
(2008) 06 MAD CK 0043

In the Madras High Court

Case No : WP. No's. 714 and 853 of 2005 and W.P.M.P. No. 941 of 2005

T. Ranganathan

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 13-06-2008

Acts Referred:

Constitution of India, 1950 — Article 311(1)

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 12, 17, 3, 8, 9A

Tamil Nadu Government Business Rules, 1978 — Rule 35, 35(4)

Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 — Rule 2A

Citation : (2008) 06 MAD CK 0043

Hon'ble Judges : V. Ramasubramanian, J

Bench : Single Bench

Advocate : Vijay Narayan for R. Parthiban, for the Appellant; P.S. Raman, A.A.G. assisted by M.R. Jothimanian, for the Respondent

Judgement

V. Ramasubramanian, J.—Challenging a charge memo issued by the first respondent under Rule 17 (b) of the Tamil Nadu Civil Services

(Discipline and Appeal) Rules, the petitioner has come up with the writ petition W.P. No. 853 of 2005. Similarly, the petitioner has come up with

the other writ petition W.P. No. 714 of 2005, seeking a direction to the first respondent to include his name in the panel for promotion to the post

of Deputy Secretary to Government, issued in his proceedings dated 13.10.2004.

2. I have heard Mr. Vijay Narayan, learned Senior Counsel for the petitioner and Mr. P.S. Raman, learned Additional Advocate General for the respondents.

3. The petitioner was originally selected by the Tamil Nadu Public Service Commission and appointed as Junior Assistant (later re-designated as

Assistant) in the Tamil Nadu Secretariat Service on 22.9.1974. He was promoted

as Assistant Section Officer on 14.3.1977 and as Section

Officer on 20.4.1993. The petitioner has been working as Section Officer in the Adi Dravida and Tribal Welfare Department ever since 1.7.1996.

4. Before his posting to the Adi Dravida and Tribal Welfare Department, he was a Section Officer in Municipal Administration and Water Supply

Department. The charge memo related to the alleged irregularities in the issuance of appointment orders to 27 persons as Work Inspectors/Town

Planning Inspectors/Junior Engineers/Cleaners/Electrician Grade-II/Building Inspector/ Water Works Overseer/Pipeline Fitter Grade-II, in the

Municipal Administration and Water Supply Department, in the year 1995, when the petitioner was a Section Officer in M.E.III Section of the said

department.

5. The only charge framed against the petitioner in the charge memo is that he failed to discharge his legitimate duties as Section Officer in M.E.III

Section in the Municipal Administration and Water Supply Department, during the year 1995 and failed to examine the cases of 27 NMRs

properly and caused the issuance of orders appointing them to the above posts in relaxation of the Rules even without ascertaining the genuineness

of the candidates and non availability of similarly placed persons in the department.

6. Immediately on receipt of the charge memo, the petitioner submitted a defence statement on 20.8.2001 questioning the initiation of disciplinary

proceedings on various grounds including the jurisdiction of the Secretary to Government, Personnel & Administrative Reforms Department. But

by then, similar charge memos had already been issued to several persons in the Municipal Administration and Water Supply Department and

hence the Government issued G.O.(D) No. 232 P&AR Department dated 21.12.2001 appointing a Deputy Secretary as the Enquiry Officer.

7. Subsequently, the aforesaid Government Order was cancelled by an order in G.O.(D) No. 41, P&AR Department, dated 13.3.2002. But by

another order in G.O.(D) No. 42, P&AR Department, dated 13.3.2002, the Commissioner for Disciplinary Proceedings was appointed by the

Government as an Enquiry Officer to enquire into the charges framed against all the delinquent Officers. This was done under Rule 17A of the

Tamil Nadu Civil Services (Discipline and Appeal) Rules. Subsequently, by an

order in G.O.(D) No. 95, P&AR Department, dated 4.4.2003, the Government appointed the Commissioner for Disciplinary Proceedings, Thanjavur as the Enquiry Officer.

8. In the meantime, the petitioner filed an application in O.A. No. 1535 of 2003 on the file of the Tamil Nadu Administrative Tribunal, seeking a direction to the Government to complete the proceedings and pass final orders within a time frame. The said application was ordered by the

Tribunal on 28.4.2003, directing the Government to pass final orders within 4 months. But no final orders could be passed within the period

stipulated and the petitioner has come up with the present writ petitions.

