(2009) 09 MAD CK 0050

In the Madras High Court

Case No : Writ Petition No. 17652 of 2006

S. Kannan APPELLANT

Vs

The State of Tamil Nadu RESPONDENT

Date of Decision : 07-09-2009

Acts Referred:

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17
Tamil Nadu Motor Vehicles Rules, 1989 — Rule 377

Citation : (2009) 8 MLJ 217

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : G. Ethirajulu, for the Appellant; V. Viswanathan, Addl. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

V. Dhanapalan, J.—Petitioner has filed this Writ Petition, praying for issuance of a writ of certiorari to call for the records relating to the

proceedings made in Memo R. No. 87355/V3/04, dated 22.09.2005, passed by the second respondent, quash the same and for a consequential

direction to the respondents to include his name in the panel and promote him to the post of Motor Vehicles Inspector, Grade-I, with all attendant

benefits.

2. Petitioner was appointed as Motor Vehicles Inspector, Grade-II, on 27.12.2000, in the office of the Regional Transport Officer, Coimbatore

(North). Thereafter, on 06.06.2005, he was transferred to the Enforcement Wing and posted in the office of the Joint Commissioner, Chennai,

namely, third respondent. His next promotion is to the post of Motor Vehicles Inspector, Grade-I. While so, the second respondent, in his office proceedings, which are impugned herein, dated 22.09.2005, framed three charges against the petitioner u/s 17 (b) of The Tamil Nadu Civil

Services (Discipline & Appeal) Rules (in short, ""the Rules""). The said charges are as under:

Charge-I : That on 14.06.03, Thiru S. Kannan while working as Motor Vehicle Inspector Grade-II at Regional Transport Office, Coimbatore

(North) has personally inspected three vehicles involved in an accident near Karikadai bus stop in Pappanaickenpalayam on 13.06.03 and has

submitted his inspection report in Form AIR stating that

(i) The front left body is pressed in Corporation Bus TN37/N-0675.

(ii) The front left bumper twisted and left grill pressed in Corporation bus TN38/N-0309.

(iii) There are damages in front head light assembly, front vision mirror, fork, Handle bar, speedometer and petrol tank in Motor Cycle TN

37/AA-2369.

But, the report of the MD, TNSTC, Coimbatore regarding the damages of the two Corporation buses in this case reveals that

i) the backside left body and beeding is damaged in respect of TN 37/N-0675

ii) the front grill, bumper, right indicator, mirror and front left wind screen is damaged in respect of TN 38/N-0309.

Thus he has furnished incorrect accident report controversial to the factual occurrence of the accident in this case.

Charge-II : Thiru S. Kannan, Motor Vehicle Inspector, Grade-II, O/o the Regional Transport Officer, Coimbatore (North) has not properly

inspected the two corporation buses involved in this accident without carefully analysing the nature of the accident and the possible damages

depending upon the impact of this accident. This shows his negligence and lack of devotion to official duties.

Charge-III : Thiru S. Kannan, Motor Vehicle Inspector Grade-II, O/o the Regional Transport Office, Coimbatore (North) has furnished false and

misleading report in this case without technical expertise. Thus he has failed to maintain absolute integrity in the discharge of his official duty.

Aggrieved over the said charges, the petitioner has filed this Writ Petition.

3. A counter has been filed by the respondents, stating as follows:

One K. Natarajan of Coimbatore had lodged a complaint against the petitioner, that his son met with an accident on 13.06.2003 between two

State Transport Corporation buses near Kaarikadai Bus Stop in Pappanaickenpalayam and died on the way to hospital. The petitioner, who

inspected the vehicles on 14.06.2003, wrongly reported with ulterior motive and for extraneous considerations in such a way that the two

corporation buses dashed face-to-face and the position of the motor vehicle was unclear, by which the entire case turned turtle, in spite of clear

evidences to prove the negligence of the accused in causing the accident and killing the victim. Therefore, he requested to take necessary action

against the petitioner. The Deputy Transport Commissioner was asked to conduct a detailed enquiry in this regard to elicit the facts of the case

and, on such enquiry, the petitioner reported that the motorcyclist had clashed against the bus bearing No. TN38/N0309, standing in front, on its

left side, being hit by TN37/N0675 and died due to heavy injuries. In conclusion, the Enquiry Officer finalised that in comparison with the details of

damages of the three vehicles with that of the accident report given by the petitioner, it was proved that the petitioner had furnished incorrect

report. Hence, the petitioner had not inspected the vehicles properly. Subsequently, the charges were framed against the petitioner on 22.09.2005

and the Charge Memo was served on the delinquent officer on 18.01.2006. The Charge Memo is not a punishment, but an opportunity for the

delinquent to explain his stand on the charges. The charges are framed as per rules and, hence, no interference is called for in the order impugned.

