

(2011) 07 MAD CK 0435

In the Madras High Court

Case No : Writ Petition No. 7284 of 2010

K.M. Venkatakrishnan

APPELLANT

Vs

The Secretary Personnel and Administrative Reforms
Department and The Principal Secretary Finance Department
Secretariat

RESPONDENT

Date of Decision : 12-07-2011

Acts Referred:

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17

Citation : (2011) 07 MAD CK 0435

Hon'ble Judges : K.N. Basha, J

Bench : Single Bench

Advocate : M. Vijayakumar, for the Appellant; P.S. Sivashanmugasundaram, AGP for R1 and 2, for the Respondent

Final Decision : Allowed

Judgement

K.N. Basha, J.—The Petitioner has come forward with the above writ petition seeking for the relief of quashing the impugned orders passed by the 1st Respondent dated 01.11.1999, 30.11.2009 and 12.01.2010 and to direct the Respondents to settle all the monetary and service benefits.

2.1. The case of the Petitioner is that he has joined in the services of the 2nd Respondent in the year 1971 as ASO-Typist. The 2nd Respondent, by the Government order in G.O.[2D] No. 18, Finance [OP-I] Department dated 24.10.1998 placed the Petitioner under suspension for the alleged shortfall in the Cash account of P&AR Department by holding the Petitioner and one A. Ramadoss, the then Under Secretary to Government, P&AR Department, in the capacity as Bill Drawing Officer and Bill Disbursing Officer respectively, are jointly and severally responsible for the above said shortfall.

2.2. The charges were framed against the Petitioner as early as on 01.11.1999 by the 1st Respondent and the charge framed against the Petitioner is to the effect that the Petitioner in collusion with one A. Ramadoss, formerly Under

Secretary to the Government, P&AR Department, caused a shortfall in the Cash account. The Petitioner challenged the charge memo dated 01.11.1999 before the Tamil Nadu Administrative Tribunal in OA. No. 7141/1999 and the Tribunal as per its order dated 09.11.2001, directed the 1st Respondent therein to complete the enquiry within a period of six months. The 1st Respondent appointed an Enquiry Officer and the Enquiry Officer submitted his report on 30.06.2003. On the findings of the Enquiry Officer's report on the charges against both the delinquent officers, viz., the Petitioner and the said A. Ramadoss, he has recorded that the Audit Party failed to appear inspite of repeated call letters. But, the Enquiry Officer has submitted his final report on 30.06.2003, the date on which he has retired from service. The said alleged final report filed by the Enquiry Officer on 30.06.2003 is not a conclusive one and accordingly, the Government has not accepted the said report and appointed fresh Enquiry Officer once again on 16.09.2004. The 2nd Enquiry Officer has expressed his inability to conduct enquiry in the absence of the file. The 1st Respondent without considering the reason given by the 2nd Enquiry Officer, again mechanically appointed the 3rd Enquiry Officer on 18.10.2004. The 3rd Enquiry Officer has also expressed his inability to proceed with the enquiry.

2.3. The co-delinquent of the Petitioner, viz., A. Ramadoss, filed a writ petition in WP. No. 6749/2005 challenging the charge memo dated 01.11.1999 issued against him. The 1st Respondent produced a letter in the above writ petition stating that the Respondents could not proceed with the enquiry and the file relating to the case has not been returned back from CBCID, Chennai. The Government in G.O.[2D] No. 21, P&AR [Q] Department dated 29.07.2005 has dropped all further action in the criminal case initiated against both the Petitioner and the said Ramadoss. The writ petition filed by the said Ramadoss in WP. No. 6749/2005 was allowed by this Court by the order dated 30.08.2005 and the impugned charge memo in respect of the said Ramadoss was quashed.

2.4 After quashing of the impugned charge memo of the co-delinquent, viz., Ramadoss, charges were framed against the Petitioner and as the Petitioner did not file any writ petition, the 1st Respondent has passed the impugned order dated 30.11.2009 proposing the punishment of cut in his pension at the rate of Rs. 500/- per month for a period of 24 months without conducting enquiry and invited the Petitioner to reply within 15 days. The 1st Respondent again sent another impugned order dated 12.01.2010 extending the time limit for the reply of the Petitioner for a period of ten days in respect of the proposed punishment for a period of 12 months and thereby, it is stated that if no reply is forthcoming from the Petitioner, the Respondents would presume that the Petitioner has not accepted the proposed punishment. Being aggrieved against the said impugned orders, the Petitioner has come forward with this petition with the above said prayer.

