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7. In the instant case, the accused had illicit intimacy with the wife of PW 1. From this it can be said that there was hostility between PW 1 and the accused. On the fateful day PW 3, the mother of the deceased and the mother of the accused were quarrelling with each other, and even by then the accused hearing the quarrel came out of his house armed with a dagger. Seeing this PW 1 went and brought the deceased. Then the accused shouted that: "You have defamed me. I would not leave you. I will kill." Saying this he stabbed on the left side of the chest of the deceased and the deceased fell down and died instantaneously. It is important to note that there was neither a quarrel nor a fight between the deceased and the accused. The words uttered by the accused against the deceased followed by the stabbing with the dagger on the left side of the chest of the deceased, would clearly indicate that he intended to cause that particular injury which was objectively found to be sufficient in the ordinary course of nature to cause death.

8. From all the above facts, there is no doubt whatsoever that the accused intended to cause that particular injury on the chest which necessarily proved fatal. Therefore clause 3rdly of Section 300 IPC is clearly attracted. The High Court erred in holding that "the accused did not intend to cause his death by inflicting the injury on the chest because there was no premeditation and therefore the offence would be culpable homicide". This view of the High Court is not correct and as discussed above clause 3rdly of Section 300 IPC is clearly attracted. For all these reasons we set aside the judgment of the High Court and restore the judgment of the trial court convicting the accused under Section 302 IPC and sentencing him to undergo imprisonment for life. Accordingly the appeal is allowed.

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(BEFORE B.P. JEEVAN REDDY AND SUHAS C. SEN, JJ.)

TRANSPORT COMMISSIONER, MADRAS-5 .. Appellant;

*Versus*

A. RADHA KRISHNA MOORTHY .. Respondent.

Civil Appeals Nos. 8561-62 of 1994<sup>†</sup>, decided on December 1, 1994

**A. Service Law — Departmental enquiry — Charge-sheet — Correctness of the charges — Held, not subject to judicial review prior to conclusion of the departmental enquiry — Even after the conclusion of the departmental enquiry, the scope of judicial review is restricted to charges based on no evidence — Administrative Tribunals Act, 1985 — Ss. 14 and 15 — Constitution of India, Art. 226 — Administrative Law — Judicial review**

*Held :*

The truth and correctness of the charges was not a matter for the Tribunal to go into — more particularly at a stage prior to the conclusion of the disciplinary enquiry. Even when the matter comes to the Tribunal after the imposition of

<sup>†</sup> From the Judgment and Order dated 5-1-1993 of the Tamil Nadu Administrative Tribunal, Madras in O A No 4068 of 1992

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a 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 Administrative Tribunal is akin to that of the High Court under Article 226 of the Constitution. It has 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. (Para 7)

b B. Service Law — Departmental enquiry — Authority competent to initiate — Initiation of departmental enquiry by an officer subordinate to the appointing authority, held, unobjectionable (Para 8)

c C. Departmental enquiry — Charge-sheet — Judicial review of, on the ground of vagueness of charges — Legality — Administrative Tribunals Act, 1985, Ss. 14 and 15 (Paras 9 and 10)

d D. Service Law — Departmental enquiry — Charge-sheet — Vague charges — Validity — Charge of indulging along with other officials in misappropriation by falsification of accounts — In absence of specification of the part the delinquent played, the account which he falsified or helped to falsify and the amount which he, individually or together with other named persons, misappropriated held, the Tribunal was right in holding such charges to be vague and quashing the charge memo — T.N. Civil Service (CCA) Rules, R. 17(b) (Paras 2, 9 and 10)

e E. Service Law — Departmental enquiry — Charge-sheet — Grievance against vagueness of charges — Relief — Ordinarily, direction for particularising the charges and then proceeding with the enquiry would have been given but in view of imminent retirement of the delinquent (within seven or eight months) matter directed to end there — Relief — Retirement (Para 10)

Appeals dismissed

H-M/13871/CLA

e Advocates who appeared in this case :

A. Mariarputham and Ms Aruna Mathur, Advocates, for the Appellant;

C.S. Vaidyanathan, Senior Advocate (K.V. Mohan, Advocate, with him) for the Respondent.

The Judgment of the Court was delivered by

f B.P. JEEVAN REDDY, J.— 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.

g 3. The respondent Radha Krishna Moorthy was working as the Additional Regional Transport Officer, Madras (Central) during the period 20-6-1984 to 20-3-1985. 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 4-6-1989 was h 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. Radhakrishnamoorthy were performing the duties and responsibilities in the above office as Additional Regional Transport Officer. Your duties included money transactions and ensuing 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 5,54,124 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 mala fide 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

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Tribunal for quashing the charges. Three grounds were urged by the respondent in support of his prayer aforesaid:

- a (1) that the charges communicated are vague and are not elucidated by the statement of 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.

b 6. The Tribunal has recorded that in spite 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 all the three grounds.

c 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.

d 8. Insofar as initiation of 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.

e 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 4-6-1989, 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 along with 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

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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 GOMs 928 dated 25-4-1988 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. a

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. b

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

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(BEFORE B.P. JEEVAN REDDY AND SUHAS C. SEN, JJ.) d

STATE OF U.P. AND ANOTHER . . . Appellants;

*Versus*

ABHAI KISHORE MASTA . . . Respondent. e

Civil Appeal No. 8497 of 1994<sup>†</sup>, decided on December 1, 1994

**A. Service Law — Compulsory retirement — Order of, passed during pendency of departmental enquiry — Nature of — Such order, held, not necessarily penal — Its true nature is to be decided on verification of relevant record or material on which the order is based — Case law discussed — Matter remitted to High Court to determine the true nature of the order — Fundamental Rule 56(j) (Paras 7 and 12)** f

*J.N Bajpai v. State of U.P.*, (1990) 8 Lucknow Civil Decisions 149, *overruled*

*State of U.P. v. Madan Mohan Nagar*, (1967) 2 SCR 333 : AIR 1967 SC 1260; *Ram Ekbal Sharma v. State of Bihar*, (1990) 3 SCC 504 : 1990 SCC (L&S) 491 : (1990) 2 SCR 679, *referred to*

**B. Service Law — Departmental enquiry — Enquiry report — Non-supply of — Effect — Punishment of reduction in rank imposed prior to decision in Ramzan Khan case — Held, could not be annulled merely on the ground of non-supply of enquiry report — Natural justice — Hearing — Reduction in rank (Para 6)** g

*Managing Director, ECIL v. B. Karunakar*, (1994) 4 SCC 727 : 1993 SCC (L&S) 1184 : (1993) 25 ATC 704 : JT (1993) 6 SC 1, *followed*

*Union of India v. Mohd. Ramzan Khan*, (1991) 1 SCC 588 : 1991 SCC (L&S) 612 : AIR 1991 SC 471, *explained and distinguished* h

<sup>†</sup> From the Judgment and Order dated 9-4-1993 of the High Court of Allahabad in W.P. No. 1518 of 1990 (SB)