

(2006) 03 MAD CK 0345
In the Madras High Court
Case No : Writ Petition No. 26598 of 2005

M. Gunasekaran	Vs	APPELLANT
The Director General of Police		RESPONDENT

Date of Decision : 08-03-2006

Acts Referred:

Tamil Nadu Civil Services (Discipline and Appeal) Rules, 1955 — Rule 36
Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 — Rule 15A, 2, 3

Citation : (2006) 03 MAD CK 0345

Hon'ble Judges : N. Paul Vasanthakumar, J

Bench : Single Bench

Advocate : N. Chandraraj, for the Appellant; D. Malarvizhi, Government Advocate, for the Respondent

Judgement

N. Paul Vasanthakumar, J.—In W.P. No. 26598 of 2005, petitioner seeks to quash the show cause notice issued by the Director General of Police in his proceedings Rc. No. 5079/Con.V(2)/94, dated 4.11.1998 for enhancement of punishment from postponement of next increment for a period of one year to that of dismissal from the Force.

2. In W.P. No. 27633 of 2005, petitioner seeks to quash the order of the 3rd respondent dated 1.5.1996 imposing the punishment of postponement of next increment for a period of one year without cumulative effect and as confirmed by the second respondent in his proceedings dated 1.4.1997 and further confirmed by the first respondent in his proceedings dated 4.11.1998 by issuing show cause notice for enhancement of punishment and to direct the respondents to give monetary benefits.

3. The brief facts necessary for the disposal of the above writ petitions are as follows.

(a) Petitioner joined in the service of the Police Department on 13.8.1971 and he obtained 145 rewards and Chief Minister's medal for his meritorious service. The

petitioner while working as Head Constable, attached to Kumbakonam Taluk Police Station, Thanjavur, he was served with a charge memo on 24.9.1994 under rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules in P.R. No. 21 7/94 along with the Inspector and Sub Inspector of Police attached to that station. The charge alleged against the petitioner was that the petitioner connived with the Inspector and Sub Inspector of Police in demanding bribe for an incident that was alleged to have taken place on 3.5.1991. The charge framed against the petitioner reads as under,

Highly reprehensible conduct and unbecoming of a Police Head Constable in having connived with Sub-Inspector Thiru Udayasankar and Inspector of Police Thiru P.Thirugnanasampandam, demanded Rs.5,000/- as bribe from one Annamalai, S/o.Palaniappan, Proprietor, Sri Mahaganapathy Lottery Centre, Kumbakonam North Police Station on record at about 0200 hrs., on 3.5.91 from one Yunus, S/o.Mohammed Yusuff, Pudumanai Street, Koranattu Karuppur under suspicious circumstances during the course of their night beat and in pursuance of the demand you have accepted a bribe of Rs.1,700/- from Annamalai at about 11.00 hrs on 3.5.91 in front of Kumbakonam South Police Station in the presence of Karu Shanmugam and Mohan.

(b) The third respondent ordered for a joint enquiry by the Superintendent of Police, Thanjavur. The charge memo was issued pursuant to the preliminary enquiry of the Vigilance and Ante Corruption Department. Petitioner states that he was not provided with the vigilance report either before commencement of the enquiry or during the conduct of the enquiry in spite of his several requests and by letter dated 1 5.3.1995 to the Enquiry Officer.

(c) According to the petitioner, the entire matter was handled by the Sub-Inspector of Police and Inspector of Police concerned and the same is evident from the general diary recorded by the Sub-Inspector of Police on 4.5.1991. The Enquiry Officer found the petitioner guilty of the charge on the basis of circumstantial evidence and thereafter the third respondent imposed the punishment of postponement of next increment for one year without cumulative effect by order dated 1.5.1996. Aggrieved over the order of punishment, petitioner preferred an appeal before the first respondent on 7.6.1996, which was transmitted to the second respondent for disposal.

(d) The second respondent, without disposing of the same on merits, issued show cause notice on 1.8.1996 for enhancement of the punishment. Petitioner sent a representation to the second respondent on 26.8 .1996 stating that when the appeal is pending, second respondent is not justified in issuing second show cause notice. Subsequently, second respondent dropped the proceeding issued under the show cause notice dated 1.8.1996 and disposed of the appeal on merits by order dated 1.4.1997 confirming the order of punishment imposed by the third respondent.

(e) Petitioner further states that the first respondent initiated suo-motu revision

and consequently a show cause notice dated 4.11.1998 was served on the petitioner on 23.11.1998 for the enhancement of penalty imposed on him. In these writ petitions, petitioner challenges the order of punishment passed by the third respondent and confirmed in appeal by the second respondent and the show cause notice dated 4.11.1998.

3. While admitting O.A. No. 10391 of 1998, the Tribunal granted stay of the show cause notice dated 4.11.1998 and it was extended until further orders and as such no final order was passed.

4. In the counter affidavit filed by the respondents, the action of the department is justified. In so far as the suo-motu power of the first respondent, it is stated that the first respondent found that the punishment imposed on the petitioner is inadequate in view of the gravity of the delinquency, which deserves capital punishment. With regard to the delay in exercising the suo-motu power in para 10 of the counter affidavit it is stated as follows,

it is submitted that the delay was not intentional one but due to administrative reasons only. The delay did not affect the prosecution and the applicant was given reasonable opportunity to defend his case.

