

THE REGISTRAR OF CO-OPERATIVE SOCIETIES,  
MADRAS AND ANR.

v.

F.X. FERNANDO

FEBRUARY 15, 1994

[M.N. VENKATACHALIAH, C.J., S. MOHAN AND  
FAIZAN UDDIN, JJ.]

*Tamil Nadu Civil Service (Classification Control & Appeal) Rules  
Rules 12 & 17(b)—Proceedings under Rule 17(b) initiated by the appellant  
as Head of Department—Power assumed under amended Rule 12—Failure  
of Tribunal to take note of the said amendment effect of—Held proceedings  
not vitiated.*

*Delay in submitting report by an authority—Consequential delay in  
issuing of charge memo—Different authorities involved—Authority initiating  
proceedings not to be faulted.*

**The Director, Vigilance and Anti-Corruption Department received certain complaints against the Respondent alleging some irregularities committed by the respondent in the capacity of Joint Registrar/Special Officer of a Cooperative whole sale store. On receipt of the said complaints, the Director, Vigilance Department approached the appellant for inquiry. The appellant furnished all the relevant material to the Vigilance Department and requested them to complete the enquiry by 31.12.1987. However, the enquiry could not be completed within that time and before the report of the said enquiry could be submitted, the State Government amended Rule 12 of Tamil Nadu Civil Service (Classification, Control and appeal) Rules and inserted sub- Rule(2) therein. By virtue of the said amendment, the power to impose minor penalties came to be conferred on the Heads of the Departments also.**

**On receipt of the report, the State Government directed the appellant to take disciplinary action against the respondent. Accordingly, the appellant initiated disciplinary proceedings against the respondent, asking him to appear before an enquiry officer. The respondent, initially participated in the proceeding but later on, represented to the appellant that the enquiry officer was biased. The appellant rejected the representations**

- A** and directed him to appear before the enquiry officer. The Respondent approached the Administrative Tribunal for quashing the order of the appellant requiring him to appear before the enquiry officer. The Tribunal set aside the order impugned before it and overlooking the amendment in Rule 12, took the view that the proceedings under Rule 17(b) could be initiated only by a person empowered to impose minor penalties specified in that Rule, and that since the appellant was not empowered to do so, he was not competent to initiate disciplinary proceedings against the respondent. The Tribunal also found that there was a long delay in initiating departmental proceedings.
- B**
- C** The appellant in its appeal to this Court challenged the correctness of the aforesaid finding on the ground that the Tribunal had completely ignored G.O.Ms. 185 dated 17.3.88 by which the Government had delegated the power to impose minor penalties to the Head of Departments and that the Government itself, by a subsequent G.O.Ms. 371 dated 20.12.1988, had directed the appellant to frame charges against the respondent and initiate enquiry.
- D**

**Allowing the Appeal, this Court**

- E** HELD: 1. The finding of the Tribunal that the appellant is not empowered even to impose the minor penalties and therefore initiation of disciplinary proceeding by him by issue of a charge memo and proceeding further by appointment of Enquiry Officer is beyond his powers and therefore on this ground alone the proceedings have to be set aside, is clearly wrong since it has not taken note of the amendment made to Tamil Nadu Civil Service (Classification, Control & Appeal) Rules amending Rule 12 whereunder the Heads of the Departments like the appellant are empowered to impose minor penalties. Moreover, the appellant did not initiate the disciplinary action on his own. The State Government directed the appellant to take disciplinary action against the respondent. Accordingly he issued the charge memo. [963-C-E]
- F**
- G** *P.V. Srinivasa Sastry v. Comptroller and Auditor General, A.I.R. (1993) S.C. 1321, referred to.*

- H** 2. The finding that there is long delay in initiating of departmental proceedings cannot be supported because in this case the Directorate of Vigilance and Anti-Corruption had not been prompt. Therefore, the appel-

lant cannot be faulted. [967-B]

A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 832 of 1994.

From the Judgment\* and Order dated 19.3.91 of the Tamil Nadu Administrative Tribunal, Madras in O.A. No. 1294 of 1990

B

P.R. Seetharaman and P.N. Ramalingam for the Appellants.

Sundra Varadan, A.T.M. Sampath and Ms. Pushpa Rajan for the Respondent.

C

The Judgment of the Court was delivered by

MOHAN, J. 1. Leave granted.

The facts leading to present appeal are as under:

The respondent joined the Co-operative Department as Deputy Registrar in the year 1969. He was promoted as Joint Registrar in 1981. He became the Joint Registrar/Special Officer of the Park Town Co-operative Whole-sale Stores Ltd. in 1984.

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2. During his tenure as the Joint Registrar/Special Officer of Park Town Co-operative Whole Sale Stores Ltd. complaints were received by the Director, Vigilance and Anti-Corruption Department. The said Department approached the Registrar, Co-operative Societies to furnish the details to investigate into the alleged irregularities. Thereupon, the Registrar furnished the relevant material. The Vigilance and Anti-Corruption Department was requested to complete the enquiry on or before 31.12.1987. However, no progress was made in that direction.

