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**(2014) 08 MAD CK 0089**  
**In the Madras High Court**  
**Case No : W.P. (MD) No. 4173 of 2011**

ER. S. Ravichandran

APPELLANT

Vs

Tamil Nadu Water Supply and Drainage Board

RESPONDENT

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**Date of Decision :** 13-08-2014

**Acts Referred:**

Criminal Procedure Code, 1973 (CrPC) — Section 173(8), 300  
Penal Code, 1860 (IPC) — Section 409, 467

**Citation :** (2014) 08 MAD CK 0089

**Hon'ble Judges :** S. Nagamuthu, J

**Bench :** Single Bench

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## Judgement

S. Nagamuthu, J.—The petitioner was working as an Assistant Executive Engineer in the Maintenance Sub Division, Tamil Nadu Water Supply and Drainage Board, Karur. There were two contractors under the TWAD Board by name Mr. S. Manimaran and Mr. S. Raj, who had done certain works relating to maintenance of pipeline for TWAD Board between September, 1998 and December, 1998. On their claim made for the amount for the said work, payment vouchers were prepared and pass orders were also issued in the months of September and December, 1998. The bills were, thereafter, sent to the Divisional Office for issuance of cheques. Accordingly, in the Divisional Office the cheques were issued and the cheques were, as a matter of fact, collected by one Mr. B. Swaminathan, the Assistant of the Sub Division Office and the same were handed over to the then Assistant Executive Engineer of the Maintenance Sub Division, Karur, by name Mr. M. Murugesan. Mr. Murugesan in turn handed over the cheques to the petitioner, who after cancelling the Account Payee endorsement viz., crossing on the cheques, encashed the cheques and misappropriated the amount on 03.01.2000. The total amount so misappropriated was Rs. 18,100/- after deduction of commission charges of Rs. 41/-.

2. In this regard, a complaint was made against the petitioner and preliminary enquiry was held and based on the same, a charge memorandum was issued to

him. The petitioner denied the charges. An enquiry was ordered by the Managing Director of TWAD Board. Mr. A. Palanisamy, the then Project Engineer, TWAD Board, Project Circle, Mannargudi, conducted enquiry into the charges framed under Regulation 9(b) of the TWAD Board Employees' (Discipline and Appeal) Regulations, 1972. The enquiry officer held the charges proved. Based on the same, a second show cause notice was issued to the petitioner and finally the disciplinary authority passed an order imposing punishment of stoppage of increment for two years with cumulative effect. Challenging the same, the petitioner preferred an appeal to the Board. The Board by its proceedings in B.P.Ms. No. 144, dated 30.11.2009, dismissed the appeal, thereby confirming the punishment. Challenging the same, the petitioner is before this Court with this writ petition.

3. I have heard the learned counsel for the petitioner and the learned counsel appearing for the respondents. I have perused the records carefully.

4. Though several grounds have been raised in this writ petition, the learned counsel for the petitioner advanced his argument only on two grounds. The first ground is that in respect of the above transactions, on a complaint made to the Police, a criminal case was registered against the petitioner by the Inspector of Police, Uraiyur Police Station and the same was investigated and finally a charge sheet was laid before the learned Judicial Magistrate No. IV, Tiruchirapalli, who in turn took cognizance of the offence in C.C. No. 88 of 2008. The petitioner filed a petition for discharge. The learned Judicial Magistrate No. IV, Tiruchirapalli, by order dated 23.09.2008, discharged the accused as there were no materials to frame charges under Sections 409 and 467 IPC. The said order has become final. Relying on the same, the learned counsel for the petitioner submitted that the Criminal Court found no material at all even to frame a charge. Therefore, the punishment imposed in the disciplinary proceedings is not sustainable.

5. This argument appears to be very strange. The standard of proof in a criminal trial before the Criminal Court is one of beyond reasonable doubt. Similarly, when a Criminal Court considers the question of framing charges or discharging the accused, the standard is something different. At that stage, the Court is to find whether there are sufficient grounds to frame charges or not in terms of penal provisions of the Indian Penal Code or any other law for that matter. If the Police Officer, who investigated the case had not collected sufficient materials to frame charges, that by itself may be a ground for discharge. Simply because an accused has been discharged on certain grounds, such as inadequate investigation, non collection of sufficient documentary evidence or oral evidence, it cannot be said that discharge of an accused is final. Even after such discharge, further investigation can be held and there can be a fresh final report. Section 300 of the Code of Criminal Procedure is not a bar for filing such a fresh report. If it is an order of acquittal, we can understand that there can be no further collection of evidence except in certain circumstances. In a case of discharge, it is always open for the investigating agency, after getting prior permission from

the jurisdictional Magistrate under Section 173(8) Cr. P.C., to hold further investigation, collect materials and file fresh charge sheet, in which case the Magistrate will not be barred to proceed with the trial, after framing appropriate charges. Therefore, simply because the petitioner has been discharged from the criminal case, that cannot be a ground to hold that the disciplinary proceeding is wholly unsustainable.

6. In the disciplinary proceeding, the question is whether there are sufficient materials placed before the enquiry officer. In this case, it has been done so. Witnesses were examined and documents were produced to show that the cheques were collected by the petitioner and he removed the cross endorsement made and then collected the amount. This has been duly proved before the enquiry officer. I do not find any reason to give a different opinion in this regard. This Court cannot convert itself as a Court of appeal so as to reappreciate the entire evidence and substitute its own conclusion in the place of the conclusion arrived at by the enquiry officer. The enquiry officer's report had been duly considered by the disciplinary authority as well as the appellate authority. Thus, I do not find any infirmity in the same.

7. Secondly, the learned counsel for the petitioner submitted that the appellate authority had not passed a speaking order. In this regard, there can be no second opinion that an order of the appellate authority should be a speaking order. Such a speaking order cannot be equated to a judgment to be written either by a Civil Court or by a Criminal Court. It is suffice, if a reading of the order of the appellate authority reflects the application of mind by the appellate authority. Here, in this case, a reading of the order of the appellate authority would go to show that the appellate authority had considered all the grounds and the materials placed, and only on application of mind, passed the impugned order confirming the punishment. I do not find any infirmity in the order of the appellate authority as well. Thus, I do not find any merit at all in this writ petition.

8. In the result, this writ petition fails and the same is dismissed. No costs.