

**(2007) 02 MAD CK 0203**

**In the Madras High Court**

**Case No :** Writ Petition No's. 9006 of 2005 and 24753 of 2006 and M.P. No's. 3007 and 9708 of 2005 in Writ Petition No. 9006 of 2005 and M.P. No's. 1 to 3 of 2006 in Writ Petition No. 24753 of 2006

S. Duraisingh Gangatharan

APPELLANT

Vs

The Engineer in Chief, Water Resource Organization, Public Works Department and Others

RESPONDENT

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**Date of Decision :** 07-02-2007

**Acts Referred:**

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

**Citation :** (2007) 3 LW 384 : (2007) 5 MLJ 384

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

**Bench :** Single Bench

**Advocate :** M. Ravi, for the Appellant; G. Sankaran, Spl. G.P., for the Respondent

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**Judgement**

P. Jyothimani, J.—W.P. No. 9006 of 2005 is filed by the petitioner, challenging the impugned charge memo issued by the first respondent dated 15.12.2004 on the file of the Madurai Bench of Madras High Court having been transferred to this Court.

2. W.P. No. 24753 of 2006 is filed by the same petitioner for direction against the first respondent, the Government of Tamil Nadu, represented by the Secretary to Government, Public Works Department, to include the name of the petitioner in the panel for promotion as Assistant Executive Engineer for the year 2005-2006 and consequently, to promote him without reference to the pendency of charge memos dated 28.10.1999 and 15.12.2004.

3. The petitioner, who was originally appointed as Assistant Engineer temporarily in the Public Works Department, was selected through the Tamil Nadu Public Service Commission regularly as Assistant Engineer in the year 1986 and he is fully qualified for promotion to the post of Assistant Executive Engineer. In respect of the panel of promotion for the Assistant Executive Engineer for the year 2005-2006, the name of the petitioner was not included on the ground that

the charges framed against the petitioner on 28.10.1999 and 15.12.2004 under Rule 17(b) of the Tamil Nadu Civil Services (D & A) Rules, are pending. Initially, a charge memo was framed against the petitioner on 28.10.1999 on the basis that he has failed to hand over certain materials of his section at Tirunelveli to his successor in a complete shape, resulted in loss of Rs. 3,43,700/-, apart from the charge of failing to obey the instructions issued by the Assistant Executive Engineer Technical Education Sub Division, Tirunelveli in respect of handing over of the section charges and therefore, the petitioner has failed to maintain absolute integrity and devotion to duty.

4. According to the petitioner, an Enquiry Officer was appointed and enquiry report has been sent to the Government. By letter dated 03.11.2004 sent by the Government to the Engineer-in-Chief, the Government has found certain infirmities in the enquiry, since no opportunity was given to the delinquent to cross examine the witness and it was in those circumstances, the Government has directed the second respondent to frame fresh charge memo, conduct enquiry and send the report. It was based on the said letter of the Government a fresh second charge memo has been framed dated 15.12.2004, impugned in W.P. No. 9006 of 2005. The Madurai Bench of this Court while admitting the writ petition has granted interim stay of the impugned charge memo dated 15.12.2004.

5. The petitioner has also filed another Writ Petition in W.P. No. 24999 of 2006 challenging the first charge memo dated 28.10.1999. Inasmuch as the Government has directed to frame fresh charge memo and in fact the fresh charge memo has been framed on 15.12.2004, since the respondents have taken a stand that by virtue of certain flaws in the enquiry based on the earlier charge memo dated 28.10.1999 and the fresh charge memo has been framed on 15.12.2004 and therefore, the respondents are not proposing to proceed with the charge memo dated 28.10.1999, the same was recorded and W.P. No. 24999 of 2006 was dismissed by this Court.

6. In respect of the impugned charge memo dated 15.12.2004, the petitioner has submitted his explanation and subsequently, an Enquiry Officer has also been appointed and it was on that stage the Writ Petition in W.P. No. 9006 of 2005 was filed on various grounds including that when the same charge memo was framed on 28.10.1999, the same was not proceeded with, the present charge memo is not maintainable. Apart from the fact that it is after a delay of 4 years, the present charge memo has been issued. It is also the case of the petitioner that the reference to the impugned charge memo does not even refer to the earlier charge memo of the year 1999 and the impugned charge memo is devoid of any merits.

7. Mr. M. Ravi, learned Counsel appearing for the petitioner, placing reliance on the Division Bench judgement of this Court reported in A. Obaidhullah Vs. The State of Tamil Nadu and The Tamil Nadu Administrative Tribunal, would contend that the second charge memo issued after 5 years, is not sustainable and the

delay is unexplainable in its nature. He would also rely upon another judgement of the Division Bench of this Court reported in D. Amaladoss Vs. The State of Tamil Nadu and The High Court of Judicature at Madras, to substantiate his contention. That apart, he would also rely upon the judgement of the Hon"ble Supreme Court reported in P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, apart from the judgement of this Court reported in 2006 (2) CTC 635 and therefore, according to him, the second charge memo is not valid in law.

8. On the other hand, Mr. Sankaran, learned Special Government Pleader would submit that the conduct of the petitioner in causing financial loss cannot be lightly taken, especially in the circumstance that he has not even reconciled the loss even as on date. He would also submit that the present charge memo is only the continuation of the earlier charge memo dated 28.10.1999 and it was only to give an effective opportunity to the petitioner the present charge memo has been framed as it was directed by the Government. He would also rely upon a letter of the petitioner dated 22.05.2003 addressed to the second respondent stating that he is prepared to reconcile the loss. However, till date the petitioner has not done so and therefore, it should be taken as if the petitioner has admitted the charges.

