

**Central Administrative Tribunal
Madras Bench**

MA/310/00229/2018 (in)(&) OA/310/01976/2019

Dated 18th day of October Two Thousand Nineteen

P R E S E N T

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

A.Velayoudame
S/o Arumugame,
Store Superintendent,
Department of Women & Child Development,
Puducherry. .. Applicant
By Advocate **Mr.P.Suresh**

Vs.

1. Union of India, rep. by the
Government of Puducherry
through the Secretary to Government for Finance,
Chief Secretariat,
Puducherry.
2. The Secretary to Government for Women
& Child Development,
Chief Secretariat,
Puducherry.
3. The Under Secretary to Government,
Health & Family Welfare Department,
Puducherry.
4. The Under Secretary to Government,
Women & Child Development,
Chief Secretariat,
Puducherry. .. Respondents

By Advocate **Mr.R.Syed Mustafa**

ORDER

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

The above OA is filed seeking the following relief:-

“To call for the records of the respondents (1) Charge Memo with No.210/Dis.Pro./H3/Health/2016-17 dated 26.7.2016 (2) Charge Memo with No.C.14012/1/2017/WCD/SW-1 dated 22.11.2017 and to quash the same and consequently to direct the respondents to grant the pension and other pensionary benefits to the applicant and to pass such other or further orders in the interest of justice and thus render justice.”

2. The facts of the case as stated by the applicant are that the applicant was working as Store Superintendent in the department of Women and Child Development, Puducherry and he is a physically challenged person. He was also holding the post of President of Federation for Physically Challenged Person's Association. The applicant was active in taking up matters relating to the physically challenged persons before the appropriate forum and due to the measures taken by the applicant, the officers are on inimical terms with him. According to the applicant, the respondents had issued a charge memo on 08.3.2016 alleging misconduct but the same was dropped by the respondents on getting his explanation. Subsequently the respondents had again issued a charge memo on 26.7.16 alleging one article of charge that the applicant had behaved in unruly manner with the Officers and Staff of Social Welfare Department and hence he is liable for violation of Rule 3(1)(iii) of CCS (Conduct) Rules, 1964. But this charge was also not proceeded as and the applicant had filed a explanation to the charge memo on 08.8.16. Thereafter, no proceedings

had taken place. According to the applicant, he was due to retire on 30.11.2017 and his pension papers were not processed by the respondents. So, he filed a representation before the Lt. Governor on 08.11.17 for processing his pension papers as he is due to retire. On 22.11.17, the respondents had issued another charge memo which is produced as Annexure A6 showing the same charges included in the earlier charges. According to the applicant, the third charge memo was issued only to create difficulties to him and to stop the payment of pension to him. He mainly relies upon the following grounds for challenging the charge memo:-

“According to him, the charge memos are false and baseless and issued with malafide intention. The charge memo was issued at the fag end of his retirement with ulterior motive, and also to discriminate him. The said charge memo was issued at the instance of some higher officials who is on inimical terms with him. The first memo of charge was earlier issued to him in 2016 and it was rescinded by the respondents themselves. The second charge memo was also rescinded and the latest charge memo was issued just before his retirement only after his filing representation for processing his pension papers”.

So, accordingly he prays for the above relief.

3. The respondents entered appearance and filed a detailed reply. According to the respondents, the applicant in this case was functioning as Store Keeper in the department and there arose a compliant against the applicant filed by one L.Sumathy W/o Thiru A.Lakshmanan, Embalam, Puducherry dated 28.3.07. In the said representation she had stated that her husband Thiru A.Lakshmanan had availed

NHFDC loan of Rs.50,000/- for setting up of a grocery shop by providing quotation from M/s Ranjan Traders. The loan amount was paid by cheque No.625967 dt. 25.7.2003 alongwith covering letter in favour of M/s Ranjan Traders. The said cheque was handed over to her husband for giving it to M/s Ranjan Traders. The applicant in this case had obtained the said cheque and did not provide money or grocery items. The Director of Social Welfare Department, Puducherry forwarded the said representation to the Chief Vigilance Officer (CVO), Puducherry. The Superintendent of Police, Vigilance and Anti-Corruption, Puducherry, conducted an enquiry on the allegation and submitted a report to the CVO, Puducherry on 24.11.08. The CVO, Puducherry had forwarded the same to the Directorate of Health and Family Welfare Services, Puducherry with instructions to initiate disciplinary proceedings against the applicant in this case by letter dt. 01.12.15. Accordingly, the applicant was issued a charge memo on 08.3.16 by the Deputy Director (PH) stating the articles of charges as follows:-

