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(2011) 09 MAD CK 0216

In the Madras High Court

Case No : Writ Petition No. 30621 of 2008

K. Ravikumar — APPELLANT

Vs

The Deputy Commissioner of Police — RESPONDENT

Date of Decision : 19-09-2011

Acts Referred:
Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 — Rule 3

Citation : (2011) 09 MAD CK 0216

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : Mr.K. Venkataramani, for Mr. T. Ayngaraprabhu, for the Appellant; Ms. V.M. Velumani, Special Government Pleader, for the Respondent

Judgement

The Honourable Mr. Justice V. Dhanapalan, J.—Heard Mr. K. Venkataramani, learned Senior Counsel appearing for Mr. T. Ayngaraprabhu, Learned Counsel for the Petitioner and Ms. V.M. Velumani, learned Special Government Pleader appearing for Respondents 1 to 3.

2. Challenging the impugned orders passed by the Respondents 1, 2 and 3 in PR No. 54/PR(N)/(2)/2006 dated 24.07.2007, RC No. PRN(2)/appeal/54/2006 dated 25.09.2007 and RC No. 175782/AP3(3)/2007 dated 12.05.2008, respectively, seeking to quash the same and for a direction to the Respondents to reinstate him into service with all consequential service and monetary benefits, the Petitioner has filed this writ petition.

3. The Petitioner would submit that he entered the service as a directly recruited Grade-II Police Constable in the Chennai City Armed Reserve in the year 1979 and after serving there for number of years, he was transferred to Law & Order. Thereafter, he was promoted as Grade-I Police Constable in the year 2004. While serving as Grade-I PC at H4, Korukkupet Police Station, Law & Order, Chennai City from 06.06.2004, on 21.01.2006, he was given a Passport to serve in the City Armed Reserve. He was assigned the job of performing Guard duty in the Punjab National Bank, Mint Branch along with two other police constables.

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3a. According to the Petitioner, he is an Asthma patient, undergoing treatment for the last several years. On 25.01.2006, the Petitioner was unable to attend work, as he was suffering from Asthma, due to the rough weather that prevailed in Chennai during January 2006, and he went to Maraimalai Nagar, where his mother was residing, for undergoing Ayurvedic treatment. The ailment was so severe that he was unable to breathe for sometime and with the assistance of the Medical Officer and Ayurvedic Doctors, he recovered slowly. In the meanwhile, as the Petitioner was absent from duty from 25.01.2006, after completion of 21 days, his absence was duly reported to the Office of the 1st Respondent, who in turn, issued an order declaring the Petitioner as a Deserter in North Zone DO No. 84/2006 dated 20.02.2006 and directed the Petitioner to report for duty and explain the reason for his absence within 60 days from the date of receipt of a copy of this order. The Petitioner, on receiving the order of desertion, reported for duty on 21.04.2006 before the Deputy Commissioner of Police, Washermanpet Division and explained the reasons for his absence. The Deputy Commissioner of Police, Washermanpet Division, who was satisfied with the explanation given by the Petitioner along with the documents, accepted his explanation and took him back for duty as per proceedings in North Divisional DO No. 128/2006, dated 09.03.2006 and he was posted in the same station. But, unfortunately, the 1st Respondent, who accepted the explanation and ought to have proceeded against the Petitioner under Rule 3(a) as per the directions of the DGP, has chosen to issue a charge memo in PR No. 54/2006 Rule 3(b) of TNPSS (D & A) Rules, stating that the Petitioner did not report for duty on 25.01.2006 and continued to be absent for more than 21 days and thereby deserted the force.

3b. The Petitioner, after receiving the charge memo, submitted an explanation. The Assistant Commissioner of Police, Washermanpet Division, Chennai 21, was appointed as the Enquiry Officer to conduct an oral enquiry against the Petitioner in the Disciplinary Proceedings. The Enquiry Officer conducted the oral enquiry by examining four witnesses on the side of the prosecution and marked six documents. As the Petitioner has already submitted his explanation for his absence due to ill health, he could not report for duty and hence, he should have been proceeded under Rule 3(a) instead of 3(b) of TNPSS (D&A) Rules. The Enquiry Officer, instead of going into the explanation submitted by the Petitioner on record about the truthfulness of the statement, has chosen to hold that the Petitioner has committed the delinquency of desertion based on the statement given by him and held that the charges have been proved and submitted a proven minute to the disciplinary authority on 13.10.2006.

