

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04 .03.2011

Coram

THE HONBLE MR. JUSTICE VINOD K.SHARMA

W.P.Nos.7043 of 2008, 4068, 5912, 5913, 11211, 11212,
13680, 11854, 26387 of 2009, 15297 of 2010

A.Sundaraganesan ... Petitioner in W.P.No.15297 of 2010

Vs.

The Principal Secretary / Transport Commissioner
Chepauk, Chennai-5

... Respondent

Prayer in W.P.No.15297/2010: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the respondent herein to consider the petitioner for promotion as Superintendent for the year 2008-2009 without reference to and without taking into account the pendency of the charge under rule 17(b) in Government Letter No.58016/Tr.II/07-3 dated 23.08.2007 and the charge pending in T.D.P.No.15/2007 dated 29.06.2007.

For Petitioner : Mr.Ravi Shanmugam

For Respondent : Mr.P.S.Raman, Advocate General
Assisted by Mr.B.Vijay, Govt. Advocate

COMMON ORDER

This judgement shall dispose of the following writ petitions, viz.,

Sl. No.	Case No.	Name of the Petitioner
1	W.P.No.7043 of 2008	N.Balagurunathan
2	W.P.No.4068 of 2009	A.Angamuthu
3	W.P.No.5912 of 2009	R.Dhamodharan
4	W.P.No.5913 of 2009	S.Udhayakumar
5	W.P.No.11211 of 2009	K.Kalyanakumar
6	W.P.No.11212 of 2009	N.Ravichandran
7	W.P.No.13680 of 2009	J.Jayanthi
8	W.P.No.11854 of 2009	P.Shanmugam
9	W.P.No.26387 of 2009	K.Palanisamy
10	W.P.No.15297 of 2010	A.Sundaraganesan

as common question of law is raised in all these writ petitions. However, for the sake of brevity, the facts are being taken from W.P.No.15297 of 2010.

2. The petitioner has invoked the jurisdiction of this Court with a prayer for issuance of a writ in the nature of mandamus directing the respondent to consider him for promotion as Superintendent for the year 2008-2009 without reference to and without taking into account the pendency of the charge memo under rule 17(b) in Government Letter No.58016/Tr.II/07-3 dated 23.08.2007 and the charge pending in T.D.P.No.15/2007 dated 29.06.2007. In some of the cases, the prayer is also for quashing the charge sheet. In view of the fact that all the writ petitioners were consolidated on oral request by the learned counsel for the petitioners, they were allowed to address arguments, to challenge the charge sheet in all the cases.

3. Two questions are arised for consideration in this writ petition, i.e.

i) Whether under Rule 39(d) of Tamil Nadu State and Sub-ordinate Services Rules, a person facing enquiry under Section 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, has enforceable legal right to claim promotion;

ii) Whether in view of facts and circumstances of the case, charge sheet issued under Section 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, is liable to be quashed.

4. The pleadings in the affidavit in support of the writ petition reads that the petitioner joined as a Junior Assistant with the respondent on 24.10.1994, and was promoted as Assistant in the year 1998. It is pleaded by the petitioner that he was fully qualified to be promoted as Superintendent on the crucial date i.e. 15.03.2007 for the year 2007-2008.

5. The case of the petitioner is that he has clean record of service and no punishment has been awarded till date. The Transport Commissioner vide order dated 18.06.2007 published a panel of Assistant fit for promotion as Superintendent in which the name of the petitioner was not included due to the pendency of the charge memo against him under Rule 17(b) of Tamil Nadu Civil Service (Discipline and Appeal) Rules.

6. According to the petitioner, 12 persons were promoted to the post of Superintendent out of whom, some were juniors to the petitioner.

7. The case of the petitioner is that the allegations levelled against the petitioner was of shortage of Rs.14,980/- in collection of fees whereas subsequently charge of corruption was also levelled. Similar allegations were also levelled against the then Regional Transport Officer Thiru. C.Ramalingam, Tmt.P.Malleswari, Superintendent, Thiru V.Singaravelu, Typist, Thiru S.Senthil Arumugam, Junior Assistant and Thiru K.Vadivel, Dispatch Clerk.

8. The case of the petitioner is that the allegations of misconduct are of the year 2003, but the charge sheet against the petitioner was issued after the lapse of 4 years. It is also the case of the petitioner that in spite of the fact that the charge sheet was issued in the year 2007, the enquiry has not been concluded, thereby denying the petitioner the right of promotion to the post of Superintendent.