9. Though the petitioner challenges the charge memo both on the ground of lack of competence on the part of the first respondent and also on the

ground of delay in the initiation of proceedings, the focus is primarily on the former. According to the petitioner, the Secretary to Government,

P&AR Department, is not competent to issue a charge memo against him and that only the Officers in the Adi Dravida and Tribal Welfare

Department, including its Secretary, are competent to initiate proceedings.

10. A counter affidavit has been filed purportedly on behalf of the first respondent (Secretary to Government, P&AR Department) as well as the

second respondent (Secretary to Government, Adi Dravida and Tribal Welfare Department), justifying the initiation of proceedings by the first

respondent, on 3 grounds, namely

(i) that by virtue of the Chief Minister's Standing Order No. 8 dated 17.1.1997, the first respondent was competent to initiate the proceedings;

(ii) that under Rule 2 (g) of the Special Rules for Tamil Nadu General Service, the Secretary to Government, P&AR Department, is the authority

competent to approve the panel of Assistant Section Officers for promotion to the post of Section Officers and to allot them to different

departments and that therefore, he is competent to initiate disciplinary proceedings; and

(iii) that in view of Rule 9A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, the first respondent alone is competent to initiate

proceedings since a hierarchy of officers were involved in the case, including an Under Secretary to Government, in respect of whom the first

respondent was the competent authority.

11. The first contention of the respondents, as reflected in paragraph-3 of the counter affidavit, is that under the Chief Minister's Standing Order

No. 8 dated 17.1.1997, issued in exercise of the power conferred under Rule 35 (4) of the Tamil Nadu Government Business Rules 1978, the

Secretary, P&AR Department, is the Disciplinary Authority for the post of Under Secretary to Government. But even at the outset, the contention

is to be rejected since the said Standing Order does not say so anywhere. Paragraph-5 of the said Standing Order merely states that the files

relating to initiation of disciplinary proceedings, in respect of Officers other than those belonging to IAS, IPS, IFS, Heads of Departments,

Secretaries to Government and Additional and Joint Secretaries to Government, may be circulated to the concerned Minister and orders issued

after the approval of the Minister concerned. Rule 35 of the Tamil Nadu Government Business Rules 1978, itself deals only with the files which are

required to be submitted to the Chief Minister and the Governor. Sub Rule (4) of Rule 35 enables the Chief Minister to give directions, by means

of Standing Orders, to restrict and regulate the submission of any classes of cases to him or through him to the Governor. Neither Rule 35 (4) of

the said Rules nor the Chief Minister's Standing Order dated 17.1.1997 deals with the issue on hand as to whether the Secretary to Government,

P&AR Department, is competent to initiate disciplinary proceedings against an Officer serving in another department of the Secretariat or not.

Therefore the reliance placed by the respondents on the Chief Minister's Standing Order, is wholly misconceived.

12. The next contention of the respondents is based upon the Special Rules governing the post of Section Officer. The posts of Deputy Secretary

(other than those in the Finance Department of the Secretariat and those borne on the Indian Administrative Service), Under Secretary, Section

Officer, Private Secretary, Accountant and Librarian of Secretariat Library, fall under the Tamil Nadu General Service. The recruitment to that

service, is governed by a set of Rules known as ""Special Rules for Tamil Nadu General Service"". The post of Section Officer falls under category

3 of the said service and the recruitment to the said post (in all departments except Law and Finance) is by the method of transfer from among the

holders of the post of Assistant Section Officers or by transfer from any other service. Rule 2 (a) of the said Rules contains a Table prescribing the

method of appointment to each of the categories of post in the service. Rule 2 (b) stipulates that ""Appointment to the category of Under Secretary to Government in the Service shall be made from the panels approved by the Government and appointment to the category of Section Officer shall be made from the panels approved by the Secretary to Government in-charge of Personnel and Administrative Reforms Department containing the names of eligible officers of the respective feeder categories"". Rule 2 (d) stipulates that ""the panel of Assistant Section Officers fit for appointment as Section Officers shall be submitted for the approval of the Secretary to Government, P&AR Department"".

