

(2013) 09 MAD CK 0137

In the Madras High Court

Case No : Writ Petition No. 18616 of 2013 and M.P. No. 1 of 2013

S. Shanmuga Rajan

APPELLANT

Vs

The Commandant T.N. Special Police (Special Force), The
Inspector General of Police and N. Tamilselvan, IPS I/c.
Inspector General of Police, Addl. Director General of Police

RESPONDENT

Date of Decision : 05-09-2013

Acts Referred:

Citation : (2013) 09 MAD CK 0137

Hon'ble Judges : D. Hariparanthaman, J

Bench : Single Bench

Advocate : K. Venkatramani, for Mr. M. Muthappan, for the Appellant; V. Jaya
Prakash Narayanan, Spl. Govt. Pleader for R1 and R2, for the Respondent

Final Decision : Allowed

Judgement

D. Hariparanthaman, J.—The petitioner entered the service as a directly recruited Gr-II Police Constable through selection conducted by

Tamil Nadu Uniformed Services Recruitment Board in May 1999. While so, the petitioner was issued with a charge memo under Rule 3(b) of

Tamil Nadu Police Subordinate Services (D & A) Rules in PR No. 39/2004 dated 26.10.2004 on the following allegations:--

Highly reprehensible conduct while working as constable in TSP Special Force entered casual leave from 26.06.04 to 30.06.04, extended the

casual leave from 1.7.04 to 5.7.04, did not report for duty on 6.7.04 and after completion of leave, in violation of the rules entered medical leave

from 6.7.04 to 15.07.04 and did not report for duty thereafter and absented from duty without information, permission or leave for more than 20

days and thus declared as a deserter and did not appear before the Commandant

within 60 days from the date of desertion and hence the desertion was confirmed on 30.10.04.

2. The crux of the allegation was that the petitioner absented from duty without permission for more than 20 days and thus, he was declared as a deserter.

3. Thereafter, an enquiry was conducted. The petitioner submitted a written statement of defence stating that he was on casual leave from 26.06.2004 to 30.06.2004 and due to ill health, he extended the casual leave from 01.07.2004 to 05.07.2004. As his health condition worsened, he took medical leave for 10 days from 06.07.2004 to 16.07.2004. Even thereafter, as he did not recover from his illness, he had asked his parents to submit a letter for medical leave, but due to illiteracy, they did not send the leave application. According to the petitioner, due to compelling circumstances, he could not report for duty. However, the Enquiry Officer without taking into consideration his explanation held that the charges against the petitioner were proved. Based on the same, the petitioner was imposed with the punishment of Removal from service by an order dated 01.12.2004 of the first respondent.

4. Thereafter, the petitioner filed a review petition before the second respondent. His review petition was rejected by the second respondent viz., Inspector General of Police, Armed Police, Trichy by order dated 05.07.2005. The petitioner filed a Mercy Petition before the Director General of Police and the same was also dismissed by an order dated 22.10.2005.

5. Thereafter, the petitioner filed a writ petition in W.P. No. 11164 of 2006 before this Court questioning the aforesaid orders. The learned single Judge of this Court dismissed the writ petition vide order dated 22.09.2008 refusing to interfere with the punishment of removal from service.

6. As against the said order, the petitioner filed a writ appeal in W.A. No. 1608 of 2011. The First Bench of this Court set aside the order of the learned single Judge and remitted back the matter to the Inspector General of Police, the second respondent herein to consider the issue regarding the proportionality of the punishment and to pass fresh orders within a period of eight weeks from the date of receipt of copy of the order.

7. On remand, the second respondent has passed the impugned order dated 08.05.2013 stating that the punishment of removal imposed on the

petitioner is proportionate to his delinquency and he was rightly punished. This writ petition is filed against the order dated 08.05.2013.

8. The respondents have filed counter affidavit refuting the allegations.

9. The crux of the allegation made in the counter affidavit was that the petitioner deserted the force on three occasions and unauthorisedly absented

from duty on three occasions.

10. Heard both sides.

11. The learned Senior Counsel for the petitioner vehemently contended that the impugned order is opposed to the decision of the First Bench of

this Court dated 26.02.2013 made in W.A. No. 1608 of 2011 preferred by the petitioner herein, wherein, he was the appellant. He submitted that

the order dated 26.02.2013 is based on the order of the First Bench of this Court dated 27.01.2011 in W.A. No. 58 of 2011.