9. The learned counsel for the petitioner on the facts pleaded above prayed for issuance of writ in the nature of mandamus, by placing reliance on the judgment of the Hon'ble Supreme Court in the case of State of Punjab and others Vs. Chaman Lal Goyal reported in 1995 (2) SCC 570, wherein the Hon'ble Supreme Court was pleased to observe as under:-

" It is more appropriate and in the interest of justice as well as in the interest of administration that the enquiry which had proceeded to a large extent be allowed to be completed. At the same time, it is directed that the respondent should be considered forthwith for promotion without reference to and without taking into consideration the charges or the pendency of the said enquiry and if he is found fit for promotion, he should be promoted immediately. This direction is made in the particular facts and circumstances of the case though we are aware that the Rules and practice normally followed in such case may be different. The promotion so made, if any, pending the enquiry shall, however, be subject to review after the conclusion of the enquiry and in the light of the findings in the enquiry."

10. On consideration, I find that this judgment has no application to the facts of the case, The Hon'ble Supreme Court, on the peculiar facts and circumstances of the said case, passed the order, for considering the claim of Chaman Lal Goyal for promotion. The observation cannot be treated to be a precedent, to hold that the persons facing charge sheet is to be considered for promotion, pending enquiry.

11. The learned counsel for the petitioner placed reliance on Rule 39(d) of the Tamil Nadu State Subordinate Service Rules which reads as under:-

"39. Temporary Promotion :- (a)(i) Where it is necessary in the public interest owing to an emergency which has arisen to fill immediately a vacancy in a post borne on the cadre of a higher category in a service or class by promotion from lower category and there would be undue delay in making such promotion in accordance with the rules, the appointing authority may temporarily promote a person, who possess the qualification prescribed for the post, otherwise than in accordance with the rules.

.....

(d) Where it is necessary to promote an officer against whom an enquiry into allegations of corruption or misconduct is pending the appointing authority may promote him temporarily pending enquiry into the charges against him. The competent authority shall have discretion to make regular promotion in suitable cases."

12. The contention of the learned counsel for the petitioner is that the petitioner is entitled to be considered for promotion under Rule 39(d) reproduced above particularly in view of the fact that there has been inordinate delay in concluding the enquiry.

13. The learned counsel for the petitioner also placed reliance in an interim order dated 24.04.2009 passed by this Court in W.P.No.4068 of 2009 and connected writ petitions, wherein, direction was issued by this Court, qua similarly placed persons to give them temporary promotion, subject to the final outcome of the enquiry, in view of rule 39(d) of the Tamil Nadu State and Subordinate Service rules.

14. The learned counsel for the petitioner then placed reliance on the judgment of the Hon'ble Division Bench of this Court in W.P.No.10854 of 2001 decided on 17.02.2005 (The Principal Chief Conservator of Forests vs. Shanmugham and others) to contend that decision of learned Tamil Nadu Administrative Tribunal, directing the State to consider the claim of promotion, without taking into consideration the disciplinary proceedings, in view of rule 39(d) was upheld, meaning thereby that an employee has a right to be considered for promotion pending enquiry.

15. This contention is totally misconceived. The Hon'ble Division Bench in the facts and circumstances of that particular case, did not like to

interfere with the order passed by learned Tribunal. The reference to rule 39(d) in said case would be "per-incuriam" in view of decision of Hon'ble Supreme Court in the case of C.O.Arumugam and others vs. State of Tamil Nadu (supra) and judgment of Hon'ble Division Bench of this Court in W.P.No.46447 of 2002 decided on 02.02.2006 (The Secretary to Government and others vs. M.Pugalendran and others).

16. The learned counsel for the State opposed the writ by placing reliance on G.O.Ms.No.368 dated 18.10.1993, which lays down, that when charges framed under Rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules are pending against an employee, then the inclusion of his name in panel for promotion is to be deferred, until finalisation of the disciplinary proceedings. The constitutional validity of this G.O. stands upheld by this Court in the case of R.Raghuraman vs. State of Tamil Nadu (W.P.No.39868 of 2006, decided on 01.09.2009).

17. The contention of the learned counsel for the respondent by referring to the G.O.Ms.No.368 is that, the petitioner cannot be considered for promotion, in view of the specific bar vide G.O.Ms.No.368 during the pendency of departmental enquiry under rule 17(b).

