

**(2006) 02 MAD CK 0213**

**In the Madras High Court**

**Case No : Writ Petition No. 25355 of 2005**

P. Dhandapani

APPELLANT

Vs

The Principal Commissioner and Commissioner for Revenue  
Administration and The Revenue Divisional Officer

RESPONDENT

---

**Date of Decision : 21-02-2006**

**Acts Referred:**

Constitution of India, 1950 — Article 309

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17, 36(1)

**Citation : (2006) 2 MLJ 318 : (2006) WritLR 448**

**Hon'ble Judges : N. Paul Vasanthakumar, J**

**Bench : Single Bench**

**Advocate : V. Balu, for the Appellant; D. Malarvizhi, Government Advocate, for the Respondent**

**Final Decision : Allowed**

---

## **Judgement**

N. Paul Vasanthakumar, J.—By order dated 9.9.1996, the writ petitioner was imposed with the punishment of withholding of increment for two years without cumulative effect by the second respondent, which was enhanced to that of removal from service by the order of the first respondent dated 12.8.1999 on suo-motu revision under Rule 36(1)(ii) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. The said order of the first respondent dated 12.8.1999 is challenged in this writ petition.

2. The facts leading to filing of the writ petition are that the petitioner, while working as Village Administrative Officer, Melandal, was placed under suspension by the Revenue Divisional Officer in his proceedings dated 17.8.1994 on the ground that an enquiry into grave charges is contemplated. The charges framed against the petitioner are that,

(i) while working as Village Administrative Officer of Melandal village from 14.12.1988 to 30.6.1994, he collected land revenue from pattadars to the tune of Rs.38,231/- as stated in Annexures 1 and 2 and failed to remit the same into

the Government Account immediately and thus temporarily misappropriated the said amount,

(ii) in the receipts issued for payment of land revenue, though in the first copy one pattadar's name and the amount paid by him were mentioned, in the second and third copies, he fraudulently mentioned another pattadar's name and different amount against the Government rules and thus misappropriated the differential amount, and that

(iii) corrected the Government documents fraudulently and thereby misappropriated Rs.38,231/-

A charge memo was issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules on 23.9.1995. For the very same charges, a criminal case was registered u/s 409 I.P.C., in crime No. 47 of 1996 of Manaloor Police Station. Petitioner had submitted his explanation on 2.10.1995 and according to him, he had repaid the amount of Rs.38,231/-, said to have been misappropriated, as early as on 31.3.1995. The Enquiry Officer, after concluding the enquiry, submitted his report on 31.5.1996 holding that charges 2 and 3 are proved and that in respect of the first charge, a criminal case is pending. The Disciplinary Authority/Revenue Divisional Officer, after going through the enquiry report and taking into consideration the remittance of the alleged misappropriated money by the petitioner, imposed the punishment of withholding of increment for two years without cumulative effect. Petitioner was given thirty days time to file appeal before the District Revenue Officer, Villupuram, but however, he did not file any appeal. According to the petitioner, the criminal case initiated against him u/s 409 I.P.C., in C.C. No. 149 of 1998 ended in acquittal.

3. Respondents herein filed a counter affidavit stating that at the first instance on an initial enquiry a sum of Rs.6,230/- was detected as misappropriation and on further investigation it was found that the petitioner misappropriated Government money to the tune of Rs.38,231/-. It is further stated that during enquiry, the petitioner admitted the charges levelled against him and also remitted the sum of Rs.38,231/- on 31.5.1995 voluntarily and hence the Disciplinary Authority imposed the punishment of withholding of increments for two years without cumulative effect by order dated 9.9.1996. In the counter affidavit it is further stated that as per Rule 36(1)(ii) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the first respondent as the Head of the Department is empowered to revise the order of punishment at any time. Pursuant to that, as the punishment was found to be inadequate, a show cause notice was issued on 29.10.1997 and subsequently the order dated 12.8.1999 was passed removing the petitioner from service.

4. The learned Counsel appearing for the petitioner argued that the first respondent being the Head of the Department, has no jurisdiction to suo-motu review the punishment imposed upon the petitioner after six months. The learned Counsel further argued that Rule 36(1)(ii) empowers the Head of the

Department to review the order suo-motu, only within six months from the date of the order and the State Government alone can exercise suo-motu revisional power at any time, that is, even after expiry of six months. Therefore, the learned Counsel submitted that the suo-motu review made by the first respondent, who is only Head of the Department, enhancing the punishment, is totally unsustainable and without jurisdiction. The learned Counsel also argued that there is no misappropriation at all, committed by the petitioner and the belated remittance alone was found fault with.

5. The learned Counsel for the petitioner further submitted that while admitting O.A. No. 5003 of 1999, the State Administrative Tribunal granted stay, pursuant to which the petitioner was reinstated and he attained the age of superannuation on 31.8.2005 on which date the petitioner was not allowed to retire, but an order of suspension was passed.

6. I have considered the rival contentions made by the learned Counsel for the petitioner as well as the learned Government Advocate.

