBI v. Bhopal Singh Panchal [(1994) 1 SCC 541 : 1994 SCC (L&S) 594 : (1994) 26 ATC 619] . In that case, this Court has considered the impact of Regulation 46(4) dealing with honourable acquittal by a criminal court on the disciplinary proceedings. In that context, this Court held that the mere acquittal does not entitle an employee to reinstatement in service, the acquittal, it was held, has to be honourable. The expressions “honourable acquittal”, “acquitted of blame”, “fully exonerated” are unknown to the Code of Criminal Procedure or the Penal Code, which are coined by judicial pronouncements. It is difficult to define precisely what is meant by the expression “honourably acquitted”. When the accused is acquitted after full consideration of prosecution evidence and that the prosecution had miserably failed to prove the charges levelled against the accused, it can possibly be said that the accused was honourably acquitted.



25. In *R.P. Kapur v. Union of India* [AIR 1964 SC 787] it was held that even in the case of acquittal, departmental proceedings may follow where the acquittal is other than honourable. In *State of Assam v. Raghava Rajgopalachari* [1972 SLR 44 (SC)] this Court quoted with approval the views expressed by Lord Williams, J. in *Robert Stuart Wauchope v. Emperor* [ILR (1934) 61 Cal 168] which is as follows:

“8. ... ‘The expression “honourably acquitted” is one which is unknown to courts of justice. Apparently it is a form of order used in courts martial and other extrajudicial tribunals. We said in our judgment that we accepted the explanation given by the appellant, believed it to be true and considered that it ought to have been accepted by the government authorities and by the Magistrate. Further, we decided that the appellant had not misappropriated the monies referred to in the charge. It is thus clear that the effect of our judgment was that the appellant was acquitted as fully and completely as it was possible for him to be acquitted. Presumably, this is equivalent to what government authorities term “honourably acquitted”.’”

26. As we have already indicated, in the absence of any provision in the service rules for reinstatement, if an employee is honourably acquitted by a criminal court, no right is conferred on



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WP(MD)No.27232 of 2022

the employee to claim any benefit including reinstatement. Reason is that the standard of proof required for holding a person guilty by a criminal court and the enquiry conducted by way of disciplinary proceeding is entirely different. In a criminal case, the onus of establishing the guilt of the accused is on the prosecution and if it fails to establish the guilt beyond reasonable doubt, the accused is assumed to be innocent. It is settled law that the strict burden of proof required to establish guilt in a criminal court is not required in a disciplinary proceedings and preponderance of probabilities is sufficient. There may be cases where a person is acquitted for technical reasons or the prosecution giving up other witnesses since few of the other witnesses turned hostile, etc. In the case on hand the prosecution did not take steps to examine many of the crucial witnesses on the ground that the complainant and his wife turned hostile. The court, therefore, acquitted the accused giving the benefit of doubt. We are not prepared to say that in the instant case, the respondent was honourably acquitted by the criminal court and even if it is so, he is not entitled to claim reinstatement since the Tamil Nadu Service Rules do not provide so.”

11. Therefore, this Court is not inclined to accede the ground of acquittal raised by the petitioner.



12.The next ground raised by the petitioner is that this impugned charge memo was issued in the year 2022 for the delinquency said to have been committed in the year 2010, ie., after 12 years.

13.As rightly pointed out by the learned Counsel for the petitioner, a Division Bench of this Court in *Engineer-in-Chief v. P.Kannan* [WA(MD)No.669 of 2019, dated 24.09.2019] has quashed a charge memo, which was issued with a delay of eight years, in the following terms:-

“6. The first aspect, which we have taken note of, is that there is a delay in initiation of the departmental proceedings against the respondent / writ petitioner. There is no reasonable explanation given by the appellant for the delay and why the department could not initiate disciplinary proceedings earlier. We have perused the counter affidavit filed in the writ petition by the appellant, which was referred to by the learned Special Government Pleader and only the reason given by the appellant is that the delay in initiating disciplinary action against the respondent is attributable to the established legal process in conducting and concluding the inquiry by the appropriate Investigating Authority and disciplinary action has been initiated against the respondent immediately on the receipt of the report.