18. The learned counsel for the State also placed reliance on the judgment of the Hon'ble Supreme Court in the case of C.O.Arumugam and Others Vs. State of Tamil Nadu and Others reported in 1991 Supp (2) SCC 199, wherein, the Hon'ble Supreme Court while dealing with Rule 39(d) of the General Rules was pleased to observe that:-

" 2. Under Rule 39(d)(i)(ii) only persons possessing qualifications shall ordinarily be considered for temporary promotions and persons against whom a prima facie case of misconduct is indicated cannot be said to be qualified to hold the post.

3. Rule 39 of the General Rules is an exception to the general rule enabling the government to promote certain persons in certain contingency, and in such cases the guidelines for normal promotions cannot be ignored altogether.

4. In any event Rule 39(d) will not give the incumbent the right to be promoted."

19. Reliance was also placed by the learned state counsel on the judgment of the Supreme Court in the case of Union of India Vs. Tejinder Singh reported in (1991) 4 SCC 129, wherein, the Hon'ble Supreme Court has been pleased to lay down that pending departmental enquiry a contemplated enquiry can be a ground for withholding consideration for promotion or the promotion itself.

20. The operative part of the judgment of the Hon'ble Supreme Court reads as follows:-

" It is averred that accordingly the government communicated the adverse remarks to the respondent. He filed his representation and the

same was considered by the competent authority and rejected. It is further averred that thereafter the government approached the Union Public Service Commission to review the proceedings of the Departmental promotion Committee held in September 1985 in accordance with their earlier advice as regard the grading of the respondent for suitability for promotion in the light of the adverse entry in his confidential report for 1982-83 made by the Reporting Officer. It is also averred that the Union Public Service Commission accordingly held a Review Departmental Promotion Committee on August 11, 1986 and graded the respondent 'not yet fit' for promotion. It is said that this fact had been brought to the notice of the appointing authority which had earlier deferred the promotion of the respondent for the reason that a view should be taken later after the departmental proceedings initiated against him had concluded. These subsequent events brought on record put the matter entirely in a different complexion. Faced with the situation, learned counsel appearing for the respondent seeks leave to withdraw the application for interim relief filed by him before the Central Administrative Tribunal, with liberty to pursue such remedy as may be available.

4. The appeal is accordingly allowed and the impugned order passed by the Central Administrative Tribunal directing the Union of India, Ministry of Finance to consider the respondent for promotion to the post of Commissioner of Income Tax, Level II, is set aside. While setting aside the impugned order of the Tribunal we would like to record that the Tribunal had no jurisdiction whatever while dealing with a petition to quash the contemplated departmental enquiry against the respondent, to make an interim order of this nature. We are also not satisfied as to the correctness of the view expressed by the Tribunal that a contemplated departmental inquiry or pendency of a departmental proceeding cannot be a ground for withholding consideration for promotion or the promotion itself. We are not aware of any rule or principle to warrant such a view. As at present advised, we do not subscribe to the view expressed by the Tribunal.

5. We are given to understand that the rights of the respondent are adequately safeguarded by the order of the Central Administrative Tribunal dated March 3, 1986 passed in O.A.No.45 of 1986 directing that one post shall be kept vacant for him with consequential benefits. In view of this, we wish to add that there was no occasion for the Tribunal to make the impugned order directing the Union of India, Ministry of Finance to consider and promote the respondent as Commissioner of Income Tax, Level II, irrespective of whether departmental inquiry was contemplated or pending. This virtually amounted to pre-judging the whole issue before the Tribunal."

21. A Division Bench of this Court in W.P.No.46447 of 2002 (The Secretary to Government, Tamil Development, Culture and Religious Endowments Department, Fort St.George, Chennai-9 and others Vs. M.Pugalendran and another) has been pleased to lay down that

G.O.Ms.No.368 dated 18.10.1993 does not run contrary Rule 39. It has further been held that Rule 39(d) does not give any right to an employee to claim promotion or consideration for promotion, pending enquiry.

22. On consideration, I find that the petitioner cannot claim right to be promoted during the pendency of the departmental enquiry, in view of the judgments of the Hon'ble Supreme Court and the judgment of the Division Bench of this Court, on which reliance is placed on by the learned state counsel representing the respondent.