13. But the aforesaid Special Rules, merely confer powers upon the Secretary to Government, P&AR Department, to approve the panel of

Assistant Section Officers fit for promotion as Section Officers. The power to approve a panel of persons fit for promotion to a higher post, cannot

be equated to a power of appointment. The power so conferred is akin to the power of the Public Service Commissions to approve and/or select

persons for appointment. A dichotomy has always been maintained between the power to make selection and the power to make appointments.

While the authority competent to make appointments and the authority who actually makes appointments, would normally be entitled to take

disciplinary action by virtue of their power to make appointment, the authority competent only to make selection need not, unless so authorised,

have disciplinary control. Therefore the fact that the Secretary to Government, P&AR Department, is empowered by the Rules to approve the list

of Assistant Section Officers fit for promotion to the post of Section Officers in all the departments of the Secretariat, does not make him either the

appointing authority or the disciplinary authority, for the category of Section Officers in all the departments of the Secretariat.

14. Under such circumstances, the answer to the question raised in the writ petition has to be searched for, only in the Tamil Nadu Civil Services

(Classification, Control and Appeal) Rules, also known as Tamil Nadu Civil Services (Discipline and Appeal) Rules. Rule 8 of these Rules, lists out

the major and minor penalties that could be imposed upon a member of the Civil Service of the State or upon a person holding a civil post under

the State. Rule 12 of the said Rules empowers the State Government to impose any of the penalties specified in Rule 8, on members of the State

Services. Rule 14 (a) (2) of the said Rules, specifies that the penalties of withholding of promotion, reduction to a lower rank or to a lower post or

lower time scale, compulsory retirement, removal and dismissal from service, shall be imposed on a member of the Subordinate Service, by the

appointing authority or any higher authority. The proviso to Rule 14 (a) (2) further makes it clear that if a person was appointed by an authority

higher than the appointing authority, any of the penalties mentioned therein shall not be imposed by any authority subordinate to such higher

authority. Rule 17(a) prescribes the procedure for the imposition of minor penalties and Rule 17(b) prescribes the procedure for the imposition of

major penalties.

15. But none of the rules (except Rule 9(c) and 9-A) throw any light upon the authorities competent to initiate proceedings, though some of them

indicate the authorities competent to impose penalties. It is on account of this fact that the respondents rely heavily upon Rule 9-A to sustain the

impugned charge memo. Therefore, it is necessary to examine Rule 9 (c) and 9-A.

16. Rule 9 (c) of the said Rules reads as follows:

9. (c) (1) The Governor or any other authority empowered by him by general or special order may-

(i) institute disciplinary proceedings against any Government servant;

(ii) direct a disciplinary authority to institute disciplinary proceedings against any Government servant on whom that disciplinary authority is

competent to impose under these rules any of the penalties specified in Rule 11.

Rule 9-A of the Rules reads as follows:

Rule-9-A. Authority competent to institute disciplinary proceedings where more than one Government Servant is involved:

9-A. In any case where more than one Government Servant of the same department are involved, the authority competent to institute disciplinary

proceedings and impose any of the penalties specified in Rule 8 shall be the authority in that department in respect of the Government Servant who

holds the highest post and the disciplinary proceedings against all of them shall be taken together;

Provided that in the case of Government Servants belonging to different departments who are jointly involved or whose cases are interconnected,

the Government shall be the authority competent to initiate disciplinary proceedings and impose any of the penalties specified in Rule 8 and in such cases the Administrative Department of Secretariat in respect of the Government Servant who holds the highest post will initiate such disciplinary proceedings and issue final orders after complying with the entire procedure laid down in these rules.

Provided further that this rule shall not apply to cases in which officers coming under the administrative control of the Chief Secretary to

Government are jointly involved

17. A combined reading of Rule 9 (c) and Rule 9-A of The Tamil Nadu Civil Services (Discipline and Appeal) Rules, shows that they contemplate

three different contingencies. They are as follows:

- (i) Where action is to be taken against a single person.
- (ii) Where action is to be taken against more than one person belonging to the same department and
- (iii) Where action is to be taken against more than one person belonging to different departments.