7. In our considered view, the explanation cannot be taken to be a valid explanation, especially when there is a delay of eight years. The appellant blame the delay to the “established legal process”. It is not clear as to what, the appellant means “established legal process”. Admittedly, along with the respondent, there were other officers, who were also arrayed as accused. From the proceedings placed before us by the learned counsel for the respondent, more particularly the proceedings of the Superintending Engineer, dated 17.09.2013, we find that those Officers were superior in rank to the respondent and inferior to the rank to the respondent, those Officers have been permitted to retire and the charge proceedings have been dropped. If the appellant seeks to proceed against the respondent, then they should have done expeditiously. The period of eight years in initiation of disciplinary proceedings is fatal.”

14. Another Division Bench of this Court in *Joint Director of School Education and Others v. M. Stephen* [WA(MD)No.1557 of 2024, dated 18.09.2024] has also quashed a similar charge memo, which was issued with a delay of seven years, in the following terms:-

“5. The Writ Court has quashed the proceedings solely on the ground of delay and the fact that the respondent / petitioner had retired from service. Therefore, we see no reason to interfere with the order of



the Writ Court. At the same time, we cannot resist observing that the charges have been quashed only because of the callousness and negligence of the officials of the Education Department, who have slept over the matter for nearly seven years from the date of completion of the enquiry. We are compelled to quash the charges, though they are very serious, because of the attitude and the most irresponsible behaviour exhibited by the officials of the Education Department. We recommend disciplinary action against the officers, who have held the position of disciplinary authority from 19.11.2017 to date for dereliction of duty."

15.The charge memo was issued by the respondent on 09.11.2022. Learned Counsel on either side admitted that the charges in the departmental proceeding is similar to that of the charges levelled in the criminal case. It is also admitted that the witnesses are also one and the same. Therefore, the respondent took a stand that they have awaited for the outcome of the criminal case. The respondent has offered an explanation that the charge memo dated 09.11.2022 was issued pursuant to the guidelines issued in G.O.Ms.No.66, Human Resources Management Department dated 06.07.2022, which was communicated to the Electricity Board in TNEB Sec.Br.Ch.Memo.No. 27733/A17/A171/2022-1 dated



14.09.2022, that the departmental disciplinary proceedings may be simultaneously initiated for a criminal misconduct committed by a Government Servant, in connection with the discharge of his official duties.

16.This Court is unable to accept the reasoning given by the respondent that the impugned charge memo was issued pursuant to the guidelines issued in G.O.Ms.No.66, Human Resources Management Department dated 06.07.2022. There is no legal bar for simultaneous conduct of departmental and criminal proceedings. In fact, such guidelines were issued by the Government much prior and even repeated instructions were issued by the Government time and again that the pendency of a criminal case is not a bar for initiating the departmental proceedings and that both the proceedings can go simultaneously.

17.Vide G.O.Ms.No.124, Personnel and Administrative Reforms Department, dated 22.02.1983, the Government has held as under:-

“2.The Government have examined the above matter and have decided that the following procedure shall be adopted in such cases.



i) *When a criminal case is filed solely on a criminal offence committed by the Government servant which is in no way connected with the discharge of his official duties, there is no need to pursue departmental action except placing the Government servant under suspension as contemplated under Tamil Nadu Civil Services (Classification, Control and Appeal) Rules. The ultimate departmental action can be initiated against the delinquent officer after the result of the criminal case pending against him is disposed of by the Court of Law.*

ii) *When both departmental as well as criminal action is initiated for the offences of the kind referred to in para 1 above in regard to departmental action, charges may be framed against him for the lapses committed by him and final orders may be passed after obtaining the required registers / records / documents from the Court irrespective of the fact whether he is acquitted or not. Thus the departmental action will be confined to the irregularities or lapses committed by the accused officer with reference to the administrative aspect."*