4. The one and only contention of the learned Counsel for the petitioner is that the allegations made against the petitioner do not attract the

ingredients to frame charges under Rule 17(b), but only under Rule 17(a), as there is no dishonest motive, and non consideration of the same by

the respondents has vitiated the entire proceedings.

5. Learned Counsel for the petitioner has cited three unreported orders of this Court in W.P. No. 3558 of 2004, dated 05.09.2006; W.P. No.

18517 of 2007, dated 12.10.2007, and W.P. No. 21933 of 2005, dated 25.04.2006.

(i) In W.P. No. 3558 of 2004, a Division Bench of this Court has held as follows:

9. As far as the second limb of the prayer sought for by the petitioner for

promotion to the post of District Revenue Officer on par with his juniors

and with consequential benefits, is concerned, we feel that the punishment of stoppage of increment for a period of six months without cumulative

effect is only a minor punishment as per Tamil Nadu Civil Services (Discipline and Appeal) Rules applicable to the Tamil Nadu Government

servants and the Charges could have been framed under Rule 17(a) as they were not serious in nature. Admittedly, the charges were framed

against the petitioner for certain lapses and lack of supervision and no other allegations such as, illegal gratification, committal of penal offence, etc.

which would come under Rule 17(b) were levelled against the petitioner. The Government has given specific guidelines with regard to framing of

charges under Rule 17(a) and 17(b). The guidelines are to the following effect:

Guidelines for deciding whether charges may be framed under Rule 17(b):

(1) Cases in which there is reasonable ground to believe that a penal offence has been committed by a Government servant but the evidence

forthcoming is not sufficient for prosecution in a Court of law, e.g.,

(a) possession of assets disproportionate to the known sources of income;

(b) obtaining or attempting to obtain illegal gratification;

(c) misappropriation of Government property, money or shares;

(d) obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate,

etc.,

(2) Falsification of Government records.

(3) Irregularity or negligence in the discharge of official duties with a dishonest motive.

10. Therefore, as per the above said guidelines also, as stated earlier, the charges framed against the petitioner would not come under Rule 17(b),

but only under Rule 17(a). However, since the petitioner was imposed punishment on framing Charges under Rule 17(b) which is a bar for

consideration of promotion, he has been deprived of the promotion to the next cadre. Therefore, we are of the view that the charges should have

been framed under Rule 17(a) and not under Rule 17(b). Therefore, in view of the Guidelines as stated in Letter No. 248 issued by the

Government of Tamil Nadu, dated 20.10.1997 which have been reconsolidated in the recent Letter No. 1882/S/2005-2, dated 7.10.2005 issued

by the Government of Tamil Nadu, the claim of the petitioner can be considered for further promotion. In identical circumstances, the Division

Bench of this Court had an occasion to deal with the similar issue with regard to framing of Charges under Rule 17(a) and 17(b) following the

above said Guidelines, and by its order, dated 7.12.2004 in W.P. No. 19144 of 2004, has taken similar view that the Disciplinary Authority, while

issuing charge memo, was required to keep in mind the guidelines for framing charges either under Rule 17(a) or under Rule 17(b).

11. Following the same, we are of the view that since the allegations levelled against the petitioner were not serious in nature besides since the

proved allegations are minor in nature, only minor punishment can be imposed. As such the claim of the petitioner to the post of District Revenue

Officer can be considered by the first respondent on par with his juniors and to this extent, the second limb of the prayer of the petitioner sought

for in this Writ Petition is allowed.

(ii) In W.P. No. 18517 of 2007, it is held as follows:

9. ...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....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 long time. 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. 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 possible...

(iii) In W.P. No. 21933 of 2005, it has been held as under:

3. ...the only allegation against the petitioner is lack of effective supervision over his subordinates. Therefore, the respondents should have framed

the charges under Rule 17(a) instead of Rule 17(b) to impose a minor punishment. It is also noticed that the charges impugned in these writ

petitions were framed without taking into account the circular dated 11.3.2003 issued by the Government to determine whether the charges were

to be framed under Rule 17(a) or under Rule 17 (b) in respect of the allegations levelled against the petitioner. Therefore, from the materials placed

on record, this Court is satisfied that the respondents have not acted properly in framing the charges under Rule 17(b) without considering the

explanation offered by the petitioner.... Therefore, the impugned charge sheets are set aside. The respondents are directed to consider the

explanation submitted by the petitioner in response to the notice issued by them and frame charge under Rule 17(a) if they want to proceed with

the matter and pass appropriate orders in accordance with law thereafter.

