

## **N. Swamiduraivelu, Additional Superintendent of Police (Crime), Tuticorin Vs The State of Tamil Nadu**

**Court:** Madras High Court (Madurai Bench)

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

**Acts Referred:** Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 " Rule 17

**Hon'ble Judges:** T. Raja, J

**Bench:** Single Bench

**Advocate:** M. Ajmal Khan, for the Appellant; T.R. Janarthanan, Additional Government Pleader, for the Respondent

**Final Decision:** Dismissed

### **Judgement**

@JUDGMENTTAG-ORDER

Honourable Mr. Justice T. Raja

1. This writ petition has been filed by N. Swamiduraivelu for the issuance of a Writ of Certiorari calling for the records relating to the impugned

order passed by the second respondent in his proceedings R.C.No.170210/Con.V(1)/2007, dated 25.08.2011 and quash the same as illegal.

2. The learned Counsel appearing for the petitioner submits that the impugned order is to be quashed on the sole ground that when a similar charge

memo was issued under Rule 17(a) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955, against another officer namely,

Inspector of Police, the Superintendent of Police after finding him guilty, by order dated 01.12.2010 imposed the punishment of warning against

the said Inspector of Police in whose police station the alleged impersonation took place. However, the second respondent/Director General of

Police has chosen to award the punishment of censure against the petitioner for the only reason that since the petitioner was only a supervisory

officer over the Inspector of Police. The petitioner at any cost cannot be held responsible for the alleged impersonation and in any event having

imposed a lighter punishment of warning against the Inspector of Police by the Superintendent of Police in his order dated 01.12.2010, the

Director General of Police/second respondent herein while dealing with the petitioner should not have imposed a higher punishment of censure. In

support of his submission he placed reliance on a decision in the case of State of Uttar Pradesh and Others v. Raj Pal Singh, reported in (2010) 5

SCC 783.

3. The said submission made by the learned counsel appearing for the petitioner that the second respondent instead of imposing a similar

punishment of warning as imposed by the Superintendent of Police against the Inspector of Police, discriminated the petitioner, does not have any

reason or logic for more than one reason. Firstly, if there is a common disciplinary enquiry to deal with a delinquency against some delinquents like

Sub Inspector of Police or police constables then for same charge among various police constables awarding different punishment would amount

to discrimination. But, in the present case, the Inspector of Police, who suffered a punishment of warning, was holding a lesser position. Therefore,

the punishment of warning imposed against the Inspector of Police cannot be claimed to be imposed against the petitioner who was serving as the

Deputy Superintendent of Police. Secondly, the ratio of the judgment has to be applied depending upon the each facts and circumstances involved

therein. Thirdly, the above mentioned judgment relied by the learned counsel for the petitioner relates to allegation of assault that was made against

five Assistant Warders. Finally, the departmental proceedings found them guilty and the disciplinary authority passed an order of dismissal against

one Assistant Warder and in respect of some others an order of stoppage of five increments was imposed. Under these circumstances, when the

order of dismissal was challenged before the High Court, the High Court setting aside the order of dismissal directed the similar punishment of

stoppage of five increments as was the order in case of some other Assistant Warders. When that order was challenged on the ground that it was

not proper for the High Court to interfere with the quantum of punishment, it was held that it was not open for the disciplinary authority to impose

different punishments for different delinquents, however, it was further held that the reasoning given by the High Court cannot be faulted with in

view of the fact that the State was not able to indicate as to any difference in the delinquency of these employees. Under these circumstances, the

Hon"ble Apex Court has also held that it is undoubtedly open for the disciplinary authority to deal with the delinquency once the charges are

established to award appropriate punishment. Therefore, the above ratio clearly shows that it is undoubtedly open for the disciplinary authority to

deal with the delinquency once charges are established to award appropriate punishment.

4. In the present case also the petitioner was a Deputy Superintendent of Police and the other officer against whom punishment of warning

imposed was serving as Inspector of Police. When the charge of impersonation was brought to the notice of these two people, the Inspector of

Police failed to register and take appropriate criminal action, for which the disciplinary authority, namely, the Superintendent of Police, found him

guilty and imposed a lighter punishment of warning. When the turn of imposing punishment as against the Deputy Superintendent of Police was

warranted, the another disciplinary authority, namely, Director General of Police in his order stated that the lapses and irregularities on the part of

the Deputy Superintendent of Police were found proved and accordingly imposed a different punishment viz., censure to the Deputy

Superintendent of Police who is having more responsibility than the Inspector of Police. Therefore, in the present case, there are two disciplinary

authorities unlike in the case cited by the petitioner in the State of Uttar Pradesh v. Rajpal Singh (cited supra). Because when a Superintendent of

Police imposed a punishment of warning against an Inspector of Police, an another disciplinary authority viz., the Director General of Police has

imposed a censure against the petitioner who was a Deputy Superintendent of Police, therefore, a Higher Officer (Director General of Police) is

not bound or expected to follow his junior's order in the matters of disciplining the police force. Hence, it is not open to the petitioner to say that

the petitioner also should be imposed with the same punishment when two different disciplinary authorities are dealing with two different

delinquents, of course, may be on a similar charge. As held by the Hon"ble Apex Court in the above said judgement, it is undoubtedly open for the

disciplinary authority to deal with the delinquency, once charges are established to award appropriate punishment.

5. In view of the above reasons, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.