

(2011) 07 MAD CK 0389

Madras High Court (Madurai Bench)

Case No: Writ Petition (MD) No. 11694 of 2009 and M.P. No. 2 of 2009

M. Peer Mohammed, Assistant

APPELLANT

Vs

The Secretary to Government,
Highways Department and The
District Collector, Collectorate

RESPONDENT

Date of Decision: July 19, 2011

Acts Referred:

- Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 - Rule 17
- Tamil Nadu Government Servants Conduct Rules, 1973 - Rule 20

Hon'ble Judges: P. Jyothimani, J

Bench: Single Bench

Advocate: Padmavathy and Ravi Shanmugam, for the Appellant; V. Pandi, Government Advocate, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P. Jyothimani, J.

The Petitioner has challenged the impugned charge memo dated 12.02.2001, issued by the first Respondent - Secretary to Government, Highways Department, formulating charges under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, [for short "the Rules"] on various grounds including that the first Respondent has No. jurisdiction to issue such charge memo, since the Petitioner is working in the Rural Welfare Department as an Assistant; that there has been a delay in completing the disciplinary proceedings and that in respect of similarly situated persons, relating to the similar charges, they were exonerated as per the orders of this Court.

2. The said ground has been opposed by the second Respondent in the counter affidavit stating that the Petitioner is working as per the new Service Rules framed in

G.O.Ms. No. 585, Rural Development and Panchayat Raj Department, dated 12.04.1984 and that the delay is sought to be explained as administrative in nature. It is seen that the impugned charge memo was issued against the Petitioner on 12.02.2001 by the first Respondent with the following charges:

Charge 1:

That the said Thiru M.Peer Mohammed while functioning as Rural Welfare Officer (Grade-II) in Dindigul Panchayat Union during 1996 - 1997 in collusion with others had not evinced interest in supervising the work of construction of 13 TV rooms under JVVTV programme which was entrusted to him, but allowed substandard work and thereby caused loss to the Government funds to a tune of Rs. 12627.12.

Charge 2:

That during the above said period and while functioning in the aforesaid office Thiru M.Peer Mohammed, formerly Rural Welfare Officer (Grade-II) by committing the aforesaid irregularity has failed to maintain absolute integrity and devotion to duty and thereby violating Rule 20 of the Tamil Nadu Government Servants Conduct Rules, 1973.

3. The charge memo issued by the Secretary to Government, Highways Department relates to the Petitioner, who was working as Rural Welfare Officer Grade II, Dindigul Panchayat Union and there is No. explanation offered as to how the first Respondent belonging to the Highways Department has got jurisdiction to issue charge memo under Rule 17(b) of the Rules to the Petitioner. Even otherwise, it is seen that the charge memo, which was issued on 12.02.2001 to the Petitioner, relates to an event, which is stated to have taken place in the year 1996 - 1997, by which a loss to the tune of Rs. 12,627.12 is stated to have been caused to the Government. The Enquiry Officer appointed is stated to have submitted his report on 05.12.2002 and ultimately, a final show cause notice dated 14.10.2003 was issued to the Petitioner, for which he has offered his explanation on 08.12.2003. But, till date, No. final order has been passed.

4. It is also seen that there has been an order of interim direction granted by this Court directing the Respondents to consider the claim of the Petitioner for further promotion in accordance with law. Admittedly, the Petitioner has been given further promotion. The reason given for such long delay is attributed as administrative in nature. It is not the case of the Respondents in the counter affidavit that the reasons are attributable to the Petitioner. In such circumstances, law is well settled that the unexplained delay is detrimental to the interest of a Government Employee, since the effective right of defence is taken away. The attribution of administrative delay cannot be accepted as a proper reason for a long delay of five years on the date of the charge memo, which relates to the year 1996 - 1997 and though the Petitioner has offered his reply to the final show cause notice, till date, more than seven years, No. final order has been passed.

5. It was in [P.V. Mahadevan Vs. M.D., Tamil Nadu Housing Board](#) , the Hon"ble Supreme Court has held that the protracted disciplinary proceedings will demoralize the Government Employees in their function and public will lose their faith in the governmental system apart from mental agony and sufferings experienced by the delinquent. The Hon"ble Supreme Court in Paragraph No. 11 has observed as follows:

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 interests 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 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 department in the procedure for initiating the disciplinary proceedings, the Appellant should not be made to suffer.

6. The said judgment of the Hon"ble Apex Court itself is based on an earlier judgment of the Hon"ble Supreme Court in [The State of Madhya Pradesh Vs. Bani Singh and another](#) , wherein the Hon"ble Supreme Court has held that delay in disciplinary proceedings is detrimental to the interest of the delinquent and in enormous number of cases, the pendency of disciplinary proceedings causes more agony than the punishment itself.

7. On a reference to the impugned charge memo, it is clear that charges are not related to any misappropriation, but improper supervision of the work of construction of TV rooms under Jawhar Velai Vaippu Thittam. Therefore, as held by the Hon"ble Supreme Court, the pendency of the disciplinary proceedings, for more than 12 years, is certainly more than a punishment, which would be inflicted by the disciplinary authority, if proper enquiry was conducted. Therefore, I have no hesitation to hold that such long delay having not been explained by the Respondents has to be given benefit to the Petitioner/delinquent. It is also brought to the notice of this Court that in respect of an identical charge relating to one M.Ganpathy, who is stated to have caused the monetary loss to the tune of Rs. 12,627.12, this Court, by order dated 19.09.2007 has allowed the Writ Petition in W.P. No. 34823 of 2005 by quashing the charge memo framed against the said individual. The said order has become final.

8. For the reasons stated above, the impugned charge memo stands quashed and the Writ Petition stands allowed. According to the learned Government Advocate

appearing for the Respondents, the Petitioner should have worked as a Rural Welfare Officer Grade I for a period of one year. However, under the scheme, he has worked as a Bhoodan Inspector only, and therefore, he will not be entitled for further promotion. Be that as it may, if the Petitioner is entitled for further promotion, the same shall be considered by the Respondents irrespective of the charge memo. No. costs. Consequently, connected Miscellaneous Petition is closed.