

(1996) 09 MAD CK 0034

In the Madras High Court

Case No : Writ Petition No. 11537 of 1987

M. Kolandai Gounder

APPELLANT

Vs

The Divisional Engineer, T.N.E.B. Thuraiyur, ors.

RESPONDENT

Date of Decision : 02-09-1996

Acts Referred:

Citation : (1997) 1 LLJ 222

Hon'ble Judges : S.M. Abdul Wahab, J

Bench : Single Bench

Judgement

S.M. Abdul Wahab, J.—The writ petition is for quashing the charge memo dated November 11, 1987.

2. The case of the petitioner is that he was working as a Commercial Assistant. He was the senior most and he had unblemished record during his

service. While so, some complaints against the Assistant Divisional Engineer for irregular sanctioning of two service connections were received.

When the irregularity was pointed out by the higher officers, the Assistant Divisional Engineer got a complaint from one of the parties as if estimate

was prepared by the petitioner. The petitioner had nothing to do with the preparation of the estimates. It is by the Assistant Divisional Engineer.

With a view to get over the irregularities committed by him, the Assistant Divisional Engineer filed a charge against the petitioner as if he received

Rs. 500 for preparing the irregular estimate. An Enquiry Officer was appointed and he conducted the enquiry. One Junior Engineer was examined.

According to the said witness, the petitioner prepared only the fair copy as per the allocation of work. Another witness Thiru Perumal, the

complainant, deposed that he did not pay any amount to the petitioner and he

gave a complaint as he was insisted by some officers. Thereafter nothing was heard. The enquiry was completed on May 5, 1984 itself. To his shock and surprise, after the aforesaid enquiry, the impugned charge has been again issued containing the same charges. Hence the writ petition.

3. No counter has been filed.

4. It is contended that after having conducted an enquiry and after receiving the report from the Enquiry Officer holding that the charges were not proved against the petitioner, it is not open to the respondent to issue the very same charge and conduct another enquiry with reference to the very same charges.

5. With reference to a mis-conduct, it is open to the employer or the management to conduct an enquiry. After conducting an enquiry, if the report of the Enquiry Officer is not acceptable, it is open to the management to take a different view from the views already recorded. But, at the same time, no service law provides that the management can go on conducting enquiries again and again till it is sufficiently proved the guilt of the employee. In the present case, it is clearly asserted that the enquiry report was against the Board. No records have been placed before me to hold that the enquiry was not conducted in a fair or proper manner. Nor there is evidence to show that if any infirmity has been committed by the Enquiry Officer. In such circumstances, if the respondents are allowed to conduct another enquiry on the very same charges, it will tantamount to harassment.

6. The enquiry proceedings can be dropped before it is completed. But after all the witnesses have been examined and the Enquiry Officer has submitted his report, there is no question of dropping the disciplinary proceedings and initiating another disciplinary proceedings.

7. A reading of the charge memo dated November 11, 1987 does not contain any reference to the disciplinary proceedings at all. It is also not found as to whether the earlier proceedings had been dropped or not. Since the allegations in the affidavit having not been controverted, I have no other go except to accept statement contained in the affidavit. The affidavit shows that the enquiry was completed and the enquiry report was also submitted. The enquiry report was also against the Board. Therefore, in the said circumstances, there is no justification for conducting a second

disciplinary proceedings on the very same charges, which have been not proved. Even though the principle of double jeopardy is not applicable, the law permits only disciplinary proceedings and not Harassment. The second set of disciplinary proceedings with very same charges which have not been proved, tantamount to harassment. Allowing such practice is not in the interest of the public service. In the circumstances, I have no hesitation to hold that the charge memo dated November 11, 1987 deserves to be quashed. Accordingly, the writ petition is allowed. However, there will be no order as to costs.