3. Mr. M. Vijayakumar, learned Counsel for the Petitioner would vehemently contend that the impugned orders have been passed without conducting any

proper enquiry and as such, the said orders were passed in violation of principles of natural justice. It is contended that the 1st Respondent passed the impugned orders mainly placing reliance on the first enquiry report which was not accepted by the Government as per its order in G.O.[D] No. 209, P&AR [Q] Department dated 16.09.2004. The learned Counsel would point out that the Government held that such enquiry report is not a full-fledged one and as a result, as per the said order dated 16.09.2004, another officer was appointed as Inquiry Officer. The said officer has expressed his inability to conduct the enquiry in the absence of the required case file. It is further contended that even the 1st Respondent ignoring the difficulty expressed by the said 2nd Enquiry Officer, appointed the third Enquiry Officer and he has also expressed his inability to proceed with the enquiry without any records. It is submitted that the records have been taken by the CBCID in respect of the criminal case and the criminal case was ultimately dropped against the Petitioner and as well as the co-delinquent, viz., Ramadoss. It is contended that the said Ramadoss filed a writ petition challenging the impugned charge memo dated 01.11.1999 and this Court allowed the said writ petition by the order dated 03.08.2005 in WP. No. 6749/2005 and the charge memo in respect of the said Ramadoss was set aside. Learned Counsel would submit that the charges levelled against the Petitioner as well as the co-delinquent are one and the same to the effect that there was a shortfall in the Cash account of P&AR Department and as such, in view of the charge memo is quashed in respect of the said Ramadoss, the Petitioner is also entitled to seek the same relief as both the cases are relating to one and the same allegations.

4. Learned Counsel for the Petitioner would further contend that this Court while allowing the writ petition filed by the co-delinquent, viz., Ramadoss in the year 2005, held that there was an inordinate delay in conducting enquiry and further held that the said delinquent is not responsible for such delay and as on date, there was further delay in completing the disciplinary proceedings. It is contended that the disciplinary authority, viz., the 1st Respondent herein passed the impugned orders mainly placing reliance on the enquiry report submitted by the 1st Enquiry Officer whose report has already been rejected by the Government by the order dated 16.09.2004 in G.O.[D] No. 209. Therefore, it is contended that there is absolutely no enquiry whatsoever conducted by the subsequent Enquiry Officers, viz., 2nd and 3rd Enquiry Officers and the 1st Respondent, having placed reliance on the enquiry report of the 1st Enquiry Officer which was rejected by the Government, has committed serious error of law in passing the impugned orders and as such, the impugned orders are liable to be set aside.

5. Per contra, Mr. P.S. Shivashanmugasundaram, learned Additional Government Pleader would submit that there is no infirmity or illegality in the impugned orders passed by the 1st Respondent. It is contended that the 1st Respondent has clearly stated about the report submitted by the Enquiry Officer and further observed that the reply given by the Petitioner dated 11.08.2007 does not contain any new grounds and as such, the 1st Respondent has rightly held that

charges Nos. 4, 5, 9, 11 and 12 are proved against the Petitioner. It is further contended that on the basis of such findings, proposed punishment was informed to the Petitioner; but the Petitioner has not sent any reply and straightaway challenged the same before this Court in the present writ petition. Learned Additional Government Pleader would submit that a counter was also filed by the Respondents denying the averments contained in the writ petition. It is also submitted that the relevant file is also produced by the officers concerned before this Court today.

6. I have given my careful and anxious consideration to the rival contentions put forward by either side and thoroughly scrutinised the entire materials available on record and perused the impugned orders.

7. The fact remains that common charges were levelled against the Petitioner and the co-delinquent, viz., A. Ramadoss to the effect that there was a shortfall in the Cash account of the P&AR Department, holding that both the Petitioner and the said Ramadoss were jointly and severally responsible for the said shortfall. It is pertinent to note that after framing the charges against the Petitioner and the said A. Ramadoss, an Enquiry Officer was appointed. The said Enquiry Officer submitted his report on 30.06.2003, i.e., the date on which the said Enquiry Officer has retired from service and the said report was not accepted by the Government as per its order in G.O.[D] No. 209 dated 16.09.2004. The relevant portion of the said Government Order reads as here under:

2]In the G.O. fourth read above, Thiru A. Lawrence, Joint Secretary to Government [Retd] Personnel and Administrative Reforms Department was appointed as Inquiry Officer to enquire into the charges framed against the delinquent officers and to furnish his report to Government. Accordingly, he has submitted his report to Government. He has also retired from service on 30.06.2003 on attaining the age of superannuation. On examination, it is found that Enquiry report referred to above is not full-fledged one. It has therefore been decided to appoint another Inquiry Officer. Accordingly, the Government hereby appoint Tmt. Lalitha Joyce, Deputy Secretary to Government, Personnel and Administrative Reforms Department as Inquiry Officer under Rule 17[b] of the Tamil Nadu Civil Services [Discipline and Appeal] Rules, to inquire into the charges framed against the delinquent officers and to furnish her report to Government in accordance with the said rules.

8. It is seen that even the second Enquiry Officer expressed his inability to proceed with the enquiry in view of the non-availability of the case records as the same was taken by CBCID police. At this juncture, it is relevant to note that the criminal proceedings initiated against the Petitioner and as well as the co-delinquent, viz., Ramadoss, were dropped. Thereafter, the 3rd Enquiry Officer was also appointed by the 1st Respondent ignoring the difficulty expressed by the 2nd Enquiry Officer as stated above. It is seen that even the 3rd Enquiry Officer expressed the similar inability to proceed with the enquiry in view of the

non-availability of the case records. Therefore, it is crystal clear that the initial enquiry conducted by one officer who has submitted his report on the date of his retirement on 30.06.2003 and the said report was held to have been incomplete and not a full-fledged one by the Government as per its order dated 16.09.2004 and thereafter, two more officers have been appointed and they have also not conducted any enquiry, but the 1st Respondent placed reliance on the report submitted by the 1st Enquiry Officer for passing the impugned order dated 30.11.2009. It is fairly submitted by learned Additional Government Pleader that on verification of the records available with him, it is seen that the same contains only one enquiry report. It is pertinent to note that the first enquiry was conducted by one A. Lawrence as seen from the order passed by the Government dated 16.09.2004 in G.O.[D] No. 209 and the said report was not accepted by the Government holding that the said report is not a full-fledged one. The perusal of the original records now produced before this Court discloses that the only enquiry report available on records is that of the enquiry report submitted by the said A. Lawrence, the then Joint Secretary to the Government. Therefore, this Court has no hesitation to hold that the impugned order was passed without conducting any proper enquiry in a manner known to law and the report which was rejected by the Government, was placed reliance for passing such an impugned order. In view of the said admitted factor, this Court is of the considered view that the impugned order dated 30.11.2009 and the consequential order dated 12.01.2010 were passed in flagrant violation of the principles of natural justice.

9. The yet another aspect to be borne in mind of this Court in this matter is the inordinate delay in conducting the disciplinary proceedings. As already pointed out the charges have been framed against the Petitioner in the year 1999 and the Respondents have not conducted any proper enquiry and the enquiry which was earlier conducted by one A. Lawrence, is said to have been an incomplete one even as per the Government Order in G.O.[D] No. 209 dated 16.09.2004. Admittedly, the said delay occurred in this matter is not due to the fault of the Petitioner. At this juncture, it is also relevant to point out that the co-delinquent of the Petitioner, viz., A. Ramadoss filed WP. No. 6749/2005 and this Court by the order dated 03.08.2005 allowed the said writ petition and quashed the charge memo on the ground of delay and other grounds. It is needless to state that the said inordinate delay of nearly 12 years not only caused prejudice but also resulted in grave injustice to the Petitioner.

10. At this juncture it is relevant to refer to the decision of the Hon'ble Apex Court in P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, wherein the Hon'ble Apex Court has held that the inordinate and unexplained delay in conducting the departmental proceedings pursuant to the issue of charge memo would vitiate the departmental proceedings and the relevant portions of the said decision are better to be incorporated as here under:

4. In the first case The State of Madhya Pradesh Vs. Bani Singh and another, , an

O.A. was filed by the officer concerned against initiation of departmental enquiry proceedings and issue of charge sheet on April 22, 1987 in respect of certain incidents that happened in 1975-76 when the said officer was posted as Commandant 14th Battalion, SAF Gwalior. The Tribunal quashed the charge memo and the departmental enquiry on the ground of inordinate delay of over 12 years in the initiation of the departmental proceedings with reference to an incident that took place in 1975-76.

