
(1991) 01 MAD CK 0088
In the Madras High Court
Case No : W.A. No. 431 of 1989

K. Lakshmanan

APPELLANT

Vs

Govt. of Tamil Nadu and another

RESPONDENT

Date of Decision : 11-01-1991

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 161

Citation : (1991) 01 MAD CK 0088

Hon'ble Judges : A.S. Anand, C.J.;D.J. Jagannadha Raju, J

Bench : Division Bench

Judgement

Dr. A.S. Anand, C.J.—This writ appeal is directed against the judgment of a learned single judge dismissing Writ Petition No. 810 of 1981 vide judgment dated July 22, 1987.

2. Since the challenge in the appeal has been confined at the Bar by Mr. Chandru, learned counsel for the appellant, only to the manner in which the appeal filed by the appellant against the punishment imposed upon him by the Deputy Director of Printing, Madras, of reduction in the time scale by three stages with cumulative effect for a period of three years from the date of reinstatement of the appellant in service, the period of reduction operating to postpone future increments besides treating the period of suspension undergone by him already, has been disposed, it is not necessary for us to advert to the detailed facts leading to the imposition of the punishment as hereinabove noticed by the Deputy Director of Printing, Madras. Suffice it to notice that on a charge memo drawn up against the appellant on September 25, 1974 an enquiry was conducted and the punishment as hereinabove noticed was imposed by the Deputy Director of Printing, Madras. It would be relevant to notice that apart from the appellant, certain other employees were also charge-sheeted and more or less similar punishments were imposed upon them also. The appellant preferred an appeal before the Appellate Authority. The Appellate Authority, after receipt of the appeal petition dated May 5, 1975, was of the view that the

punishment awarded to the appellant was inadequate, and accordingly, a show cause notice was issued to the appellant vide Memo No, Pr. No. 94291/TE. 11/75 dated March 24, 1976. The appellant submitted his explanation wherein he not only denied the allegation against him and pleaded complete innocence, but he also asserted that he had not committed any mistake willfully or knowingly and that the proposal to enhance the punishment which the appellant was already undergoing by dismissing him from service was wholly unjustified and prayed that the said proposal to dismiss the appellant from service be dropped. He even volunteered to remit the amount of Rs. 489.60 to the Government. The Appellate Authority vide order dated May 1, 1976, however, rejected the explanation and enhanced the punishment. The appellant was dismissed from service by virtue of the enhancement of punishment. The appellant questioned the appellate order through revision before the Government which failed. He further filed a reconsideration petition which also came to be rejected on April 11, 1978. It was at this stage that the appellant filed Writ Petition No. 810 of 1981 and as would be seen from the affidavit filed in support of the writ petition the challenge made by the appellant was not confined to the enhancement of punishment, but also to the punishment as originally imposed. Various grounds were raised in the writ petition but as already noticed, since the challenge has been confined before us only to the enhancement of punishment, we need not detain ourselves to deal with the other grounds of challenge.

3. Learned counsel for the appellant submitted that the enhancement of punishment in the facts and circumstances of the case was wholly unjustified. In support of his argument the learned counsel has submitted that since the dismissal is a major punishment, the enquiry that had been held prior to the imposition of punishment upon the appellant by the Deputy Director of Printing, Madras could not be considered to be an appropriate enquiry in a matter involving imposition of major punishment of dismissal. The learned counsel then went on to submit that there had been a complete non-application of mind by the Director of Stationery and Printing while enhancing the punishment. He pointed out that the show-cause notice issued to the appellant for enhancement of punishment on March 24, 1976 and the order of punishment dated May 1, 1976 when read together would show that the Appellate Authority did not consider the explanation furnished by the appellant and without proper application of mind enhanced the punishment and awarded the major penalty of dismissal of the appellant. Mr. M. Vellaichamy, appearing for the Government Pleader, however, submitted that the enhancement of punishment had been ordered by the Appellate Authority in accordance with the rules, and since the Appellate Authority had issued a show cause notice to the appellant before enhancing the punishment, he had complied with the principles of natural justice and no interference is called for with the order of the learned single judge dismissing the writ petition.

