(2007) 10 MAD CK 0147

In the Madras High Court

Case No : Writ Petition No''s. 18517 and 18518 of 2007, MP No''s. 1 and 2 of 2007 in WP No. 18518 of 2007 and MP No. 1 of 2007 in WP No. 18517 of 2007

R. Venkatesan APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 12-10-2007

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

Citation : (2007) 10 MAD CK 0147

Hon'ble Judges : M. Chockalingam, J

Bench : Single Bench

Advocate : G. Ethirajulu, for the Appellant; V. Arun, Additional Government Pleader, for the Respondent

Judgement

M. Chockalingam, J.—The petitioner has challenged the proceedings of the second respondent namely the Special Commissioner and

Transport Commissioner, Madras, made in Proc.R. No. T1/23327/2007 (F.O. No. 207/07) dated 9.5.2007 and in Memo R. No. 75848/V4/05

dated 4.5.2006, by filing these two writ petitions respectively. He also seeks a direction to the respondents to promote the petitioner to the post of

Motor Vehicle Inspector Grade-I and seeks to forbear the respondents from proceeding with the enquiry pursuant to the aforesaid charge memo.

2. The affidavits in support of the petitions are perused. The Court heard the learned Counsel on either side.

3. Concededly, the petitioner who was appointed as Motor Vehicle Inspector Grade-II on 7.12.2000, was working at the Regional Transport

Office, Dharmapuri. During the relevant time, he was working in the Office of the Deputy Transport Commissioner, Salem. He was again transferred to Motor Vehicle Inspectors Unit Office, Hosur, on 12.11.2005, and he joined duty on 17.11.2005 and was working so. While so,

19.11.2005 and 20.11.2005 were holidays, and he went on medical leave from 21.11.2005 to 27.11.2005. He joined duty on 28.11.2005.

While he was actually on duty that day, there was a surprise inspection made by the Officials of the District Cell. Following the same, there was a

charge memo issued on 4.5.2006, under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, containing three charges. He

also put forth his reply stating that the contents of the charges were false. Then, the Deputy Transport Commissioner, Salem, was appointed as

Enquiry Officer, and it was conducted on two occasions. But, he retired from service. Thereafter, a fresh Enquiry Officer was appointed. Under

the circumstances, these two writ petitions have been brought forth.

4. The learned Counsel for the petitioner would submit that in the instant case, the charges were framed against him for negligence and of devotion

to duty; that a single allegation was multiplied into three charges; but, no allegation was made that the petitioner has committed these irregularities;

that further, the charge memo was vague, and it lacks in material particulars; that no direct allegations were made to attract Rule 17(b); that even

assuming without admitting that the charges are true, it would not attract any major punishment; but, it would come only under Rule 17(a) of the

said Rules; that the first Enquiry Officer, appointed, has also retired; that the second Enquiry Officer has been appointed; but, they have not taken

initiative; that the matter is pending for a longtime; that the chance of promotion was also deterred by the pendency of the same, and under the

circumstances, it has got to be quashed.

5. Contrary to the above contentions, the learned Additional Government Pleader would submit that it is true that there was a surprise inspection

where it was found that eight brokers were found inside the Office; that apart from that, an unaccounted money of Rs. 21,165/- was recovered

from them; that further, an unclaimed amount of Rs. 3,370/- was found and seized within the Office premises of Motor Vehicle Inspector, Hosur;

that there was also a third charge to the effect that there was a shortage in the closing balance; that explanations were given, but not found to be

satisfactory; that the Enquiry Officer was appointed, who retired; that another

Enquiry Officer has been appointed, who has to proceed with the

enquiry, and under the circumstances, the writ petitions have been brought forth.

6. Added further the learned Additional Government Pleader that after the explanations were brought forth, it was found that the charges would

attract only Rule 17 (a) of the said Rules and not 17(b); that the authorities had no power to amend the same; that they have placed the matter

before the State Government for amending the same; that it is awaited, and under the circumstances, the writ petitions have got to be dismissed

permitting the department to proceed with the enquiry of the matter.

7. The Court paid its anxious considerations on the submissions made.

8. It is not in controversy that the petitioner was working as Motor Vehicle Inspector, Hosur, during the relevant time. The surprise inspection,

according to the department, was made on 28.11.2005. But, in the instant case, a charge memo was issued only on 4.5.2006 i.e., nearly after a

period of six months. It remains to be stated that if the allegations contained in the charges, were true, there could not have been such a delay. That

apart, the first Enquiry Officer was also appointed after a period of six months, and he also retired. The second Enquiry Officer was appointed,

and it is pending. Now, at this juncture, it is pertinent to point out that the charges levelled against the petitioner, which are incorporated in the

memo, are placed in the hands of the Court. A perusal of the same would indicate that three charges were mentioned. The first charge was that the

brokers eight in number, were inside the Office, and they were also having a money of Rs. 21,165/-, which was seized from them. The second

charge was that an unclaimed amount of Rs. 3,370/- was found and seized within the Office premises of the Motor Vehicle Inspector, Hosur. The

third charge was that there was a shortage of Rs. 348/- noticed in the closing cash balance. As far as the charge No. 2 was concerned, wherefrom

Rs. 3,370/- was actually seized was not made known. Further, it was simply mentioned that it was seized from the Motor Vehicle Inspector''s

Office premises. As regards the third charge, there was a shortage of Rs. 348/- noticed, and it can be attributed only to the Cashier and not to the

petitioner herein.

9. The learned Counsel for the petitioner brought to the notice of the Court that there were eight brokers inside the office, and it is not clear from

whom the unaccounted money of Rs. 21,165/- was recovered. It is pertinent to point out that as per the guidelines for deciding the charge under

Rule 17(b), there must be an irregularity or the negligence in the discharge of the official duty with the dishonest motive. In the case on hand, merely

because eight brokers were found inside the office and they were also found in possession of the unaccounted money of Rs. 21,165/-, it cannot be

attributed to the petitioner. Only if there is dishonest motive noticed, then it could be attributed; but, in this case, it is not so. Under the

circumstances, the framing of charges under Rule 17(b) was not at all warranted.

10. Now, the learned Additional Government Pleader would submit that after noticing the explanation, the authorities came to know that the facts

would not attract a charge under Rule 17(b), and they have applied to the Government for amending the charge as one for Rule 17(a). This

contention cannot be accepted since the matter is pending for a longtime. Even assuming that there was a charge under Rule 17(a), no question of

deterring him from getting further promotion would arise, and it is not warranted so. Thus, the charges levelled against him, in the opinion of this

Court, do not stand. This Court is of the view that the charges have got to be necessarily quashed. That apart, the order of the second respondent

rejecting the petitioner''s claim to be included in the panel for the post of Motor Vehicle Inspector Grade I is also liable to be quashed.

Accordingly, they are quashed. The respondents are also directed to consider the promotion of the petitioner to which he is legally entitled, taking

into consideration that the charges levelled against him, have been quashed by this Court as above, in accordance with law as expeditiously as

practicable. Accordingly, both the writ petitions are disposed of. No costs. Consequently, connected MPs are closed.

