

**(2011) 08 MAD CK 0417**

**Madras High Court**

**Case No:** Writ Petition No. 5647 of 2007

Jerome Durairaj

APPELLANT

Vs

The Commandant, T.N. Special  
Police IV Battalion, The Deputy  
Inspector General of Police and  
The Director General of Police

RESPONDENT

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**Date of Decision:** Aug. 19, 2011

**Acts Referred:**

- Central Civil Services (Classification, Control and Appeal) Rules, 1965 - Rule 27(2)
- Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 - Rule 23(1)
- Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 - Rule 15A(3)

**Hon'ble Judges:** N. Paul Vasanthakumar, J

**Bench:** Single Bench

**Advocate:** K. Venkataramani for T.M. Ayngaraprabhu, for the Appellant; V. Jayaprakashnarayanan, Additional Government Pleader, for the Respondent

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**Judgement**

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N. Paul Vasanthakumar, J.

The prayer in the writ petition is to quash the order of punishment imposed against the Petitioner postponing the increment for one year with cumulative effect by order dated 3.4.2006 of the first Respondent, confirmed in appeal by the second Respondent by order dated 22.5.2006 and modified in review as postponement of increment for one year without cumulative effect by order dated 1.2.2007 of the third Respondent.

2. The brief facts necessary for disposal of the writ petition are as follows:

(a) Petitioner was recruited as Grade-II Police Constable in the Tamil Nadu Special Police Battalion and posted at Kovaipudur, Coimbatore, on 24.5.1999 after being

selected by the Tamil Nadu Uniformed Services Recruitment Board. After the institutional training, Petitioner opted to serve in the Radio Telephone Branch (signal group). Petitioner was promoted as Nayak in the said branch in January, 2003 and further promoted as Havildar during December, 2006. It is claimed that the Petitioner has received more than 35 rewards and has No. adverse remarks.

(b) While the Petitioner was serving as Havildar in the Tamil Nadu Special Police 4th Battalion, Kovaipudur, Coimbatore, he was allotted a quarters in the Battalion premises, where he stayed with his family.

(c) On 3.9.2005 at about 24.00 hours (in the midnight) when he was in his residence at the Police Quarters, there was a check-in roll call issued by the Assistant Commandant. According to the Petitioner, as he was residing in the Tamil Nadu Special Police Battalion quarters, he need not appear for check-in roll call, however, he was compelled to attend the same on the alleged ground that few of the policemen, who were staying in the barracks as bachelors, have chosen to drink and caused nuisance in that area.

(d) It is the case of the Petitioner that the nature of his work in the Radio Telephone is to sit for more than four to five hours everyday continuously due to which gastric problem developed, besides he was suffering from back pain and nervous disorder. He took allopathy treatment initially and the said treatment having no effect, he shifted his treatment to Ayurvedic system and the Ayurvedic Doctor prescribed Ayurvedic medicine viz., Dasamoolarishtam, Chiriviluda Khasayam and Drakasha Khasayam and he was advised to take the said medicine during bed time, so that he will get sound sleep.

(e) The Petitioner appeared for the check-in-roll call and he was subjected to medical examination. He alongwith 350 policemen were subjected to clinical examination and the Petitioner and five others were sent for medical examination to find out whether they have consumed liquor.

(f) According to the Petitioner, Ayurvedic medicine prescribed by the Ayurvedic Doctor contains small percentage of Alcohol. Petitioner's blood and urine was tested and small percentage of alcohol was found and therefore he was proceeded departmentally in P.R. No. 29/2005 along with others. The charges levelled against the Petitioner are that on 3.9.2005 at 00.45 hours when the Assistant Commandant of the Battalion conducted the check-in roll call he found that the Petitioner was smelling alcohol and medical examination revealed that the Petitioner consumed alcohol and therefore he committed dereliction of duty and irreprehensible conduct.

(g) On 10.12.2005 by way of explanation, Petitioner denied the charges stating that he was on rest at that time and he took Ayurvedic medicine at about 21.00 hours after the meals while he was residing at the quarters, that too as per the prescription of the Doctor. It is also stated that no proceeding could be initiated against the Petitioner as he was not on duty and during non-duty periods, he is at

liberty to consume any medicine including alcohol, since there is no prohibition law in force in Tamil Nadu.

(h) The department appointed the Assistant Commandant, TSP IV Battalion, Kovaipudur as the Enquiry Officer and his appointment was objected by the Petitioner and others by submitting a representation to the Commandant stating about his inhuman and indecent conduct of beating a police personnel on the night of 3.9.2005 during the check in roll call. Despite the objection, enquiry was conducted and the Enquiry Officer submitted an exparte enquiry report on 16.2.2006 holding that the charges levelled against the Petitioner are proved.