18.The Government has issued further clarification and guidelines in dealing with the departmental proceedings of Government servants, who are involved in criminal cases, in the Government Order in G.O.Ms.No.120,



Personnel and Administrative Reforms Department, dated 30.08.2018, as

under:-

“4.The Government have examined the issue in detail and decided that para 2(i) of the G.O.(Ms)No.124, Personnel and Administrative Reforms (N) Department, dated 22.02.1983, shall be substituted with the following instruction and order accordingly:-

“When a criminal case is filed solely on the criminal offence alleged to have been committed by the Government servant, which is in no way connected with the discharge of his official duties, the disciplinary authority may suspend such Government servant, by exercising the discretionary power, only if his continuance in office will be clearly detrimental to the public interest and in the circumstances which would really warrant suspension, depending upon, the circumstance of the incident, nature of the complaint, gravity of the offence, seriousness of the charge, stage of the case, etc. Once, the criminal case is disposed of by the Court of Law, the competent authority may initiate action against such delinquent officer either under rule 17(c)(i)(1) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or under rule 9(1)(a) of the Tamil Nadu Pension Rules, 1978, as the case may be.”

Para 2(ii) of the G.O.(Ms)No.124, Personnel and Administrative Reforms (N) Department, dated 22.02.1983, holds good, as it is.”



19. In the Government Order in G.O.Ms.No.124, Personnel and Administrative Reforms Department, dated 22.02.1983, instructions were issued that the simultaneous departmental action shall be confined to the irregularities or lapses committed with reference to the administrative aspect and that also has to be finalized after obtaining the required registers / documents from the Court, irrespective of the fact whether he is acquitted in the criminal case or not. Subsequently, the Government has also issued another Government Order in G.O.Ms.No.326, Personnel and Administrative Reforms Department, dated 19.08.2004, that in the case of simultaneous departmental disciplinary action, when the original registers / records / documents are available with the Courts, there is no objection to use the xerox or photocopies of the same, in case they are duly authenticated, so as to pass final orders in such cases, quickly, without awaiting for the outcome of the criminal cases.

20. The Hon'ble Supreme Court has, time and again, reiterated that there is no bar in law for initiation of simultaneous departmental proceedings on the same set of allegations as in the criminal case and also



permitted the disciplinary authorities to conclude the departmental proceedings without waiting for the outcome of the criminal case, inasmuch as a criminal case should be proved beyond reasonable doubt by adducing oral and documentary evidence, whereas charges in the departmental proceedings should be established on the basis of preponderance of probabilities.

21.The observations made by a Full Bench of the Hon'ble Supreme Court in *Ajit Kumar Nag v. General Manager, Indian Oil Corporation Ltd [2005 (7) SCC 764]*, are extracted as under:-

“11. ... In our judgment, the law is fairly well settled. Acquittal by a criminal court would not debar an employer from exercising power in accordance with 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 enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with service Rules. In a criminal trial, incriminating statement made by the accused in certain circumstances or before certain officers is totally inadmissible in



evidence. Such strict rules of evidence and procedure would not apply to departmental proceedings. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. The rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused 'beyond reasonable doubt', he cannot be convicted by a court of law. In departmental enquiry, on the other hand, penalty can be imposed on the delinquent officer on a finding recorded on the basis of 'preponderance of probability'"

22.*In Re State of Rajasthan & Others v. Phool Singh [2022 SCC OnLine SC 1140]*, the Hon'ble Supreme Court has held as under:-

"10.

... A departmental proceeding is different from a criminal proceeding. The fundamental difference between the two is that whereas in a departmental proceeding a delinquent employee can be held guilty on the basis of "preponderance of probabilities", in a criminal court the prosecution has to prove its case "beyond reasonable doubt". In short, the difference between the two proceedings would lie in the nature of evidence and the degree of its scrutiny. The two forums therefore run at different levels. For this reason, this Court has consistently held that



merely because a person has been acquitted in a criminal trial, he cannot be ipso facto reinstated in service."