“That the said A.Velayoudame, Stock Verifier, Office of the Deputy Director (PH), Puducherry while working as Store Keeper Gr.II in the ESI Hospital, Puducherry during May 2003 stood surety to Thiru A.Lakshmanan of Embalam for an amount of Rs.50,000/- to avail a loan from Puducherry Corporation for the Development of Women and Handicapped Persons Ltd., Puducherry by giving false declaration of setting up of grocery shop at Embalam and wrongfully utilized the loan amount for the celebration of world disability day function, thereby misusing the Government money. Thus he failed to maintain absolute integrity and conduct unbecoming of Government servant whereby he contravened clauses (I) (ii) and (iii) of Sub-Rule (1) of Rule 3 of CCS (Conduct Rules), 1964.”

This charge was subsequently rescinded by the respondents on 24.3.16 as

Administrative Secretary of the Department concerned has been delegated the powers of the Disciplinary Authority in respect of Group-B Officers. The respondents thereafter issued a fresh charge memo by Secretary to Government (Health) on 26.7.16. The allegation in the said charge memo was as follows:-

“That the said Thiru A.Velayoudame, Stock Verifier, while working as Store Keeper in the Directorate of Social Welfare, Puducherry in his position as President of Federation of Physically Handicapped Association has behaved in unruly manner with the Officers and Staff of Social Welfare Department, which act tantamount to the unbecoming of a Government Servant thereby violating Rule 3(1) (iii) of CCS (Conduct) Rules, 1964.” is pending before the Disciplinary Authority.

Thereupon, as per letter dt. 04.10.16 the CVO, Puducherry had requested for issuing a fresh charge sheet including the earlier allegation also in the said charge memo. So, a fresh charge memo was issued incorporating the allegation of misappropriation and misconduct dt. 22.11.17. His pension papers could not be processed as the officer was not clear from the vigilance angle and he is being proceeded with. The department has granted provisional pension under Rule 69(1)(b) of CCS (Pension) Rules, 1972. So, according to the respondents, there is no merit in the contention put forward by the applicant in this case.

4. We have heard the counsel for the applicant and the counsel for the respondents. The applicant mainly relies upon the decision of the Hon'ble High Court in *Writ Appeal (MD) No.1009/2014* between *The Joint Director of School Education & Another v. B.Ravindran* and the decision of this Tribunal in *OA 888/2014* wherein delay in issuing charge memo was considered. According to the

applicant, the alleged misconduct of taking Rs.50,000/- from one A.Lakshmanan has taken place in the year 2003. The alleged complaint by one L.Sumathy was given to the Director in the year 2007. The Director has forwarded the said complaint to the vigilance department and the vigilance department had conducted an enquiry and filed a report to the department on 24.11.08 itself. But the CVO had forwarded the same to the Department of Health & Family Welfare Services only on 01.12.15. There has taken place an inordinate delay in issuing proceedings against the applicant. It was also contended that the charge memo issued in this case is very vague and it cannot be acted upon. There is no clear specific dates on which the alleged misconduct has taken place. So, according to the applicant, the charge memo issued against the applicant is liable to be quashed.

5. We have carefully gone through the various annexures produced in this case. As per the statement filed by the respondents' themselves, the alleged misappropriation of Rs.50,000/- from one A.Lakshmanan has taken place in the year 2003. The said complaint has come up before the Director of Social Welfare Department, Puducherry, only in the year 2007 when it was brought to the notice by one L.Sumathy w/o A.Lakshmanan. According to her, the loan amount sanctioned to A.Lakshmanan was handed over to her husband by cheque in favour of one M/s Ranjan Traders. The allegation is that the applicant in this case had obtained the said cheque from A.Lakshmanan and misappropriated the same for other purposes. The Director has forwarded the complaint for vigilance enquiry and the Vigilance Officer has conducted an enquiry and filed its report to the CVO on 24.11.08. The CVO had