(i) The Petitioner was furnished with copy of enquiry report on 17.2.2006 and was directed to submit further representation, which was submitted on 27.2.2006. The first Respondent based on the enquiry report, imposed the punishment of postponement of increment for one year with cumulative effect by order dated 3.4.2006.

(j) Petitioner preferred an appeal before the second Respondent under Rule 6 of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules, 1955 (hereinafter referred to as "the Rules"), which was also rejected by order dated 22.5.2006.

(k) Petitioner filed a review petition before the third Respondent under Rule 15A of the Rules and the third Respondent by order dated 1.2.2007 modified the punishment as postponement of increment for one year without cumulative effect.

(l) The above said orders are challenged in this writ petition on the ground that as per the Doctor's advise only Petitioner had consumed Ayurvedic medicine, which contained certain percentage of alcohol and the said aspect was not considered; that the enquiry was conducted exparte without giving opportunity to cross examine the prosecution witnesses; that the Petitioner was misled by the superior officers that No. punishment would be imposed against him; that No. witness was examined to show that the Petitioner was warned by the higher officials at any time not to consume alcohol at his residence during rest hours; and that, the order passed by the appellate authority is in violation of Rule 6 of the Rules, so also the order passed by the reviewing authority is not in accordance with the statutory provision, namely Rule 15A.

3. The Respondents have filed counter affidavit contending that while the Petitioner was serving in RadioTelecommunication Wing in the Tamil Nadu Special Police IV Battalion, Kovaipudur, during the night roll call for maintaining discipline and alertness of the police personnel at 00.45 hours on 3.9.2005, it was noticed that the Petitioner appeared before the Assistant Commandant in a drunken mood. It is stated in the counter affdiavit that there is general instruction to all officers and men of the battalion that they should not use alcoholic drinks in the battalion quarters at any time and they should behave like a role model with dignity and

discipline. The Petitioner had not obeyed the instructions issued and therefore he was sent for medical examination and during blood test and urine test, it was found that Petitioner and four others had consumed alcohol and therefore charges were framed against the Petitioner under Rule 3(b) of the Rules in P.R. No. 59/2005 on 28.11.2005 and the Petitioner submitted his explanation on 10.12.2005. The Enquiry Officer submitted a minute stating that the charges leveled against the Petitioner are proved. Remarks regarding the enquiry report submitted by the Petitioner was also perused and the first Respondent imposed the punishment, which was confirmed by the second Respondent in appeal and in review the third Respondent modified the same.

4. It is further stated that the Doctor's Certificate produced by the Petitioner is an after thought. Out of 350 police personnel attended the check-in roll call at 00.45 hours on 3.9.2005, Petitioner and four other personnel alone were found in drunken mood. It is also stated in the counter affidavit that in the medical certificate it is stated that urine contained 5 ml of yellowish turbid liquid, detected 34 mg% w/v of ethyl alcohol and the blood test revealed 2ml of reddish brown turbid liquid, detected 13 mg % w/v of ethyl alcohol. Petitioner having violated the general instructions issued to the Police personnel not to intoxicate either in the battalion premises or in the headquarters, he was proceeded, which was established through medical evidence as well as during the enquiry by the department and took alienient view of postponing the increment for one year with cumulative effect which was confirmed by the second Respondent and modified by the third Respondent in review. There is No. illegality in the said orders.

5. Mr. K. Venkataramani, learned Senior Counsel appearing for the Petitioner submitted that No. delinquency has been committed by the Petitioner as he took only Ayurvedic medicine containing alcoholic contents for his back pain treatment and particularly when the said medicine was taken during rest hours in his quarters, No. proceeding scan be initiated for the said reason. The leaned Senior Counsel also submitted that in the State of Tamil Nadu, there is No. prohibition for taking liquor and therefore anyone can consume liquor after office hours and the same can not be treated as dereliction or violation of the rules. The learned Senior Counsel also submitted that the enquiry conducted is improper. The punishing authority, appellate authority and the reviewing authority have not followed the statutory provision before passing the respective orders.

6. Mr. V. Jayaprakahnarayanan, learned Additional Government Pleader appearing for the Respondents on the other hand submitted that there is standing instructions to the Police Department that at all times the police personnel should be alert and not to intoxicate either during duty hours or during rest hours. Petitioner having violated the said instructions, he was proceeded rightly and lenient punishment was imposed, which was confirmed in appeal and modified in review.

7. I have considered the rival submissions of the learned Senior Counsel for the Petitioner as well as the learned Additional Government Pleader.

