

**M. Devendran Vs. the Director Tamil Nadu Fire and Rescue Services**

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**Court :** Chennai

**Decided On :** Nov-08-2005

**Reported in :** (2006)1MLJ40

**Judge :** A. Kulasekaran, J.

**Acts :** Prevention of Corruption Act; Tamil Nadu Civil Services (Discipline and Appeal Rules) - Rule 17(1)

**Appeal No. :** Writ Petition No. 33248 of 2005 and WMP. No. 36211 of 2005

**Appellant :** M. Devendran

**Respondent :** The Director Tamil Nadu Fire and Rescue Services

**Advocate for Def. :** Suresh Viswanath, Government Adv.

**Advocate for Pet/Ap. :** R. Thiagarajan, Senior Counsel

**Judgement :**

ORDER

**A. Kulasekaran, J.**

1. This Writ Petition has been filed seeking for the issuance of a Writ of Certiorari calling for the records pertaining to the order in Rc.No.04/Camp/dfrs/2003, dated 6.10.2005, issued by the respondent and quash the same.

2. Learned Senior Counsel appearing for the writ petitioner submits that pursuant to the conviction of the petitioner for the offences under the Prevention of Corruption Act, an Appeal has been filed by him, in which suspension of sentence is ordered, thereafter the respondent has issued a notice dated 6.10.2005 which is impugned in this Writ Petition, that in the said notice, the respondent has revealed the mind that it has decided to take departmental action against the petitioner on the basis of the facts which led to the conviction and accordingly arrived at a provisional conclusion to dismiss the petitioner from service, which discloses prejudging the things and prayed to quash the said notice.

3. On the above said contention, I heard the learned Government Advocate appearing for the respondent.

4. Paragraph 2 of the impugned communication reads as under:-

'Therefore, under Rule 17(c)(i)(1) of the Tamil Nadu Civil Services (Discipline and Appeal Rules), it has been decided to take departmental action against you on the basis of the facts which led to your conviction and accordingly arrived at a provisional conclusion to dismiss you from the service of the State Government. You are hereby directed to show cause within fifteen days from the date of receipt of this notice as to why you should not be dismissed from the service of the State Government on the basis of the facts which led to your conviction. You are informed, that if your explanation is not received within the period specified above, it will be presumed that you have no explanation to offer and further course of action will be taken on the merits of the case.'

5. Rule 17(c)(i)(1) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, reads as follows:-

'Rule 17(c) Procedure in the Case of Conviction of A Government Servant:- (i)(1) The requirements of sub-rule (b) shall not apply where it is proposed to impose on a member of a service any such penalty as is referred to in clause (i) of that sub rule on the basis of facts which have led to his conviction in a criminal court (whether or not he has been sentenced at once by such court to any punishment); but he shall be given a reasonable opportunity of making any representation that

he may desire to make and such representation, if any, shall be taken into consideration before the order imposing the penalty is passed.'

6. Thus, it is seen from the above said Rule 17(c)(i)(1) that where it is proposed to impose on a member of a service any such penalty as is referred to in clause (i) of the sub rule on the basis of facts which have led to his conviction in a criminal court (whether or not he has been sentenced at once by such court to any punishment); but he shall be given a reasonable opportunity of making any representation that he may desire to make and such representation, if any, shall be taken into consideration before the order imposing the penalty is passed. Whereas in this case, the respondent in the impugned communication has prejudged the things and has provisionally come to the conclusion to dismiss the petitioner from service which is contrary to the Rule referred to above. Hence the impugned communication is quashed. However, liberty is given to the respondent to issue a fresh notice in accordance with law.

7. Writ Petition is ordered accordingly. Consequently, connected WPMP is closed. No costs.

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