6. In reply, the learned Additional Government Pleader would submit that the measurement of charges is to be decided by the disciplinary authority

based on the gravity of offence or allegation; mere issuance of charge memo does not amount to awarding of punishment and that there is no

wanton delay in the framing of charges.

7. The learned Additional Government Pleader would cite a Division Bench of this Court in Xavier Dhanaraj Vs. The Secretary to Government,

Public Works Department, Government of Tamil Nadu, The Chief Engineer, General Public Works Department and The Registrar, Tamil Nadu

Administrative Tribunal, to show that Charge Memos could not be quashed only on the ground of delay in initiating the charges, particularly when

the employee had never made a grievance that he was prejudiced due to the delay.

8. I have heard the learned Counsel for the parties and also gone through the records.

9. The only point that arises for determination in this case is, whether the

charges framed against the petitioner attract Rule 17(a) or Rule 17(b) of

the Rules ?

10. For deciding the charges to be framed under Rule 17(b), the Government, vide Circular No. 14353, P&AR (Per.N)/93-1, dated 11.03.1993,

has framed certain guidelines, which read as under:

Without prejudice to the generality of situations involving indiscipline, moral turpitude, corruption etc., charges under Rule 17(b) have to be framed

in the following types of cases for imposing any one of the major penalties:

(1) Cases in which there is reasonable ground to believe that a penal offence has been committed by a Government servant but the evidence

forthcoming is not sufficient for prosecution in a Court of Law, e.g.

(a) possession of assets disproportionate to the known sources of income;

(b) obtaining or attempting to obtain illegal gratification ;

(c) misappropriation of Government property, money or shares;

(d) obtaining or attempting to obtain any valuable thing or pecuniary advantage without consideration or for a consideration which is not adequate

etc;

(2) Falsification of Government records.

(3) Irregularity or negligence in the discharge of official duties with a dishonest motive.

(emphasis supplied)

(4) Misuse of official position for personal gain.

(5) Disclosure of secret or confidential information even though it does not fall strictly within the scope of the Official Secrets Act.

(6) Misappropriation of Government funds, false claims of Travelling Allowance, reimbursement of false medical bills etc.

Unless a major punishment is really warranted namely, dismissal from service, removal from service, compulsory retirement or reduction to a lower

rank in the seniority list or to a lower post or time scale, framing of charges under Rule 17(b) is not necessary and should be avoided.

(emphasis supplied)

11. On a perusal of the above guidelines, what comes to be known is that none of the charges framed against the petitioner comes under the above

category of cases. Though the charges are framed against the petitioner under Rule 17(b) as if there is irregularity or negligence in the discharge of

official duties, as adumbrated in clause 3 of the guidelines referred to supra, the said negligence, alleged by the respondents, does not contain the

dishonest motive, which is a crucial factor for deciding the category of the charge i.e., under 17 (a) or under 17 (b).

12. The very object of framing of the guidelines is that unless a major punishment is really warranted, namely, dismissal from service, removal from

service, compulsory retirement or reduction to a lower rank in the seniority list or to a lower post or time scale, framing of charges under Rule

17(b) is not necessary and should be avoided.

13. The point raised in this case is, whether the executive instructions of the Government can have a force of law ? In this connection, it is to be

stated that the executive instructions of the Government can only be supplemental to the statutory rules, where the statutory rules are silent and

such instructions cannot supplant the rules. In the present case, the instructions are intended to be used only as supplemental and they are not

intended to supersede the statutory rules. In the absence of any conflict between the guidelines and the statutory rules, the disciplinary authority,

while issuing the charge memo, was required to keep in mind the guidelines.

14. That being so, in the case on hand, the alleged delinquencies in the Charge Memo are minor in nature. No allegation of misconduct,

misappropriation of funds of the Government or wilful and dishonest act is made against the petitioner in the Charge Memo. Also, the respondents

have admitted in their counter that there is no financial loss to the Government and it is only a dereliction of duty on the part of the petitioner. In the

absence of any such serious allegations, grave charges, attracting major punishment u/s 17(b), in my considered opinion, cannot be framed against

the petitioner. The authority was required to keep in mind the above guidelines, while framing the charges against the petitioner, which is apparently

not done. The charges impugned herein were framed without taking into account the Government Circular No. 14353, P&AR (Per.N)/93-1,

dated 11.03.1993, issued by the first respondent, to determine whether the charges would fall under (a) or (b) of Rule 17 of the Rules in respect of

the allegations levelled against the petitioner. So, the framing of charges against the petitioner is contrary to the Government Circular, dated

11.03.1993, and none of the charges framed against the petitioner, in my view, fall under Rule 17(b). It is also not the case of the respondents that

there was dishonest intention on the part of the petitioner in the discharge of his official duties. As such, the act of the respondents in framing

charges, attracting Rule 17(b), is vitiated by ulterior motive.

