

**(2009) 11 MAD CK 0049**  
**In the Madras High Court**  
**Case No : Writ Petition No. 94 of 2008**

N. Gajarajan

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

**Date of Decision :** 24-11-2009

**Acts Referred:**

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 12(2), 17, 17A, 8, 9(1)  
Tamil Nadu Government Servants Conduct Rules, 1973 — Rule 20(1)  
Tamil Nadu Pension Rules, 1978 — Rule 48(5), 9(2)  
Tamil Nadu State and Subordinate Services Rules, 1955 — Rule 39

**Citation :** (2009) 11 MAD CK 0049

**Hon'ble Judges :** P. Jyothimani, J

**Bench :** Single Bench

**Advocate :** P. Jayaraman for G. Elanchezhian, for the Appellant; R. Murali, Government Advocate, for the Respondent

## Judgement

P. Jyothimani, J.—The writ petitions are directed against the proceedings of the second respondent dated 14.3.2006 under which the

second respondent framed charges against the petitioners under Rule 17A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

2. The petitioners were initially appointed as Assistant Engineers through Tamil Nadu public Service Commission on 29.8.1980 and 11.2.1998

respectively. Thereafter, the petitioner in W.P. No. 94 of 2008 was promoted as Assistant Divisional Engineer on 4.10.1999 and posted at

Krishnagiri and ultimately he was transferred and posted in Tamil Nadu Road Sector Project, Chennai-20 in the year 2005, in which the petitioner

is working, while the petitioner in W.P. No. 95 of 2008 was subsequently transferred and posted in NABARD and Rural Road, Kancheepuram

Section as Assistant Engineer (H) in 2006 and he is working in the said capacity.

2(a). It is stated that while the petitioners were working at Ponneri Assistant Engineer's Office where the petitioner in W.P. No. 94 of 2008 was

working as Assistant Divisional Engineer and the petitioner in W.P. No. 95 of 2008 was working as Assistant Engineer, emergency patch work

was carried out in Nerkundram-Seemavaram Road at the cost of Rs. 5 lakhs in K.M.9/050-14/0. While the work was carried out during

December, 2004, there was stated to be heavy rain. It is stated that after two years when checking was effected, a report was sent to the

Government to the effect that there was no trace for having carried out the said patch work. It was based on the report of the Quality Control

Authority, the impugned charge memo came to be issued.

2(b). Two charges were framed to the effect that in respect of the above said work stated to have been carried out for an amount of Rs. 5 lakhs, it

was found on inspection that no such work was done, however, an amount of Rs. 1,41,912/- was received on the basis that the said work was

completed and therefore, the petitioners have not done their duty with dedication and honesty and thereby violated Rule 20(1) of the Tamil Nadu

Government Servants Conduct Rules, 1973.

2(c). Under the said impugned charge memo, the petitioners were directed to submit explanation within 15 days. The petitioners submitted their

explanation to the second respondent stating that even as per the report of the Director of Highways Research Centre, it was not possible to check

the measure after a long lapse of time and there was no finding that such work was not done. It is the case of the petitioners that after receiving the

explanation, there was no enquiry conducted and no action taken till date.

2(d). In the meantime, the petitioner in W.P. No. 94 of 2008 was due for promotion as Divisional Engineer in the year 2006-07, while the

petitioner in W.P. No. 95 of 2008 was due for promotion for the post of Assistant Divisional Engineer in the year 2006-07 and their names were

not considered because of the charges pending against them. It is stated that their juniors were considered for promotion and they were also

promoted to the above said posts with effect from 29.3.2007.

2(e). It is stated that the second respondent has preferred a panel for the year 2007-08 for the post of Divisional Engineer and Assistant Divisional

Engineer and in the panel also, the petitioners names were not included and their

juniors were included and the reason assigned therefore is the pendency of disciplinary proceedings. It is the case of the petitioners that as per Rule 39(d) of the Tamil Nadu State and Subordinate Service Rules, even the pendency of departmental or criminal proceedings is not a bar for considering the promotion temporarily and even regular promotion can be made.

