(2009) 09 MAD CK 0177

Madras High Court

Case No: Writ Petition No. 4998 of 2007 and O.A. No. 5563 of 2002

R.M. Manohar Daniel		APPELLANT
	Vs	
Government of Tamil Nadu		RESPONDENT

Date of Decision: Sept. 30, 2009

Acts Referred:

- Constitution of India, 1950 - Article 20

Hon'ble Judges: K. Chandru, J

Bench: Single Bench

Advocate: M. Ravi, for the Appellant; K. Rajasekar, GA(F), for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

K. Chandru, J.
Heard both sides.

2. This writ petition arose out of O.A. No. 5563 of 2002 filed by the petitioner before the Tamil Nadu Administrative Tribunal. In view of the abolition of the Tribunal, it was transferred to this Court and was renumbered as W.P. No. 4998 of 2007.

3. The petitioner sought for the issuance of a writ of certiorari to call for the records of the first respondent relating to G.O.(3D)No.2, Environment and Forest Department, dated 03.01.2002 and to quash the same.

4. The petitioner, who was working as a Forest Ranger, challenged the order of punishment issued by G.O. (3D) No. 2, Environment and Forest Department, dated 3.1.2002. By the said order, a recovery from the petitioner''s DCRG to the extent of Rs. 10000/- was ordered and also to stop his drawing of full pension for 6 months. The petitioner''s date of superannuation was 31.8.97 while he was working as Forest Range Officer which also includes as a double lock officer in the sandalwood depot at Salem. It was reported that while he was a trainee ranger at Sevarai North range,

he took the Hero Honda Motor cycle with registration No. TCE 4449 which was confiscated in connection with a sandalwood offence and failed to return the same. Therefore, a charge memo under Rule 17(b) was issued on 31.12.96. The said charge memo resulted in an enquiry conducted by Divisional Assistant Conservator of Forest. An enquiry was conducted on 10.4.97. The enquiry officer gave his report dated 15.5.97 holding that the charges were proved.

5. The petitioner gave a representation, stating that it was a one sided report and no proper enquiry was conducted and therefore, demanded a fresh enquiry to be conducted. Thereafter, the second respondent himself conducted a fresh enquiry and recorded the statements from the witnesses and found the petitioner was guilty of the charges. The Government upon the receipt of the report invited the opinion of the Tamil Nadu Public Service Commission. The TNPSC recommended appropriate punishment by recovery of the amounts from the DCRG and also an imposition of penalty.

6. On notice from the Tribunal, the respondents have filed a reply affidavit, dated 19.2.2003, justifying the penalty. The petitioner took this Court through the minutes of the enquiry proceedings. However, once an enquiry is conducted properly, the judicial review over such an enquiry is very limited as held by the Supreme Court in Praveen Bhatia Vs. Union of India (UOI) and Others, . The Supreme Court has also further held that unless the punishment is shockingly disproportionate it cannot be interfered with and the judicial review over the penalty is extremely limited vide its judgment in 2008 (7) SCC 580 (State of Meghalaya v. Mecken Singh N. Marak).

7. Similar view was also taken by the Supreme Court to the effect that a well reasoned order of the departmental authority cannot be interfered with on the basis of sympathy or sentiment. When once procedural formalities are complied with by the authorities, the courts ordinarily should not disturb the penalty vide its judgment in Chairman and MD V.S.P. and Others Vs. Goparaju Sri Prabhakara Hari Babu, .

8. However, the petitioner had raised in paragraph 15 that the recovery from the DCRG and withholding of pension for six months would amount to double jeopardy and hit by Article 20 of the Constitution. In this context, it is worthwhile to refer to the judgment of the Supreme Court in Depot Manager, A.P. SRTC v. N. Ramulu reported in Depot Manager, Andhra Pradesh State Road Transport Corporation v. N. Ramulu and Anr., (1997) 11 SCC 319 . The following passage found in paragraph 3 of the said judgment may be extracted below:

3. We think that the entire approach of the Division Bench of the High Court is incorrect. The driver had caused pecuniary loss to the appellant and that was estimated to be Rs. 500. It was this pecuniary loss which was ordered to be recovered from the delinquent. In addition to that, the delinquent was punished for misconduct and it is that punishment with which the Labour Court interfered and so

also did the learned Judge of the High Court. The learned Single Judge came to the conclusion that 50 per cent of back wages should be refunded to the delinquent besides reinstatement. Against that order both the delinquent and the management went up in appeal. The High Court modified the order of the learned Single Judge and directed payment of full back wages. In other words, the only order that survived was the reimbursement of the loss occasioned to the appellant on account of the act of the delinquent driver. It is true that that has been shown to be a penalty under Regulation 8(v) of the Regulations. But the penalty for the act of negligence was removal from service. The explanation to Regulation 8, however, enumerates various penalties which are not to be treated as penalties and one of them is as Clause (5) thereof says: "The penalty of recovery from pay of the whole or part of any pecuniary loss caused to the Corporation by an employee''s negligence or breach of orders, may be imposed in addition to any other penalty which may be inflicted in respect of the same act of negligence or breach of orders." This clause clearly says that the penalty of recovering loss caused to the management under Regulation (1)(v) shall not preclude the management from imposing any other penalty. The High Court was, therefore, wrong in thinking that this was a case of double jeopardy. We think that the order passed by the learned Single Judge was eminently just and fair and the Division Bench of the High Court should not have interfered with that order.

9. Therefore, in the light of the above, the contentions raised by the petitioner cannot be countenanced by this Court. Hence, the writ petition stands dismissed. No costs.