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3. The Government of Tamil Nadu by its G.O. Ms. No. 185 Personnel and Administrative Reforms Department dated 17.3.1988 amended Rule 12 of the Tamil Nadu Civil Service (Classification, Control and Appeal) Rules. Under the said G.O., the powers imposing minor penalty came to be conferred on the Heads of the Departments.

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4. Finally, the Vigilance and Anti-Corruption department submitted its detailed report. On an examination of the same, the Government issued G.O. Ms. No. 371 dated 20.12.1988 directing the Registrar to take discipli-

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A nary action against the respondent. Thereupon the Registrar issued the charge memo dated 20.3.1989. The Registrar (Marketing, Planning and Development) was appointed as Enquiry Officer to conduct the enquiry. The respondent appeared before the Enquiry Officer from 24.1.1990 to 20.3.1990. He also cross-examined one witness.

B 5. On 20.3.1990, he made a representation to the appellant alleging bias against the Enquiry Officer. The complaint was rejected. Again, another representation to the same effect was made. That was also rejected on 8.5.1990 and the Registrar called upon the respondent to appear before the Enquiry Officer. At this stage, the respondent moved an application  
C O.A. No. 1294 of 1990 before the Tamil Nadu Administrative Tribunal to quash the order dated 8.5.1990 calling him by Registrar to appear before the Enquiry Officer.

D 6. By the impugned order dated 19.3.1991, the Tribunal held that the proceedings under Rule 17(b) were liable to be set-aside on the ground that the Registrar of Co-operative Societies was not empowered to impose even minor penalty. However, it was open to the Government as Disciplinary Authority to initiate fresh action by issuing a charge memo and conclude the proceedings within a period of six months. Aggrieved by this order, the present civil appeal has come to be preferred.

E 7. The learned counsel for the appellant would urge that the Tribunal has completely ignored G.O. Ms. 185 dated 17.3.1988 by which the Government had delegated the power to the Heads of the Departments to impose minor penalties.

F 8. Besides, by G.O. Ms. 371 dated 20.12.1988, the Government directed the Registrar to frame charges against the respondent and to initiate enquiry. Without regard to this G.O., the Tribunal has held as though Registrar on his own under Rule 17(b) has issued a charge memo for which there was no power.

G 9. The learned counsel for the respondent would submit that if the Disciplinary Authority is the Government, the Registrar is not competent to frame charges and direct enquiry proceedings.

H 10. We will now proceed to consider whether the impugned order of the Tribunal is correct. The finding of the Tribunal is as follows:

"The Joint Registrar of Co-operative Societies is a state service officer and the disciplinary authority is the State Government. Therefore, proceedings under Rule 17(b) of the T.N.C.S. (CA) Rules can be initiated only by the person empowered to impose the penalties specified in that rule. The rules also contain a provision that an authority competent to impose the penalties mentioned in Rule 17(a) may institute a disciplinary action in respect of major penalties also. However, in this case, the Registrar of Co-operative Societies *is not empowered even to impose the minor penalties and therefore initiation of disciplinary proceeding by him by issue of a charge memo and proceeding further by appointment of Enquiry Officer is beyond his powers and therefore on this ground alone the proceedings have to be set aside.* It is open to the disciplinary authority viz., the Government to initiate action afresh by issuing the charge memo and after obtaining the written statement of defence of necessary by designating the Enquiry Officer." (emphasis supplied)

11. This finding is clearly wrong since it has not taken note of the amendment made to Tamil nadu Civil Service (Classification, Control and Appeal) Rules amending Rule 12 whereunder the Heads of the Departments are enable to impose minor penalties. We will now extract both original Rule 12 and the notification issued in G.O. Ms. No. 185, Personnel and Administrative Reforms (Personnel -N) Department, dated 17.3.1988 amending the said rule:

"12. The State Government may impose any of the penalties specified in items (i) and (iii) to (viii) in rule 8 on members of the State Service:

Provided that if the Governor of Madras is himself the appointing authority for any service or a class or category thereof; he may himself impose any of the said penalties on members of that service, class or category, as the case may be:

Provided further that in the case of the members of the Services specified in column (I) the of Appendix IV to these rules, the authority which may impose any of the penalties mentioned in items (i), (iii) so far as it relates to withholding of increments and (v) in rule 8 shall be the authorities specified in the corresponding

A entries in columns (2), (3) and (4) thereof."

"NOTIFICATION

B In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Governor of Tamil Nadu hereby makes the following amendment to the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, in volume-I of the Tamil Nadu Service Manual, 1977:—

AMENDMENT

C In the said Rules, Rule 12 shall be numbered as sub rule (1) of that rule and after sub-rule (1) as so re-numbered, the following sub-rule shall be added; namely:—

D "(2) Notwithstanding anything contained in these rules and in Appendix IV, the Heads of Departments concerned may impose any of the penalties mentioned in items (i), (iii) in so far as it relates to withholding to increments and (v) in rule 8 on all members of the State Service other than such members who are immediately below such Heads of Departments."

