(2004) 06 MAD CK 0005

In the Madras High Court

Case No : Writ Petition No. 6809 of 2004 and WPMP No. 8026 and WVMP 532 of 2004

State of Tamil Nadu — APPELLANT

Vs

Dr. A. Rajaraman, Assistant Commissioner (CT)/Senior Lecturer, Commercial Taxes Staff Training Institute and The Registrar,Tamil Nadu Administrative Tribunal — RESPONDENT

Date of Decision : 17-06-2004

Acts Referred:

- Constitution of India, 1950 — Article 226
- Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 17
- Tamil Nadu Government Servants Conduct Rules, 1973 — Rule 20(1)

Citation : (2004) 06 MAD CK 0005

Hon'ble Judges : P.K. Misra, J;F.M. Ibrahim Kalifulla, J

Bench : Division Bench

Advocate : S.T.S. Murthi, Spl. Govt. Pleader, for the Appellant; K. Ravi, for kugan and Arya for Respondent-1, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Misra, J.—This petition has been filed by the State to issue a Writ of Certiorari to quash the order dated 4.2.2004 made in Original

Application No. 3913 of 2003 whereunder the Tamil Nadu Administrative Tribunal, has modified the charge Memo issued against the present

respondent No. 1.

2. Heard the learned counsel appearing for the parties.

3. Even though the matter was listed for considering the miscellaneous petition filed by the respondents to vacate the interim order of stay, since the

very same question is involved in the writ petition itself, with the consent of the counsel appearing for both parties, the writ petition itself is heard on merits and the same is disposed of by the present order.

4. The first respondent had filed a O.A. No. 3913 of 2003 challenging the charge memo issued against him. The two charges against the first

respondent are quoted here under.

Charge No. 1 : That Thiru A. Rajaraman, Assistant Commissioner (CT) while holding Full Additional Charge of the post of Deputy Commissioner

(CT) Coimbatore, during the period from 19.8.2002 to 08.07.2003 had failed to monitor the performance of the Assistant Commissioner (CT),

Tirupoor, in executing the instructions issued by the Special Commissioner and Commissioner of Commercial Taxes in D.O. Letter No.

Q2/78476/2001, dated 11.10.2002 and had thereby failed to take effective steps towards the collection of the tax dues from dealers who had

violated the conditions prescribed for the availment of IFST Deferral as noted in the enclosure.

Charge No. 2:- That Thiru A. Rajaraman, Assistant Commissioner (CT) by his aforesaid act of failure to follow the instructions issued by his

superior officer and by his failure to safeguard the interests of the Revenue had acted with negligence and recklessness in the discharge of his

official responsibilities, thereby, violating Rule 20(1) of the Tamil Nadu Government Servants Conduct Rules, 1973.

5. The main contention of the present first respondent before the Tribunal was to the effect that the allegation in the annexure along with the charge

memo related to the period during which the other Deputy Commissioners were in-charge of the post of Deputy Commissioner(CT), Coimbatore

and he was merely in-charge of the post of the Deputy Commissioner (CT) for a short period during the period from 19-8-2002 to 08-07-2003.

In was indicated that he had been singled out and no action has been contemplated against the predecessor, who had functioned as a Deputy

Commissioner (CT), Coimbatore or the successor in such office. The said charge memo had been issued just two days prior to the submission of

the proposal to the promotion to the post of Deputy Commissioner (CT), and it was the specific case of the present respondent NO. 1 that the

charge memo had been purposely issued under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules (herein after referred to

as The Rules) with the malafide motive to make him ineligible for the promotion which was about to be considered.

6. A counter affidavit had been filed by the present petitioner before the Tribunal wherein it was pointed out that a charge memo had also been

issued against one Assistant Commissioner. However, nothing was indicated in the said affidavit as to whether any charge memo had been issued

against any of the Deputy Commissioner who is in charge before or after. Before the Tribunal also, it was pointed out that as per the instructions

issued by the State Government regarding framing of charges under Rule 17(a) or (b) had not been followed.