12. The appellant in W.A. No. 58 of 2011 also deserted the force on three occasions and absented himself from duty on two occasions and in

those circumstances, the Division Bench of this Court has held in W.A. No. 58 of 2011 that the punishment imposed on the appellant is

disproportionate to the charge levelled against him and it is shocking the conscience of the Court and remitted back the matter to the disciplinary

authority, to re-consider the matter with regard to the quantum of punishment imposed on the appellant therein. According to him, the appellant

therein was reinstated in service after remand in W.A. No. 58 of 2011. It is submitted by the learned Senior Counsel that the petitioner is also

entitled to similar relief.

13. On the other hand, the learned Special Government Pleader has relied on the counter affidavit filed by the respondents and has referred to

paragraph 4 of the counter in support of his submission that the petitioner deserted thrice the force during his service and he unauthorisedly absent

for three times. He prayed for dismissal of the writ petition.

14. I have considered the submissions made by the learned counsel on either side.

15. It is necessary to refer to the following passages found in paragraphs 8 and 9 of the judgment dated 26.02.2013 made in W.A. No. 1608 of

2011:--

8. In an identical set of fact, the Division Bench of this Court in paragraph 3 of the order in W.A. No. 58 of 2011 dated 27.1.2011, R. Ramesh v.

The Deputy Inspector General of Police and Other, held as follows:

..... we are prima facie of the view that the punishment imposed on the appellant is disproportionate to the charge levelled against him and it is

in fact, shocking the conscience of this Court, We, therefore, allow this writ appeal, set aside the impugned judgment passed by the learned single

Judge and remit back the matter to the disciplinary authority viz., the second respondent herein, to reconsider the matter with regard to the

quantum of punishment imposed on the appellant and to take a decision within six weeks from today. It is made clear that in the event the quantum

of punishment imposed on the appellant is reduced, he shall not make any claim with regard to the wages for the period he has not performed his

duty, but the continuity in service will not be affected.....

In the said case the appellant who served as Grade II Police Constable deserted the force on three occasions and absented from duty on two

occasions. The said order was also implemented by the very same Police Department by its order dated 10.06.2011. The appellant therein was

imposed with a punishment of postponement of next increment for two years which shall operate to postpone his future increments. He also joined

duty on 28.04.2011.

9. Thus proportionality of the punishment has to be gone into by the Disciplinary Authority as well as by the Appellate Authority. The said aspect

has not been considered in this case by the learned Single Judge. Hence, the order of the learned Single Judge is set aside and the matter is

remitted back to the fourth respondent to consider the issue regarding the proportionality of the punishment and pass fresh orders within a period

of eight weeks from the date of receipt of copy of this order. It is also made clear that in the event the quantum of punishment is reduced, the

appellant shall not claim backwages for the period in which he has not performed his duty.

16. The aforesaid passages make it clear that the Division Bench remanded the matter to the second respondent based on the order dated

27.01.2011 in W.A. No. 58 of 2011. In the very beginning of Paragraph 8 of the judgment, the Division Bench has stated that ""In an identical set

of fact...""', which assumes more important for this case.

17. It is necessary to refer to the judgment dated 27.01.2011 made in W.A. No. 58 of 2011:--

Heard the learned counsel for the parties. This appeal is filed challenging the order of the learned single Judge dated 02.09.2008 passed in Writ

Petition No. 33624 of 2005.

The appellant/writ petitioner, who was serving as Grade -II Police Constable in the Police Department at Kancheepuram, was proceeded against

departmentally on the charge that he remained absent from duty for a period of 21 days. The Enquiry Officer held the charge against the appellant

as proved. In view of the finding of the Enquiry Officer, as also the fact that the appellant had earlier deserted the force on three occasions and

absented himself from duty on two occasions, the disciplinary authority, viz., the second respondent herein, passed an order of dismissal from

service against the appellant. The appellant challenged the same by filing the writ petition, which was dismissed by the learned single Judge, who

held that the appellant, being employed in the Armed Reserve was expected to maintain strict discipline and in view of his past conduct, the

punishment of dismissal cannot be termed as excessive or disproportionate.

3. After hearing the learned Senior Counsel for the appellant and the learned Government Pleader, we are prima facie of the view that the

punishment imposed on the appellant is disproportionate to the charge levelled against him and it is in fact, shocking the conscience of this Court.

We, therefore, allow this writ appeal, set aside the impugned judgment passed by the learned single Judge and remit back the matter to the

disciplinary authority viz., the second respondent herein, to reconsider the matter with regard to the quantum of punishment imposed on the

appellant and to take a decision within six weeks from today. It is made clear that in the event the quantum of punishment imposed on the appellant

is reduced, he shall not make any claim with regard to the wages for the period he has not performed his duty, but the continuity in service will not

be affected.....