2(f). According to the petitioners, they are entitled to be considered for promotion for Divisional Engineer and Assistant Divisional Engineer respectively and in these circumstances, the writ petitions came to be filed on the ground that the charge memo is illegal, opposed to the principles of natural justice and arbitrary.

2(g). According to the petitioners, under Rule 9A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, in cases where more than one Government Servant are involved in a disciplinary proceeding belonging to the same department, the authority who is competent to initiate disciplinary proceedings and impose penalty is specified and under Rule 8, the authority to take disciplinary proceedings in both the cases shall be one who is entitled to take disciplinary proceedings in respect of the Government servant who is holding the highest post and the disciplinary proceedings against all of them shall be taken together. In the present case, according to the petitioners, one is working as Assistant Divisional Engineer and the other is the Assistant Engineer and the competent authority is the Government and therefore, the proceedings by the second respondent is against Rule 9A.

2(h). That apart, it is also the case of the petitioners that there are no witnesses to prove the charge against the petitioners and therefore, no charge can be framed under Rule 17(b), that the instructions to do the patch work were given in December, 2004 and the Director of Highways Research Centre conducted the inspection nearly after 1= years of completion of the work, that by virtue of the disciplinary proceedings the chance of petitioners being considered for the next promotion is obstructed and that the case on hand is covered by various orders of this Court, as referred to in the affidavit.

3. In the counter affidavit filed on behalf of the respondents, while it is admitted that the charges were framed against the petitioners under Rule

17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, on the basis of illegal loss that was caused to the Government to the extent

of Rs. 1,41,912/- in carrying out patch work and it was due to the pendency of disciplinary proceedings, the petitioners' names were not

considered for panel for promotion for the years 2006-07, 2007-08 and 2008-09.

3(a). It is stated that the urgent repair work to improve Nerkundram-Seemavaram KM5/7 - 14/0 was sanctioned at the estimated cost of Rs. 40

lakhs apart from the repairing flood damages on Nerkundram-Semavaram KM9/050 - 14/0 at the estimated cost of Rs. 5 lakhs in Ponneri

Highways Sub Division during 2004-2005. In March, 2006 when the Director of Highways Research Station made inspection and filed a report

on 11.3.2006, he furnished remarks about the above said works as follows:

Since the improvements work has been completed in the reach 5/7 - 8/2 the urgent repair works are not measurable. In other reaches works

under improvements are commenced and progressing, the quantum of work as per the urgent repairs Estimate in this reach could not be verified

and properly assessable at this stage. From Km.8/2-13/0 other than the above said WBM laid portions there are no traces of BT patches laid.

The road is damaged due to potholes, revelling. Moreover, in most of the reaches the average road width is about 5.5 mts. to 6.5 mts. and

specifically in the last reach of 11/0 to 13/0 the width of the road is about 4.5 to 5.0 mts.

All the urgent repair estimates are prepared using PC without seal coat. Further one of the agreement conditions under Commercial condition 4.1

states that the contractor shall be responsible to make good and remedy at his own cost, any defect which may develop before the expiry period

of 36 months (defect liability period) from the completion of whole work.

But within a period of 4 to 6 months of completion of urgent repair work, improvements or strengthening estimate for the same reaches are

prepared, sanctioned and entrusted and started by picking the patches provided in the urgent estimate which is contrary to the above tender

condition. The Chief Engineer (General) (Highways) has stated in his inspection notes, dated 24.05.2005 that he has observed the defects that

there are no traces of PC patches done on these roads.

Subsequently, on 10.11.2005 the Superintending Engineering (H) Chennai has

reported that all the defects were rectified. He has stated that he had inspected all the roads and found no such acts of omission. But the date of inspection is not mentioned. Further as seen from the above that the patchwork under urgent repair work was picked from August' 05 onwards. Hence the report of the Superintending Engineer (H) Chennai is contrary. No inspection notes of the Superintending Engineer (H) Chennai is available for having verified the defects. Further action may please be taken in this regard.

3(b). It was based on the said report, the second respondent has issued the memo. It is stated that the petitioners have submitted their explanation on 25.9.2006, after five months from the date of the charge memo which was served on 17.3.2006. It is stated that apart from the petitioners, charges were framed against other two persons and ultimately, an Enquiry Officer was appointed on 2.11.2007 and the Enquiry Officer conducted the enquiry and submitted a report on 5.3.2008.