18. In respect of the first contingency, namely, where action is to be initiated against a single person, Rule 9 (c) (1) and 9 (c) (2), enables the

following authorities, to initiate disciplinary proceedings:

- (a) The Governor.
- (b) Any other authority empowered by the Governor by general or special order.
- (c) The Disciplinary Authority.
- (d) The authority competent to impose minor penalties, even if he is not competent to impose any of the major penalties.

19. In respect of the second contingency, namely, where action is to be initiated against several persons working in the same department, Rule 9-A

empowers that authority who is competent to initiate proceedings against the person holding the highest post (among the delinquents), as the

authority competent to initiate proceedings against all of them, if the disciplinary proceedings against all of them are taken together.

20. The third contingency, namely, cases where action is to be initiated against several persons working in different departments, is covered by the

proviso to Rule 9-A. It provides that where Government Servants belonging to

different departments are jointly involved or whose cases are interconnected, the Government shall be the authority competent to initiate disciplinary proceedings. This is further amplified by the later part of the proviso, by prescribing that in such cases, the Administrative Department of the Secretariat in respect of the Government Servant who holds the highest post, will initiate disciplinary proceedings and issue final orders after complying with the entire procedure laid down in the Rules.

21. A careful scrutiny of Rule 9 (c) and Rule 9-A shows that there are essentially a few distinguishing features between the two Rules, which are as

follows:

(i) Rule 9 (c) speaks only about institution of disciplinary proceedings, but not about imposition of penalty. On the contrary, Rule 9-A speaks both

about institution of disciplinary proceedings and about imposition of penalty.

(ii) Rule 9 (c) uses the word ""may"", while prescribing that the Governor or any other authority empowered by him can institute disciplinary

proceedings. Therefore, it is only an enabling provision in view of the decision of the Supreme Court, rendered while construing a similar provision

in Rule 2-A of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules. But Rule 9-A uses the word ""shall"" while prescribing

that where more than one Government Servant of the same department are involved, the authority competent to institute disciplinary proceedings

and impose any of the penalties, shall be the authority in that department in respect of the Government Servant who holds the highest post.

(iii) While Rule 9(c) does not deal with a situation where more than one Government Servant is involved in the same case, Rule 9-A is

incorporated specially for the purpose of providing for such a contingency. Therefore, the main part of Rule 9-A also imposes an additional

condition that for its invocation, ""the disciplinary proceedings against all of them shall be taken together.

22. The logic behind Rule 9 (c) and 9-A is that when a hierarchy of Officers is involved in a case, none of them should be dealt with by an

authority who is subordinate to his appointing/ disciplinary authority. The rationale behind the Rule actually stems out of the guarantee provided

under Article 311(1) of the Constitution. But the protection guaranteed under Article 311(1) itself is confined only to the imposition of the major

penalties of dismissal, removal or reduction in rank. The protection does not extend to the initiation of proceedings. This position is settled by the

Apex Court as early as in 1970 in *State of Madhya Pradesh and Others Vs. Shardul Singh*, . It was held therein that ""the guarantee given under

Article 311(1) does not include within itself a further guarantee that the disciplinary proceedings resulting in dismissal or removal of a Civil Servant should also be initiated and conducted by the authorities in that Article"".

23. The same view was reiterated in *P.V. Srinivasa Sastry and others Vs. Comptroller and Auditor General and others*, . However, even while

reiterating the said position, the Supreme Court added a rider in paragraph-4 of its judgment as follows:

Article 311 (1) guarantees that no person who is a member of a civil service of the Union or a State shall be dismissed or removed by an authority

subordinate to that by which he was appointed. But Article 311(1) does not say that even the departmental proceeding must be initiated only by

the appointing authority. However, it is open to Union of India or a State Government to make any rule prescribing that even the proceeding

against any delinquent officer shall be initiated by an officer not subordinate to the appointing authority. Any such rule shall not be inconsistent with

Article 311 of the Constitution because it will amount to providing an additional safeguard or protection to the holder of a civil post. But in absence

of any such rule, this right or guarantee does not flow from Article 311 of the Constitution.