(Emphasis added)

18. The second respondent, on remand, passed the impugned order dated 08.05.2013 holding that the punishment of removal awarded to the

delinquent is proportionate to his delinquency. Paragraph 11 of the impugned order is extracted hereunder:

11.....I am of the opinion that the punishment of Removal from service awarded to the delinquent earlier is proportionate to his delinquency. He was rightly punished.

19. It was not in dispute that the petitioner was on casual leave from 26.06.2004 to 30.06.2004. According to him, due to illness, he extended his casual leave for a further period of five days from 01.07.2004 to 05.07.2004. As per the impugned order, the petitioner availed medical leave from 06.07.2004 to 15.07.2004. Thereafter, the petitioner produced medical certificate for his treatment from 16.07.2004 to 31.07.2004. The certificates were neither disputed nor doubted by the second respondent.

20. The following passages found in paragraph 7 of the impugned order may be usefully extracted below:--

Again, instead of reporting for duty he has stated that he was ill and hence approached the Medical Officer of Govt Hospital at Tindivanam who

has prescribed 10 days Medical Leave from 06.07.2004 to 15.07.2004. This medical certificate states that he was suffering from Acute Gastritis

and Chest Pain. Beyond 15.07.2004, he has stated that his illness continued and he took treatment in Govt General Hospital, Chennai for the

period from 16.07.2004 to 31.07.2004. He has obtained a medical certificate from Dr. R. Parimala (Regd No. 35285, Madras Medical College)

Govt General Hospital, Chennai 03 which states that he is suffering from Enteric Fever. Again from 01.08.2004 to 21.09.2004 a period of 52 days

he had continued medical leave and produced a certificate obtained from the same Doctor. This time stated as Peptic Ulcer. As a patient suffering

from ""Peptic Ulcer"" he is capable of writing a letter to his superiors about his position and getting necessary leave. Instead the delinquent has stated

that he had asked his parents to go and inform about his illness and to send the medical certificate. He has stated that his parents were ignorant and

hence they did not send the medical certificate. This plea is not acceptable from a person said to be suffering only from peptic ulcer. Hence, I am

of the opinion that the charge of desertion is clearly proved and the delinquent is covering up his indisciplinary conduct by a web of lies.

21. In paragraph 9 of the impugned order, it was observed that while he was

able to travel from his home in Tindivanam to Chennai, a distance of over 100 kms, he was not able to travel to his battalion headquarter at Avadi, which is about 30 kms from Chennai to inform about his illness.

22. The second respondent having expressed no doubt about the plea of illness of the petitioner, is not correct in coming to the conclusion that the punishment of removal is proportionate to the delinquency.

23. For the aforesaid reasons, I am of the view that the impugned order is liable to be interfered with. The employee cannot be found fault for

absence, if he was really sick. However, he should be awarded with some punishment for not informing about his sickness and not seeking leave.

24. Therefore, in the facts and circumstances of the case, the Division Bench in paragraph 9 of the order dated 26.02.2013 in W.A. No. 1608 of

2013 held that the proportionality of the punishment can be gone into by the second respondent.

25. The learned Special government Pleader sought to justify the impugned order on the ground that the petitioner deserted thrice in his service and

also he was unauthorisedly absent three times and therefore, the petitioner could not seek for any indulgence. I am not in agreement with the

submission made by the learned Special Government Pleader. Further, the impugned order also nowhere refers to those earlier desertions and

unauthorised absence for confirming the punishment of removal from service.

26. In any event, when the appellant in W.A. No. 58 of 2011 was removed from service in identical circumstances, wherein, the appellant therein

also deserted the force three times and unauthorisedly absent for two times, the Division Bench held that the punishment imposed on the appellant

therein was disproportionate to the charges levelled against him and shocking to the conscience of the court.

27. In the order dated 26.02.2013 in W.P. No. 1608 of 2011, another Division Bench has held in Paragraph 8 that this Case is identical to the

case of the appellant in W.A. No. 58 of 2011. These categorical findings of the Division bench of this Court in W.A. No. 58 of 2011 and W.A.

No. 1608 of 2011 was not taken into account by the second respondent, while upholding the punishment of removal awarded to the petitioner.

28. In the normal course, this Court would not interfere with the order of punishment imposed by the disciplinary authority or the appellate

authority. That is why the Division Bench of this Court remanded the matter to the second respondent to decide the proportionality of the

punishment in the light of the observations made by them. But the second respondent has again passed an order which is contrary to the decisions

of this Court. Hence, I am not inclined to remand the matter back this time to the second respondent to again decide the matter.

29. Hence, the impugned order is set aside and the respondents are directed to reinstate the petitioner in service, but without backwages, within a

period of four weeks from the date of receipt of a copy of this order. It is made clear that the continuity of service of the petitioner will not be

affected. The writ petition is allowed in the above terms. No costs.