3(c). In the meantime, by virtue of interim stay order granted by this Court dated 15.2.2008, which was stated to have been received by the first respondent on 5.3.2008, further proceedings were stopped. After the expiry of the period of stay granted for four weeks which as not subsequently extended, the Government examined the Enquiry Officer's report and having decided that the charges against the petitioners are proved, the defence statement was called for from the petitioners by letter dated 24.4.2009 and the petitioners also submitted their reply on 18.6.2009.

3(d). The factum of pendency of disciplinary proceedings and non-consideration of the petitioners for promotion for the year 2006-07, 2007-08 and 2008-09 was intimated to the petitioners on 27.9.2007. Rule 39(d) of the Tamil Nadu State and Subordinate Service Rules relates to the promotion given on emergency basis pending preparation of panel and that is not the situation in the present case.

3(e). In respect of the contention of the petitioners regarding Rule 9A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, it is stated that the said rule applies only in cases where charges are framed under the Tamil Nadu Civil Services (Discipline and Appeal) Rules, but in the present case, charges have been framed against two higher officials viz.,

Divisional Engineers (now Superintending Engineers retired) by the first respondent and those charges were framed under the Tamil Nadu Pension Rules since they have retired and therefore, the charges are not under the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Therefore, according to the respondents, the provisions of Rule 9A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules are not applicable to the case of retired officers.

3(f). It is stated that the second respondent has exercised his powers vested with him as Head of the Department in Rule 12(2)(ii) of the Tamil

Nadu Civil Services (Discipline and Appeal) Rules and issued charge memo on 14.3.2006 under Rule 17(b). Therefore, it is the case of the

respondents that in respect of these two petitioners though charges were framed under Rule 17(b), in respect of the two higher officers viz.,

Superintending Engineers, since they retired from service after holding higher posts, the charges were reframed under Rule 9(2) of the Tamil Nadu

Pension Rules and therefore, Rule 9A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules are not applicable.

3(g). It is also stated that there are abundant materials to show that sub-standard materials have been used for patching working and the same is

revealed by the Director of Highways Research Centre in his report which has been enclosed along with the charge memo. It is stated that the

enquiry has been conducted and it is, because of the pendency of the writ petitions, no orders have been passed in the enquiry.

4. It is the contention of the learned senior counsel for the petitioners Mr. P. Jayaraman that Rule 12(2) of the Tamil Nadu Civil Service

(Disciplinary and Appeal) Rules do not in any way dilute the provisions of Rule 9A and the said Rule 12(2) would apply in cases where the

individual Government servant is proceeded with any departmental action. He would also rely upon the orders of this Court in W.P. No. 24506 of

2003, etc. batch dated 5.4.2005. It is his submission that the amendment made to Rule 9A is only prospective and he would rely upon the

judgment of the Supreme Court in State of Uttaranchal v. KharakSingh (2008) 8 SCC 36. It is his further submission that the charge memo is

liable to be set aside on the ground of delay.

5. On the other hand, it is the contention of Mr. R. Murali, learned Government

Advocate that there is no violation and according to him, the charge memo was issued in 2006 and the Enquiry Officer conducted the enquiry, in which the petitioners participated and the enquiry report was filed and at that time, interim stay was granted by this Court and further proceedings could not be proceeded with and therefore, there was a delay. It is contended that Rule 9A of the Tamil Nadu Civil Service (Disciplinary and Appeal) Rules will not apply since in this case, in respect of two other officials who are holding higher posts, they were proceeded with under Rule 9(2) of the Tamil Nadu Pension Rules and on the other hand, the petitioners are still in service and among the two petitioners, the Chief Engineer viz., the second respondent is the higher authority and therefore, the proceedings were initiated on that basis. It is stated that because of the pendency of the writ petitions, final orders could not be passed and if the final orders are passed, it is open to the petitioners to challenge the same.