3c. The Petitioner was served with a copy of the enquiry officer''s report and directed to submit his further representation on 03.11.2006. The Petitioner took time to submit his further representation for the sole reason that his mother was unwell. But, the disciplinary authority, namely, the 1st Respondent agreed with the findings of the enquiry officer''s report and held that the Petitioner is a habitual absentee and chronicle deserter having deserted the force for more than

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nine occasions earlier and further held that the charges against him were proved and for the proven charges, was imposed a punishment of removal from service by an order dated 24.07.2007. The Petitioner, after receiving the same, preferred an appeal to the 2nd Respondent on 07.08.2007 along with the reason for the delay. The 2nd Respondent, without going into the merits of the charges, in line has rejected the same by an order dated 25.09.2007 not only on the ground of delay but also on merits. The Petitioner preferred a Mercy Petition to the 3rd Respondent on 20.08.2007 and the 3rd Respondent, without going into the merits of the case has issued a non-speaking order rejecting his request by an order dated 12.05.2008.

3d. The order of removal issued by the 1st Respondent and confirmed by Respondents 2 and 3 is unjust, illegal and unsustainable in law. It is submitted that the issuance of the charge memo by the 1st Respondent under Rule 3(b) of TNPSS (D&A) Rules is in violation of the Circular issued by the DGP in respect of desertion. The Petitioner ought to have been proceeded under Rule 3(a) imposing a minor punishment. The Disciplinary Authority has relied upon the previous punishment sustained by the Petitioner for the same delinquency of desertion on nine occasions and has come to the conclusion that the Petitioner is a habitual absentee and chronic deserter and held that the charges have been proved and imposed a major punishment. It is submitted that the previous punishment has influenced the disciplinary authority to arrive at a conclusion to impose a major punishment on the Petitioner. The explanation of the Petitioner for his absence, though accepted by the 1st Respondent initially, the same has been subsequently rejected and he has imposed a major punishment. Hence, having no other alternative, the Petitioner has approached this Court.

4. Respondents have filed counter affidavit and has stated as follows:

(i) The Petitioner was enlisted as Grade II Police Constable on 11.06.1979. He worked as Grade I Police Constable (Law and Order) 3282 at H4 Korukkupet Police Station from 06.08.2004 to 24.01.2006. On 21.01.2006, he was deputed for Armed Reserve Guard duty and given duty passport for the same. Accordingly, he worked as Guard at Punjab National Bank at Mint from 21.01.2006. On 25.01.2006 at 13.45 hours, he should have come for guard duty there. But, he was continuously absent for duty for more than 21 days from 25.01.2006 without any leave or permission or any intimation to his superior officers at Korukkupet Police Station. Hence, he was treated as deserter with effect from 25.01.2006 as Per North Zone Office Order No. 84/2006 dated 20.02.2006 in C. No. 3(N)/256/3281/06 by the Deputy Commissioner of Police, Washermanpet District. In the desertion order, it was directed to report before the Deputy Commissioner of Police, Washermanpet District, within 60 days from the date of desertion, if he desires to be taken for duty and explain the reasons for his desertion. The Petitioner received the desertion order on 24.02.2006. He appeared before the Deputy Commissioner of Police, Washermanpet District and represented to take him back for duty. He was taken back for duty on

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16.03.2006 as per the orders of Deputy Commissioner of Police, Washermanpet District in North Zone Office Order No. 128/2006 (C. No. 3(N)/256/3281/06) dated 09.03.2006 and dealt with a charge memo dated 16.05.2006 under Rule 3(b) of TNPSS (D&A) Rules, 1955 for his in-disciplined conduct and neglect of duty by desertion w.e.f. 25.01.2006. An oral enquiry as laid down in P.S.O. 80 was held against him by the Assistant Commissioner of Police, Washermanpet. During the oral enquiry, two Prosecution witnesses were examined and 6 Prosecution Exhibits were filed. The Enquiry Officer drew a proved minute on 13.10.2006. Based on this, the Deputy Commissioner of Police, Washermanpet District, who was the punishing authority, awarded the punishment of "Removal from Service" in P.R. No. 54/PRN(2)/2006 on 13.03.2007. The Petitioner''s appeal was rejected by the Joint Commissioner of Police, North Zone, Chennai Police in C. No. N(2)/Appeal/54/06 dated 25.09.2007 and his Mercy Petition to the Director General of Police, Tamil Nadu, Chennai - 4, dated 20.08.2007 was rejected in Proceedings C. No. 175782/AP 3(3)/2007 dated 12.05.2008.

(ii) According to the Respondents, the contention of the Petitioner that he should have been dealt with under Rule 3(a) instead of 3(b) of TNPSS (D&A) Rules is not correct. Desertion is a serious offence and major delinquency and hence he was dealt with on a charge memo under Rule 3(b) of TNPSS (D&A) Rules. The Enquiry Officer drew a proved minute on 13.10.2006 after carefully analyzing charges, evidences on prosecution and defence side, explanation of the delinquent officer, i.e. the Petitioner. Based on it, the Deputy Commissioner of Police, Washermanpet District, who was the punishing authority, awarded the punishment of "Removal from Service" in PR. No. 54/PRN(2)/2006 on 13.03.2007. The Petitioner''s appeal was rejected by the Joint Commissioner of Police, North Zone, Chennai Police in C. No. N(2)/Appeal 54-06 dated 25.09.2007 and his Mercy Petition to the Director General of Police, Tamil Nadu, Chennai - 4, dated 20.08.2007 was rejected in Proceedings C. No. 175782/AP 3(3)/2007 dated 12.05.2008. There is no procedural irregularity or deviation of any rules in processing and disposing of the punishment roll against the Petitioner.

