(2004) 08 MAD CK 0041

In the Madras High Court

Case No : Writ Petition No. 9732 of 2002 and W.P.M.P. No''s. 13190 of 2002 and 43340 of 2003

The Deputy Inspector General of Police, Coimbatore Range — APPELLANT

Vs

T.K. Vasudevan, Sub Inspector of Police and The Registrar, Tamil Nadu Administrative Tribunal — RESPONDENT

Date of Decision : 12-08-2004

Acts Referred:

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

Citation : (2004) 08 MAD CK 0041

Hon'ble Judges : R. Banumathi, J;P.K. Misra, J

Bench : Division Bench

Advocate : P.S. Sivashanmuga Sundaram, Additional Government Pleader, for the Appellant; G. Devi, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—This writ petition is filed to issue a Writ of Certiorari calling for the records of the Tamil Nadu Administrative Tribunal,

Chennai, the Second Respondent herein relating to Order dated 23.11.2001 made in O.A. No. 190 of 1993 and to quash the same.

2. This writ petition arises on the following facts:- The First Respondent was then working as Sub Inspector of Police, Anthiyur. On 07.11.1988,

the First Respondent along with another Sub Inspector of Police Durairaj headed by Inspector - Raju and the party went in Raid. At about 06.00

p.m., they searched a Cracker Shop of one Shanmugam at Thavittupalayam and seized Crackers worth Rs.5,000/- and took the Shop Owner

Shanmugam to the Police Station and without registering any case against him, let him to go away. The First Respondent S.I-Durairaj and PC-

Samiyappan and Head Constable one Ramachandran are alleged to have shared the seized Crackers among themselves. Therefore, as per the

orders of the Government, Charge against the First Respondent was framed under Rule 3(b) of TNPSS (D & A) Rules 1955 for allegedly seizing

the Crackers and sharing the same and the First Respondent was issued with Charge Memo in P.R. No. 340/1990. The other officers Raju-

Inspector of Police; Durairaj-S.I. of Police; Ramachandran-HC 853; PC 746-Samiyappan were also dealt with departmentally under Rule 3(b) of

TNPSS (D & A) Rules 1955.

3. Even before offering his explanation, the First Respondent has filed O.A. No. 624 of 1991 on the file of Tamil Nadu Administrative Tribunal

and has obtained stay of further proceedings in P.R. No. 340 of 1990.

4. Pointing out that only D.I.G is the competent authority to frame charges, the Tribunal has dismissed O.A. No. 624 of 1991 with a direction that,

... it will follow that if the Charge Memo is formulated by any lesser authority the penalty that can be imposed would be limited to those which

such lower authority can impose on an officer of the rank of the applicant. It is therefore, open to the Department either to proceed with the

charges as formulated subject to his limitation or cancel the charge memo and refer the matter to the authority competent to impose the penalties

specified in Rule 3(b) on Sub-Inspector of Police for action afresh ...

Pointing out the time lag of over two years in such matters, the Tribunal has issued the direction to issue fresh Charges within one year.

5. As per the order of Administrative Tribunal, Chennai fresh Charge Memo in P.R. No. 191 of 1992 was served on the First Respondent on

07.12.1992. The Applicant again filed O.A. No. 190 of 1993 to set aside the Charge Memo issued to him by the Writ Petitioner. The Department

has contested the petition.

6. O.A. No. 190 of 1993 was allowed by the Tribunal on two grounds, viz.,

(i) That there is a long delay of 13 years and even if the matter is remitted back to the Second Respondent, no substantial materials could be

produced to proceed with the Enquiry pursuant to the Charge Memo dated 02.11.1992;

(ii) In respect of raid on Cracker Shop, further action against the other Officers - Sub Inspector of Police R. Durairaj and Grade I Police

Constable S. Swaminathan were dropped. They were proceeded only relating to prohibition raid.

7. Aggrieved over allowing of the Original Application, the Department / Deputy Inspector General of Police, Coimbatore Range, Coimbatore has

preferred this writ petition.

8. Assailing the findings of the Tribunal, learned Additional Government Pleader Mr. P.S.Sivashanmuga Sundaram submitted that the delay was

mainly on account of compliance of the direction issued by the Tribunal in framing the charges approved by D.I.G of Police. The main contention

urged is that on 07.11.1988, the First Respondent was specially deputed for some other work, but he has visited Anthiyur Police Station and

raided the Cracker Shop and at the same time made false entries in the General Diary that he never visited the Cracker Shop. Pointing out the

grave allegations viz., falsification of records, learned Additional Government Pleader prays for reversal of the Impugned Order and revival of the

Enquiry Proceedings. Submitting the synopsis containing various dates and events, he has urged that the time gap in framing the charges is well

explained and Tribunal erred in not taking note of the same.