4. A careful reading of the order of enhancement of punishment shows that it is a verbatim reproduction of the show-cause notice from first sentence to the last

sentence except for the last ten lines in the order of punishment. There is not even an iota of difference between paragraphs 1 to 6 of the show-cause notice and paragraphs 1 to 6 of the order of punishment except, as already noticed, in the last 10 lines. Those ten lines read thus :-

"..... a notice was given to him directing him to show cause against the enhancement of the punishment to that of dismissal from service. The appellant has given his further explanation to this notice. He has not put forth any new facts to mitigate the charges proved against him. I, therefore, consider that the proposed enhanced punishment will be the most appropriate punishment in this case and I accordingly direct that the appellant be and is hereby dismissed from service".

These lines are in substitution for the six lines in the show cause notice which read thus :

"The appellant is accordingly directed to show cause within ten days from the date of receipt of this order why the punishment awarded to him by the Deputy Director of Printing should not be enhanced to that of dismissal from service".

5. The manner in which the Appellate Authority has dealt with the appeal has created an impression in our minds that besides reproducing the show cause notice in toto the only other thing stated by him to enhance the punishment is that there were no new facts to mitigate the charges against the appellant. This is a wholly unsatisfactory way of dealing with the appeal against punishment by the Appellate Authority. Not only this. We find that the Appellate Authority has with a view to meet the arguments of the appeal as reflected in his explanation and in the memo of appeal, even imported personal knowledge while deciding the appeal. That is reflected from the following paragraph in the order of punishments :

"His plea was that after obtaining letters of authorities he merely signed the acquittance and the amount was appropriated by Thiru K. V. Narayana Iyer, the then Administrative Assistant. He has further pleaded that he signed the acquittance under threat and coercion from the then Administrative Assistant K. V. Narayana Iyer, who is no more. I have known the said Narayana Iyer when I was Deputy Director of Printing in the Government Press eight years ago. He was a soft man, hardly capable of compelling his subordinates to do a thing under threat or coercion. I am inclined to think that the appellant has conveniently chosen to shift the blame on a dead man and his plan, therefore, deserves no consideration".

The appellants thus has been very unfairly treated. In case the Appellate Authority was inclined to rely on his personal observations, in all fairness, he should have appeared as a witness and subjected himself to be cross-examined. He could not rely on his observations to negative the plea of the appellant with regard to the manner under which the acquittances were signed by the appellant. The Appellate Authority also relied upon the Police investigation and

the witnesses examined during the investigation. The reliance, therefore, was placed by the Appellate Authority on the statements recorded u/s 161 Cr. P.C. by the investigating agency. It is admitted case of the parties that neither copies of those statements nor even the report of the investigating agency was furnished to the appellant at any stage. Neither the report nor the statements of the witnesses was even marked by the Appellate Authority during the pendency of the proceedings for enhancement of punishment. The Appellate Authority could, therefore, not rely on any such material which was not legally acceptable and admissible. It is elementary that in case the Department wishes to rely upon the statement of a witness, an opportunity must be granted to the employee concerned to subject that witness to cross-examination. That also undoubtedly was not done in this case. Thus the infirmities which we have noticed above with which the appellate order bristles we are of the opinion that the appellate order enhancing the punishment cannot at all be sustained. The learned single Judge, in our opinion, fell in error is not dealing with this aspect of the matter or considering the challenge to the enhancement of punishment in that light. The judgment of the learned single judge consequently cannot be sustained and we, therefore, set it aside.

6. Although as a necessary corollary on setting aside the judgment of the learned single judge and the order of enhancement of punishment as enforced by the Appellate Authority on May 1, 1976 we would have in ordinary circumstances remitted the matter to the Appellate Authority for fresh disposal in accordance with law, but as rightly submitted by Mr. Chandru, learned counsel for the appellant, the offence for which the appellant was put on enquiry was based on the charge memo dated September 26, 1974 and more than 16 year have since then lapsed. Even from the date of the initial punishment which was imposed upon the appellant by the Deputy Director of Printing, 15 years have elapsed. The incident for which the appellant was subjected to departmental enquiry related to the period March 5, 1967 to September 6, 1967 and more than 2 decades have passed since then. Mr. Chandru submits that the appellant would have no grievance now to protest against the punishment first imposed by the Deputy Director of Printing, Madras dated March 6, 1975, and that being the position and keeping in view the efflux of time, we do not think it proper to remit the matter to the Appellate Authority for fresh disposal, and while confirming the punishment imposed by the Deputy Director of Printing, Madras dated March 6, 1975 and setting aside the order of the Appellate Authority, allow this appeal and the writ petition to the extent indicated hereinabove. There shall, however, be no order as to costs The appellant shall be entitled to all benefits consequent upon setting aside the order of dismissal.