6. On the facts of the present case, one of the main issues that is raised by the learned senior counsel for the petitioners is that as far as two writ petitioners are concerned, the authority competent to initiate disciplinary proceedings is the second respondent, whereas there were two other officials against whom charges were framed in respect of the same incident and they were holding the posts of Divisional Engineers at the time of the incident and subsequently retired as Superintending Engineers. They are Mr. D. Vishnumohan and Mr. A. Narayanan.

7. It is also not in dispute that in respect of those two higher officials, charges were framed at the time when they were in service, and subsequently when they retired from service, proceedings were continued under Rule 9(2) of the Tamil Nadu Pension Rules. Under the Tamil Nadu Pension Rules, Rule 9(2) says that the disciplinary proceedings against a Government servant initiated before retirement is deemed to be the proceedings under the said Pension Rules and the same may be continued by the authority by which the proceedings were commenced in the same manner as if the Government servant has continued in service. Rule 9(2) of the Pension Rules is as follows:

9. Right of Government to withhold or withdraw pension.-

(1)xxx

(2)(a) The departmental proceedings referred to in Sub-rule (1), if instituted

while the Government servant was in service, whether before his retirement or during his re-employment, shall, after the final retirement of the Government servant be deemed to be proceedings under this rule and shall be continued and concluded by the authority by which they were commenced in the same manner as if the Government servant had continued in service:

Provided that where the departmental proceedings are instituted by an authority subordinate to the Government, that authority shall submit a report recording its findings to the Government.

(b) The departmental proceedings, if not instituted while the Government servant was in service, whether before his retirement or during his re-employment-

(i) shall not be instituted save with the sanction of the Government;

(ii) shall not be in respect of any event which took place more than four years before such institution; and

(iii) shall be conducted by such authority and in such place as the Government may direct and in accordance with the procedure applicable to

departmental proceedings in which an order of dismissal from service could be made in relation to the Government servant during his service.

8. Rule 9A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules before amendment stood as follows:

9A. In any case where more than one Government servant of the same department are involved, the authority competent to institute disciplinary

proceedings and impose any of the penalties specified in Rule 8 shall be the authority in that Department in respect of the Government servant who

holds the highest post and the disciplinary proceedings against all of them shall be taken together:

Provided that in the case of Government servants belonging to different departments who are jointly involved or whose cases are interconnected,

the Government shall be the authority competent to initiate disciplinary proceedings and impose any of the penalties specified in Rule 8 and in such

cases the administrative department of Secretariat in respect of the Government servant who holds the highest post will initiate such disciplinary

proceedings and issue final orders after complying with the entire procedure laid down in these rules:

Provided further that this rule shall not apply to cases in which officers coming under the administrative control of the Chief Secretary to

Government are jointly involved.

9. The said rule came to be amended by G.O.Ms. No. 26, Personnel and Administrative Reforms (N) Department dated 15.2.2008 and after

amendment, the said Rule 9A reads as follows:

9A. In any case where more than one Government servant of the same Department are jointly involved or whose cases are interconnected, the

authority competent to institute disciplinary proceedings shall be the immediate higher authority in that Department in respect of the Government

servant who holds the highest post among such Government servants and the disciplinary proceedings against all of them shall be taken together.

Where inquiry is to be conducted in terms of Rule 17(b), the said authority may either himself conduct the inquiry or get the inquiry conducted by

an inquiring officer appointed by the authority competent to impose major penalty in respect of the Government servant who holds the highest post

among such Government servants. The said authority shall remit the case, at the appropriate stage, to the authority competent to impose any of the

penalties specified in Rule 8 in respect of the Government servant who holds the highest post among such Government servants in that Department

for passing final orders

In the notification issued by the Government, it is stated that the amendment has come into effect from 15.2.2008 and therefore, it is prospective in

effect.

10. On the facts of the present case, the charges were framed against the petitioners on 14.3.2006, which was before the date of the amendment

and therefore, as per the original Rule 9A, the departmental proceedings are to be initiated and conducted by the authority who is competent to

conduct such disciplinary proceedings in respect of a delinquent holding the higher post among various persons charged. Even after the

amendment, it only enables the disciplinary authority to delegate the powers of conducting the enquiry by any Enquiry Officer who may be lower

authority provided such authority is appointed as Enquiry Officer by the competent authority to impose punishment in respect of the Government

servant who holds the higher post among such Government servants and after

the enquiry is conducted, the report has to be forwarded to the authority competent to pass final orders as per Rule 9A as stood originally. Therefore, on the facts of the present case, there is no difficulty to conclude that Rule 9A of the Rules as stood before the amendment is applicable.