7. Rule 36(1)(ii) and (iii) of the Tamil Nadu Civil Services ( Discipline and Appeal) Rules read as follows,

Rule 36. Revision of Orders by the Appellate Authorities and the Higher Authorities.

(1) Notwithstanding anything contained in these rules:-

(i) ....

(ii) the head of the department directly under the State Government, in the case of a Government servant serving in a department or office under the control of such head of the department, or departments; or

(iii) the appellate authority, other than the State Government, within six months of the date of the order proposed to be revised; or,

(iv) ....

may at any time, either on their or its own motion or otherwise call for the records of any inquiry and after consultation with the Tamil Nadu Public Service commission, where such consultation is necessary, revise any order made under these rules, and may- ....

A reading of Rule 36(1)(ii) and (iii) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules disclose that the head of the department or the appellate authority, other than the State Government, can review the punishment of a Government Servant within six months and the Government alone can at any time, either on its own motion or otherwise, revise any order of punishment beyond the period of six months. The said position is also made clear by the Government in G.O.Ms. No. 63, Personnel and Administrative Reforms (N) Department, dated 2.2 .1996, which is extracted hereunder,

Government of Tamilnadu Abstract

PUBLIC SERVICES - Amendment to Rule 36(1)(iii) of Tamilnadu Civil Services (Discipline and Appeal) Rules ---- Notification issued.

-----

PERSONNEL AND ADMINISTRATIVE REFORMS (N) DEPARTMENT

G.O.Ms. No. 63 Dated : 2.2.1996 Read:-

G.O.Ms. No. 406, Personnel and Administrative Reforms (Per.N) dated 23.12.92.

ORDER:

1. Prior to issue of orders in the G.O. read above, the power to review the orders passed in disciplinary cases were vested with the authorities concerned under Rule 36 of the Tamilnadu Civil Services ( Discipline and Appeal) Rules. In G.O.Ms. No. 406, Personnel and Administrative Reforms, dated 23.12.92, the above said rules have been amended introducing new Rules 36 Revision (in the place of review under old Rule 36) and 37 Review.

2. In its judgement in T.A.217/91, dated 13.8.91, Tamilnadu Administrative Tribunal has held that under Rule 36(1)(iii) of the Tamilnadu Civil Services (Discipline and Appeal) Rules, the Government while exercising the power of review (revision under the amended rule) as the appellate authority, could pass orders under the said rules only within a period of six months as specified under the said rule. It has also further observed that if the intention of the rule maker is that six months time will not apply to the State Government, then specific mention would have been under Rule 36(i)(iii) of the said rules mentioning, appellate authority other than the Government. Subsequently, in another judgement in T.A.141/91, dated 31.10.91, which is subsequent to the above judgement, the Tamilnadu Administrative Tribunal has held that the time limit of six months does not apply to the State Government of the Head of Department specified in the said Rule 36(I) i and ii. The time limit of six months or such time as may be prescribed in such general or special order is applicable only to the appellate authority or any authority covered by the said Rule 36(I) iii and iv. Though the latter judgement which holds the field provides that the six months time limit will not apply to the State Government, in order to make the position clear and to avoid ambiguity, it has been decided to amend Rule 36(I)(iii) of the Tamilnadu Civil Services (Discipline and Appeal) Rules to exclude the State Government so that the six months time will not apply to the State Government.

3.The following Notification will be published in the Tamilnadu Government Gazette:-

Notification

In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Government of Tamilnadu hereby makes the following

amendment to the Tamilnadu Civil Services (Discipline and Appeal) Rules.

2. The amendment hereby made shall come into force on the 2nd February, 1996.

#### Amendment

In the said rules,

In Rule 36, in Sub-rule (1), for Clause (iii) the following clause shall be substituted, namely:-

(iii) the appellate authority, other than the State Government, within six months of the date of the order proposed to be revised;

(BY ORDER OF THE GOVERNOR)

S.SIVASUBRAMANIAN Secretary to Government.

/ true copy /

8. There is no dispute that the said rule is issued by the Government in exercise of the powers conferred under Article 309 of the Constitution of India and only under this rule the disciplinary proceedings against the Government servants of the State are initiated and concluded. The first respondent is the head of the department, who, after a lapse of more than one year issued suo-motu show cause notice on 29.10.1997. The show cause notice is dated 29.10.1997 and the consequential order is dated 12.8.1999. The said notice and the order having been issued by the first respondent beyond the prescribed period of six months, Rule 36(1)(ii) is violated in this case. Therefore, the impugned order passed by the first respondent on 12.8.1999 removing the petitioner from service is without jurisdiction and consequently the said order is liable to be set aside.

9. As stated above, petitioner after obtaining stay, served as Village Administrative Officer till 31.8.2005 and he has not challenged the order of the second respondent dated 9.9.1996 imposing punishment of withholding of increment for two years without cumulative effect.

10. In such circumstances, the writ petition is allowed. The impugned order of the first respondent dated 12.8.1999 is set aside. The respondents are directed to settle the retirement benefits and pension to the petitioner from 1.9.2005 within a period of three months from the date of receipt of copy of this order. No costs.