15. On receipt of the Charge Memo, the petitioner submitted his explanation on 10.02.2006, requesting for documents, which are referred in the

Charge Memo. Though the explanation is dated 10.02.2006, neither the departmental enquiry was initiated against the petitioner nor did the

authorities furnish the copies of documents, as requested by the petitioner.

16. Though it is stated in the order impugned that a list of documents by which and a list of witnesses by whom the charges are proposed to be

maintained are also enclosed in Annexure III and IV respectively, no material is seen to that effect. Further, the specific case of the petitioner is that

he has not been supplied with the documents, relied upon by the respondents, in spite of request. Therefore, failure to furnish the documents and

statement of witnesses either along with the Charge Memo or on the request of the petitioner taints the entire proceedings.

17. Under the circumstances, the apprehension of the petitioner that if the promotion panel is prepared, in view of the pendency of the charges, his

name will not be included in the panel, even though the alleged charges attract only Rule 17(a) of the Rules, is germane. That apart, the allegation

attributed against the petitioner in this case is one and the same. However, the second respondent has multiplied or split up the charges on the basis

of the same allegation, which should be avoided as per the guidelines.

18. The date of incident is dated 14.06.2003. The Charge Memo is dated 22.09.2005, which, according to the petitioner, was served after much

delay on 18.01.2006, which is not disputed by the respondents. No explanation is forthcoming on the part of the respondents initially with regard

to framing of the charges belatedly i.e., after nearly two-and-a-half years after the incident and subsequently as regards the serving of the Charge

Memo on the petitioner with much delay after four months pursuant to framing of the charges. Framing of charges belatedly, that too under Rule

17(b), will shatter the right of the petitioner for promotion and infringement of the said right amounts to violation of principles of natural justice.

Therefore, the impugned proceedings suffer from perversity, on the ground of laches as well.

19. Further, under Rule 377 of Tamil Nadu Motor Vehicle Rules, the officers empowered to inspect the vehicles involved in the accident are, the

Magistrates, any inspecting officer of the Transport Department and Public Officers not below the rank of Sub-Inspector, and for that purpose

they can enter at any reasonable time any premises where the vehicle is kept and remove the vehicle for examination.

20. In this case, the petitioner, being a Motor Vehicle Inspector, having the authority to inspect the motor vehicles involved in the accident, has

done the inspection and submitted a report. However, based upon the report of the Managing Director, a charge memo has been issued to the

petitioner.

21. One more aspect in this case is that the case in C.C. No. 88 of 2003, dated 16.09.2004 has ended in acquittal on the ground that the alleged

presence of eye witnesses namely P.Ws.1 and 2 in the place of occurrence is doubtful and that the damages in the motor cycle are not in

corroboration with the evidence of the eye witnesses. The said judgment has become final, as no appeal has been preferred against the same. So,

the mere complaint of the father of the deceased cannot be a material to initiate the proceedings against the petitioner.

22. A Division Bench of this Court in W.P. No. 19144 of 2004, dated 07.12.2004, has held that when there is no dishonest motive, there cannot

be any proceedings u/s 17(b).

23. Though the decision cited by the learned Additional Government Pleader in Xavier Dhanaraj''s case, referred above, is on the point, it is not

applicable to the case on hand, the reason being, in the said case, the employee had never made a grievance that he was prejudiced due to the

delay. However, in this case, one of the grievances of the petitioner is that he was prejudiced by the delay in framing the charges against him. The

said delay, in my opinion, is clouded with a stigma.

24. For all the foregoing reasons, this Writ Petition is allowed, setting aside the order impugned, dated 22.09.2005, of the second respondent and

directing the respondents to include the name of the petitioner in the panel, over and above his juniors, and promote him to the post of Motor

Vehicles Inspector, Grade-I, if he is otherwise eligible, by affording all service and monetary benefits thereof. No costs. Consequently, the

connected M.P. Nos. 1 of 2006 and 1 of 2008 are closed. However, it is open for the respondents to proceed against the petitioner under Rule

17(a) for the alleged charges, which shall not be a bar for promotion, in accordance with law.