23. I also agree with the submission of the learned Counsel for the State that a person facing departmental charges under rule 17(b) of the Tamil Nadu Civil Service (Discipline and Appeal) Rules, cannot claim promotion. It is within the power of the state, to withhold such promotion, until incumbent gets exonerated of the charges. The right of employee is protected under the rules, as in case of exoneration, the employee gets entitled to promotion, if found fit from the due date or the date when the juniors are promoted, with all consequential benefits.

24. For the reasons stated, the first question is answered against the petitioner, as the incumbent, facing charges under rule 17(b) of Tamil Nadu Civil Services (Discipline and Appeal) Rules, does not have any legal enforceable right to claim promotion pending enquiry.

25. On the second question, Whether the charge sheet issued to the petitioner is liable to quashed? The contention of the learned counsel for the petitioners that on account of inordinate delay in issuing of charge sheet, the charge memo deserves to be quashed, cannot be accepted. It is well settled law that mere delay in issuing charge sheet, without showing any prejudice caused on account of delay cannot be the ground to quash the charge sheet.

26. It is equally well settled that the Court is not justified to go into the question, whether charges are true, as it would be a matter to be seen on production and evidence, at the time of hearing by the enquiry Office. The enquiry proceedings cannot be quashed at initial stage, in view of law laid down by the Hon'ble Supreme Court in the case of Deputy Inspector General of Police vs. K.S.Swaminathan, reported in (1996) 11 SCC 498.

27. Further in Union of India and another vs. Kunisetty Satyanarayana, reported in (2007) 1 SCT 452, the Hon'ble Supreme Court of India has been pleased to lay down as under:

"It is well settled by a series of decision of this Court that ordinarily no writ lies against a charge sheet or show cause notice vide Executive Engineer, Bihar State Housing Board vs. Ramdish Kumar Singh and others JT 1995 (8) SC 331, Special Director and another vs. Mohd. Ghulam Ghouse and another in 2004 (1) SCT671 (SC), Ulagappa and others

vs. Divisional Commissioner, Mysore and others (2001) 10 SCC 639, State of U.P. vs. Brahm Dutt Sharma and another in AIR 1987 SC 943 etc."

28. The Hon'ble Supreme Court in this very judgment held that in some very rare and exceptional cases, the High Court can quash the charge sheet or show cause notice, if it found to be without jurisdiction, or for some other reason, if it wholly illegal, though normally, the High Court should not interfere.

29. Therefore, it would be necessary to deal with the each of the writ petitioner, to see as to whether a rare case is made out to quash the charge sheet.

30. In these cases, in view of the fact that civil right of the petitioners for being concerned for promotion is effected, it becomes necessary for this Court to see if the charge sheet deserves to be quashed at this stage.

1) W.P.Nos.7043 of 2008, 4068 of 2009 and 15297 of 2010:

i) Charge sheet issued to the petitioners reads as under:

"The following charges are framed against you Tvl.Vadivel, Senthil Arumugam, Sundaraganesan, Shah Navaz, Malleswari, Rajendhran, Balagurunathan, Angamuthu, Sheik Mohammad, A.K.Pugazhendhi and C.Ramalingam (hereinafter referred to as Accused Officer 1 to 11 respectively)

Charge-1

That you, (Accused Officers 1 to 11) while you were working in the office of the Regional Transport Officer, Thanjavur during the period between 01.01.2003 to 10.09.2003 actuated by corrupt and dishonest motive, obtained illegal gratification ranging from Rs.10 to Rs.4,300/- through the touts namely Thiru Shiyam @ Subbiah @ Samuel Subbiah, Tr.Jeyaseelan, Thiru P.Selvaraj, Tr.Baskaran, Tr.Hariharan, Tr.C.Ramamoorthy, Tr.M.Ganesan, Tr.John Kennedy Vijayakumar, Tr.N.Rajasekaran, Tr.Gopal and Tr.Ravichandran (1 to 11) as a motive or reward for discharging your official duties in respect of the day today transactions namely (1) Registration of vehicles, (2) issuing of driving licences (3) Issuing of fitness certificate (4) Transfer of ownership of vehicles (5) granting permits etc...

