

**(2006) 11 MAD CK 0050**

**Madras High Court**

**Case No:** Writ Petition No"s. 21912 to 21914, 23305 and 23306 of 2005

M. Mohammed  
Mohideen

APPELLANT

Vs

The State of Tamil  
Nadu <BR>The  
Secretary to  
Government, Home  
Department and The  
Director of Fire and  
Rescue Services Vs M.  
Mohameed Mohideen  
and The Registrar,  
Tamil Nadu  
Administrative Tribunal

RESPONDENT

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**Date of Decision:** Nov. 10, 2006

**Acts Referred:**

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

**Hon'ble Judges:** S.K. Krishnan, J; Elipe Dharma Rao, J

**Bench:** Division Bench

**Advocate:** Yashod Vardhan, in W.P. Nos. 23305 and 23306/2005 and K. Balu, AGP in W.P. Nos. 21912 to 21914 of 2005, for the Appellant; K. Balu, AGP in W.P. Nos. 23305 and 23306/2005 and Yashodvardhan in W.P. Nos. 21912 to 21914/2005, for the Respondent

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### **Judgement**

@JUDGMENTTAG-ORDER

Elipe Dharma Rao, J.

W.P. No. 23305 of 2005 has been filed praying for the issuance of a Writ of Certiorari calling for the records pertaining to G.O.(D) No. 635 dated 30.6.2005 of the first respondent and quash the same.

2. W.P. No. 23306 of 2005 has been filed praying for the issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to G.O.(D) No. 636 dated 30.6.2005 of the first respondent and quash the same and consequently direct the first respondent to allow the petitioner to retire on 30.6.2005, the date of superannuation with pensionary benefits together with interest @ 18% per annum.

3. W.P. No. 23305 of 2005 is filed against the Government order in G.O.(D) No. 635, Home (Police-XVII) Department, dated 30.6.2005 wherein the petitioner has been placed under suspension invoking the power under Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, on the ground that when the O.As filed by the petitioner against the show cause notice dated 13.9.1994 issued to enhance the punishment against the petitioner, were allowed contemplating to file a writ petition against the order of placing the petitioner under suspension in the public interest. Against this order, W.P. No. 23305 of 2005 is filed contending that the petitioner was working as an Assistant Divisional Fire and Rescue Service, Tirunelveli Division. The second respondent by an order dated 28.6.1990 imposed a punishment of reduction in rank from the post of Assistant Divisional Fire Officer to the post of Station Fire Officer for a period of two years for certain alleged misconduct. The said order of punishment was also confirmed in appeal by the first respondent in G.O.(3D) No. 6, dated 22.1.1993. It is submitted that he challenged those orders by filing O.A. No. 6000 of 1993 before the Tamil Nadu Administrative Tribunal, Chennai. The petitioner had undergone the punishment as per the original order dated 28.6.1990, since the appeal was disposed of only on 22.1.1993. Thereafter, the petitioner was restored to the post of Asst. Divisional Fire Officer. In the mean time, the first respondent suo-motu issued a notice dated 13.9.1994 directing him to show cause as to why the punishment given to him should not be reviewed and enhanced. The petitioner has submitted an explanation dated 20.10.1994 and pointed out that the first respondent had no power to review the order suo motu and requested the first respondent not to proceed with the show cause notice. Since the order dated 27.7.1999 refusing to include his name in the promotion panel on the ground that the show cause notice dated 13.9.1994 with regard to suo motu review for enhancing the punishment was pending, was also illegal and contrary to law and the rules, the petitioner filed O.A. No. 7097/1997 before the Tamil Nadu Administrative Tribunal challenging the show cause notice dated 13.9.1994 and also the order dated 27.7.1999 refusing to include his name in the panel for promotion to the post of Divisional Fire Officer. The Tribunal while admitting the O.A. on 1.12.1999, directed the respondents to consider his claim for promotion to the post of Divisional Fire Officer by including his name in the panel for the year 1997-1998 without reference to show cause notice dated 13.9.1994. The Respondents complied with the direction of the Tribunal only after filing of contempt petition No. 127/2000 and the petitioner was promoted as Divisional Fire Officer by G.O.(D) No. 761, Home (Police XVII) Department, dated 25.8.2000.

