Supreme Court of India
Inspector General Of Police And ... vs Thavasiappan on 25 January, 1996
Equivalent citations: 1996 AIR 1318, 1996 SCC (2) 145
Author: N G.T.
Bench: Nanavati G.T. (J)

PETITIONER:
INSPECTOR GENERAL OF POLICE AND ANR.

Vs.

RESPONDENT:
THAVASIAPPAN

DATE OF JUDGMENT: 25/01/1996

BENCH:
NANAVATI G.T. (J)
BENCH:
NANAVATI G.T. (J)
AGRAWAL, S.C. (J)

CITATION:
1996 AIR 1318 1996 SCC (2) 145
JT 1996 (6) 450 1996 SCALE (1)522

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T NANAVATI. J.

Leave granted.

A departmental proceeding was initiated against the respondent, a Sub-Inspector of Police, on an allegation that in January 1988, while he was working as PSI at Anthiyur Police Station, he not only did not register a criminal case against one Smt. Jayalakshmi for the offences found to have been committed by her but let her off and delivered back the seized articles after accepting a bribe of Rs.2,000/- from her. A Deputy Superintendent of Police was appointed as an enquiry officer. He framed the charges and served the same on the respondent. He then held an enquiry and submitted his report to the Deputy Inspector General of Police who was competent to award the proposed penalty. The Dy. Inspector General of Police agreed with the findings recorded by the enquiry officer and imposed the penalty of compulsory retirement by an order dated 26.3.91. The respondent filed

an appeal against that order to the Inspector General of Police who dismissed it by an order dated 16.7.91.

The respondent then filed O.A. No. 4236 of 1991 before the Tamil Nadu Administrative Tribunal. It was contented before the Tribunal that only the authority competent to award the proposed penalty could have framed and served the charge memo and as that was done in this case by a Deputy Superintendent of Police, only that penalty could have been lawfully imposed upon the respondent which was within the powers of the Deputy Superintendent of Police. As the Deputy Superintendent of Police was not competent to award the penalty of compulsory retirement imposition of that penalty even by Deputy Inspector General of Police should be regarded as illegal. It was also contended that there was no evidence to prove the charge against the respondent. A contention was also raised that the respondent was not given a reasonable opportunity to defend himself. The Tribunal did not go into the other contentions raised by the respondent and allowed his application as it was of the view that "the charge memo under Rule 3(b) should be issued by the disciplinary authority empowered to impose the penalty specified therein and if any lower authority has initiated proceedings by issuing the charge memo then the penalty will be limited to those that such lower authority can award to the delinquent concerned". As the Deputy Superintended of Police could not have imposed the penalty of compulsory retirement, the Tribunal set aside the order of penalty and directed the petitioners herein to reinstate the respondent and remitted the case back to the Deputy Inspector General of Police to pass an appropriate order. Aggrieved by that order the petitioners who were respondents in O.A. have filed this appeal.

The order of the Tribunal is challenged on the ground that it is based on an erroneous interpretation of Rule 3(b). It was submitted that Rule 3(b) does not specifically or even by necessary implication so provide and no such requirement can justifiably be read into it.

Rule 2 of the said Rules specifies the penalties that can be imposed upon members of the service. Compulsory retirement is specified is a penalty in clause (h) of that Rule 2. A Provides that the Governor or any other authority empowered by him by general or special order can institute disciplinary proceeding against any member of the service. Rule 4 specifies the authorities which can impose the penalties prescribed in Rule 2. Rule 3 provides the procedure that has to be followed before an order imposing penalty is passed. If any of the minor penalties mentioned in clauses (a), (b), (c), (e) and (f) of Rule 2 is proposed to be imposed then comparatively simple procedure prescribed in Rule 3 (a) has to be followed. If, however, it is proposed to impose any major penalty specified in clauses

(d), (h), (i) and (j) of Rule 2 then the elaborate procedure mentioned in clause (b) of that Rule is required to be followed. Rules 3 (a) and 3 (b)(i) and 3 (b)(ii) read as under :

> "Rule 3(a) - In every case where it is proposed to impose on a member of a service any of the penalties mentioned in clauses (a), (b), (c), (e) and (f) of Rule 2 he shall be given a reasonable opportunity of making any representation that he may desire to make and such representation, if any shall be taken into consideration before the order imposing the penalty is passed:" "Rule 3(b)(i)- In every case where it is

proposed to impose on a member of a service any of the penalties specified in clauses (d), (h), (i) and (j) of Rule 2 the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged together with a statement of the allegations on which each charges is framed and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time, to put in a written statement of his defence and to state whether he desires an oral inquiry or only to be heard in person. An oral inquiry shall be held if such an inquiry is desired by the person charged or is directed by the authority concerned. At that inquiry oral evidence shall be heard as to such of theallegations as are not admitted, the person charged shall be entitled to cross-examine the witnesses to give evidence in person and to have such witnesses called as he may wish, rovided that the officer conducting the inquiry may, for special and sufficient reason to be recorded in writing refuse to call a witness. After the inquiry has been completed, the person charged shall be entitled to put in, if he so desires, any further written statement of his defence.