Thereby you (Accused Officers 1 to 11) acted in a manner unbecoming of Government Servants and violated Rule 20(1) of Tamil Nadu Government Servants Conduct Rules, 1973."

ii) The reading of charge sheet shows that incident is stated to be of period between 01.01.2003 and 10.09.2003, whereas, charge sheet was issued on 09.06.2007, i.e. after more than four years. Therefore, with the passage of time, serious prejudice has been caused to the petitioners, as they have been deprived of their right / chance to produce evidence, specially when the allegations against petitioners are

also totally vague and not specific. Allegations of illegal gratification are to be clear so as to enable the petitioners to effectively defend themselves.

iii) The further contention of the learned counsel for the petitioners is that not only that there has been delay in issuing of charge, but after issuance of charge sheet, in the year 2007, till date, enquiry has also not progressed. Therefore, the continuation of proceedings is nothing, but misuse of process of the Court. There is no explanation forthcoming for the delay in issuing such vague charge sheet, at the time when there was proposal for promotion and petitioners are in the zone of consideration.

iv) The explanation, given by the learned Advocate General that file could only be seen when the cases were considered for further promotion, cannot be accepted, as it is not permissible for the authority to sit over the file on serious allegations of corruption for number of years. Explanation, therefore, deserves to be straightway rejected.

v) The Hon'ble Supreme Court in the case of State of Punjab and others Vs. Chaman Lal Goyal (supra), has been pleased to lay down that whether delay in service of vitiated charges is to be decided by balancing process, i.e., weighing the factors for and against and taking decision on the totality of circumstances.

vi) If this principle is followed in the case in hand, no other conclusion, than the one, that the continuation of proceeding would be wastage of time and misuse of process of Court, as the possibility of holding the petitioners guilty on vague charges, levelled after lapse of so many years, is not at all possible.

vii) The Hon'ble High Court of Punjab & Haryana in the case of State of Punjab vs. Pritam Singh, reported in 1994 (1) SCT 198 has been pleased to lay down that when the charges are not defined under different heads, and nothing is clear, and the charges are vague, then enquiry, enquiry report, as also punishment awarded would be liable to be quashed.

viii) In view of the settled law, the continuation of proceeding is nothing but misuse of process of law.

ix) The Hon'ble Gujarat High Court, in the case of Dalabhai Bhima Shai Patel vs. Deputy Commissioner of Police, reported in 1992 (2) SCT 224, held that charge sheet with vague allegations would, ex-facie, be contrary to service rules, thus, illegal, inoperative and void. The charge sheet issued to the petitioners is ordered to be quashed.
II) W.P.No.26387 of 2009:

i) Charge against petitioner in the writ petition, is that on

08.02.2007, the petitioner allowed four touts namely, 1) Tr.R.Ramadoss, 2) Tr.Mohin Abubakkar, 3) Tr.G.Raja and 4) Tr.R.Purushothaman to operate in the premises of Regional Transport Office, Chennai (South West) who were caught with unaccounted cash of Rs.21,440/- during the surprise check conducted by the District Inspection Cell Officer and Deputy Superintendent of Police, Vigilance and Anti-Corruption, City Special Unit-III, Chennai and not obeyed the instructions of the Transport Commissioner issued in Circular No.174/2000 in Letter No.V/45570/2000 dated 28.08.2000, thereby, failed to maintain absolute integrity and devotion to duty, thereby, violated rule 20(1) and (2) of the Tamil Nadu Government Servant's Conduct Rules, 1973.

ii) The charge memo has been challenged on the ground that though allegations are alleged to be of 08.02.2007, charge sheet was issued on 03.08.2009, i.e. lapse of more than two years and six months. The charge memo cannot be said to be bona fide keeping in view of the fact that it was issued, when the case of the petitioner was under consideration for further promotion. It is also the case of the petitioner that it was not within the power of petitioner to compound offences, thus, on the face of it, allegations levelled cannot be attributed to the petitioner.

iii) It is also pertinent to note here that similar charge sheet issued to other employees, stands quashed by this Court in W.P.No.10166 of 2009 (S.Swaminathan vs. The State of Tamil Nadu and another), decided on 04.08.2010, wherein, this Court was pleased to hold as under:

"8. Though it is well settled position that no writ lies against show cause notice it can be entertained in exceptional cases where the charge memo is without jurisdiction and tainted with any malafide. In this case, the learned counsel for the petitioner has challenged the validity of the charge memo on the ground of inordinate delay and lack of bonafide. It is not in dispute that the delinquency period relates to the year 2005 and the charge memo is issued after three years during 2008. Though the delay cannot be the sole ground to quash the charge memo, the delay coupled with other admitted facts that the petitioner was not in the office premises at the date and time specified in the charge memo would certainly render the charge memo vitiated. Though the official respondents have in para-11 at Page 10 of the counter affidavit filed in support of the vacate stay petition attempted to defend the charge memo by introducing new theory that occurrence for which the charge memo issued is not related to 07.01.2005 alone, but related to period prior to 07.01.2005 and the petitioner was in the habit of entertaining touts to collect compounding fees etc., this Court is not inclined to accept such contention. Both the charges and statement of allegations appended to the charge proved as if the charge is in respect of occurrence found out on the date of surprise inspection i.e. between 4.30 to 9.30 pm. The allegations reads that the petitioner entertained few touts in his office and utilized their

service to collect fees from the Motor Vehicle owners as such the petitioner has failed to maintain absolute integrity and devotion to duty amounting to misconduct unbecoming of a Government servant. That being the nature of the allegations which is on the face of the diary maintained in his official capacity untrue and which render the allegations contained in the charge memo baseless and without jurisdiction, the petitioner need not be driven to face any enquiry for such charges which is totally devoid of any merit at all.

9. In this connection, the attention of this Court is drawn to the order passed by the High Court on 12.10.2007 in W.P.Nos.18517 and 18518 of 2007 filed by one Venkatesan for similar relief to quash the charge memo containing similar allegation and to consequently direct the respondent to promote the petitioner herein to the post of Motor Vehicles Inspector, Grade-I. The copy of the order is enclosed at Pages 13 to 16 of the typed set of papers filed by the petitioner. The facts of the other case dealt with in the order referred herein reveals that the petitioner therein was working as Motor Vehicles Inspector, Grade-I RTO, Dharmapuri and he was on medical leave from 21.11.2005 to 27.11.2005 and he joined duty on 28.11.2005 on which day, there was a surprise inspection made by the officials of the District Cell and the same was followed by the charge memo issued on 04.05.2006, containing three charges. The disciplinary authority not having accepted his explanation appointed by the enquiry officer to hold enquiry into the charge memo which compelled the petitioner to approach this Court by way of Writ Petition for quashing the charge memo. It was contended by the petitioner therein that the allegations contained in the charge memo do not constitute any misconduct to frame charges and the same does fall only under Rule 17(a) and not under 17(b). Such contentions raised on behalf of the petitioner is opposed on the side of the respondents by stating that during the time of surprise inspection 8 brokers were found inside the office, and they were found to be in custody of unaccounted sum of Rs.21,165/-. Our High Court after considering rival submissions made on both sides in para 9 of the Judgment made in W.P.Nos.18517 and 18518 of 2007, has arrived at a conclusion that the presence of brokers inside the office with unaccounted money of Rs.21,165/- will not amount to any irregularity or negligence on the part of the petitioner therein in the discharge of his official duty and no motive can be attributed to the writ petitioner. Our High Court is also pleased to negative the contentions raised on the side of the respondents that proposal is pending with the Government for amending the charge as under section 17(a) by saying even then it will not affect the promotional chances of the petitioner therein.

10. This Court is considering the nature of the allegations raised in the charge and the delay with which the same is issued, constrained to hold that same do not stand the test of reasonableness and if the disciplinary proceedings into such charge is allowed to go on, it is

only a futile exercise prejudicial to the interest of the petitioner and is likely to affect his promotional chances as such, it is the fit case wherein the charge memo is to be necessarily quashed and the authority concerned is further directed to consider his claim for promotion. It is also brought to the notice of this Court that the petitioner in the writ disposed of earlier is also duly considered and he was promoted to the next promotional cadre

11. In my considered view, the petitioner herein stands on better position as the petitioner was not at all in the office premises on the date of the surprise inspection. Under such peculiar circumstances, the impugned charge memo is quashed with further direction issued to the respondent officials to consider the petitioner for the promotion, if he is otherwise, qualified and eligible for promotion."

iv) In view of decision of this Court in W.P.No.10166 of 2009, the charge sheet, issued to the petitioner is ordered to be quashed.