23.Following the principles laid down by the Hon'ble Supreme Court, a Division Bench of this Court in *Additional Director General of Police and Another v. O.Baskaran* [WA.No.1988 of 2021, decided on 30.09.2021] has issued certain directions on the principles to be followed in the simultaneous disciplinary proceedings to be initiated as against the Government servants on the same set of charges in the criminal cases, as follows:-

"11. Finding that no prima facie case has been made out by the Appellants herein, we are not inclined to interfere with the orders of the learned Single Judge. Accordingly, this Writ Appeal is disposed of with the following directions:

i) The Appellants are directed to revoke the suspension order and reinstate the Writ Petitioner on or before the end of November, 2021;

ii) It is open to the Appellants to initiate departmental proceedings against the Writ Petitioner and if any commenced or initiated, the same shall be proceeded with, de hors pendency of the criminal case, as both criminal proceedings as well as departmental



proceedings can go on simultaneously, as there is no hindrance on the part of the employer to proceed with the departmental proceedings, if the Criminal Proceedings are not initiated or concluded within one year from the date of FIR (not from the date of filing of Charge Sheet, as filing of Charge Sheet in the Criminal Court is a herculean task and will take years together), in view of the fact that the criminal case should be proved beyond reasonable doubt by adducing oral and documentary evidence, whereas charges in the departmental proceedings should be established on the basis of preponderance of probabilities. In the event of the delinquent employees, including the Writ Petitioner, having less than one year of service and in the absence of pension rules to proceed against them, after retirement, then there is no need for strict observance of the waiting period;

iii) The Disciplinary Authority shall proceed with the enquiry on a day to-day basis without adjourning the matter beyond seven working days at any point of time and bring the issue to a logical conclusion at the earliest, but not later than six months from today. The petitioner shall co-operate for early attainment of the proceedings;

iv) If the Writ Petitioner refuses to participate in the enquiry, ex parte enquiry may be conducted, final decision in the ex-parte may be taken and communicated to the Writ Petitioner. This will enable the Writ Petitioner to participate in the enquiry without



protracting it. Till final orders are passed by the disciplinary authorities, the Writ Petitioner cannot approach the Court further to stall the proceedings;

v) For the suspension period, the subsistence allowance needs to be paid in terms of the Rules, provided the employee does not leave the Head Quarters and it is open to the employer to verify the residence of the employee that has been furnished by him/her as to whether the employee is residing there or not. In case the employee is not found therein, then the subsistence allowance can be stopped, as the employee should not leave the Head Quarters without prior permission;

vi) The enquiry should not be stalled, citing the reason of non availability of documents. If the documents are taken by the DVAC or other Departments or filed before the Court, certified copies of those documents can be obtained by the Department and in the event of any such request made, other Departments are bound to furnish the same, in order to enable the concerned Department to proceed with the enquiry against the delinquent and DVAC or other Departments should not be a party for nonconduct of enquiry;

vii) The documents, which are going to be relied upon by the Department in the domestic enquiry, will have to be furnished to the Writ Petitioner. Wherever it is not possible and documents are voluminous, the Writ Petitioner will be permitted to take notes of



those documents for the purpose of effective defence in the enquiry;

viii) In case Departmental action is not taken against the delinquent in time, the Officer, who is responsible for non-initiation of Departmental Proceedings should be taken to task, on the presumption that the said Officer is in collusion with the delinquent employee and adverse remarks against the Officer, who is responsible to take action shall be entered in the Service Register and he/she should not be allowed to be promoted further and reversion to the post in which that person / Officer was appointed shall be the minimum punishment to him/her;

ix) The Appellants / Officials in other Departments, while taking a decision, shall bear in mind the order of this Court dated 06.01.2021 made in W.P.No.13 of 2021 in entirety."