(iii) According to the Respondents, the Petitioner absented for duty from 25.01.2006 on his own accord. Though he has stated that he had been to Maraimalai Nagar where his mother was residing, to undergo treatment for respiratory problem, nothing prevented him to inform his superior officers in Korukkupet Police Station about his alleged illness, get sick passport, appear before a Medical Officer in a nearby Government Hospital, get leave Certificate and get leave passport from his superiors as prescribed in PSO 272 (3) & (4). Hence, after giving him reasonable opportunities in an oral enquiry to defend himself, by adopting departmental procedures correctly, he was awarded the punishment of removal from service by the punishing authority. His appeal and mercy petition were rejected on merits. Hence, the plea of the Petitioner to quash the punishment did not deserve any merit.

5. Learned Counsel appearing for the Petitioner even though raised several

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grounds, ultimately urged to quash the order of dismissal on the ground of proportionality. He would further submit that this Court has also interfered with the punishment of dismissal, if an order was passed merely on the ground of desertion for the first time due to some reason or other and several of the orders of this Court were also implemented by the Respondents and in some cases, lesser punishments were imposed.

5a. He has also relied upon judgment of a Division Bench of this Court made in W.A. No. 58 of 2011, dated 27.01.2011 and contended that the Division Bench considered the disproportionate nature of punishment of dismissal for desertion and set aside the order of the learned single Judge upholding the order of termination and remitted the matter to the Department to reconsider the matter with regard to the quantum of punishment and to take a decision in six weeks. The learned counsel also produced the order passed by the learned Single Judge which was reversed in the writ appeal, wherein the learned Single Judge refused to interfere with the order of punishment on the ground that the writ Petitioner therein absented from duty thrice. The Learned Counsel further submitted that in spite of desertion thrice, the Division Bench thought that the punishment of dismissal from service on the sole ground of desertion is highly disproportionate.

5b. After perusing the counter affidavit filed by the Respondents, Learned Counsel for the Petitioner would submit that the impugned order may be set aside and the matter may be remitted to the Respondents to consider the Petitioner''s case in the light of the Division Bench judgment and a fresh order may be directed to be passed.

6. Learned Special Government Pleader appearing for the Respondents, on the other hand, submitted that Police Standing Order provides for dismissal of police personnel, whereby, if he deserts the service for more than 21 days, then the order passed by the Respondents are legal and valid.

7. I have given careful consideration to the submissions made by the Learned Counsel on either side.

8. A close scrutiny of the case would reveal that the Petitioner was directly recruited as Grade - II Police Constable in the Chennai City Armed Reserve in the year 1979 and promoted as Grade - I Police Constable in the year 2004. While so, he was transferred to Chennai City from 06.06.2004 and from 21.01.2006, he was sent to serve in City Armed Reserved Police and while performing the job of Guard duty in the Punjab National Bank, Mint Branch, because of his health condition, he absented himself and claimed that due to breathlessness for some time, he was absent from duty from 25.01.2006. For the said unauthorised absence, departmental action was initiated against the Petitioner on the ground of desertion. However, he reported to duty by explaining the reasons for his absence. The Deputy Commissioner of Police, Washermanpet Division, who was satisfied with the explanation given by the Petitioner along with the documents, accepted his explanation and took him back for duty as per his proceedings

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dated 09.03.2006 and he was posted in the same station. However, the very same Respondent chose to issue a charge memo to the Petitioner and thereafter, the Petitioner submitted an explanation to the same and an Enquiry Officer was appointed and he conducted the oral enquiry. Based on the Enquiry Officer''s report, the Petitioner was imposed with the punishment of removal from service by an order dated 24.07.2007. Analyzing the entire facts and circumstances, and in view of the specific plea made by the counsel for the Petitioner, this Court is inclined to consider the question of proportionality alone in respect of the quantum of punishment.