Whether or not the person charged desired or had an oral enquiry, he shall be heard in person at any stage if he so desires before final orders are passed. A report of the inquiry or personal hearing (as the case may be) shall be prepared by the authority holding the inquiry or personal hearing whether or not such authority is competent to impose the penalty. Such report shall contain a sufficient record of evidence, if any, and a statement of the findings and the grounds thereof.

(ii) After the inquiry or personal hearing referred to in clause (i) has been completed, and if the authority competent to impose the penalty mentioned in that clause,isof the opinion, on the basis of the evidence adduced duringthe inquiry that any of the penalties specified therein should be imposed on the Government servant, it shall make an order, imposing such penalty and it shall not be necessary to give the person charged, any opportunity of making representation on the penalty proposed to be imposed."

We have not set out the provisos to Rule 3(a) and Rule 3(b)(ii) as they are not material for the purpose of this appeal.

Before we consider the requirement of Rule 3(b) we will refer to the three decisions cited by the learned counsel for the appellant. He first invited our attention to the decision of this Court in state of Madhya Pradesh Vs.Shardul Singh 1970 (1) SCC 108. In that case a departmental enquiry was initiated against a Sub Inspector of Police by Superintendent of Police who after holding an enquiry sent his report to the Inspector General of Police who ultimately dismissed the Sub Inspector of Police from service. The order of dismissal from service was challenged before the High Court of Madhya Pradesh on the ground that the enquiry held by Superintendent of Police was against the mandate of Article 311(1) of the Constitution as he was incompetent to conduct the enquiry. The Sub Inspector of Police was appointed by the Inspector General of Police. The High Court allowed the

petition. The State preferred an appeal to this Court. Rejecting the contention that the guarantee given under Article 311(1) includes within itself a further guarantee that he disciplinary proceedings resulting in dismissal or removal of a civil servant should be initiated or conducted by the authorities mentioned in that article, this Court held as under:

> "This Article does not in terms require that the authority empowered under that provision to dismiss or remove an official, should itself initiate or conduct the enquiry preceding the dismissal or removal of the officer or even that enquiry should be done at its instance. The only right guaranteed to a civil servant under that provision is that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed." This Court further held that "we are unable to agree with the High Court that the guarantee given under Article 311(1) includes within itself a further guarantee that the disciplinary proceedings resulting in dismissal or removal of a civil servant should also be initiated and conducted by the authorities mentioned in that Article. The learned counsel also drew our attention to P.V.

Srinivasa Sastry Vs. Comptroller and Auditor General 1993 (1) SCC 419, wherein this Court in the context of Article 311(1) has held that in absence of a rule any superior authority who can be held to be the controlling authority can initiate a departmental proceeding and that initiation of a departmental proceeding per se does not visit the officer concerned with any evil consequences. Transport Commissioner, Madras Vs. A. Radha Krishana Moorthy 1995 (1) SCC 332 was next relied upon. Therein also this Court has held that initiation of disciplinary enquiry can be by an officer subordinate to the appointing authority. Thesedecisions fully support the contention to the learned counsel for the appellants that initiation of a departmental proceeding and conducting or enquiry can be by an authority other than the authority competent to impose the proposed penalty.

As to who shall initiate and conduct a disciplinary proceeding, the Rules are silent. Rule 2 A which provides that the Governor or any other authority empowered by him may institute disciplinary proceedings is an enabling provision. From the way it is worded it is not possible to infer that the rule making authority intended to take away the power of otherwise competent authorities, like the appointing authority, disciplinary authority or controlling, authority and confine it to the authorities mentioned in Rule 2 A only. Moreover, it is difficult to appreciate how this provision can be helpful in deciding whether the charge should be framed and the enquiry should be held by that authority only which is competent to impose the penalties mentioned in Rule 3(b)(i). An act of instituting a disciplinary proceeding is quite different from conducting an enquiry. Rule 3(b)(i) provides how an enquiry should be held in a case where it is proposed to impose on a member of the service any of the penalties specified in clauses (d),

(h), and (i) and (j) of Rule 2. It lays down the differentsteps that have to be taken in the course of the enquiry proceedings. This Rule is completely silent as regards the person who should perform those acts except that the report of the enquiry has to be prepared by the authority holding the enquiry. Rule 3(b)(i) itself contemplates that the enquiry officer may not be the authority competent to impose the penalties referred to therein and that becomes apparent from the second paragraph of that sub-rule. If it was intended by the rule-making authority that the disciplinary authority should

itself frame the charge and hold the enquiry then it would not have provided that a report of the enquiry shall be prepared by the authority holding the enquiry whether or not such authority is competent to impose the penalty. Generally speaking, it is not necessary that the charges should be framed by the authority competent to award the proposed penalty or that the enquiry should be conducted by such authority. We do not find anything in the rules which would induce us to read in Rule 3(b)(i) such a requirement. In our opinion, the view taken by the Tribunal that in a case falling under Rule 3(b) the charge memo should be issued by the disciplinary authority empowered to impose the penalties referred to therein and if the charge memo is issued by any lower authority then only that penalty can be imposed which that lower authority is competent to ward, is clearly erroneous. We, therefore, allow this appeal. The order passed by the Tribunal is set aside and the case is remitted back to the Tribunal to consider the other contentions which were raised before it and to dispose of the case in accordance with law.