24. Even after repeated orders / directions, the officials, for the reasons best known to them, have not initiated departmental action for the delinquencies / criminalities committed by the Government Servants while discharging their official duty. Therefore, the Government has also repeatedly reminding the officials to initiate departmental proceedings simultaneously when the criminal cases are pending. Considering the directions issued by the Division Bench of this Court in **O.Baskaran's** case



(supra), the Government has issued comprehensive guidelines with regard to the simultaneous departmental disciplinary action as against the Government servants for the same set of charges as in the criminal cases connected with the discharge of their official duty, in G.O.Ms.No.66, Human Resource Management Department, dated 06.07.2022, as under:-

“1) 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;

2) The nature of both proceedings and the test applied to reach final conclusion in the criminal case and in the departmental action are entirely different;

3) 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 '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 concluded without awaiting the outcome of the said criminal case. There is no legal bar for both proceedings to go on simultaneously;

4) 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;

5) 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;

6) 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;

7) 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 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;

8) In disciplinary proceedings, the delinquent officers should be allowed to peruse all or any of the records pertaining to that case or be furnished with copy thereof, if he so desires, either before or after the



inquiry;

9) *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 inquiry authority may hold the inquiry ex-parte as per Rule 17(f) of the said Rules;*

10) *An order of suspension, if required, may be issued in the prescribed format as per the rules;*

11) *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;*

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);*

13) *The disciplinary proceedings should be finalized within the time limits set out in the Government Letter (Ms.) No.1118/Per N/87, 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;*



14) *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;*

15) *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;*

16) *In the cases, where charges are “proved” and the Government Servant is retained in service 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;*

17) *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;*



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 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.

20) The pendency of the appeal filed against the conviction in a criminal case or a stay on the 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;

21) 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 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;

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 Case) will be viewed seriously and it will entail severe action to be initiated against the officials responsible for it."

25. The respondent attempted to take shelter, as if only on receipt of this Government Order in G.O.Ms.No.66, Human Resource Management Department, dated 06.07.2022, they came to know that departmental disciplinary proceedings may be simultaneously initiated for a criminal misconduct committed by a Government Servant, in connection with the discharge of his official duties. This conduct of the respondent / disciplinary authority is to be deprecated and this Court is inclined to order



for a departmental action as against the concerned disciplinary authorities who have failed in discharging their duty.

26. Insofar as the petitioner's plea to quash the charge memo on the ground of delay is concerned, no doubt, there is a delay in issuing the charge memo. However, the Court should not quash the charge sheet merely on the ground of delay, especially when the offence is serious in nature. The gravity of the offence is an important factor to be considered while deciding whether to quash the charge sheet or not.

27. In this case, the petitioner is said to have demanded illegal gratification to erect an electric pole. It is a case of corruption and trap. In cases involving corruption and vigilance, the Courts should be slow to quash the charge sheet, even if there is some delay in the proceedings. In this regard, this Court drew support from the following decisions:-

i) In *Ministry of Defence v. Prabhash Chandra Mirdha* [(2012) 11 SCC 565], the Hon'ble Supreme Court has held as follows:-



"8. The law does not permit quashing of charge-sheet in a routine manner. In case the delinquent employee has any grievance in respect of the charge-sheet, he must raise the issue by filing a representation and wait for the decision of the disciplinary authority thereon. In case the charge-sheet is challenged before a court/tribunal on the ground of delay in initiation of disciplinary proceedings or delay in concluding the proceedings, the court/tribunal may quash the charge-sheet after considering the gravity of the charge and all relevant factors involved in the case weighing all the facts both for and against the delinquent employee and must reach the conclusion which is just and proper in the circumstance.

...

12. Thus, the law on the issue can be summarised to the effect that the charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings."