11. The next point that has to be seen consequently is, in the facts of the present case, two other superior officers were involved in the same charges in respect of whom the Government is the competent authority to initiate and conduct the proceedings, and while charges were pending, they retired from service and the disciplinary proceedings continued under Rule 9(2) of the Tamil Nadu Pension Rules. Therefore, the contention of the learned Counsel for the respondents is that after retirement, the disciplinary proceedings is deemed to be one under the Tamil Nadu Pension Rules and therefore, after retirement, the proceedings cannot be deemed to be conducted under the Tamil Nadu Civil Services (Discipline and Appeal) Rules, since no punishment can be imposed under Rule 8 except ordering deduction from the pensionary benefits and therefore, the proceedings against other two superior officers under the Tamil Nadu Pension Rules is not a bar for the second respondent to proceed with the enquiry against the petitioners.

12. A reading of Rule 9(2) of the Tamil Nadu Pension Rules as elicited above makes it clear that in respect of the Government servant against whom disciplinary proceeding was initiated before his retirement, and if he has retired during the pendency of the disciplinary proceedings, the disciplinary proceeding so initiated is deemed to continue subject to the condition contained therein. In cases where the departmental proceeding has been initiated by the authority subordinate to the Government, such authority shall submit a report to the Government recording its findings. However, in cases where no departmental proceeding is initiated against the Government servant while he is in service, such proceedings cannot be instituted after retirement without the sanction of the Government and that too, in respect of the events that have taken place within four years from the date of such institution and in those cases where the Government has granted sanction in respect of the events that took place within four years from the date of institution of proceedings, if the departmental proceeding is instituted after the retirement, such proceeding has to be conducted by

the authority and in the place as directed by the Government and the procedure to be followed by such authority is the same as in the case of

departmental proceedings in which ultimate punishment of dismissal could be passed, as it is expressly provided in Rule 9(2b) of the Tamil Nadu

Pension Rules.

13. Therefore, it is clear that even after retirement, if proceedings continue, subject to the conditions mentioned in Rule 9(2) of the Tamil Nadu

Pension Rules, the nature of the departmental proceeding is as same as that of the proceedings instituted against the Government servant while in

service under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The only difference is that in case of retired Government

servant, disciplinary proceedings is instituted or continued after retirement as stated above under the Tamil Nadu Pension Rules and final order is

passed as mentioned under Rule 9(1) of the said Rules. The above Rule 9(1) is as under:

9. Right of Government to withhold or withdraw pension.-

(1)(a) The Government reserve to themselves the right of withholding a pension or part thereof, whether permanently or for a specified period if, in

any departmental or judicial proceeding, the pensioner is found guilty of grave misconduct or negligence during the period of his service, including

service rendered upon re-employment after retirement, and such withholding or withdrawing the pension may be effected irrespective of the fact

whether or not any pecuniary loss on account of such grave misconduct or negligence was caused to the Government, to any local body or to any

Co-operative society comprising of Government servants and registered under the Tamil Nadu Co-operative Societies Act, 1961;

Provided that the Tamil Nadu Public Service Commission shall be consulted before any final orders under this clause are passed:

Provided further that where a part of pension is withheld or withdrawn, the amount of such pension shall not be reduced below the limit specified in

Sub-rule (5) of Rule 48.

(b) In case there is any pecuniary loss caused to the Government to any local body or to any Co-operative society comprising of Government

servants and registered under the Tamil Nadu Co-operative Societies Act, 1961 and if, in any departmental or judicial proceedings, the pensioner

is found guilty of grave misconduct or negligence during the period of his service including service rendered upon re-employment after retirement,

the Government shall also have the right of ordering recovery from the pension of the whole or part of the pecuniary loss caused such grave

misconduct or negligence:

Provided that the Tamil Nadu public Service Commission shall be consulted before any final orders under this clause are passed.

