

(2010) 04 MAD CK 0295

In the Madras High Court

Case No : Writ Petition No. 44736 of 2006 (T) and O.A. No. 7410 of 1999

Parambarath Suresh

APPELLANT

Vs

The Commandant, T.N. Special Police VI Battalion, The Dy.
Inspector General of Police, Armed Police (Modernization and
Welfare) and The Inspector General of Police, Armed Police

RESPONDENT

Date of Decision : 30-04-2010

Acts Referred:

Citation : (2010) 04 MAD CK 0295

Hon'ble Judges : B. Rajendran, J

Bench : Single Bench

Advocate : K. Venkatramani for M. Muthappan, for the Appellant; P.
Gurunathan, Government Advocate, for the Respondent

Judgement

B. Rajendran, J.—The petitioner was appointed as cook in the Tamil Nadu Special Police Battalion VI, Madurai on 24.09.1981. Subsequently, his service was regularized. During the year 1989, the petitioner underwent treatment at Kerala for sulpha allergy, as he was suffering from frequent swelling and itching all over his body. During the period of such treatment, for his unauthorized absence, he was treated as a deserter and minor penalty was imposed on him. Again, during the month of December, 1993, due to ill-health, he had to leave to Kerala. As the disease was very severe, he could not return to duty in time and consequently, he was declared as a "deserter" for having absented himself without leave or prior permission for a period of 21 days i.e., from 02.12.1993 to 22.12.1993. Thereafter, the petitioner was served with a desertion order and he was directed to appear before the Commandant on 10.03.1994. As the petitioner was suffering from severe sulpha allergy disease, he could not appear before the Commandant on 10.03.1994. Therefore, the petitioner was served with a charge memo in PR. No. 40/94 dated 16.08.1994, for having deserted the force from 02.12.1993. Thereafter, an enquiry was conducted and the petitioner expressed his inability to report for duty due to severe nature of his allergy. But without considering the petitioner's explanation, the Enquiry Officer submitted a proved

minute and basing on the same, the Disciplinary Authority sent a copy of the enquiry report to the petitioner and directed him to submit his further explanation. The Disciplinary Authority, on getting further representations, imposed the punishment of dismissal from service by an order dated 08.02.1995 in C. No. F1/PR/40/94. Thereafter, the petitioner preferred an appeal to the second respondent, which was also dismissed on 11.08.1998. The petitioner preferred a further review to the third respondent on 01.11.1998 and since no order were passed, he moved to the Tribunal which has been transferred to this Court and renumbered as W.P. No. 44736 of 2006.

2. The grievance of the petitioner is that the order of the Disciplinary Authority is totally against law because the punishment is shockingly disproportionate to the charge. After all, the petitioner was absent only for a period of 21 days, whereas, the punishment imposed is total removal from service, especially to one who has put in 14 years of service. Furthermore, his absence is justified because of his allergic to sulphur, which was also proved by medical reports. Unfortunately, since this has not been taken into consideration by the respondents, the petitioner challenges the order.

3. The Learned Government Advocate for the respondents filed a detailed counter in which he would to state that all the formalities and the principles of natural justice have been followed. He was given ample time for participating in the enquiry. In fact, by his own letters dated 10.10.1994 and 17.11.1994, the petitioner had accepted his delay in reporting to the duty and therefore, he will not be entitled to any benefits. Furthermore, on a previous occasion for the very same offence, the petitioner was punished. Under those circumstances, the order passed by the Authorities is fair and reasonable. Moreover, in a disciplined service, the petitioner being a deserter, the punishment of removal from service is proper and correct.

4. Heard, both sides. The only contention raised by the Learned Senior Counsel for the petitioner is that the punishment is shockingly disproportionate to the offence made out. In this case, the charge is that the petitioner did not attend duty for a period of 21 days i.e., from 02.12.1993 to 22.12.1993, for which an order of desertion was served to him, directing him to appear before the Commandant on 10.03.1994. Since the petitioner did not respond for the desertion notice, enquiry was conducted. But the fact remains that the petitioner could not attend on one ground that he was suffering from allergy especially due to sulphur and therefore, he was taking treatment. On earlier occasion, the petitioner when he was undergoing treatment he was declared as a deserter and at most time also the petitioner brought to the notice of the Authorities his ailment before ultimately, he was given a minor punishment. At this point of time, as he could not immediately report for duty, as his illness was very severe, he only prayed that he may be given lenient punishment.

5. In this connection, the learned Senior Counsel relied upon the judgment of the Hon"ble Supreme Court reported in Chairman cum Managing Director, Coal India

Limited and Another Vs. Mukul Kumar Choudhuri and Others, that when the delinquent had admitted the charges, the penalty can always be modified, if it is found that it is excessive and is shockingly disproportionate to the conscience of the Court. In this case stated supra, the Hon"ble Supreme Court has categorically held as follows:

The doctrine of proportionality is, thus, well-recognised concept of judicial review in our jurisprudence. What is otherwise within the discretionary domain and sole power of the decision-maker to quantify punishment once the charge of misconduct stands proved such discretionary power is exposed to judicial intervention if exercised in a manner which is out of proportion to the fault. Award of punishment which is grossly in excess to the allegations cannot claim immunity and remains open for interference under limited scope of judicial review.

One of the tests to be applied while dealing with the question of quantum of punishment would be: would any reasonable employer have imposed such punishment in like circumstances? Obviously, a reasonable employer is expected to take into consideration measure, magnitude and degree of misconduct and all other relevant circumstances and exclude irrelevant matters before imposing punishment.

In a case like the present one where the misconduct of the delinquent was unauthorized absence from duty for six months but upon being charged of such misconduct, he fairly admitted his guilt and explained the reasons for his absence by stating that he did not have any intention nor desired to disobey the order of higher authority or violate any of the Company"s rules and regulations but the reason was purely personal and beyond his control and, as a matter of fact, he sent his resignation which was not accepted, the order of removal cannot be held to be justified, since in our judgment, no reasonable employer would have imposed extreme punishment of removal in like circumstances. The punishment is not only unduly harsh but grossly in excess to the allegations.

6. In the Division Bench judgment reported in (2009) 7 MLJ 1213 in V. Senthurvelan v. High Court of Judicature at Madras, rep. by the Registrar, High Court, Chennai 600 104 and Ors. this Court has categorically held as follows:

...the punishment of removal from service imposed on the delinquent by the disciplinary authority and confirmed by the Appellate Authority is shockingly disproportionate to the proved charges of unauthorized absence from duty by the petitioner and therefore, it requires modification.

7. From the above two decisions, it is very clear that in the case of mere absence from duty for a short period the punishment of removal from service is very heavy. On taking into consideration that long period has lapsed, it is only worthwhile to modify the punishment from removal of service into compulsory retirement. In the present case by considering the fact that the petitioner is not in a position to work as a Cook due to allergy, under those circumstances, by

taking into consideration that the punishment imposed is shockingly disproportionate to the offence made out, the impugned order of removal is modified into one of compulsory retirement. The writ petition is partly allowed. No costs.