E 12. The punishments that are referred to above are found in Rule 8 of Madras Civil Services (Classification, Control and Appeal) Rules as under:

"8. (i) Censure.

F (iii) Withholding of increments or promotion, including stoppage at an efficiency bar.

(v)(a) Recovery from pay of the whole or part of any pecuniary loss caused to the State Government or the Central Government or to a local body by negligence or breach of orders, or

G (b) Recovery from pay to the extent necessary of the monetary value equivalent to the amount of increments ordered to be withheld, where such an order cannot be given effect to.

H (c) Recovery from pay to the extent necessary of the monetary value equivalent to the amount of reduction to a lower stage in a

time-scale ordered where such an order cannot be given effect to. A

Explanation- In cases of stoppage of increment with cumulative effect, the monetary value equivalent to three times the amount of increments ordered to be withheld may be recovered.

13. This is not a case in which a Registrar has taken disciplinary action on his own. The Government of Tamil Nadu by G.O. Ms. 371 dated 20.12.1988 directed the appellant to take disciplinary action against the respondent for the following irregularities: B

"He appointed candidates for the post of Salesmen to the newly opened fair prices shops of Park Town Co-operative Whole Sale Stores, Madras during 1984-85 directly without being sponsored by the Employment Exchange and thereby violated G.O. Ms. No. 1138, Labour and Employment Department, dated 25.5.1978, and the instructions given by the Registrar of Co-operative Societies in Lr. No. 149614/84 PDS2, dated 26.9.1984. C D

He had violated departmental instructions and purchased consumer goods such as rice, tamarind and chillies from traders at higher rates without placing orders through joint purchase committee meetings as prescribed by the Registrar of Co-operative Societies circulars etc. and thereby conferred undue pecuniary advantages to the private traders." E

14. It was on the basis of this G.O., on 20.3.1989 the Registrar issued the charge memo. In this connection, it is worthwhile to refer to a recent decision of this Court reported in AIR (1993) SC 1321 *P.V. Srinivasa Sastry v. Comptroller and Auditor General*. The relevant observations at pages 1323-24 are as under: F

"...But Art. 311(1) does not say that even the departmental proceeding must be initiated only by the appointing authority. However, it is open to Union of India or a State Government to make any Rule prescribing that even the proceeding against any delinquent officer shall be initiated by an officer not subordinate to the appointing authority. Any such Rule shall not be inconsistent with Art. 311 of the Constitution because it will amount to providing an additional safeguard or protection to the holder of a civil H

A post. But in absence of any such Rule, this right or guarantee does not flow from Art. 311 of the Constitution. It need not be pointed out that initiation of a departmental proceeding *per se* does not visit the officer concerned with any evil consequences, and the framers of the Constitution did not consider it necessary to guarantee even that to holders of civil posts under the Union of India or under the State Government. At the same time this will not give right to authorities having the same rank as that of the officer against whom proceeding is to be initiated to take a decision whether any such proceeding should be initiated. In absence of a Rule, any superior authority who can be held to be the controlling authority, can initiate such proceeding.

In the case of *State Madhya Pradesh v. Shardul Singh*, [1970] 1 SCC 108, the departmental enquiry had been initiated against the Sub-Inspector of Police by the Superintendent of Police, who sent his inquiry report to the Inspector-General, who was the appointing authority. The Inspector-General of Police dismissed the officer concerned from the service of the State Government. That order was challenged on the ground that the initiation of the departmental enquiry by the Superintendent of Police was against the mandate of Art. 311(1) of the Constitution. This contention was accepted by the High Court. But this Court said:

"We are unable to agree with the High Court that the guarantee given under Art. 311(1) includes within itself a further guarantee that the disciplinary proceedings resulting in dismissal or removal of a civil servant should also be initiated and conducted by the authorities mentioned in that Article.".....

Although Art. 311 of the Constitution does not speak as to who shall initiate the disciplinary proceedings but, as already stated above, that can be provided and prescribed by the Rules. But if no Rules have been framed, saying as to who shall initiate the departmental proceedings, then on the basis of Art. 311 of the Constitution it cannot be urged that it is only the appointing authority and no officer subordinate to such authority can initiate the departmental proceeding. In the present case, it was not brought to our notice that any Rule prescribes that the Accountant

General, who is the appointing authority, alone could have initiated a departmental proceeding." A

15. Then again the finding that there is long delay in initiating of departmental proceedings cannot be supported because *in this case* the Directorate of Vigilance and Anti-Corruption had not been prompt. Therefore, the appellant cannot be faulted. Accordingly, we set-aside the order of the Tribunal and direct that the matter be proceeded with from the stage at which it was left. It is a settled principle of law that justice must not only be done but must be seen to be done. Therefore, we would direct that another Enquiry Officer be appointed in order to remove any apprehension of bias on the part of respondent. The Civil Appeal will stand allowed with no cost. B

J.B.

Appeal allowed.