4. Since the petitioner filed contempt petition, the respondents did not grant him increment for the second year after his promotion to the Divisional Fire Officer on the

ground that O.A. No. 7097 of 1999 was pending. The petitioner was forced to file O.A. No. 824/2004 praying to grant him the subsequent annual increments due as on 1.7.2002 and 1.7.2003 without reference to O.A. No. 7097 of 1999. It is further submitted that the petitioner has made representations to the respondents and requested them to implement the order dated 28.3.2004 of the Tribunal by promoting him on par with his junior with consequential benefits. The respondents have not passed any orders on his representations. In the mean time, the petitioner reached the age of superannuation on 30.6.2005 and he was due to retire on the said date. The first respondent issued the impugned orders placing the petitioner under suspension with effect from 30.6.2005 under Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and refused to allow him to retire from 30.6.2004 and retain him in service respectively. Therefore, the petitioner has not been paid the terminal benefits by virtue of which his livelihood is affected. Rule 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules as follows:

17(e)(1) A member of a service may be placed under suspension from service where

(i) an enquiry into grave charges against him is contemplated or is pending or

(ii) a complaint against him of any criminal offence is under investigation or trial and if such suspension is necessary in the public interest.

5. The Rule contemplates two contingencies to place the employee under suspension namely (i) an enquiry into grave charges against him is contemplated or is pending or (ii) a complaint against him of any criminal offence is under investigation or trial and if such suspension is necessary in the public interest. Under the above mentioned two circumstances, the Rule 17(e) has to be invoked.

6. On the facts and circumstances of the case, the petitioner was issued a charge memo on a complaint that he has accepted a suitcase valued at Rs. 385/- and bribe of Rs. 100/- from his fireman Peter Ryan on 6.1.1986. Against the charge memo, after conducting an enquiry, punishment was imposed. An appeal was filed rejecting the Government Order dated 22.1.1993. On 15.9.1993, O.A. No. 6000 of 1993 was filed by the petitioner challenging the order of the Government rejecting the appeal preferred against the punishment. Thereafter, the Government issued a show cause notice on 13.9.1994 to enhance the punishment. The petitioner has submitted his reply dated 20.10.1994 to the show cause notice. Thereafter, nothing was happened. Now, after disposal of the OAs, the present impugned order has been passed. As seen from the contents of the impugned order and the provision of law under which the order is passed, viz., the reasons stated in the impugned order to place the petitioner under suspension does not give any one of the grounds mentioned in 17(e) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules. No enquiry is pending except the show cause notice for enhancement of the punishment inflicted in the year 1994. Therefore, the impugned orders are liable to be set aside. Accordingly, the writ petition Nos. 23305 and 23306 of

2005 are allowed.

7. This case is a classic example how a genuine person was deprived of his right to promotion and depriving him from enjoying the benefits of the promotional post by initiating departmental proceedings against him and issuing a show cause notice for enhancing the punishment and after receiving the explanation to the show cause notice and keeping it pending without passing orders thereon and thereafter, placing him under suspension and continuing to extend the order of suspension indefinitely without conducting any enquiry is unconstitutional and against the public interest.

8. Since W.P. Nos. 23305 and 23306 of 2005 filed by the employee are allowed, W.P.No. 21912 to 21914 of 2005 which have been filed by the Government praying for the issuance of a Writ of Certiorari calling for the records pertaining to the order dated 8.3.2004 made in O.A. Nos. 6000/93, 7097/99, 824/2004 on the file of the second respondent herein and to quash the same are dismissed.

9. Consequently, the impugned order of not allowing the petitioner to retire on 30.6.2005 is set aside. The respondents are directed to settle the pensionary benefits and to make necessary arrangements in that regard within a period of twelve weeks from the date of receipt of a copy of this order.