III) W.P.Nos.11211, 11212, 13680 of 2009:

i) The petitioners in W.P.Nos.11211 and 11212 of 2009 are facing enquiry under rule 17(b) on the following charges, which read as under:
Charge-I:

Thiru N.Ravichandran and Thiru K.Kalyanakumar, Motor Vehicle Inspector, Grade-I, while working at the office of the Regional Transport Office, Madurai (South) had failed to maintain the Fitness Certificate Register and watch register as per the direction of the Transport Commissioner.

Charge-II:

Four subsidiary register of Fitness Certificate in 2003 and two in 2004 were not available in the office and reported that they are missing.

Charge-III:

As per Circular No.40/94 dated 30.05.1994, the Government has fixed compounding fees for belated application for F.C. ranging between Rs.100/- to Rs.5000/- the Motor Vehicle Inspector Gr-I acted in favour of Transport Operators so as to evade from renewal of FC and from the payment of compounding fees thereby resulting in huge loss of revenue to the Government.

Charge-IV:

The Omni bus operators are operating their buses by collecting more bus fare from the passengers for their pecuniary gain.

Charge-V:

The Motor Vehicle Inspector Gr-I has failed to obtain periodical returns, statistics and other information in favour of the operators violating condition No.10.

Charge-VI:

The bus is shaped to carry heavy load of luggage at the bottom and top of the vehicle but he failed to notice it at the time of issue of Fitness Certificate.

Charge-VII:

He was keeping private individuals and driving school owners as brokers for collection of mamools in the process of registration, issue of temporary and permanent driving licenses and renewal of Fcs and licences etc.

Charge-VIII:

Unaccounted amount of Rs.8,825/- was seized from Thiru Shajahan, agent and Rs.1,430/- was seized from Thiru Madhan, agent Thiru Balamurugan private individual. Thiru Veerakumar was keeping 12 original Registration Certificate books and Regional Transport Office records without any valid reasons. This shows that they encourage touts.

Charge-IX:

All the Driving School owners were allowed to print the Government forms related to DLR, registration of vehicles etc., and sell them according to their choice. Thus, they failed to curtail such practice.

Charge-X:

No proper account for sale of flags. They had not sold the flags through receipts violating the proceedings of the District Collector, Madurai."

ii) The petitioner in W.P.No. 13680 of 2009 is facing enquiry under rule 17(b) on the following charges, which read as under:

Charge-I:

Unaccounted amount of Rs.8,825/- was seized from Thiru Shajahan, agent and Rs.1,430/- was seized from Thiru Madhan, agent Thiru Balamurugan private individual. Thus she failed to curtail the movement of touts in the office.

Charge-II:

All the Driving School owners were allowed to print the Government forms related to Driving Licences Renewal (DLR), registration of vehicles etc., and sell them according to their choice. Thus, she failed to curtail such practice.

Charge-III:

No proper account for having detained 26 vehicles kept outside the office without any safety. No common register for all vehicles impounded and release of the vehicle was not maintained in the proper form as specifically ordered by the Transport Commissioner, thereby, she failed to maintain absolute integrity and devotion to duty.

iii) The charge sheet was issued on 12.03.2008. The reading of the charge sheet shows that charges are totally vague, and does not connect the petitioners directly with the charges. Charges are of such nature, which would show that right of the petitioners to defend is prejudiced, because of lapse of time, as it will not be possible for the petitioners to remember about the register, maintained in 2003.

iv) Even otherwise, allegations are not specific nor directly connected with the petitioners. Continuation of departmental proceedings, therefore, would be nothing, but misuse of process of law, as it is not likely to result in any positive finding against the petitioners, as it will not open to lead evidence beyond charges framed.

v) Therefore, for the reason stated for quashing the charge sheet in W.P.No.15297 of 2010, the charge sheet is ordered to be quashed.

IV) W.P.No.11854 of 2009:

i) The petitioner in this case challenged the memo of charge sheet, issued to him vide MemoR.No.68145/VB2/2008 dated 06.01.2009.

ii) The ground of challenge of the petitioner is that on the very allegations, the petitioner was criminally prosecuted on the following charges.