kept the file in his custody for about 7 years and forwarded the same to the Director of Health and Family Welfare Services on 01.12.15. Accordingly, the applicant was issued a charge memo on 08.3.16. Subsequently this charge memo was withdrawn on 24.3.16 as the DA for Group-B Officers was Administrative Secretary of the Department and not the Deputy Director of Health and Family Welfare Services. Thereafter, a fresh charge memo for unruly behaviour was given to the applicant on 26.7.16 under Rule 3(1)(iii) of CCS (Conduct) Rules, 1964. Subsequently this charge memo was also rescinded on the instruction of the CVO and a fresh charge memo was issued on 22.11.17 adding the earlier charges also. On a perusal of the records, we find that this charge memo was issued only after the applicant has filed a representation before the Lt.Governor on 08.11.17 (Annexure A5) for processing his pension papers. According to the counsel for the respondents, the disciplinary proceeding was pending and only because of that his pension papers could not be processed. There was no vigilance clearance for the same. The respondents in this case has not at all given any satisfactory explanation as to why no charge memo was issued even though a complaint was given to the Director in the year 2007 itself. On going through the charge memo, it can be seen that it was issued after 10 years. Further on a perusal of the charge memo issued as Annexure A6 dt. 22.11.17, it can be seen that there is no specific dates or allegation as to how the money was misappropriated and there is also no specific statement regarding the allegation of unruly behaviour committed by the applicant in this case. Prima facie Article 1&2 are vague and uncertain, that too was issued after a long gap of 10 years. The

Hon'ble High Court in *Writ Appeal (MD) No.1009/2014* has observed in para-5 as follows:-

“The law is well settled while dealing with the quashing of charges framed by the authorities concerned. The power of judicial review is rather limited. However, when the charges appear on the face of it, too vague, flimsy, frivolous and without any basis, then a delinquent officer can be made to undergo an ordeal of enquiry. Admittedly, the petitioner has completed 29 years of service. The suspension order followed by the charge memo have been issued just prior to his date of superannuation. In so far as charges 1 and 2 are concerned, they are pertaining to the occurrences said to have been happened in the year 1998. Therefore, after a period of more than 12 years, the charges have been framed for the reasons best known to the respondents. There is no explanation for the belated framing of charges. They are also very flimsy in nature. In so far as charge No.3 is concerned, admittedly, the petitioner has obtained loan and purchased the vehicle-Hero Honda two wheeler in the year 2001. Therefore, the said charge also not sustainable in the eye of law.”

The Hon'ble Supreme Court in *State of A.P. v. N.Radhakrishnan reported in (1998)*

4 SCC 154, 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, 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 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.”

On a perusal of the pleadings and annexures, it can be seen that there is absolutely no explanation given by the respondents for the undue delay of 10 years happened in issuing the charge memo. Further, the charge memo is vague and unspecific. A

disciplinary proceeding at this distant point of time will clearly prejudice the applicant and as observed by the Hon'ble Apex Court **“it is necessary to draw the curtain and to put an end to the enquiry”**.

6. In view of the above discussion of the law laid down by the Hon'ble Apex Court, we are of the view that the **Charge Memo No.C.14012/1/2017/WCD/SW-1 dated 22.11.2017 issued just before the retirement of the applicant is liable to be quashed and we do it accordingly. OA is disposed off. Consequently MA 229/2018 stands closed. No order as to costs.**

(T.Jacob)
Member(A)

18.10.2019

(P.Madhavan)
Member(J)

/G/

Annexures referred to by the applicants in OA No.310/01976/2017:

Annexure A1: Charge Memo issued to the applicant dt. 08.3.16.

Annexure A2: Explanation given by the applicant dt. 18.3.16.

Annexure A3: Charge Memo issued to the applicant dt. 26.7.16.

Annexure A4: Explanation given by the applicant dt. 08.8.16.

Annexure A5: Representation given by the applicant dt. 08.11.17.

Annexure A6: Charge Memo issued to the applicant dt. 22.11.17.

Annexure A7: Memo issued to the applicant dt. 19.4.07.

Annexure A8: Explanation given by the applicant dt. 23.4.07.

Annexures with reply statement:

Annexure R1: No.19/PCDWHP/2011-2002 dt. 28.3.07.

Annexure R2: No.77-2007/SP/VAC/Pet/2008 dt. 24.11.08.

Annexure R3: I.D.Note No.C/13013/18/2007-CVO dt. 01.12.15.

Annexure R4: No.C.13013/18/2001-CVO dt. 04.10.16.

Annexure R5: No.C.14012/1/2017/WCD/SW-1 dt. 05.12.17.

Annexure R6: No.726/DWCD/Estt/B2/2007-08 dt. 07.9.17.

Annexure R7: No.C13013/18/2007-CVO dt. 27.11.17.

Annexure R8: P.P.O.No.29170 dt. 20.12.17.

Annexure R9: No.DAT/GPF/FW/U.VI/2017-18/30 dt. 17.1.18.