
(1991) 02 MAD CK 0002
In the Madras High Court

The Secretary to Government, Transport Department and
Another

APPELLANT

Vs

N. Marimuthu

RESPONDENT

Date of Decision : 05-02-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1991) 1 LW 458 : (1991) 1 MLJ 402

Hon'ble Judges : A.S. Anand, C.J

Bench : Division Bench

Judgement

A.S. Anand, C.J.—The only question which this writ appeal raises is, whether the High Court, in exercise of its powers under Article 226 of

the Constitution of India, can interfere with the penalty awarded by the Competent Authority after a domestic enquiry is held and misconduct

established, only on the ground that it is disproportionate to the misconduct proved? To answer the question, a brief note of the facts would be

necessary.

2. The respondent was employed as a foundry worker in the Government Press. On a charge of stealing mono-metal weighing about 540 grams he

was proceeded against departmentally. A criminal case was also registered against him and he was prosecuted in C.C. No. 18991 of 1979 before

the Vth Metropolitan Magistrate, Egmore, Madras.

3. In the domestic enquiry the respondent was charge-sheeted and was asked to submit his explanation. He submitted no explanation. The

Assistant Works Manager, Government Press, held an enquiry. The respondent apparently did not extend any assistance in the enquiry. The

enquiry officer, after conducting an enquiry, concluded that the case of theft of metal by the respondent stood proved. Reliance was also placed on

a written statement made by the respondent after he had been caught red-handed while committing the theft. On receipt ""of the enquiry report, a

provisional conclusion was arrived at by the Competent Authority to dismiss the respondent, and he was called upon to show cause inciting within

seven days from the date of receipt of the memorandum, as to why the proposed punishment of dismissal from service be not imposed upon him. A

copy of the findings of the enquiry officer was enclosed. He submitted his explanation to the show cause memorandum wherein he pleaded that the

complaint against him was false and was born out of some misunderstanding between him and another person. The Competent Authority

considered the explanation given by the respondent and found that the story of misunderstanding did not carry any force. The Competent

Authority, therefore, imposed the punishment of dismissal from service on the respondent, by his proceedings dated 14.7.1980. The respondent

did not immediately question proceedings dated 14.7.1980 and according to his own averment in the writ petition, in paragraph 5 of the affidavit

filed in support thereof, stated that an appeal was filed before the first respondent in the writ petition, through a representation dated 29.11.1982.

That was more than two years after the order of dismissal was made.

4. After the respondent had been dismissed from service by the Competent Authority, as a result of the departmental proceedings, it appears that

the criminal case also came to be concluded. In the criminal case, however, the respondent was acquitted on 5.8.1980. The respondent

approached the Government for his reinstatement on the ground that he had been acquitted by the criminal Court, without in anyway at that stage

assailing the order of dismissal made by the Competent Authority on 14.7.1980. Since the Government did not accede to the request of the

respondent, he preferred Writ Petition No. 11090 of 1983 in this Court. Various grounds were raised in the writ petition including the ground that

since the respondent had been acquitted in the criminal case, no punishment could have been imposed upon him in the domestic enquiry. The

learned single Judge rightly repelled the argument. The learned single Judge found that the domestic enquiry had been properly conducted and that

it was not one of those cases where the findings of the disciplinary authority could be characterised as based on no evidence or on no acceptable

evidence. The learned single Judge therefore, concluded in paragraph 4 of the judgment under appeal that the finding of the domestic enquiry

regarding the misconduct of the respondent did not call for any interference. After having returned the finding, the learned single Judge observed as

follows:

5. The last contention though not actually raised in this proceeding that the extreme punishment of dismissal is highly excessive considering the theft

of material of value of Rs. 20, appears to me to be well founded. Following the decision in W.P. No. 6593 of 1983, I am inclined to set aside the

order of dismissal, but with a condition that the ""respondents are directed to reinstate the petitioner only as a new employee with no right to the

petitioner to claim benefit of any kind on the basis of his past services. Accordingly, the writ petition is allowed. However, there will be no order as

to costs.

5. The Government Pleader, appearing for the appellants submits that after having found no fault with the findings recorded by the Enquiry Officer,

it was not open to the learned single Judge, in exercise of the writ Jurisdiction, to interfere with the punishment imposed by the Competent

Authority. It was submitted that the power to impose penalty on a Government employee is conferred on the Competent Authority by the Service

rules framed under the proviso to Article 309 of the Constitution of India and the quantum of punishment is in the exclusive domain and jurisdiction

of the Competent Authority. The learned Government Pleader went on to submit that the adequacy of penalty which was not questioned on any

ground, much less on the grounds of mala fides, was not a matter for the learned Single Judge to concern with. In support of his submission the

learned Government has relied upon the Judgment of the Apex Court in Union of India (UOI) Vs. Parma Nanda, , wherein after a review of a

catena of authorities, including the judgment reported in State of Orissa Vs. Bidyabhushan Mohapatra, , Railway Board Representing The Union of