WEB COPY ii) In *Chairman, LIC of India and Others v. A.Masilamani* [(2013) 6

SCC 530], the Hon'ble Supreme Court has observed as under:-

“18. The court/tribunal should not generally set aside the departmental enquiry, and quash the charges on the ground of delay in initiation of disciplinary proceedings, as such a power is de hors the limitation of judicial review. In the event that, the court/tribunal exercises such power, it exceeds its power of judicial review at the very threshold. Therefore, a charge-sheet or show cause notice, issued in the course of disciplinary proceedings, cannot ordinarily be quashed by court. The same principle is applicable, in relation to there being a delay in conclusion of disciplinary proceedings. The facts and circumstances of the case in question, have to be examined, taking into consideration the gravity/magnitude of charges involved therein. The essence of the matter is that the court must take into consideration, all relevant facts and to balance and weigh the same, so as to determine, if it is infact in the interest of clean and honest administration, that the judicial proceedings are allowed to be terminated, only on the ground of delay in their conclusion.

19. The word “consider”, is of great significance. Its dictionary meaning of the same is, “to think over”, “to regard as”, or “deem to be”. Hence, there is a clear connotation to the effect that, there must be active application of mind. In other words, the term “consider” postulates



consideration of all relevant aspects of a matter. Thus, formation of opinion by the statutory authority, should reflect intense application of mind with reference to the material available on record. The order of the authority itself, should reveal such application of mind. The appellate authority cannot simply adopt the language employed by the disciplinary authority, and proceed to affirm its order."

28.The Vigilance and Anti Corruption Department has conducted a trap and this petitioner was also trapped with the bribe money of Rs.1000/- on 18.06.2010. The Vigilance and Anti Corruption Department can arrange the trap only after receipt of complaint on the previous day. In this case, the complainant lodged a complaint on the previous day and also gave the money. The trap money was also recovered from this petitioner on 18.06.2010. However, the complainant turned hostile during the criminal trial and therefore, the petitioner was acquitted by the Special Court. It appears that the petitioner is capable of influencing the witness, who has arranged the trap on his complaint on 18.06.2010.



29. This Court is also of the view that the officials have facilitated by not initiating the departmental proceedings for the past 12 years. Since there is some lapse on the part of some corrupt officials in not initiating the departmental proceedings and considering the gravity of offence, this Court is not inclined to quash the charge memo, mechanically, for the delay committed by some corrupt officials.

30. Therefore, this Court is not inclined to entertain this writ petition. Accordingly, this writ petition is **dismissed**. The respondent / disciplinary authority is directed to proceed with the departmental proceedings as against the petitioner, as per the Board Proceedings dated 13.04.1987, which mandates that the disciplinary proceedings has to be completed within a period of 180 days.

31. When the Government has issued various directions that the departmental proceedings has to be simultaneously initiated as against the delinquent officials along with the criminal case and if there is any lapse on the part of the disciplinary authority, that needs to be addressed by



WP(MD)No.27232 of 2022

initiating a departmental proceedings as against the concerned disciplinary authorities for having failed in their duty of initiating the departmental proceedings.

32. Therefore, this Court *suo-motu* impleads the Chairman, TANTRANSOCO, NPKRR Maaligai, Chennai, as a respondent to this writ petition and directs the learned Standing Counsel to take notice on behalf of the newly impleaded respondent. The Chairman shall ensure that appropriate departmental proceedings is initiated as against the concerned disciplinary authorities, who have failed in their duty from issuing the charge memo as against the petitioner in time.

There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
NCC : Yes / No
Internet : Yes
gk

19.11.2024



WP(MD)No.27232 of 2022

To

1.The Superintending Engineer,
O/o.Superintending Engineer,
TNEB / TAN TRANSCO,
Tirunelveli Electricity Distribution Circle,
Maharaja Nagar,
Tirunelveli District – 11.

2.The Chairman,
TANTRANSCO, NPKRR Maaligai,
Chennai.



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WP(MD)No.27232 of 2022

B.PUGALENDHI, J.

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WP(MD)No.27232 of 2022

19.11.2024