9. Countering the arguments, learned counsel for the First Respondent has submitted that when the Charge is dropped against other officers, the

First Respondent alone is singled out and victimised and the Tribunal has rightly set aside the Charge Memo. Taking us through the Charge Memo

issued in 1990 in P.R. No. 340 of 1990 and the subsequent Charge Memo served upon the First Respondent in P.R. No. 190 of 1993, learned

counsel for the First Respondent has submitted that the charges relating to falsification of records and events are only subsequently added with a

view to further victimise the First Respondent. Learned counsel has also pointed out the order passed by the Tribunal dated 06.11.2002 in O.A.

No. 2106 of 2002 allowing the First Respondent to retire and non-compliance of the same by the Department.

10. We have carefully considered the submissions of both sides.

11. It is alleged that on 07.11.1988, Raju-Inspector of Police along with Durairaj-S.I of Police, Samiyappan-PC 746 and other Police personnel

went on in Police Van bearing No. TNE 5959 to detect illegal Cracker shops. At about 06.00 p.m. all of them raided the Cracker shop of

Shanmugam and seized the crackers worth Rs.5000/- and took the owner Shanmugam along with them to Anthiyur Police Station. After reaching

Anthiyur Police Station with Shanmugam and seized crackers, the First Respondent and other Police personnel, who went with the First

Respondent are alleged to have shared the crackers seized from the shop amongst themselves. They have allowed Shanmugam to go home without

any case being booked and instructed him to come to the Anthiyur Police Station on 08.11.1988.

12. On the grave misconduct of raid into the Cracker shop - ""Vivek Music Centre"" on 07.11.1988, the Department has directed Departmental

action against Inspector of Police-Raju and others as noted below:-

DATE G.O.No.

Event 28-08-1990 G.O.Ms. No. 1950

Departmental action ordered against Tr.Raju, Inspector Bhavani Circle for slack supervision over the work of Sis Vasudevan and Durairaj and

HC 853 Ramachandran and PC 746 who conducted a raid on a cracker shop on 07-11-1988 and prohibition raid on 13-11-1988.

28-08-1990 G.O.Ms.No.1951

Departmental action ordered against SI-Durairaj, HC 853-Ramachandran and PC 746-Samiyappan for conducting raid on cracker shop on

07.11.1988 and prohibition raid on 13.11.1988; collecting illegal gratification from them.

(ii) Departmental action against SI Vasudevan for conducting raid on Cracker shop on 07-11-1988

Regarding the raid into the Cracker shop, Charge Memo was issued to the First Respondent in P.R. No. 340/1990 (18.01.1991). On the same

allegations and also Prohibition raid, Charge Memos were also served on S.I of Police -Durairaj in P.R. No. 35/1991(04.03.1991); HC 853 in

P.R. No. 337/1990 (17.12.1990); PC 746-Samiyappan in P.R. No. 338/1990 (18.12.1990); Inspector of Police-Raju in P.R. No. 36/1991

(04.03.1991). The First Respondent and other delinquent officers have filed Original Applications before the Tamil Nadu Administrative Tribunal,

Chennai for quashing the Charge Memo. O.A. No. 624 of 1991 filed by the First Respondent was dismissed with direction as aforesaid in para

(4).

13. D.I.G of Police is the competent authority to frame charge against the S.I.of Police. After getting approval of the Charge Memo from D.I.G of

Police, Seven Charges were framed against the First Respondent. On 07.12.1992 fresh Charge Memo was served on the First Respondent in

P.R. No. 191 of 1992. At this juncture, two things are to be noted. P.R. No. 340/1990 - Charge Memo was issued only for conducting the raid in

the Cracker Shop. The First Respondent faced that charge of misconduct - illegal seizure of the Crackers along with Inspector-Raju and other

Police Personnel. But, in respect of raid in the Cracker shop, charge was dropped against S.I of Police-Durairaj and PC 746-Samiyappan.

Further action was dropped against Inspector of Police-Raju, who is charged for slack supervision over the work of S.Is-Vasudevan and Durairaj,

HC 853-Ramachandran and PC 746-Samiyappan. Further, the Inspector of Police-Raju is also promoted as D.S.P in 1994.