9. I have heard the learned Counsel for the petitioner as also the learned Special Government Pleader and perused the entire records.

10. As I have stated above, the original charge memo dated 28.10.1999, which was the subject matter of challenge in W.P. No. 24999 of 2006 and the subsequent charge memo dated 15.12.2004, which is the subject matter challenging W.P.(MD) No. 9006 of 2005 are one and the same. Admittedly, the respondents have decided not to proceed with the earlier charge memo dated 28.10.1999 and in view of the fact that the Government found certain flaw in the enquiry conducted by the Enquiry Officer and accordingly, fresh charge memo dated 15.12.2004 was framed and the petitioner was called upon to give his explanation.

11. At this stage it is relevant to point out that in fact the petitioner has given his explanation for the earlier charge memo dated 28.10.1999 and an enquiry has been conducted, Enquiry Officer's report has been submitted and it was in that report some flaw found by the Government which resulted in the subsequent charge memo. The reference to the charge memo dated 15.12.2004 shows that it was in respect of the conduct of the petitioner while working as Assistant Engineer, Public Works Department Technical Education Section II, Tirunelveli for the period between 25.10.1991 to 22.06.1995, it is charged that he has not handed over the section charges to his successor in a complete shape and therefore, by not safeguarding the Government materials, he has caused loss to the tune of Rs. 3,43,700/-. Therefore, in respect of the conduct of the petitioner, which was stated to have taken place between 25.10.1991 to 22.06.1995, the earlier charge memo dated 28.10.1999 was framed and the present charge memo dated 15.12.2004 is also relating to the conduct of the petitioner between 1991-1995. Therefore, it is clear that the charge memo dated 15.12.2004 relates

to the conduct of the petitioner, which is more than 9 years before the date of the charge memo.

12. Apart from the fact that even for the earlier charge memo dated 28.10.1999 the delay of nearly 5 years has not been explained, even in respect of the present charge memo also the delay has not been explained, except saying that there has been some flaw found in the Enquiry Officer's report pursuant to the charge memo dated 28.10.1999, which is not due to the fault of the petitioner. When admittedly further proceedings pursuant to the first charge memo dated 28.10.1999 has not been pursued, merely because there is some fault in the enquiry proceedings and in this case it is stated that Enquiry Officer has not given opportunity to the delinquent to cross examine witnesses, that itself cannot be a ground for the purpose of framing another charge on the same facts and circumstances.

13. Therefore, it is clear that the second charge memo dated 15.12.2004, which relates to the conduct of the petitioner for the period between 1991-1995 is certainly a long delay, which will affect the right of the delinquent to give proper explanation by paucity of time, apart from the fact that such delay would vitiate the entire charge memo. When a similar occasion arose, a Division Bench of this Court in A. Obaidhullah Vs. The State of Tamil Nadu and The Tamil Nadu Administrative Tribunal, by placing reliance on the judgement of the Hon''ble Supreme Court rendered in K.R. Deb Vs. The Collector of Central Excise, Shillong, has held that the delay of 12 years in issuing fresh charge memo is not sustainable.

14. In fact the Hon''ble Supreme Court in the above said judgement has held that the Central Civil Services (Classification Control and Appeal) Rules 1957, does not contemplate a third enquiry after 2 reports have been filed, similarly, in the present case also. It is not even the case of the respondents also that the respondents are entitled to frame a second charge memo.

15. That apart, as held by the Hon''ble Supreme Court in P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board, , the protracted disciplinary proceeding itself may act as more than the punishment, which may be awarded on the charges. The dictum laid down by the Hon''ble Supreme Court, which I had an occasion to quote in 2006 (2) CTC 635 is relevant to be reproduced again, since the same prescribes the fundamental rules for initiating departmental proceedings, especially in respect of the consequence of delayed proceedings. The said portion of the judgement, which runs as follows:

14. Under the circumstances, we are of the opinion that allowing the respondent to proceed further with the departmental proceedings at this distance of time will be very prejudicial to the appellant. Keeping a higher Government official under charges of corruption and dispute integrity would cause unbearable mental agony and distress to the officer concerned. The protracted disciplinary enquiry against a government employee should, therefore, be avoided not only in the interest of

the government employee but in public interest and also in the interests of inspiring confidence in the minds of the government employees. At this stage, it is necessary to draw the curtain and to put an end to the enquiry. The appellant had already suffered enough and more on account of the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the appellant due to the protracted disciplinary proceedings would be much more than the punishment. For the mistakes committed by the departmental in the procedure for initiating the disciplinary proceedings, the appellant should not be made to suffer.

16. In view of the above said facts, especially on the ground that there is absolutely no justification for the second charge memo and no rule provides and enable frame such second charge memo, I am of the considered view that the impugned charge memo dated 15.12.2004 is unsustainable. In view of the same, the impugned charge memo is liable to be set aside, with the result the Writ Petition No. 9006 of 2005 stands allowed.

17. Consequently, the W.P. No. 24753 of 2006 stands ordered with a direction to the first respondent to include the name of the petitioner in the panel of Assistant Executive Engineer for the year 2005-2006 and give all other consequential benefits if there are no other legal impediments. No Costs. Consequently, the connected M.Ps. are closed.