7. The Tribunal on consideration of the entire materials on record, came to the conclusion that no action has been contemplated against any other

Deputy Commissioner, who was holding the post either before the petitioner therein, who was in-charge of the post of the Deputy Commissioner

or any successor. It was also found out that the guidelines issued by the Government of Tamil Nadu in Circular No. 145353/Per.N/93-1,

Personnel and Administrative Reforms Department, dated 11.3.1993 had not been taken into account and the Tribunal came to the conclusion that

the charge memo had been deliberately made to be one under Rule 17(b) of the Rules with a view to deprive the petitioner''s opportunity of being

considered for promotion. This order of the Tribunal is being challenged by the Government of Tamil Nadu in the present writ petition.

8. Learned counsel appearing for the State Government has contended that ordinarily the charge framed by the appropriate disciplinary authority

should not be interfered in exercise of jurisdiction under Article 226 of the Constitution of India and therefore, the Tribunal has committed an error

of law in interfering with the charge framed against the present first respondent.

9. In support of such contentions, the learned Government Advocate has relied upon the decisions reported in District Forest Officer Vs. R.

Rajamanickam and Another, and Dy. Inspector General of Police Vs. K.S. Swaminathan,

10. While there cannot be any dispute that ordinarily in the matters relating to framing of charge, the Administrative Tribunal or for that matters the

High Court should not interfere with such orders in exercise of jurisdiction under Article 226 of the Constitution of India, depending upon the facts

and circumstances of the particular case, the High Court or the Administrative

Tribunal can consider into the validity of particular charge memo.

11. In the present case, the Tribunal has referred to the instructions and come to the conclusion that the charge memo is not in accordance with the

instructions. For convenience, the relevant portion of the instructions issued by the Government of Tamil Nadu is quoted hereunder:-

Without prejudice to the generality of situations involving indiscipline, moral turpitude, corruption, etc., charges under Rule 17(b) has 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 particular 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 source 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 which is not adequate, etc.,

(2) Falsification of Government records,

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

(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

rant 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.

12. In the present case, we have already quoted the charge memo wherein the negligence in discharging of official duty is alleged. Nothing has

been whispered as to any dis-honest motive on the part of the present first respondent. The only allegation that he had not exercised control and

effectively supervised the duties and acts of the Assistant commissioneRs. There is no allegation in the charge memo that there was any dis-honest

motive on the part of the first respondent. Similarly, there is no allegation that there has been any misuse of official position for personal gain. It is

also not disputed that the other aspects indicated in the guidelines are not attracted. Therefore, in the absence of the specific allegation that alleged

negligence in discharge of official duty was with dis-honest motive or in the absence of any allegation that there was misuse of official position for

personal gain, the charge memo should not have been framed under Rule 17-(b) of the Rules. The aforesaid guideline has also makes it clear that

unless 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, the charge memo should not be under Rule 17(b) of the Rules.

13. For the afore said reasons, the Tribunal has modified the charge memo and has directed that the charge memo should be dealt with under Rule

17(a) of the Rules. In other words, this is not a case where the Tribunal has gone into the merits of the allegation nor this is a case where the

Tribunal has quashed the charge memo as such, but it has only modified the charge memo by indicating that the charge memo should have been

under Rule 17 (a) and not under Rule 17(b) in the peculiar facts and circumstances of the case.

14. Apart from the above legal conclusion, the Tribunal has also come to the factual finding that even though there were other Deputy

Commissioners, the petitioner alone was singled out. The relevant paragraphs namely Paras-7, 10 and 12 of the order of the Tribunal are quoted

here under:-

The applicant is working as Assistant Commissioner (CT), Coimbatore and during the relevant period between August 2002 and July 2003, he

was also holding Full Additional Charge of the post of Deputy Commissioner (CT), Coimbatore. The charges relate to alleged failure on the part of

the applicant to perform his duty properly in respect of additional charge which he was holding at the relevant point of time. It is also significant to

note that so far as the applicant is concerned he is not found fault with overlooking any lapses committed by the dealers in availing deferral

concession granted to them under the scheme referred to in the counter statement and the application. So while he himself is not accused of

negligence or not properly executing the scheme as per the instructions issued by the Commissioner, he is charged for negligence in supervising the

work of Assistant Commissioner, Thiruppur in execution of the scheme.

