Supreme Court of India
Govt. Of Tamil Nadu & Ors vs S. Vel Raj on 19 December, 1996
Author: Nanavati
Bench: S.C. Agrawal, G.T. Nanavati

PETITIONER:
GOVT. OF TAMIL NADU & ORS.

Vs.

RESPONDENT:
S. VEL RAJ

DATE OF JUDGMENT: 19/12/1996

BENCH:
S.C. AGRAWAL, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

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

This appeal was heard along with Civil Appeal No. 41847 of 1994 but we are disposing of the same by a separate judgment.

The respondent is a Head Constable and as such a member of Tamil Nadu Police Subordinate Service. O 20.7.84 he has served with a charge memo for an act of misconduct committed on 7.7.84 and a departmental enquiry was thereafter initiated against him. The charge was held proved and by way of punishment he was reverted to the lower grade, that is, from Head Constable to Police Constable Grade I he appealed against that order. As the appellate authority was of the view that the punishment imposed upon the respondent was very lenient it issued a show case notice to him for enhancement of the penalty.His appeal was dismissed and by way of punishment he was compulsorily retired. The respondent then filed a writ petition in the High Court of Madras challenging not only the punishment imposed upon him but also initiation of the enquiry against him. That petition was transferred to the Tamil Nadu Administrative Tribunal and was numbered as T.A. No. 271 of 1992.

The charge against the respondent was that on 7.7.84 he was deputed to attend a case pending

before the sub- Divisional judicial Magistrate, Usilampatti. He left the police station and returned to it at about 8 P.M. and reported before the sub-Inspector of Police who was incharge of Police Station. At that time he was drunk and was in 'mufti'. During the enquiry evidence was led to prove that the respondent was in a drunken condition, that he had admitted before the sub-Inspector of Police that he had admitted before the Sub-Inspector of Police that he had consumed 'arrack' and that he was in 'mufti' at that was not disputed but an attempt was made in cross-examination of the witnesses by way of suggestions that he was often suffering from stomach pain and was, therefore, taking medicine known as B.G. Phos and that if sufficient quantity of that medicine is consumed there would be smell of alcohal and eyes would become reddish.

The Tribunal held that initiation of the enquiry against the respondent was bad because the charge memo was issued by the Deputy Superintendent of Police who was not an appointing authority and it is a well-settled principle of law that only the appointing authority can take disciplinary action and that the said power cannot be delegated. On merits, the Tribunal considered the evidence as if it was sitting in appeal and held that the evidence was inconsistent and it was not proved "beyond all doubts that he had consumed prohibited liquor". It also held that neither consumption of alcohol by a member of the police force nor appearance in 'Mufti' in the police station can be considered as an act of misconduct. It also held that the appellate authority had not conducted the enquiry in the prescribed manner before enhancing the punishment and, therefore allowed the application, quashed the impugned oder of punishment and directed the authorities to reinstate the respondent with all consequential benefits.

It was contended by the learned counsel for the appellant-state that the Tribunal has committed an error of law in holding that initiation of the disciplinary enquiry against the respondent was not lawful. He submitted that there is nothing in the Tamil Nadu Police Subordinate Services that a charge memo has to be issued only by an appointing authority or an authority holding a higher rank. This point is now covered by the decision of this Court Inspector General of Police vs. Thavasiappan (1996) 2 SCC

145. We, therefore, hold that the Tribunal was wrong in holding that there was not valid initiation of the disciplinary proceeding against the respondent.

The learned counsel for the appellant was also right in his criticism that the Tribunal transgressed its jurisdiction in examining the evidence as if it was an appellate authority. The law on this point is also not well- settled. The Tribunal obviously committed a mistake in re- examining the evidence and holding that it did not deserve to be accepted because of the inconsistencies therein. The Tribunal was not holding a criminal trial and, therefore, ought not to have exonerated the respondent by holding that i was not proved " beyond all doubts that the applicant had consumed prohibited liquor". The finding recorded by the Enquiry officer and confirmed by the appellate authority were based upon the evidence led during the enquiry and it was not even contended that the said finding were perverse. it was, therefore, not open to the Tribunal to record contrary findings and hold that the charge against the respondent was not proved.

The Tribunal was also wrong in holding that what was alleged against the respondent did not amount to an act of misconduct. Under Rule 2 of the rules punishment can be imposed upon a member of the service 'for good and sufficient reason'. Therefore, the Tribunal ought to have examined the case from that angle. the respondent when he appeared before the P.S.I at 8 P.M. on 7.7.84 was on duty, He and returned to the police station for reporting to the PSI as to what he had done regarding the directions given to him earlier. At that time he was found in a drunken condition and was in 'Mufti'. He had even admitted before the P.S.I. that he had consumed 'arrack' and it was for that reason that he was smelling of alcohol. I this context, it was required to be considered whether there was 'good and sufficient reason' for initiating a disciplinary proceeding against him and imposing the punishment of compulsory retirement. The police force has to be a disciplined force and a member of the police force has to behave in a disciplined manner particularly when he is o duty. The respondent even though he was sent for official work and was on duty returned to the police station in 'mufti' and in drunken condition after consuming 'arrack'. He had returned to the police station to report to his superior officer as to what happened to the work which was entrusted to him. Under these circumstances, his behavior has to be regarded as an act of gross misconduct. It is difficult to appreciate how the Tribunal could persuade itself to take a contrary view. In view of the facts and circumstances of this case it is not possible to say that the punishment which was imposed upon him was highly excessive. The appellate authority after considering his provious record and after giving him an opportunity to show cause against the proposed enhancement had passed the order of punishment. Though the Tribunal has held that the enquiry was not conducted by the appellate authority as required by the rules it has not been pointed out which requirement of the rule had not been complied with. The Tribunal was, therefore, wrong on this count also. In the result, this appeal is allowed and the order passed by the Tribunal is quashed and set aside. In view of the facts and circumstances of Th case, however, there shall be no order as to costs.