14. We have also carefully perused the file. The Van Driver of TNE 5959 who was on duty on that date has stated that the Inspector of Police

was accompanied by S.Is-Vasudevan and Durairaj and Head Constable-Ramachandran and all of them travelled in the van. The Driver has further

stated that all of them have brought the Crackers and taken Shanmugam to custody. Further, while going through the Original Charge Memo

issued in P.R. No. 340/1990 and from the Statement of allegations thereon, we find that definite allegations are made that there was raid into the

Cracker Shop by Raju-Inspector of Police; Durairaj-S.I of Police; Ramachandran-HC 853 and Samiyappan-PC746. We also find that definite

allegations are made against all the officers of sharing the Crackers seized among themselves. No convincing reasons are set forth for dropping the

Charges against S.I of Police-Durairaj, PC-Samiyappan for the alleged raid into the Cracker shop and illegal seizure of Crackers.

15. It is also to be noted that in P.R. No. 340 of 1990, the First Respondent was faced only one Charge of misconduct - ""....misconduct in

conducting a raid on 07.11.1988 at the Cracker Shop ""Vivek Music Centre"", Thavittupalayam along with other Officers and seized the Crackers

worth Rs.5000/- belonging to Shanmugam and actuated by criminal motive in sharing the seized crackers. After the dismissal of O.A. No. 624 of

1991 with direction to frame fresh charges in P.R. No. 191 of 1992, the Department has framed inasmuch as Seven Charges. That is Raid into the

Cracker Shop and seizure of crackers is spilt into four charges. Further, grave allegations of making false entries in Crime General Diary of

Anthiyur Police Station on 07.11.1988 are levelled against the First Respondent. Learned Additional Government Pleader forcibly contended that

the falsification of records is the grave misconduct and the charges are to be necessarily revived not withstanding the fact that the First Respondent

has attained superannuation.

16. We are constrained to point out that if the First Respondent was found to have committed such grave misconduct of falsification of records,

such allegations could have been made against him even in the earlier instance. But, the charges regarding falsification of records and others were

not framed at the earlier instance in P.R. No. 191 of 1992 (dated 07.12.1992). The delay in levelling such allegations of grave misconduct is too

long and unexplained. Serious doubts arise that the action of the Department might have been actuated. This is all the more so, when the

proceedings against the other delinquent officers regarding the raid into the Cracker shop is dropped.

17. In the initial stages before the commencement of the enquiry, the justifiability proceeding cannot possibly be gone into. But, it is equally well

settled that in the event where there is an element of doubt of malice arising, the Court could certainly go into the issue. We are of the considered

view that when further action is dropped against other officers and more charges are added as against the First Respondent after four long years,

the Tribunal was justified in setting aside the Charge Memo.

18. Further, the Tribunal was also right in finding that spilt up charges regarding the raid into the Cracker shop ought to have been issued within a

period of one year. The delay in framing the charges particularly on grave charges of falsification of records etc., the delay would constitute denial

of reasonable opportunity to the First Respondent to defend himself especially when he has attained the age of superannuation. The Tribunal has

pointed out that there is a delay of 13 years in proceeding against the First Respondent. Of course, the delay is also on the part of the First

Respondent, who has obtained stay in the earlier O.A. No. 624/91. Considering the facts and circumstances, we are of the view that the delay in

framing the charges and the fresh charges added up in 1992 would cause great prejudice to the First Respondent. In our view, it would not be fair

to the delinquent officer to face the charges when the delay is too long and unexplained. The Tribunal has rightly set aside the charges. The order of

the Tribunal does not suffer from any error apparent on the face of the record warranting interference.

19. On the eve of his retirement, the First Respondent was placed under suspension on 26.03.2002. He was not permitted to retire from service

due to the pendency of the Charge in P.R. No. 191/92. When the Charge Memo is quashed, the question arises relating to promotional benefits

and backwages.

20. The First Respondent, who is appearing through Counsel Ms.G.Devi has filed an affidavit undertaking to waive all his promotional benefits and

backwages accruing on such promotional benefits. The First Respondent has also undertaken not to claim arrears of wages during the suspension

period. In view of such undertaking, question of consideration of the past promotional benefits and the backwages does not arise.

21. For the aforesaid reasons, the Writ Petitioner is directed to permit the First Respondent to retire from service on the date of his superannuation

viz.,31.03.2002. It is further directed that the First Respondent shall not claim any benefits accruing on such promotional benefits or backwages for

the suspension period. Subject to the above direction and observation, the writ petition is dismissed. There is no order as to costs.

22. Consequently, the connected W.P.M.P. Nos. 13190 of 2002 and 43340 of 2003 are closed.