24. Again in *Transport Commissioner, Madras-5 Vs. A. Radha Krishna Moorthy*, , the Supreme Court held in paragraph-8 as follows:

8. Insofar as initiation of enquiry by an officer subordinate to the appointing authority is concerned, it is well settled now that it is unobjectionable.

The initiation can be by an officer subordinate to the appointing authority. Only the dismissal/removal shall not be by an authority subordinate to the appointing authority.

25. The same issue again came up for consideration in *Inspector General of Police and another Vs. Thavasiappan*, . After referring to the earlier

decisions in *State of M.P. v. Shardul Singh*, *P.V. Srinivasa Moorthy v. Comptroller and Auditor General and Transport Commissioner v. A.Radha*

Krishna Moorthy, the Supreme Court held in *Thavasiappan's* case, as follows in

paragraph-No. 8:

These decisions fully support the contention of the learned Counsel for the appellants that initiation of a departmental proceeding and conducting an enquiry can be by an authority other than the authority competent to impose the proposed penalty.

26. Interestingly, Thavasiappan's case arose out of the provisions of Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955.

Rule 2-A of the said Rules is in pari materia with Rule 9 (c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, in the sense that it

empowers the Governor or any person authorised by him by general or special order to institute disciplinary proceedings against any member of

the Police Subordinate Service. Therefore an argument was advanced in Thavasiappan's case that only the authority empowered under Rule 2-A

of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, would be competent to initiate disciplinary proceedings. But the

said contention was repelled by the Supreme Court in paragraph-9 of its judgment, on the ground that Rule 2-A is only an enabling provision. The

relevant portion of paragraph-9 of the judgment in Thavasiappan's case reads as follows:

9. As to who shall initiate and conduct a disciplinary proceeding, the Rules are silent. Rule 2-A which provides that the Governor or any other

authority empowered by him may institute disciplinary proceedings is an enabling provision. From the way it is worded it is not possible to infer that

the rule-making authority intended to take away the power of otherwise competent authorities, like the appointing authority, disciplinary authority

or controlling authority and confine it to the authorities mentioned in Rule 2-A only. Moreover, it is difficult to appreciate how this provision can be

helpful in deciding whether the charge should be framed and the enquiry should be held by that authority only which is competent to impose the

penalties mentioned in Rule 3 (b) (i). An act of instituting a disciplinary proceeding is quite different from conducting an enquiry. Rule 3 (b) (i)

provides how an enquiry should be held in a case where it is proposed to impose on a member of the service any of the penalties specified in

Clauses (d), (h), (i) and (j) of Rule 2. It lays down the different steps that have to be taken in the course of the enquiry proceeding. This rule is

completely silent as regards the person who should perform those acts except that the report of the enquiry has to be prepared by the authority

holding the enquiry. Rule 3 (b) (i) itself contemplates that the enquiry officer may not be the authority competent to impose the penalties referred to

therein and that becomes apparent from the second para of that sub-rule. If it was intended by the rule-making authority that the disciplinary

authority should itself frame the charge and hold the enquiry then it would not have provided that a report of the enquiry shall be prepared by the

authority holding the enquiry whether or not such authority is competent to impose the penalty. Generally speaking, it is not necessary that the

charges should be framed by the authority competent to award the proposed penalty or that the enquiry should be conducted by such authority.

We do not find anything in the rules which would induce us to read in Rule 3 (b) (i) such a requirement.

27. Rule 3 (a) and 3 (b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules are in pari materia with Rule 17 (a) and 17

(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Therefore, what was said by the Supreme Court in paragraph-9 of its

judgment in Thavasiappan's case, with regard to Rule 3 (a) and 3 (b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal)

Rules, may apply in all force to cases covered by Rule 17 (b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. Similarly, what was

said by the Supreme Court in Thavasiappan's case regarding Rule 2-A of the Tamil Nadu Police Subordinate Services (Discipline and Appeal)

Rules (that it is only an enabling provision) may also apply in all force to Rule 9 (c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules.

