Additional Superintendent Of Police vs T. Natarajan on 6 August, 1998

Equivalent citations: JT1998(9)SC257, (1999)IIILLJ1482SC, AIRONLINE 1998 SC 32, (1998) 9 JT 257, 1999 SCC (L&S) 646, (1998) 7 SERV LR 403, (2000) 85 FAC LR 39, (1999) 3 LAB LJ 1482, (1998) 9 JT 257 (SC)

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Bench: S. Rajendra Babu

ORDER

1. The respondent was working as a Police Constable in the Tamil Nadu Government. Three charge-memos were issued to him.

2. Charge-memo dated June 21, 1991 stated that he absented from duty for 17 hours on March 31, 1991 on his own accord without intimating his whereabouts in having failed to obtain sick passport from a nearby police station but reported for duty on April 14, 1991 with a controversial medical certificate and special report. Charge-memo dated January 5, 1992 stated that the respondent did not attend the parade on February 12, 1991 at the time of annual mobilisation and scolded the Duty Reserve Sub-Inspector indecently, picking up a quarrel in an arrack shop in a drunken mood demanding bribe etc. Charge-memo dated July 23, 1992 stated that he was in a drunken mood while on guard duty in Ward No. 25 on July 2, 1992 at 10.30 hours, behaved in an indecent manner and used vulgar language. He was also placed under suspension pending enquiry. The respondent filed three applications in OAs Nos. 1932, 1933 and 4081 of 1992 on the file of the Tamil Nadu Administrative Tribunal, Madras seeking to quash the charge-memos dated June 21, 1991 and July 23, 1992 respectively on the ground that the same had been issued by the Additional Superintendent of Police who was not the appointing authority to initiate the inquiry proceedings while charge-memo dated January 5, 1992 was attacked on the ground that there was an inordinate delay of more than one year in issuing the same and was not preceded by any preliminary enquiry prior to framing of the charge. On similar aforesaid allegations, minor penalties were imposed upon certain other persons and therefore the charge-memo issued against the respondent amounts to invidious discrimination. The Tribunal accepted the plea raised by the respondent and was of the view that the Additional Superintendent of Police has no authority to initiate disciplinary proceedings and the charge-memo dated January 5, 1992 was stale. The Tribunal also accepted the ground of discrimination and therefore, set aside the charge-memos as well as the order pertaining to suspension. Hence, this appeal, by the State of Tamil Nadu by special leave.

3. The learned counsel for the appellant submitted that the points raised in this appeal are fully covered by the decision of this Court in Inspector General of Police v. Thavisiappan (1997-II-LLJ-191) (SC) inasmuch, as this Court had interpreted the Tamil Nadu Police Subordinate

Service (Discipline and Appeal) Rules and has taken the view that departmental enquiry could be initiated by different authorities such as appointing authority, disciplinary authority or even the controlling authority. He submitted that delay by itself will not be fatal to the enquiry unless the same has resulted in any prejudice to the official against whom enquiry is initiated. In this case, it is pointed out that no such plea of prejudice has been raised.

4. Learned Senior Advocate, Mr. A.T.M. Sampath, appearing for the respondent, drew our attention to the decision of this Court in P. V. Srinivasa Sasliy v. Comptroller and Auditor General (1993-I-LLJ-824) (SC) and contended that the view taken by the Tribunal is sound in law and need not be interfered with. The reasoning adopted by the Tribunal is that the Additional Superintendent who initiated the enquiry against the respondent was not competent to conduct the enquiry under Rule 2-A of the relevant rules.

5. We have carefully considered the rival contentions. While interpreting Rule 2-A of the Rules applicable in this case, this Court in Thavasiappan case (supra) has held that provisions under Rule 2-A enabled the Governor or any other authority empowered by him to institute disciplinary proceedings but that provision would not derogate the power of the otherwise competent authorities like the appointing authority, disciplinary authority or controlling authority to initiate disciplinary enquiry. In the light of this clear enunciation of law, the view taken by the Tribunal in this case cannot he sustained at all.

6. The Rules provide a Schedule with reference to Rules 2, 4 and 5 of the Rules. Rule 2 empowers different kinds of penalties being imposed. The Schedule enumerates the class of officers who can be visited with the punishment, which kind of punishment and as to who is the authority who can impose such punishment. It is clear from the Schedule that the Additional Superintendent of Police is also empowered to impose different kinds of punishment. It is also brought to our notice that the Additional Superintendent of Police had issued the charge-memo with the concurrence of the Superintendent of Police and hence, the plea taken for the respondent that the Superintendent of Police alone can initiate enquiry proceedings is not correct. This aspect has been completely lost sight of by the Tribunal.

7. In regard to the allegation that the initiation of the disciplinary proceedings was belated, we may state that it is settled law that mere delay in initiating proceedings would not vitiate the enquiry unless the delay results in prejudice to the delinquent officer. In this case, such a stage as to examine that aspect has not arisen.

8. We are also not impressed with the view taken by the Tribunal that the minor penalty has been imposed upon certain other officers on similar charges and therefore, the same has resulted in invidious discrimination against the respondent. In a given case, what punishment should be imposed upon depends upon certain factors such as the ground of charge, antecedents and similar aspects. When no punishment has been imposed upon the respondent, whether any discriminatory treatment has been meted out to the respondent is not clear at all.

9. In these circumstances, we allow the appeals and set aside the order of the Tribunal with no order as to costs. It would be open now to the appellant to proceed with the enquiry.