

**Central Administrative Tribunal
Madras Bench**

MA/310/00867/2015 (in)(&) OA/310/00888/2014

Dated 12th February Two Thousand Nineteen

P R E S E N T

**Hon'ble Mr. P.Madhavan, Member(J)
&
Hon'ble Mr.T.Jacob, Member(A)**

P.Dhanasegar,
S/o Ponnambalam,
No.28, 1st Cross Sathya Nagar West,
Puducherry-13. .. Applicant
By Advocate **M/s.M.Gnanasekar**

Vs.

1. Union of India, rep by
The Director,
Directorate of Economics & Statistics,
Puducherry.
2. The Commissioner,
Hindu Religious Institutions,
Puducherry. .. Respondents
By Advocate **Mr.R.Syed Mustafa**

ORDER

[Pronounced by Hon'ble Mr.P.Madhavan, Member(J)]

This is an OA filed seeking the following relief:-

“to quash the charge memorandum dated 07.2.2011 issued by the 1st respondent and to pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case and thus render justice.”

2. The applicant was appointed as Field Supervisor on 2.11.87 in the Directorate of Economics and Statistics under the 1st respondent. On 05.3.93 the applicant was appointed as Special Officer to S/Sri Muthu Vinayagar, Subramaniaswamy, Nagamuthu Mariamman Devasthanam, Saram, Puducherry in addition to his duties as Field Supervisor. This additional duty was purely honorary. The applicant accepted the duty as his family is residing in that area.

3. An audit was conducted by Directorate of Audit and Treasury (DAT) in the Devasthanam in 2013 which related to the period w.e.f. 26.6.1991 to 08.6.2003. The auditors raised some objections and the Commissioner of the Hindu Religious Institutions forwarded a copy to him seeking his explanation. He submitted his explanation on 17.11.03 and there was no further action taken till date. In the year 2012 DAT had called him and informed him that the explanation given by him was not received by DAT and they could not finalize the report. Thereafter the 2nd respondent had forwarded the explanation on 06.6.12. Thereafter, no further action is taken by the 2nd respondent.

4. The 1st respondent had issued a charge memo dated 07.2.11 alleging that the applicant between 17.9.93 and 26.9.93 and in between 24.2.94 and 06.6.05 had entered into transactions relating to immovable properties of temple without prior approval of the competent authority and thus guilty of lack of integrity, lack of devotion to duty and conduct unbecoming of a government servant and violated Rule 3(1), (I), (ii) of the CCS (Conduct Rules), 1964. It was also alleged that he had misappropriated money and caused revenue loss to temple and had also spent temple money in an improper manner. The applicant filed his statement of defence on 01.3.11 denying the allegations.

5. According to him, some of the objections raised by DAT was dropped directing to obtain ex-post facto sanction from the 2nd respondent. Owing to the pendency of charge memo, the applicant is denied of promotion for last 3 years and he has not received any financial upgradation.

6. According to him, the charge memo was issued after a gap of 8 years (ie. After 2003).

7. In many of the objections, ex-post facto sanction requested by him is still pending. The lapses occurred are merely procedural and he had not caused any loss of revenue as alleged.

8. The first and second respondents appeared and filed a common reply. The Puducherry Government used to appoint government servants as Special Officer. The applicant was acting as Special Officer independently according to his whims and fancies without approval of the Commissioner. The applicant is duty bound to

produce all vouchers, accounts and records before the auditors. As per report of DAT, the applicant has caused a revenue loss of Rs.1,46,678/-. He had functioned as Special Officer between 05.3.93 and 01.6.2005. Though the auditors recommended for obtaining ex-post facto sanction, the Commissioner would say that there is no such provision in law. The respondents admit that charge memo was given only on 07.2.11. The reply was given by the applicant on 01.3.11. An Inquiry Officer and Presenting Officer were appointed only on 03.7.14. There has occurred delay in obtaining replies from Commissioner as to whether ex-post facto sanction used to be given under the Hindu Religious Institutions Act. The respondents submits that they can complete enquiry within 6 months.

9. The counsel for the applicant would content that the charges levelled against him is for the period 1993 to 2005 and it is highly improper to initiate a disciplinary proceedings after a gap of 15 years. This seriously prejudices the defence of the applicant. According to the counsel for the applicant, the request for ex-post facto sanction is still pending before the Commissioner and hence conducting an enquiry is highly prejudicial to him.

10. The written reply is filed by the 1st respondent and it is stated that the 2nd respondent is also adopting the same contentions. But the reply does not contain any signature or authorisation done by the 2nd respondent in the reply. The 2nd respondent has not filed a proper reply. The applicant relies on the decision of the Hon'ble Apex Court in *P.V.Mahadevan v. M.D Tamil Nadu Housing Board (Civil Appeal No.4991 of 2005)* to support his contention that the issuing of charge memo after a lapse of

more than 10 years is unjustified and it prejudices the case of the applicant. But the counsel for the respondents would contend that they can complete the enquiry within 6 months if the status quo order is vacated.