28. But the case on hand cannot simply follow the general principles laid down in those decisions, for the simple reason that Rule 9-A of the Tamil

Nadu Civil Services (Discipline and Appeal) Rules, did not come up for consideration in any of the aforesaid cases before the Supreme Court. As

a matter of fact, the ratio laid down in P.V. Srinivasa Sastry and others Vs. Comptroller and Auditor General and others, , which still holds the

field, made it clear that any rule providing an additional safeguard or protection to the holder of a civil post, may not be inconsistent with Article

311. It is this view which is reiterated in paragraph-9 of the judgment in Thavasiappan's case. The Tamil Nadu Police Subordinate Services

(Discipline and Appeal) Rules did not contain a provision similar to Rule 9-A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, at

the time when Thavasiappan's case was decided. Thavasiappan's case was decided by the Tamil Nadu Administrative Tribunal in 1992 and it

was decided by the Supreme Court in January 1996. After the decision in Thavasiappan's case was rendered, an amendment was made under

G.O.Ms. No. 160, Home Department, dated 1.2.1996, to Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, whereby Rule

4-A was incorporated in the Tamil Nadu Civil Services (Discipline and Appeal) Rules. It is similar to Rule 9-A of the Tamil Nadu Civil Services

(Discipline and Appeal) Rules, which itself was inserted by G.O.Ms. No. 239, P & AR Department, dated 30-6-1993.

29. Therefore the law laid down in the aforesaid decisions with regard to the protection guaranteed under Article 311(1) of the Constitution or with

regard to the general rules such as Rule 2-A of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules {which is in pari

materia with Rule 9 (c) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules}, may not apply to a case covered by the special provision

contained in Rule 9-A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules or Rule 4-A of the Tamil Nadu Police Subordinate Services

(Discipline and Appeal) Rules.

30. Keeping in mind the above distinction, if we look into the facts of the present case, it is seen that 1 Under Secretary, 6 Section Officers and 8

Assistant Section Officers of the Municipal Administration and Water Supply Department, were involved in the case, which has led to the initiation

of the disciplinary proceedings. All of them belonged to the same department, namely, Municipal Administration and Water Supply Department, at

the time of commission of the alleged irregularities. If they had continued there even when proceedings were initiated, there would have been no

difficulty at all, since the main part of Rule 9-A, would have come into play. But before the initiation of proceedings, the writ petitioner got

transferred to Adi Dravida and Tribal Welfare Department, one S.V. Kuppumani got transferred to Small Industries department and one A.

Alexander (later dead) got transferred to Housing and Urban Development department. Therefore it is the proviso to Rule 9-A which would

govern the situation on hand.

31. Mr. Vijay Narayan, learned senior counsel contended that for the invocation of Rule 9-A, the cases of all government servants involved in the case should be taken together. The conduct of a joint enquiry, according to the learned senior counsel, is a condition precedent for the application of the said rule. Since no joint enquiry was ordered, the first respondent cannot, according to the learned senior counsel, initiate proceedings by taking recourse to Rule 9-A.

32. But I am unable to countenance the said contention. This is because of the fact that the main Rule 9-A lays down different parameters and different conditions than the proviso contained thereunder. The main Rule 9-A uses the expression "the disciplinary proceedings against all of them should be taken together". But the proviso uses the expression "jointly involved or whose cases are interconnected". Therefore it is only when the case is covered by the main rule that a joint enquiry is a condition precedent. But when the case is covered by the proviso to Rule 9-A, it is enough if they were jointly involved or if their cases were interconnected.

33. In the case on hand, the Government have not ordered a joint enquiry against all the delinquents. But Government Servants belonging to different departments are jointly involved in the case and their cases are interconnected. It is seen from the very charge framed against the petitioner and the various Government Orders issued in G.O.(D) No. 232, P&AR Department, dated 21.12.2001, G.O.(D) No. 41, P&AR Department, dated 13.3.2002, G.O.(D) No. 42, P&AR Department, dated 13.3.2002, Letter No. 2(D) 9/N2/2003 dated 4.2.2003 and G.O.(D) No. 95, P&AR Department, dated 4.4.2003 that the cases of all the delinquents were at least interconnected.

34. Therefore, in view of the proviso to Rule 9-A, it is only the Administrative Department of the Secretariat in respect of the Government Servant who holds the highest post (among the delinquents), that can initiate disciplinary proceedings against all of them. Admittedly, the case involved 1 Under Secretary to Government, 6 Section Officers and 8 Assistant Section Officers. Hence, the Secretary to Government of the Administrative Department of the Secretariat, in respect of the Under Secretary to Government involved in the case, should be taken to be the authority

competent to initiate disciplinary proceedings against all the persons involved.

