
(2009) 10 MAD CK 0166

Madras High Court

Case No: Writ Petition No. 35186 of 2006 (O.A. No. 7356 of 1998)

R. Kumar

APPELLANT

Vs

The Director General of Police

RESPONDENT

Date of Decision: Oct. 8, 2009

Acts Referred:

- Constitution of India, 1950 - Article 226
- Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 - Rule 15, 2, 3

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: H. Sathyanarayana Prasad, for the Appellant; R. Neelakantan, G.A., for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.

The petitioner was working as a police constable attached to the Armed Reserve, Chennai City Police. He was issued with a charge memo under Rule 3(b) TNPSS (D&A) Rules in P.R. No. 25/95 for the grave irregularity in submitting Clothing Acquittance roll on 23.8.1994 to the Commanding Officer "C" Company without actually issuing clothing materials to the two police constables, namely Ganesan and Murugesan by forging the signature of the two constables and he was further accused of misconduct and misappropriation of Rs. 300/- between 11.10.1994 to 27.6.1995 and handing over the said amount only on 28.6.1995 to the Officer Commanding.

2. An enquiry was conducted against the petitioner. The Deputy Commissioner of Police, Armed Reserve has accepted the findings of the Enquiry Officer and held that the charges were proved. He imposed the punishment of reduction in the time scale

of pay by one stage for a period of one year without cumulative effect for the proved charges. However, the Commissioner of Police, Chennai City took up cognizance of the case suo motu and held that the charges were proved and it requires a deterrent punishment. Therefore, he issued a show cause notice to the petitioner as to why the punishment should not be enhanced. Since the petitioner did not submit any explanation, the Commissioner of Police by his order dated 20.3.1997 ordered for the dismissal of the petitioner.

3. Thereafter, the petitioner preferred an appeal to the respondent, Director General of Police. The respondent after going through the records found the misconduct committed by the petitioner was serious and the charges have been proved and the findings were also acceptable. But however, he found that the Commissioner of Police who inflicted the punishment on suo motu review did not do so within the prescribed period of six months under the Rules.

4. Therefore, after cancelling the order of dismissal issued by the Commissioner issued Show Cause Notice for dismissal from service and directed the petitioner to submit his explanation by proceedings dated 27.03.1998. In Paragraphs 5 & 6 of the notice, it was stated as follows:

5. Thiru Kumar P.C. 2969 of Armed Reserve, Chennai City Police submitted his appeal petition against the orders of the Commissioner of Police, Chennai. I have gone through the connected records in the file. The delinquencies committed by the police constable are serious in nature. The prosecution has proved the charge conclusively without doubt. The findings of the Enquiry Officer are agreeable. The Commissioner of Police, Chennai has inflicted the punishment of dismissal from service in his proceedings fourth cited. On his suo-motu review after six months. Hence, I cancel the order issued by the Commissioner of Police, Chennai city in his proceedings, dated 20.03.1997 fourth read above.

6. I consider that the acts of delinquency committed are grave in nature and the penalty imposed by the Disciplinary authority i.e., the punishment of reduction in the time scale of pay by one stage for a period of one year is not commensurate with the gravity of the delinquencies which were held as proved. I therefore, come to a tentative conclusion to inflict the punishment of dismissal from service against the appellant. Thiru Kumar, P.C.2969 of A.R. Chennai City Police is directed to submit his explanation as to why the punishment of dismissal from service should not be awarded to him. He should submit his explanation to the Show Cause Notice within 15 days of receipt of these proceedings. If his explanation is not received within the stipulated time, it will be construed that he has no explanation to offer and the Show Cause Notice will be disposed of on its merits.

5. The petitioner gave his explanation dated 26.06.1998. Upon receiving his explanation, the respondent by the impugned order dated 04.08.1998 rejected the petitioner's explanation and imposed the punishment of dismissal. It is as against

this order, O.A. No. 7356 of 1998 was filed before the Tamil Nadu Administrative Tribunal.

6. In view of the abolition of the Tribunal, the matter stood transferred to this Court and was re-numbered as W.P. No. 35186 of 2006.

7. On notice from the Tribunal, the respondents have filed a reply affidavit dated 03.09.1999 justifying the penalty imposed on the petitioner. It was stated since the punishment imposed by the Commissioner of Police was without jurisdiction and the notice by him was issued beyond the prescribed period, it was cancelled. But nevertheless, by such technicalities, the petitioner cannot escape from being imposed with an appropriate punishment.

8. The learned Counsel for the petitioner submitted that the impugned order is bereft of any reason and therefore, contrary to Rules. In support of his contention, he placed reliance upon the judgment of this Court in *Arokiadoss v. The Deputy Commissioner of Police and Ors.* reported in 1989 WLR 274 and also the judgment of the Supreme Court in *R.P. Bhati v. Union of India and Ors.* reported in 1986 (1) SLJ 382.

9. It must be noted that both the judgments arose out of statutory appeals provided under the relevant rules. After referring to the relevant rule, the Court found that the appellate authority did not apply his mind in as much as the order impugned did not contain any reason and hence interfered with the penalty. It is one thing to state that the appellate authority while agreeing with the disciplinary authority did not apply his mind and the order was bereft of reason. It is another thing to state that when the authority exercising suo motu power of reviewing the punishment did not follow the relevant rules. Rule 15(a) of the Tamil Nadu Police Subordinate Service (D & A) Rules provides for suo motu review both for the Government and for the Head of the Department as well as the Appellate Authority, but within the time limit of six months.

10. When such a power is exercised, the Proviso to the Rule reads as follows:

Provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the Government servant concerned has been given a reasonable opportunity of making representation against the penalty proposed. Where it is proposed to impose any of the penalties specified in Clauses (d),(e),(f),(h),(i) and (j) of Rule 2 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the matter laid down in Sub-rule (b) of Rule (3) and after giving a reasonable opportunity to the Government servant concerned of showing cause against the penalty proposed on the evidence adduced during the inquiry and except after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary.

11. In the present case, the Show Cause Notice issued by the respondent clearly indicates as to why he wanted to enhance the punishment. In the present case, there is no dispute with reference to the findings rendered by the Enquiry Officer and as accepted by all the officers of the Department. The only question was the quantum of penalty to be imposed. In that case, the suo motu reviewing authority will have to indicate his mind before issuing the Show Cause Notice. Since the respondent is the Head of the Department, there is no time limit prescribed for his taking cognizance of such a case.

12. In the present case, the respondent being the competent authority must satisfy that the only punishment has to be given is dismissal for the misconduct committed by the petitioner. The decision relied upon by the learned Counsel for the petitioner has no application to the facts of the present case. On the contrary, when the competent authority inflicts the punishment on a Government Servant, unless the punishment is shockingly disproportionate, the same cannot be interfered with by this Court. In the case of judicial review, the power vested on this Court under Article 226 of the Constitution of India is very limited and can be exercised only in exceptional cases as laid down by the Supreme Court vide its judgment in [State of Meghalaya and Others Vs. Mecken Singh N. Marak](#) .

13. In the light of the above, the writ petition stands dismissed. No costs.