....As already pointed out lapses have occurred right from 1998 to 2003 in Thiruppur Region and various Assistant Commissioners must have

been holding office during the said period. All of them must have been taken into task but strangely the applicant is singled out and that office of the

too on the eve of his promotion to the post of Deputy Commissioner(CT). Moreover the applicant is accused of lack of supervision only and no

motive is attributed and no act of dishonest intention, fraud or cheating are alleged against the applicant. The Government has issued clear

guidelines through G.O. of Personnel and Administrative Reforms Department as to how charge memos have to be prepared and served on the

delinquent Government Servant Under Rule 17 (a) or 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules. Circular has been

necessitated in view of the fact that disciplinary authorities are found to issue charge memos for all cases, under Rule 17(b) which has to be applied

only in case of grave delinquency.

... In view of the nature of the charges and since he is accused only of lack of supervision, charge memo should have been issued only under Rule

17(a) and not under Rule 17(b). This is also more so in view of the fact that the applicant has been singled out and the Deputy Commissioners who

have been holding the office prior and after to him have not been taken to task similarly. Therefore, charge memo dated 18.11.2003 issued by the

Commissioner of Commercial Taxes, Chepauk, Chennai shall be deemed to have been issued under Rule 17(a) of Tamil Nadu Civil Services

(Discipline and Appeal) Rules and the applicant is directed to submit his explanation if he has not already submitted his explanation and on the

basis of the records the applicant shall be dealt with based on the materials placed before the disciplinary authority. Since the charge memo is

deemed to have been issued under Rule 17 (a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, there is no impediment for

including the nate of the applicant in the panel and consider him for promotion"".

15. A perusal of the above said conclusion particularly the conclusion in

Paragraphs 10 and 12, makes it clear that even though there were other

Deputy Commissioners, who were entrusted with similar duties during the relevant period and had at least equal responsibility, the first respondent

has been singled out just two days prior to the date of submission of the panel for promotion to the post of Deputy Commissioner. For the above

reasons, the Tribunal has come to the conclusion that the charge sheet has been made only under Rule 17(b) of the Rules with a view to deprive

the first respondent the opportunity of being considered for promotion.

16. In the writ petition itself, no specific challenge has been made in respect of this conclusion. It is not pointed out in the affidavit filed in support of

the writ petition that, in fact, any action is contemplated against any of the Deputy Commissioner though it is indicated that some action is being

taken against some other Assistant Commissioners. In the present case, the allegation related to alleged failure of the petitioner to supervise

properly the duties of the Assistant Commissioners while he was acting as a Deputy Commissioner (CT) Coimbatore. While other Deputy

Commissioners in-charge of such duties at the relevant time prior to the petitioner remaining charge of the Deputy Commissioner (CT)

Coimbatore, have not been proceed against, the very fact that the petitioner has been singled out is obviously very disturbing circumstance which

has been taken note of by the Tribunal.

17. The High Court while deciding a matter under Article 226 of the Constitution of India against the order of the Tribunal does not function as a

Appellate Authority over the orders of the Tribunal and the limitations which are applicable under Article 226 have to be borne in mind. The

Tribunal on a consideration of the relevant facts and circumstances has come to a particular conclusion. In the absence of glaring mistake or error

of law in the order of the Tribunal, this Court is not required to interfere with such orders of the tribunal as the High Court does not function as a

Appellate Authority in such matters. It has to be kept in view that the Tribunal has not quashed the charge memo as such and has given a direction

that the enquiry shall proceed as under Rule 17(a) and not under Rule 17(b).

18. Keeping in view of the peculiar facts and circumstances of the case and the scope of jurisdiction of