35. It is the contention of the petitioner that the appointment of a Section Officer as Under Secretary to Government is made by the Secretary to

Government of the concerned department, though such appointment is made from out of a panel of eligible officers recommended by the Secretary

to Government, P&AR Department and approved by the Tamil Nadu Public Service Commission, by virtue of Rule 2 (e) of the Special Rules for

Tamil Nadu General Service (Class XII). In order to substantiate this contention, the petitioner has filed in the typed set of papers, the office

proceedings bearing Nos. 689, 705, 804 and 813, dated 14.10.2005, 20.10.2005, 5.12.2005 and 7.12.2005. These proceedings relate to the

appointments of various persons by name K.Murugan, K.P.Thangadurai, Hemalatha, Gunamani and K.Vairamani, as Under Secretaries in the

Department of Adi Dravida and Tribal Welfare.

36. But unfortunately for the petitioner, all those office proceedings do not read like appointment orders. At the outset, all of them refer to the

Government Orders issued by the P&AR Department, appointing them as Under Secretaries. Moreover, all those office proceedings have been

issued, after the appointment, post facto. This can be appreciated easily by the following table:

O.P. No. Date of Issue Date of appointment

mentioned in the O.P.

689 14.10.2005 06.10.2005

705 20.10.2005 10.10.2005

804 05.12.2005 25.11.2005

813 07.12.2005 24.11.2005

Thus, all of them appear to have been appointed by virtue of the Government Orders issued in the P&AR Department and all of them appear to

have joined duty in pursuance thereof. After they joined duty, the Secretary to Government, Adi Dravida and Tribal Welfare Department had

issued the above office proceedings, merely recognising their appointment.

37. Under such circumstances, I am of the considered view that the first respondent had the jurisdiction to initiate disciplinary proceedings, by

virtue of the proviso to Rule 9-A of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, though the Chief Minister's Standing Order No.

8 dated 17.1.1997 issued in exercise of the power under Rule 35 (4) of the Tamil Nadu Government Business Rules, has no application to the

case on hand.

38. As a matter of fact, it is admitted by the petitioner that the disciplinary proceedings against all other officers have already been concluded and

final orders passed by the Secretary to Government, P&AR Department. The petitioner has filed the outcome of the enquiries against all the other

individuals, in a tabular form in page 211 of the typed set of papers. The said tabular form discloses that charges were dropped against 2 Section

Officers and the charges abated against 1 Assistant Section Officer on account of his death. 2 Section Officers and 7 Assistant Section Officers

were imposed with the penalty of censure. The only Under Secretary to Government involved in the case and 1 Assistant Section Officer, both of

whom had already retired, have been imposed with the penalty of cut in the pension to the extent of Rs. 500/- for one month only. Thus the cases

against all the delinquents have already been disposed of by the Secretary to Government, P&AR Department, with the imposition of minor

penalties. None of them have questioned the jurisdiction of the Secretary to Government, P&AR Department, to initiate disciplinary proceedings

and impose the penalty.

39. Moreover, the petitioner appears to have already submitted himself to the jurisdiction of the first respondent. Though in the first statement of

defence filed by him on 20.8.2001, in response to the impugned charge memo dated 25.6.2001, the petitioner raised the issue of competence of

the first respondent to initiate the proceedings, the petitioner did not challenge the charge memo on this score, when he filed an application before

the Tamil Nadu Administrative Tribunal in O.A. No. 1535 of 2003. The prayer made by the petitioner before the Tribunal and the final order

passed by the Tribunal in the said application, are found respectively in paragraphs-1 and 6 of the order of the Tribunal, dated 28.4.2003. It is

seen from paragraph-1 of the order of the Tribunal that the petitioner merely sought a direction to the first respondent herein to dispose of the disciplinary proceedings and to pass final orders within a time frame. The prayer was granted in paragraph-6 of the order fixing a time frame of 4 months. Therefore, it may not be open to the petitioner to turn around and question the very same charge memo on the ground that the first respondent did not have the competence to issue the same. Hence W.P. No. 853 of 2005 challenging the charge memo is liable to be dismissed.