11. We have heard the counsels appearing for the applicant and the 1st respondent and perused the pleadings. The applicant seeks to quash the charge memo dated 07.2.11 issued by the 1st respondent against the applicant. On a perusal of the pleadings and Annexure A1 to A5 it can be seen that the applicant was appointed as Special Officer of the Devaswom as per Annexure A1 dated 05.3.93. The above duty was entrusted in addition to his regular duties of his office. Annexure A2 is the order removing the applicant from the duty of Special Officer dated 02.6.05. The audit period was between 26.6.1991 and 08.6.93 and the DAT had raised certain objections in the transactions and according to the applicant he had submitted his explanations on 17.11.03 itself. But the said explanation was forwarded by the 2nd respondent to DAT only on 27.4.12 and no finality has come even now regarding the ex-post facto sanctions to be obtained as directed by the DAT. Many of the objections can be rectified by obtaining such sanction. Eventhough the defects noted is of the period 26.6.91 and 08.6.03, the charge memo was issued by the 1st respondent only in the year 2011 ie. By Annexure A3 dated 07.2.11. Thereafter more than 3 years is taken for appointing a presenting officer etc. and so far no enquiry started till date of filing of OA on 24.6.14. On 31.7.14 this Tribunal has passed an order to maintain status quo against further proceedings on the alleged charge memo. On going through the records it seems that the delay occurred was only due to the laches of the respondent

1 and 2 and it was because of this, no order is passed by the 2nd respondent on the representation filed by the applicant seeking ex-post facto sanction. According to the respondents, it occurred mainly due to the changes of Commissioner appointed in the 2nd respondent. The respondents had failed to give an explanation for this delay in initiating the disciplinary proceedings till 07.2.11 and not starting the enquiry even on the date of filing OA on 24.6.14. The applicant states that owing to the pendency of the charge memo, his juniors are being promoted without he being considered by the DPC.

12. In *State of A.P. v. N.Radhakrishnan reported in (1998) 4 SCC 154*, the Hon'ble Apex Court held as follows:-

“It is not possible to lay down any predetermined principles applicable to all cases and in all situations where there is delay in concluding the disciplinary proceedings. Whether on that ground the disciplinary proceedings are to be terminated each case has to be examined on the facts and circumstances in that case. The essence of the matter is that the court has to take into consideration all the relevant factors and to balance and weigh them to determine if it is in the interest of clean and honest administration that the disciplinary proceedings should be allowed to terminate after delay particularly when the delay is abnormal and there is no explanation for the delay. The delinquent employee has a right that disciplinary proceedings against him are concluded expeditiously and he is not made to undergo mental agony and also monetary loss when these are unnecessarily prolonged without any fault on his part in delaying the proceedings. In considering whether the delay has vitiated the disciplinary proceedings the court has to consider the nature of charge, its complexity and on what account the delay has occurred. **If the delay is unexplained prejudice to the delinquent employee is writ large on the face of it. It could also be seen as to how much the disciplinary authority is serious in pursuing the charges against its employee.** It is the basic principle of administrative justice that an officer entrusted with a particular job has to perform his duties honestly, efficiently and in accordance with the rules. If he deviates from this path he is to suffer a penalty prescribed. Normally, disciplinary proceedings should be allowed to

take their course as per relevant rules but then delay defeats justice. Delay causes prejudice to the charged officer unless it can be shown that he is to blame for the delay or when there is proper explanation for the delay in conducting the disciplinary proceedings. Ultimately, the court is to balance these two diverse considerations.”

In *P.V.Mahadevan v. M.D Tamil Nadu Housing Board (2005) 6 SCC 636* the Hon'ble Apex Court, following the earlier decision in *State of A.P. v. N.Radhakrishnan* (referred supra) had quashed a charge memo issued after much delay. In that case, transaction took place in the year 1990. The audit report came out in 1994-95 and the disciplinary action was initiated only in the year 2000. The Supreme Court held that there is no satisfactory explanation offered by the respondents. The court held 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 disputed 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 the disciplinary proceedings. As a matter of fact, the mental agony and sufferings of the applicant 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.”

13. In this case also the transactions took place during the period 1991 to 2003 and there is no explanation offered regarding why the charge memo was issued only on 07.2.11. Further proceedings at this distant time will prejudice the applicant. As observed by the Apex Court **“it is necessary to draw the curtain and to put an end**

to the enquiry.”

14. In view of the above discussion, we are of the view that initiation of departmental proceedings in this case should be put to an end.

15. In the result, the charge memo No.3425/DES/Estt/E3/2005 dated 07.2.11 issued by the 1st respondent is hereby quashed. Accordingly the OA is allowed. No costs. MA disposed off accordingly.

(T.Jacob)
Member(A)

12.02.2019

(P.Madhavan)
Member(J)

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