Explanation.- "Judicial proceeding" shall include proceeding before any Tribunal constituted by an Act of Parliament or the State Legislature or by

a Rule.

Therefore, in such cases even though the authority competent to pass an order of dismissal has the jurisdiction to continue the

disciplinary/departmental proceedings, there is no question of dismissal order being passed in respect of a retired Government servant, but the

order can only be relatable to withholding the pension under Rule 9(1) of the Tamil Nadu Pension Rules subject to the conditions enumerated

therein viz., consultation with Tamil Nadu Public Service Commission, etc.

14. There is absolutely no point in the contention of the learned Counsel for the respondents that when more than one person are involved in the

departmental proceedings among whom one retires during the proceedings, the proceedings against such retired person under Rule 9(2) of the

Tamil Nadu Pension Rules cannot be treated as a proceedings under the Tamil Nadu Civil Services (Discipline and Appeal) Rules. At the risk of

repetition, it has to be insisted that the consequential result in the departmental proceedings in respect of retired Government servants under the

Tamil Nadu Pension Rules would lead to withholding of pension and in respect of the Government servant in service, the punishment would be

under Rule 8 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules by imposing either major or minor punishment. But, the nature of

departmental proceeding which is deemed to continue after the retirement is similar to one which has been conducted and continued against a

Government servant who continues to be in service. Inasmuch as there is no change in the nature of departmental proceedings in both the cases,

viz., a person in service and a person who has retired and the distinction is only in respect of imposition of punishment that is, in respect of retired

Government servant the punishment would only be withdrawal or withholding of pension under Rule 9(1) of the Tamil Nadu Pension Rules and

therefore, there is absolutely no substance in the contention that if one of the Government servants who is involved in the disciplinary proceedings

and in the same charge retires, that would not affect the existing disciplinary proceedings at all especially when it relates to Rule 9A of the Tamil

Nadu Civil Services (Discipline and Appeal) Rules which stipulates that in such cases, the authority competent to continue the disciplinary

proceedings in respect of the person holding the higher post among the delinquents shall continue the enquiry in respect of all delinquent officers.

15. Admittedly, on the facts of the present case, in respect of two Government servants who have retired during the pendency of disciplinary

proceedings, the Government is the authority entitled to proceed with the charges and therefore, under Rule 9A of the Tamil Nadu Civil Services

(Discipline and Appeal) Rules, as it stood before amendment, it is only the highest authority, viz., the Government which is the competent authority

to proceed with the disciplinary proceedings against the petitioners. Rule 12(2) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules

cannot in any way take away the effect of Rule 9A as enumerated above. That was also the view of the Division Bench of this Court in an

unreported judgment in *The Deputy Inspector General of Police, Trichy Range, Trichy and Ors. v. The Secretary to Government, Home (Pol. II)*

*Department, Fort St. George, Chennai and Ors. (W.P. Nos. 24506 to 24512 of 2003)* by judgment dated 5.4.2005 wherein R. Balasubramanian,

J.(as He then was) while dealing with Rule 4A of the Tamil Nadu State Police Subordinate Service Rules, which is similar to Rule 9A of the Tamil

Nadu Civil Services (Discipline and Appeal) Rules, held as follows:

3. Inasmuch as the allegations levelled against all the three delinquents are definitely inter connected with each other and going by Rule 4-A of the

Tamil Nadu State Police Subordinate Services, the Deputy Superintendent of Police, holding the highest post among the three charged officials, the

competent authority to commence disciplinary proceedings against them would be only Government of Tamilnadu, represented by its Secretary,

Home Department and not any officer inferior to it. Therefore the very competency of the commencement of the disciplinary proceedings against

all the three delinquents is definitely wanting in this case. Tamilnadu Administrative Tribunal, accepting the above position alone, allowed all the

Original Applications. The learned Government Advocate would rely upon Rule 12(2) of the Tamil Nadu Civil Services (Discipline and Appeal)

rules to contend that the Director General of Police and Deputy Inspector General of Police are competent persons to commence disciplinary

proceedings against the respective delinquents. Our reading of Rule 12(2) do not lend support to the argument advanced by the learned

Government Pleader. Requirement of law provided for under Rule 9-A does not get diluted in an manner by Rule 12(2) as rightly submitted by

Thiru K. Venkataramani, learned Counsel appearing for the delinquents viz., the Deputy Superintendent of Police and Inspector of Police and Mr.

