

Transport Commissioner, Madras-5 vs A. Radha Krishna Moorthy on 1 December, 1994

Equivalent citations: JT1994(7)SC744, 1995LABLC1749, 1994(5)SCALE59, (1995)1SCC332, AIRONLINE 1994 SC 196, 1995 (1) SCC 332, 1995 AIR SCW 1555, 1995 LAB. I. C. 1749, (1995) 1 CUR LR 377, 1995 SCC (L&S) 313, (1995) 1 SERV LR 239, (1995) 1 SCT 728, (1995) 1 LAB LN 776, (1994) 7 JT 744.2, (1995) 29 ATC 113, (1994) 7 JT 744(2) (SC)

Bench: B.P. Jeevan Reddy, Suhas C. Sen

JUDGMENT

B.P. Jeevan Reddy J.

1. Leave granted. Heard counsel for both the parties.
2. This appeal is preferred against the judgment of the Tamil Nadu Administrative Tribunal allowing the Original Application filed by the respondent and quashing the memo of charges communicated to the respondent.
3. The respondent Radha Krishna Moorthy was working as the Additional Regional Transport Officer, Madras (Central) during the period 20th June, 1984 to 20th March, 1985. In September 1985 he was promoted as Deputy Transport Commissioner. Sometime in the first half of 1989, a Special Audit Wing of the Transport department detected and reported misappropriation of a large amount of Government money in the office of the Regional Transport Officer, Madras (Central) during the years 1983-84 and 1984-85. On the basis of the said report a memo of charges dated 4.6.89 was communicated to the respondent.
4. The memo of charges first sets out the amounts misappropriated under various heads in the said office during the aforesaid years, and then follow paragraphs 4, 5 and 6, which read as follows:
 4. During the above period, you Thiru. A. Radhakrishnamurthy were performing the duties and responsibilities in the above office as Additional Regional Transport Officer. Your duties included money transactions and ensuring that accounts were prepared correctly and preserved for production before the audit party whenever necessary. You have failed in your duties. Consequently embezzlement has occurred resulting in loss of revenue to Government to the tune of Rs. 5,34,124/- in the year 1983-84. Thus you have committed grave offence. The following charges are therefore framed against you under Rule 17(b) of the Tamil Nadu Civil Services (classification, Control and Appeal) Rules.

(i) That you indulged along with eight other officials referred to above in the act of misappropriation of Government funds by falsification of accounts by indicating false amounts of fees in the triplicate copies of cash receipts which were lesser than the amounts which were actually collected from the public and noted in the duplicate copies of cash receipts received along with the respective applications to make it appear that only appropriate permit fees due to Government were collected. You with the connivance of other officials with the malafide intention of cheating the Government have thus misappropriated Government money.

(ii) That by the fraudulent removal of cash receipt books and cash books from the premises of Regional Transport officer, Madras (Central) and also by your intentional failure in arranging to produce the relevant accounts before the officials from unearthing proof of further misappropriation of Government money, (iii) And that you and other officials are responsible for pecuniary loss caused to the State Government by above acts of misappropriation and are thus liable for recovery of the amounts i.e Rs. 5,54,124/- in the year 1983-84 and Rs. 5,21,914/- in the year 1984-85.

5. You are hereby directed to submit your written statement of defence to this charge memo within 15 days from the date of receipt of this memo of charge. You are also informed that if no written reply is received, it will be presumed that you have no explanation to offer and further action will be proceeded with, on merits.

6. The prescribed questionnaire Form is enclosed and you are directed to furnish replies to the same indicating specifically whether you desire an oral enquiry or wish to be heard in person or both.

5. Though the enquiry commenced into the said charges it was not concluded by the year 1992, in which year the respondent approached the Tribunal for quashing the charges. Three grounds were urged by the respondent in support of his prayer aforesaid:

(1) that the charges communicated are vague and are not elucidated by the statement on particulars or in any other manner;

(2) the disciplinary proceedings have been initiated by an authority lower than the appointing authority of the respondent and, therefore, incompetent;

(3) the charges are unsustainable and untrue.

6. The Tribunal has recorded that inspite of due opportunity being given to the appellant (respondent in the Original Application) for filing his counter, he did not file any counter. The Tribunal quashed the charges on till the three grounds.

7. So far as the truth and correctness of the charges is concerned, it was not a matter for the Tribunal to go into-more particularly at a stage prior to the conclusion of the disciplinary enquiry. As pointed

out by this Court repeatedly, even when the matter comes to the Tribunal after the imposition of punishment, it has no jurisdiction to go into truth of the allegations/charges except in a case where they are based on no evidence i.e., where they are perverse. The jurisdiction of the Tribunal is akin to that of the High Court under Article 226 of the Constitution. It is power of judicial review. It only examines the procedural correctness of the decision-making-process. For this reason the order of the Tribunal insofar as it goes into or discusses the truth and correctness of the charges, is unsustainable in law.

8. Insofar as initiation or enquiry by an officer subordinate to the appointing authority is concerned, it is well settled now that it is unobjectionable. The initiation can be by an officer subordinate to the appointing authority. Only the dismissal/removal shall not be by an authority subordinate to the appointing authority. Accordingly it is held that this was not a permissible ground for quashing the charges by the Tribunal.

9. Insofar as the vagueness of the charges is concerned we find that it deserves acceptance. It is asserted by Shri Vaidyanathan, learned Counsel for the respondent that except the memo of charges dated 4.6.89, no other particulars of charges or supporting particulars were supplied. This assertion could not be denied by the learned Counsel for the appellant. A reading of charges would show that they are not specific and clear. They do not point out clearly the precise charge against the respondent, which he was expected to meet. One can understand the charges being accompanied by a statement of particulars or other statement furnishing the particulars of the aforesaid charges but that was not done. The charges are general in nature to the effect that the respondent alongwith eight other officials indulged in misappropriation by falsification of accounts. What part did the respondent play, which account did he falsify or help falsify, which amount did he individually or together with other named persons misappropriate, are not particularised. The charge is a general one. It is significant to notice that respondent has been objecting to the charges on the ground of vagueness from the earliest stage and yet he was not furnished with the particulars. It is brought to our notice that respondent's name was not included in the schedule appended to G.O.Ms. 928 dated 25.4.88 mentioning the names of officials responsible for falsification of accounts and misappropriation and that he is also not made an accused in the criminal proceedings initiated in that behalf.

10. We are, therefore, of the opinion that the judgment of the Tribunal is right insofar as it holds that the charges communicated to the respondent are vague. In the ordinary course we would have directed the disciplinary authority or the authority which framed the charges to particularise the charges and then to proceed with the enquiry but it appears that the respondent has hardly about seven or eight months to go for retirement. Having regard to the facts and circumstances of the case, we are of the opinion that the matter should end here.

11. Accordingly the appeals are dismissed on the ground indicated above. No costs.