The Appeal against the said order was filed in this Court on the ground that the Tribunal should not have quashed the proceedings merely on the ground of delay and laches and should have allowed the enquiry to go on to decide the matter on merits.

5.

6. In the second case State of Andhra Pradesh Vs. N. Radhakishan, , the Respondent was appointed as Assistant Director of Town Planning in the year 1976. A report dated 7.11.1987 was sent by the Director General, Anti-Corruption Bureau, Andhra Pradesh, Hyderabad to the Secretary to the Government, Housing, Municipal Administration and Urban Development Department, Andhra Pradesh, Hyderabad, about the irregularities in deviations and unauthorised constructions in multi storied complexes in the twin cities of Hyderabad and Secunderabad in collusion with municipal authorities. On the basis of the report, the State issued two memos both dated 12.12.1987 in respect of three officials including the Respondent Radhakishnan, the then Assistant City Planner. In this case, till 31.07.1995, the articles of charges had not been served on the Respondent.

7. The Tribunal, however, held that the memo dated 31.7.1995 related to incidents that happened ten years or more prior to the date of the memo and that there was absolutely no explanation by the Government for this inordinate delay in framing the charges and conducting the enquiry against the Respondent and that there was no justification on the part of the State now conducting the enquiry against the Respondent in respect of the incidents at this late stage.

This Court, in para 19 has observed as follows:

It is not possible to lay down and predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the Court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are

unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings, the court has to consider the nature of charge, its complexity and on what account the delay has occurred. If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee. It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is not blamed for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the Court is to balance these two diverse considerations.

8. This Court held that there was hardly any explanation worth consideration as to why the delay occurred. In the circumstances, this Court held that the Tribunal was justified in quashing the charge memo dated 31.7.1995 and directing the State to promote the Respondent as per recommendation of the DPC ignoring memos dated 27.10.1995 and 1.6.1996. Accordingly, the appeal filed by the State of Andhra Pradesh was dismissed.

11. The Honourable Apex Court in the said decision further observed at paragraph 10 as follows:

10. The very same ground has been specifically raised in this appeal before this Court wherein it is stated that the delay of more than 10 years in initiating the disciplinary proceedings by issuance of charge memo would render the departmental proceedings vitiated and that in the absence of any explanation for the inordinate delay in initiating such proceedings of issuance of charge memo would justify the prayer for quashing the proceedings as made in the writ petition.

12. The Honourable Apex Court ultimately held in the decision cited supra as here under: (para 15)

15. We, therefore, have no hesitation to quash the charge memo 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 costs.

13. The Division Bench of this Court also quashed the charge memo on the ground of inordinate and unexplained delay of issuing charge memo in A. Obaidhullah Vs. The State of Tamil Nadu and The Tamil Nadu Administrative Tribunal, by following the Apex Court's decision (Mahadevan's case). Another Division Bench of this Court in D. Amaladoss Vs. The State of Tamil Nadu and The High Court of Judicature at Madras, , quashed the charge memo on the ground of

delay as well as conduct of parties. In yet another Division Bench decision of this Court in Union of India (UOI) and Another Vs. V. Sekar and Another, the charge memo was set aside on the ground of inordinate and unexplained delay in issuing the charge memo.

14. In a similar matter, a learned Single Judge of this Court by placing reliance on the decision of the Division Bench of this Court in A. Obaidhullah Vs. The State of Tamil Nadu and The Tamil Nadu Administrative Tribunal, has held that the charge memo is liable to be quashed on the ground of inordinate and unexplained delay.

15. The principles laid down by the Hon"ble Apex Court and this Court in the decisions cited supra, is squarely applicable to the facts of the instant case as in this case also, there is a delay of nearly 12 years for completing the disciplinary proceedings and the fact remains that even the Respondents have not conducted any proper enquiry till date and above all, an enquiry report which was rejected by the Government, was placed reliance by the 1st in passing the impugned orders.

16. In view of the aforesaid reasons, this Court is constrained to quash the impugned charge memo in Letter No. 64453/Q1998-16 dated 01.11.1999 and set aside the impugned order in Letter No. 64453/Q/1998-51 dated 30.11.2009 and the consequential impugned order in Letter No. 64453/Q/1998-52 dated 12.01.2010 passed by the 1st Respondent and the writ petition is allowed.

No costs.

17. The Petitioner is entitled to all the attendant and retirement benefits and the Respondents are directed to grant the said benefits to the Petitioner within a period of eight weeks from the date of receipt of a copy of this order.