9. The Supreme Court, in a judgment reported in Shri Bhagwan Lal Arya Vs. Commissioner of Police Delhi and Others, , has considered the issue of quantum of punishment in the case of unauthorised absence on medical grounds. Relevant paragraphs of the said judgment would read thus:

11.... It is not the case of the Respondents that the Appellant is a habitual absentee. He had to proceed on leave under compulsion because of his grave condition of health and, therefore, the punishment of removal from service is excessive and disproportionate. We are of the view that the punishment of dismissal/removal from service can be awarded only for acts of grave nature or as cumulative effect of continued misconduct proving incorrigibility or complete unfitness for police service. Merely one incidence of absence and that too because of bad health and valid and justified grounds/reasons cannot become the basis for awarding such a punishment. We are, therefore, of the opinion that the decision of the disciplinary authority inflicting a penalty of removal from service is ultra vires Rules 8(a) and 10 of the Delhi Police (Punishment and Appeal) Rules, 1980 and is liable to be set aside. The Appellant also does not have any other source of income and will not get any other job at this age and the stigma attached to him on account of the impugned punishment. As a result of which, not only he but his entire family totally dependent on him will be forced to starve. These are the mitigating circumstances which warrant that the punishment/order of the disciplinary authority is to be set aside.

14. Thus, the present one is a case wherein we are satisfied that the punishment of removal from service imposed on the Appellant is not only highly excessive and disproportionate but is also one which was not permissible to be imposed as per the Service Rules. Ordinarily we would have set aside the punishment and sent the matter back to the disciplinary authority for passing the order of punishment afresh in accordance with law and consistently with the principles laid down in the judgment. However, that would further lengthen the life of litigation. In view of the time already lost, we deem it proper to set aside the punishment of removal from service and instead direct the Appellant to be reinstated in service subject to the condition that the period during which the Appellant remained absent from duty and the period calculated up to the date on which the Appellant reports back to duty pursuant to this judgment shall not be counted as a period spent on duty. The Appellant shall not be entitled to any

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service benefits for this period. Looking at the nature of partial relief allowed hereby to the Appellant, it is now not necessary to pass any order of punishment in the departmental proceedings in lieu of the punishment of removal from service which has been set aside. The Appellant must report on duty within a period of six weeks from today to take benefit of this judgment.

(Emphasis supplied)

9a. In the said judgment, the Supreme Court instead of remanding the matter to the department, following the earlier decision reported in B.C. Chaturvedi Vs. Union of India and others, imposed punishment by itself, wherein, it is held thus:

18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof.

(Emphasis supplied)

9b. The same is the view taken by the Supreme Court in decisions reported in V. Ramana Vs. A.P.S.R.T.C. and Others, and Jagdish Singh Vs. Punjab Engineering College and Others, . In a latest ruling reported in Ramanuj Pandey Vs. The State of M.P. and Others, . the Supreme Court looked into the question of proportionality of the quantum of punishment and interfered with the quantum of punishment holding that ''the punishment of the Appellant of dismissal from service as imposed by the disciplinary authority is substituted to one of the compulsory retirement from the date of his dismissal from service.

10. Though several grounds have been raised by the Petitioner to assail the impugned order of removal from service, he has ultimately urged this Court to look in to the question of proportionality. It is contended that normally in a case of desertion, the Respondents ought to see the circumstances under which the delinquent has absented himself

and give due consideration to the explanation submitted by him, so that appropriate punishment would be inflicted upon. In the instant case, the 1st respondent has initially accepted the explanation of the Petitioner and allowed the Petitioner to report for duty. However, later on, he decided to proceed against him departmentally and for the unauthorised absence on the charge of desertion, the punishment of removal from service imposed on him is excessive and harsh.

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It is also the contention of the Petitioner that the Supreme Court as well as this Court in several rulings pertaining to cases of ''unauthorised absence'', have held that a lesser punishment could have been imposed upon on the delinquent. But, the authorities in the case on hand have viewed the case of the Petitioner seriously and imposed a harsh punishment of ''removal from service''.

11. The High Court, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of this Court, it would appropriately mould the relief, either directing the disciplinary/appellate authority to re-consider the penalty imposed or to shorten the litigation, it may itself, in exceptional and rare cases impose appropriate punishment with cogent reasons in support thereof. This aspect has been examined and legal principles are settled in respect of ''interference in the quantum of punishment'' to say that it is always open for the disciplinary authority or the appellate authority to decide the quantum of punishment in a case of misconduct and the role of the court is only secondary. As such, this Court, while considering the above legal principles, decisions rendered by the Supreme Court as well as this Court and the circumstances under which the authorities have proceeded to impose the punishment on the Petitioner, is of the view that the quantum of punishment imposed on the Petitioner is shockingly disproportionate and requires interference.

12. Therefore, I am of the view that interest of justice would be met by setting aside the order of the Respondents and accordingly, the order of the Respondents 1, 2 and 3, dated 24.07.2007, 25.09.2007 and 12.05.2008, respectively, are set aside and the matter is remitted to the 3rd respondent to consider the said issue of proportionality of the punishment and pass fresh orders within a period of eight (8) weeks from the date of receipt of a copy of this order.

The writ petition is disposed of accordingly. No costs.

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