"That the said Thiru P.Shanmugam, Motor Vehicles Inspector Grade-I, Krishnagiri had demanded Rs.3,770/- as bribe on 21.05.2003 from the complainant Thiru S.Harikrishnan, the Manager of Sri Annapoorna Automobiles, Krishnagiri for registration of two bullet motor cycles bearing Engine Number 2B 603616-C and 2B 615015-L, which were sold in favour of Thiru Thimmichetti and Thiru Ravichandran of Virudhachalam. The complainant was directed to produce the vehicles on 22.05.2003 and to hand over the bribe money to Thiru Selvam, Tradesman, attached to TNSTC Branch, at Krishnagiri, who was attending fitness certificates work for the Corporation vehicles. Since the purchaser of the vehicles refused to give the bribe amount, the complainant was not willing to give the bribe amount from the company money. Hence he lodged a complaint during the trap proceedings the complainant along with

official witness Thiru P.Krishnan, Zonal D.T.Dharmapuri met Thiru R.Selvam at Motor Vehicles Inspector's Office at Krishnagiri on 22.05.2003 and Thiru R.Selvam demanded and accepted bribe of Rs.370/- from the complainant on the instructions of A1 Thiru P.Shanmugam on 22.05.2003 between 17.40hrs and 17.50hrs in the presence of official witness. Thiru R.Selvam also demanded and accepted Rs.1,000/- from Sri Sairam Driving School, Rs.375/- from Sri Venkateswara Driving School, Rs.500/- from Trinity Matriculation School, Rs.200/- from one Murugesan and bribe on behalf of A1 for doing official duty. Thereby the Accused A1 committed offences punishable under Section 120B IPC and Sections 7, 13(2) r/w 13(1)(c) of PC Act, 1988. Thus he has failed to maintain devotion to duty and committing official misconduct unbecoming of a Government Servant and thereby violated Rule 20(1) of the TNGSC Rules, 1973."

iii) The petitioner was acquitted of the charges by the Criminal Court. It was after the acquittal that the respondents have now started disciplinary proceedings on same charges.

iv) Though it is well settled law that departmental proceedings and criminal proceedings can go together, but it is not permissible to start departmental proceedings after a man is acquitted of those very charges.

v) The impugned charge sheet, therefore, cannot be sustained, in view of law laid down by the Hon'ble Supreme Court in Captain M.Paul Anthony vs. Bharat Gold Mines Ltd and another (AIR 1999 SC 1416), as evidence in departmental proceedings would be the same, which resulted in acquittal of the petitioner.

vi) For the reasons stated, impugned charge sheet is ordered to be quashed.

V) W.P.Nos.5912 and 5913 of 2009:

i) The petitioners in these two cases have been charged under rule 17(b) of the Rules on the following charges:

Charge: (W.P.No.5912/2009)

"Thiru R.Damodharan, Motor Vehicle Inspector Gr.I, Madurai (North) by abusing his official position, allowed mini bus operators to operate their mini buses in the non-permitted routes by violating the permit conditions and caused financial loss to the Government and thereby failed to maintain absolute integrity and devotion to duty and conducted himself in a manner unbecoming of the member of service and thus violated the Rule 20(1) of Tamil Nadu Government Servants' Conduct Rules, 1973."

Charge No.1: (W.P.No.5913/2009)

Thiru S.Udhayakumar, Motor Vehicle Inspector Gr.I, Madurai (South) has signed in the re-registration certificates for the mini buses bearing Regn.No.TN-59 R-1345, in violation of rule 103 of Tamil Nadu Motor Vehicles Rules, which prohibits the alteration of bus and thereby failed

to maintain absolute integrity and devotion to duty and conducted himself in a manner unbecoming of the member of service and thus violated the Rule 20(1) of Tamil Nadu Government Servants' Conduct Rules, 1973."

ii) Charges relate to the period 2001, whereas, charge sheet has been issued on 17.04.2008. The charges are too vague and no explanation forthcoming for the delay in initiation of departmental proceedings. With the passage of time, right of the petitioners to effectively defend themselves is lost, as it is not possible for a person to remember registration of mini buses after so many years. Continuation of proceeding, therefore, would be nothing, but misuse of process of law.

iii) Therefore, for the reasons given to quash charge sheets in W.P.No.15297 of 2010, the impugned charge sheet is ordered to be quashed.

31. Consequently, all the writ petitions are allowed and a writ in the nature of Certiorari is issued, quashing the charge sheets, issued to the petitioners. The respondents are directed to consider the case of the petitioners for promotion in accordance with law.

32. No costs. Consequently, all connected miscellaneous petitions are closed.

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To

The Principal Secretary/
Transport Commissioner
Chepauk,
Chennai 5