8. The fact about the Petitioner's taking rest in his quarters during the time he was called for check-in roll call at 24.00 hours on 3.9.2005 is not in dispute. Petitioner's blood and urine contained alcoholic contents as per the medical certificate is also not disputed. The defence of the Petitioner is that he was taking Ayurvedic medicine, which contained alcoholic contents and on the basis of the advice given by the Doctor, he used to take the Ayurvedic medicine before going to sleep and the same can not be treated as consumption of liquor during duty hours or rest hours. The Petitioner also produced prescription issued by the Ayurvedic Doctor in support of his contentions. The said certificate was rejected by the Enquiry Officer as the said document produced was an after thought. The said certificate was issued by the Doctor prior to the enquiry. The Disciplinary Authority also considered the same and rejected the contention of the Petitioner and imposed the punishment of postponement of increment for one year with cumulative effect.

9. Aggrieved over the order of the disciplinary authority, Petitioner preferred an appeal under Rule 6 of the Rules and from the perusal of the appellate authority's order it is evident that the said statutory rule has not been followed by the second Respondent while rejecting the appeal. Similarly the Reviewing Authority is also bound to consider the review petition under Rule 15A of the Rules. The said authority also not considered the review in accordance with the statutory provision by stating that the charge of consumption of alcohol is established through medical certificate, but merely modified the punishment as postponement of increment for one year without cumulative effect. The reviewing authority has chosen to pass the modified order taking note of the clean record of service of the Petitioner and relied on the medical certificate.

10. The defence taken by the Petitioner that he consumed Ayurvedic medicine as per the prescription of the Doctor has not been considered by the Reviewing Authority in his order dated 1.2.2007. Rule 15A(3) of the Rules contemplates certain procedures to be followed and the said rule states that the review petition shall be dealt with as in the case of appeal, which reads thus,

15-A(3)An application for review shall be dealt with in the same manner as if it were an appeal under these rules.

How the appellate authority shall consider the appeal is considered

11. How the appellate authority shall consider the appeal and pass orders in appeal is decided by a Division Bench of this Court (S.J. Mukhopadhyaya, J. (as he then was) and N. Paul Vasanthakumar, J.) in the decision reported in 2008 WLR 86 (The Joint Commissioner of Police and Anr. v. G. Anandan). In paragraphs 10(a), 11 and 13, the Division Bench held thus,

10. (a) Similar issue with regard to Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, was considered by a Division Bench of this Court in the decision reported in [G. Srinivasan Vs. The Government of Tamil Nadu and Others](#), and in paragraph 8 the Division Bench held as follows:

8. Coming to the second question as to whether the Board of Revenue has acted in accordance with rule 23 of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules, we feel that the Board of Revenue has not kept in mind the requisites necessary, under rule 23. The order of the Board of Revenue dismissing the appeal has been extracted above. The order does not give any reason as to why it confirmed the order of dismissal except saying that it did not see any reason to interfere with the order of the Collector. We are of the view that having regard to the language used in rule 23, the dismissal of the appeal by the Board of Revenue is not a proper disposal as contemplated by rule 23. Rule 23 provides as to what the appellate authority should do while considering the appeal filed by a delinquent officer against the penalty imposed on him. Rule 23(1) gives a mandate to the appellate authority to consider: (a) whether the facts on which the order was passed have been established; (b) whether the facts established afford sufficient ground for taking action; and (c) whether the penalty is excessive, adequate or inadequate. Thus it is clear from the perusal of rule 23 that the appellate authority is enjoined to consider whether the facts on which the order of dismissal was passed had been established and the facts established afford sufficient grounds for taking action and whether the penalty is excessive or adequate. Rule 23 directs the appellate authority to consider certain matters before passing the appellate order. The order of the appellate authority must therefore ex facie show that the matters referred to in rule 23 have been considered by the appellate authority before it passed its order. In this case, the order of the appellate authority merely says that it sees no reason to interfere with the order of the Collector and it does not indicate that it took all the matters referred to in rule 23 into consideration before rejecting the appeal. Obviously, the appellate authority the Board of Revenue in this case, appears to have overlooked the criteria referred to in rule 23, as otherwise, it would have at least referred to the relevant matters contained in rule 23 in its order. Dealing with this ground of attack, Mohan, J., has stated that according to the recent trend of opinion, if the appellate authority confirms the order in appeal, the appellate authority need not give reasons. It may be that in a case where there is no statutory provision dealing with the exercise of power by the appellate authority we have to fall back to the general principle as to whether the appellate authority is found to give reasons for his affirmation of the order of dismissal; but where the power of the appellate authority is circumscribed by a statutory provision such as rule 23 as in this case, the appellate authority should act within the confines of that rule and he cannot pass an order arbitrarily without considering the matters referred to in rule 23. We are therefore of the view that the order of the Board of Revenue, dated 4th September, 1976, stands vitiated for violation of Rule 23. On this ground, the order

of the Board of Revenue which confirms the orders of dismissal passed against the Appellant will stand quashed and the Board of Revenue has to pass a fresh order on the appeal filed by the Appellant which should be treated as pending.