India (UOI) Vs. Niranjana Singh, and State of Uttar Pradesh Vs. Om Prakash Gupta, , the Supreme Court stated the law like this:

We must unequivocally state that the jurisdiction of the Tribunal to interfere with

the disciplinary matter or punishment cannot be equated with an appellate jurisdiction. The Tribunal cannot interfere with the findings of the inquiry Officer or competent authority where they are not arbitrary or utterly perverse. It is appropriate to remember that the power to impose penalty on a delinquent officer is conferred on the competent authority either by an act of legislature or rules made under the proviso to Article 309 of the Constitution. If there has been an enquiry consistent with the rules and in accordance with principles of natural justice what punishment would meet the ends of justice is a matter exclusively within the jurisdiction of the competent authority. If the penalty can lawfully be imposed and is imposed on the proved misconduct, the Tribunal has no power to substitute its own discretion for that of the authority. The adequacy of penalty unless it is mala fide is certainly not a matter for the Tribunal to concern with. The Tribunal also cannot interfere with the penalty if the conclusion of the Inquiry Officer or the competent authority is based on evidence even if some of it is found to be irrelevant or extraneous to the matter.

6. The learned Government Pleader, on the basis of the settled law enunciated by the Supreme Court of India as noted hereinabove, submitted that the judgment of the learned single Judge deserves to be set aside.

7. Learned Counsel for the respondent, in reply, submitted that since the respondent had been tried for the criminal offence in a competent court, he could not have been proceeded with in the departmental enquiry. According to the learned Counsel, the acquittal of the respondent by a criminal court was binding on the departmental authorities and no finding contra to the finding of the criminal court could have been recorded against the respondent. Learned Counsel relies upon an earlier judgment of the learned single Judge in Writ Petition No. 6593 of 1983 decided on 12/12/1985 in support of his submission.

8. We are not impressed with the argument of the learned Counsel for the respondent, whereas in a particular case it maybe desirable for the domestic enquiry to be kept in abeyance during the proceedings in a criminal court where the question in issue both in the domestic enquiry and in the criminal court is the same and is based on the same facts, it is an absolutely different thing to say that if the domestic enquiry continues simultaneously, the findings of the domestic enquiry would get vitiated only on

the ground that the criminal court records an order of acquittal.

There is no scope for such a view in the view that we take, we are fortified by the view of the Supreme Court in *Tata Oil Mills Co. Ltd. Vs. Its*

Workmen, .

9. Apart from the legal position as we have indicated hereinabove, we find that the order of dismissal had been made in the domestic enquiry

against the respondent on 14.7.1980. The order of acquittal was passed by the Criminal Court on 5.8.1980. How the Enquiry Officer was

required to take note of the acquittal made subsequent to the findings of the domestic enquiry, is not at all intelligible? The respondent waited for

more than two years to make a representation against the order of dismissal dated 14.7.1980, and thereafter for further almost one year before he

filed the writ petition in 1983 questioning the order dated 14.7.1980. He certainly was guilty of laches. Since, the learned single Judge found no

reason to interfere with the findings of misconduct recorded at the domestic enquiry, it is not permissible for him to have proceeded to interfere

with the punishment, only on the ground that the punishment of dismissal was excessive considering the value of the material of which theft was

committed. The judgment of the learned single Judge in Writ Petition No. 6593 of 1983, following which the learned single Judge interfered with

the order of punishment came up for consideration in Writ Appeal No.56 of 1986 by a Division Bench of this Court. *S. Ramalingam, J.*, speaking

for the Bench, after a reference to a number of authorities held that it is not open to the Court, in exercise of its powers under Article 226 of the

Constitution of India, after accepting the findings of the domestic enquiry regarding the established misconduct, to interfere with the quantum of

punishment. The judgment of the learned single Judge which had been relied upon by him to interfere with the quantum of punishment was set aside

by the Division Bench on the 11th of July, 1989.

10. In view of the law laid down above and in *Union of India (UOI) Vs. Parma Nanda*, , we hold that in exercise of the powers under Article 226

of the Constitution of India the Court cannot interfere with the quantum of punishment, after finding the domestic enquiry to have been properly

conducted and upholding the findings recorded during the domestic enquiry. Once there has been an enquiry consistent with the service rules and in

accordance with the principles of natural justice, and the findings recorded at that enquiry are not frowned upon, the Court would not interfere with

the quantum of punishment unless the adequacy of the penalty is shown to be vitiated by mala fides, which certainly is not the position in the instant

case. Thus, for what we have said above, we find the judgment of the learned single Judge cannot be sustained and we accordingly set aside the

same. There shall be no order as to costs.

11. Before parting with the judgment, we would like to observe that should the appellants decide to review the question of punishment, on a

representation to be made by the respondent, the dismissal of the writ petition or the grant of this writ appeal shall not be an impediment.