40. Coming to the other writ petition relating to the denial of promotion, the following facts, stare at one's face:

(a) The period of commission of the delinquencies, is stated in the impugned charge memo, to be from January 1995 to August 1995. The charge memo itself was issued only in June 2001, after a lapse of six years.

(b) From the final orders passed by the Government (first respondent) in respect of all the others involved in the same case, it is seen that 9

persons were imposed with the penalty of "censure", 2 retired persons were imposed with the penalty of "cut in the pension to the extent of Rs.

500/- for one month only" and 2 persons were exonerated of the charges. The only officer who is superior in rank to the petitioner and who was

also proceeded against, was imposed only with the penalty of cut in the pension to the extent of Rs. 500/- for one month only. 2 persons of the

same rank as the petitioner (Section Officers) were exonerated of the charges. 2 persons of the same rank were imposed with the penalty of

censure. All persons subordinate in rank to the petitioner were also imposed only with the penalty of censure.

(c) It is seen from a letter bearing No. 78/RTI-OP1/07-1 dated 23.5.2007 sent by the Deputy Secretary to Government (Public Information

Officer), Adi Dravida and Tribal Welfare Department to the petitioner that when the petitioner's case came up for consideration for promotion to

the post of Under Secretary, the Secretary to Government, Adi Dravida and Tribal Welfare Department, made out a strong case for promotion.

The recommendation made by the Secretary to Government, Adi Dravida department reads as follows:

The individual is working in AD&TW Dept., from 1.7.96 till date. His services in this department is outstanding both in "verification of bogus

community certificate"" and in ""implementation of Rule of Reservation"". No charge has been framed against him in this department.

The charge framed by P&AR Dept., on the misconduct relating to 1995 in MAWS Dept., is only an administrative procedural lapse. In fact the

P&AR Dept., issued only ""censure"" to all others. Hence considering the gravity of punishment imposed, the pendency of the case from 2001 to

2007 for nearly 6 years in P&AR Dept., (W.P. No. 853 of 2005 filed only in 2005) itself is a punishment to the individual. Even the ASO,

Assistant, Typist worked under him were promoted as Under Secretary in 2005 itself. Further, he has already crossed the scale of pay attached to

the post of Under Secretary to Government.

Hence I specifically recommend his case for promotion as Under Secretary to Government under Rule 39 (d) of the Tamil Nadu State and

Subordinate Service Rules.

(d) The Tamil Nadu Administrative Tribunal gave a direction way back on 28.4.2003 to the first respondent to pass final orders in the disciplinary

proceedings, within 4 months. The said order was not complied with. The petitioner came up with a writ petition challenging the charge memo, only

in January 2005, long after the expiry of 4 months fixed by the Tribunal. The interim stay of further proceedings was ordered by this Court only on

22.6.2005, more than 2 years after the Tribunal fixed a time limit. Thus there has been an unexplained delay both in the initiation of proceedings

and in their progress.

41. Therefore, on a cumulative consideration of all the above facts, I am of the considered view that it is not fair to deprive the petitioner of his

promotion to the post of Under Secretary to Government. Since all the other delinquents jointly involved in the same case, either of a superior rank

or of the same or lower rank, have been imposed only with a minor penalty (or even exonerated), I do not foresee any possibility of the first

respondent imposing any greater penalty than the greatest penalty awarded to any one of the co-delinquents. Even if such a penalty had already

been imposed upon the petitioner, the currency of such a minor penalty would have been over even by the year 2004 (if the time limit fixed by the

Tribunal had been adhered to). Therefore the petitioner is entitled to succeed in the writ petition W.P. No. 714 of 2005.

42. In the result, W.P. No. 853 of 2005 is dismissed and W.P. No. 714 of 2005 is allowed. The respondents are directed to consider the case of the petitioner for promotion to the post of Under Secretary to Government, without reference to the pendency of the impugned charge memo and pass appropriate orders within a period of two months. Such consideration shall be with reference to the earliest panel in which he was over looked on account of the pendency of the impugned charge memo. Connected W.P.M.P. is closed. No costs.