(b) The Supreme Court in the decision reported in [R.P. Bhatt Vs. Union of India and Ors \(UOI\) .](#), considered similar provision i.e, Rule 27(2) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. In paragraphs 3 to 5 the Supreme Court held thus:

3. Having heard the parties, we are satisfied that in disposing of the appeal the Director General has not applied his mind to the requirements of Rule 27(2) of the Rules, the relevant provisions of which read as follows:

27. (2) In the case of an appeal against an order imposing any of the penalties specified in Rule 11 or enhancing any penalty imposed under the said Rules, the appellate authority shall consider:

(a) whether the procedure laid down in these rules has been complied with and if not, whether such non-compliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice;

(b) whether the findings of the disciplinary authority are warranted by the evidence on the record; and (c) whether the penalty or the enhanced penalty imposed is adequate, inadequate or severe;

and pass orders-

(i) confirming, enhancing, reducing, or setting aside the penalty; or

(ii) remitting the case to the authority which imposed or enhanced the penalty or to any other authority with such direction as it may deem fit in the circumstances of the case.

4. The word "consider" in Rule 27(2) implies "due application of mind". It is clear upon the terms of Rule 27(2) that the Appellate Authority is required to consider (1) whether the procedure laid down in the Rules has been complied with; and if not, whether such non-compliance has resulted in violation of any provisions of the Constitution or in failure of justice; (2) whether the findings of the disciplinary authority are warranted by the evidence on record; and (3) whether the penalty imposed is adequate; and thereafter pass orders confirming, enhancing etc. the penalty, or may remit back the case to the authority which imposed the same. Rule 27(2) casts a duty on the Appellate Authority to consider the relevant factors set forth in clauses (a), (b) and (c) thereof.

5. There is No. indication in the impugned order that the Director General was satisfied as to whether the procedure laid down in the Rules had been complied with; and If not whether such non-compliance had resulted in violation of any of the provisions of the Constitution or in failure of justice. We regret to find that the

Director General has also not given any finding on the crucial question as to whether the findings of the disciplinary authority were warranted by the evidence on record. It seems that he only applied his mind to the requirement of Clause (c) of Rule 27(2) viz. whether the penalty imposed was adequate or justified in the facts and circumstances of the present case. There being non-compliance with the requirements of Rule 27(2) of the Rules, the impugned order passed by the Director General is liable to be set aside.

The above decision was followed by the Supreme Court in its latter judgment reported in [Narinder Mohan Arya Vs. United India Insurance Co. Ltd. and Others](#),

(c) Another Division Bench of this Court in 2004 (3) LW 32 (M. Nagarajan and Ors. v. The Registrar, High Court, Madras-600 104 and Anr.) following the above referred decision in [R.P. Bhatt Vs. Union of India and Ors \(UOI\) .](#), set aside the order of the appellate authority for non-compliance of Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, and remitted the matter back to the appellate authority to pass fresh orders by following the said rules.

11. In the light of the above decisions and having regard to Rule 6(1) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, quoted above to be followed in this case by the appellate authority, the order of the appellate authority cannot be sustained.

....

13. In the result, we set aside the order of the appellate authority dated 12.8.2006 and remit the matter to the first Appellant herein to pass fresh orders following Rule 6(1) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955, within a period of four weeks from the date of receipt of copy of this order. The order of the learned single Judge is set aside.

In the above cited decision viz. [Roop Singh Negi Vs. Punjab National Bank and Others](#), the Supreme Court held that if orders of the Disciplinary Authority and the Appellate Authority affect the civil rights of the employee, reasons must be stated for arriving at the decisions.

12. In the case on hand, since the third Respondent has not dealt with the point raised by the Petitioner viz., that he consumed Ayurvedic medicine for his treatment as per the prescription of the Ayurvedic Doctor, which contained small percentage of alcohol, the third Respondent is bound to consider that aspect by applying his mind and non-consideration of the said aspect has vitiated the order passed in the review.

13. In view of the above, the order passed by the third Respondent dated 1.2.2007 is set aside and the matter is remitted back to the third Respondent to consider the said aspect viz., Petitioner's defence that he consumed Ayurvedic medicine for back pain and other illness as prescribed by the Ayurvedic Doctor, which contained



certain percentage of alcohol, which alone was established during the medical examination. The third Respondent is directed to pass fresh orders within a period of eight weeks from the date of receipt of copy of this order. No. costs.