5. The learned counsel appearing for the petitioner fairly submitted that even though the petitioner has challenged the order of punishment imposed by the third respondent as confirmed in appeal by the second respondent in W.P. No. 27633 of 2005 on several grounds including that of violations of principles of natural justice, he is not pressing the prayer insofar as the prayer and he restricts the prayer only with regard to the show cause notice dated 4.11.1998. The learned counsel for the petitioner argued that the suo-motu review power is available to the first respondent, who is the Head of the Department, only for a period of six months, but the first respondent had issued the impugned show cause notice after a period of one year and six months, after the order of the appellate authority and after 2= years from the date of order of the original authority/third respondent. Therefore the learned counsel submitted that the suo motu power of review exercised by the first respondent is barred by limitation. The learned counsel further argued that Rule 15-A of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules empowers the first respondent to initiate suo-motu power only within six months and beyond six months the Government alone has got powers to suo-motu review the order of punishment. For proper appreciation, Rule 15-A is extracted hereunder, "15-A (1) Notwithstanding anything contained in these rules-

(i) the State Government; or

(ii) the Head of the Department directly under the State Government in the case of a Government servant serving in a department or office, under the control of such Head of the Department; or

(iii) the appellate authority within six months from the date of the order

proposed to be reviewed; or

(iv) any other authority, specified in this behalf by the State Government by a general or special order, and within such time as may be prescribed in such general or special order may, at any time either on their or its own motion or otherwise, call for the records of any inquiry and review any order made under these rules, after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary and may,-

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set-aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority, directing such authority to make such further inquiry as it may consider proper in the circumstances of the case: 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. Where it is proposed to impose any of the penalties specified in clauses (d), (e) (3), (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 manner laid down in sub-rule (b) of rule 3 and after giving a reasonable opportunity to the Government servant concerned of showing cause on the evidence adduced during the inquiry and except after consultation with the Tamil Nadu Public Service Commission, where such a consultation is necessary:

Provided further that no power of review shall be exercised by the Head of the Department, unless-

(i) the authority which made the order in appeal; or

(ii) the authority to which an appeal would lie, where no appeal has been preferred, is subordinate to him.

(2) No proceeding for review shall be commenced until after,-

(i) the expiry of the period of limitation for an appeal; or

(ii) the disposal of the appeal, where any such appeal has been preferred;

(3) An application for review shall be dealt with in the same manner as if it were an appeal under these rules;

(4) No application for review shall be preferred more than once in respect of the same order:

Provided that members of the constabulary (Police Constables and Head Constables) shall be eligible to make one representation to the Government

against orders of dismissal or removal from service after exhausting the right of appeal;

Provided further that no application for review shall be entertained, if it has not been made within a period of six months from the date of receipt of the order on which such application for review is preferred.

6. In this case, the impugned show cause notice is issued by the first respondent, who is the head of the department. The learned counsel for the petitioner also cited a decision of this Court reported in K. Parkunam Vs. The Chairman, Tamil Nadu Electricity Board and Others, wherein a similar provision contained in regulation 25 of the Manual on Tamil Nadu Conduct Regulation and Disciplinary Proceeding issued by the Tamil Nadu Electricity Board was considered and this Court held that the head of the department can initiated suo motu review within six months i. e., within the period of limitation.

7. I have heard the learned counsel appearing for the petitioner as well as the Government Advocate.

8. The point for consideration in this petition is as to whether the first respondent has got jurisdiction to initiate suo-motu review by issuing the impugned show cause notice beyond the period of six months from the date of the order of the appellate authority.

9. The order in appeal was passed by the second respondent on 11.4.1997 and the impugned show cause notice is issued on 4.11.1998. The period in between is one year, six months and 23 days. Beyond six months, only the State Government has got power of suo motu review and the Head of the Department lost his jurisdiction to review the punishment suo-motu. Rule 15-A extracted above enables the first respondent to review the punishment only within six months and not beyond that. The said rule is analogous to Regulation 25 of the Manual on Tamil Nadu Conduct Regulation and Disciplinary Proceeding issued by the Tamil Nadu Electricity Board. The said regulation was interpreted by this Court in the judgment reported in K. Parkunam Vs. The Chairman, Tamil Nadu Electricity Board and Others, , wherein this Court held that the review proceedings have been initiated by the Chief Engineer, who has no jurisdiction to initiate such proceeding after the period of limitation, hence the same is unsustainable.

10. In W.P. No. 25355 of 2005 order dated 21.2.2006, myself considered the power of suo-motu review exercisable under Rule 36 of the Tamil nadu Civil Services (Discipline and Appeal) Rules, which is analogous to Rule 15-A of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules. In the said writ petition, the suo-motu review power exercised by the Head of the Department was found non-est since the action was initiated beyond six months.

11. For the reasons stated in the said order and in the reported judgment cited above and in view of the impugned show cause notice having been issued by the

first respondent after 1 year, six months and 23 days, I hold that the same is without jurisdiction and the impugned show cause notice dated 4.11.1998 is set aside. As already submitted by the learned counsel for the petitioner punishment imposed against the petitioner by the original authority and confirmed by the appellate authority viz., postponement of next increment for one year without cumulative effect is sustained.

12. The writ petitions are disposed of in the above terms. No costs.