Bala, learned Counsel appearing for the Police Constable. In our opinion, Rule 12(2) of the Tamil Nadu Civil Services (Discipline and Appeal)

Rules would apply to a case where an individual Government Servant is proceeded with in a departmental action. Consequently, agreeing with the

reasons given by the Tribunal in all these cases that commencement of the disciplinary proceedings against the three delinquents itself is without

authority of law, we are inclined to confirm the judgements under challenge and accordingly, all the writ petitions are dismissed. However, we

make it clear that our order will not come in the way of the appropriate authority to have a re-look on the whole issue for taking a fresh decision....

16. As far as the second point relating to delay in framing the charges is concerned, it is seen that while the incident is stated to have taken place in

the year 2004, the defects were found at the time of inspection in 2006 as it is shown in the report of the Director of Highways and Research

Centre, dated 11.3.2006 and it is, based on the said inspection report, charge memo came to be issued on 14.3.2006. There is also no dispute

that the enquiry was conducted and enquiry officer's report was filed and at that time, by virtue of the order of interim stay granted by this Court,

further proceedings have been stopped and therefore, there is no reason to plead that there is delay on the part of the respondents in framing the

charges against the petitioners.

17. Even on a reading of the report of the Director of Highways and Research Centre, dated 11.3.2006 as noted in the counter affidavit, one

cannot come to a conclusion that this is a case of no evidence against the petitioners and these are all matters which cannot be decided by this

Court, especially when it cannot be concluded that there is absolutely no evidence against the petitioners. On the other hand, it is not for this Court

but for the disciplinary authority to decide the question whether the quantum of evidence for the purpose of conducting the enquiry and to decide

about the consequential punishment to be imposed is sufficient or not. Therefore, the contention of the learned senior counsel for the petitioners that

there is no evidence in this case, by relying upon the judgment of the Supreme Court in State of Uttaranchal and Others Vs. Kharak Singh, and

therefore, the charge sheet has to be quashed, cannot be accepted at this stage.

18. Even though under the impugned charge memo, it is stated that there are no witnesses, the documents annexed thereto viz., report of the

Director and the technical report have to be considered to decide about the correctness of the charges which can be decided only in the

disciplinary proceeding and one cannot abruptly come to the conclusion that it is a case of no evidence. In the above said case, the Supreme Court

has laid down various principles which are as follows:

15. From the above decisions, the following principles would emerge:

(i) The enquiries must be conducted bona fide and care must be taken to see that the enquiries do not become empty formalities.

(ii) If an officer is a witness to any of the incidents which is the subject matter of the enquiry or if the enquiry was initiated on a report of an officer,

then in all fairness he should not be the enquiry officer. If the said position becomes known after the appointment of the enquiry officer, during the

enquiry, steps should be taken to see that the task of holding an enquiry is assigned to some other officer.

(iii) In an enquiry, the employer/department should take steps first to lead evidence against the workman/delinquent charged and give an

opportunity to him to cross-examine the witnesses of the employer. Only, thereafter, the workman/delinquent be asked whether he wants to lead

any evidence and asked to give any explanation about the evidence led against him.

(iv) On receipt of the enquiry report, before proceeding further, it is incumbent on the part of the disciplinary/punishing authority to supply a copy

of the enquiry report and all connected materials relied on by the enquiry officer to enable him to offer his views, if any.

I do not think that the facts of the present case will not cover the above said requirements.

16. In any event, for the reasons I have stated above, by applying Rule 9A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the

charge memo has to go. In such view of the matter, the writ petitions stand allowed and the impugned charge memo against the petitioners is set

aside on the basis of Rule 9A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Needless to state, it is for the authority competent to

decide about the framing of any fresh charge on the said event, if so advised. On the facts and circumstances, the respondents shall consider the

case of the petitioners for the next promotional posts for the year 2006-2007, if they are otherwise eligible and pass appropriate orders

expeditiously.