

Thatappa G Vs. Deputy Inspector-general of Police and ors.

Thatappa G Vs. Deputy Inspector-general of Police and ors.

SooperKanoon Citation : sooperkanoon.com/426746

Court : Andhra Pradesh

Decided On : Oct-13-1958

Reported in : (1959)IILLJ575AP

Judge : Chandra Reddi, C.J.

Acts : [Constitution of India](#) - Articles 226 and 311(2); Madras Police Subordinate Services (Discipline and Appeal) Rules, 1955

Appeal No. : Writ Petition No. 424 of 1955

Appellant : Thatappa G

Respondent : Deputy Inspector-general of Police and ors.

Judgement :

Chandra Reddi, C.J.

1. This is a petition for the issue of a writ of certiorari to quash the order of the Deputy Inspector-General of Police, Central Range, dated 23 May, 1953, terminating the probation of the petitioner as sub-inspector of police as confirmed by the sub-Inspector of police as confirmed by the Inspector-General of Police, on 18 January 1954 and by the Government of Andhra, on 27 January 1955.

2. The petitioner was entertained as a probationary sub-inspector of police on 11 April 1950, and was in service till on 6 July, 1953. While so, he received a warning

on 20 October, 1952 from the District Superintendent of Police that he should improve in his work. Two months later a memo was served upon the petitioner setting out the various charges in respect of offences said to have been committed by him prior to the date of the warning and was required to submit his explanation. On 10 January, 1953 the petitioner sent his explanation with a request that an oral enquiry might be held and the connected records also might be made available to him. The District Superintendent of Police refused this request saying that no useful purpose would be served by an oral enquiry. The inquiring officer, the District Superintendent, finally recommended his removal from service with the remark that the earlier the petitioner is got rid of the better it is for himself and for the department. The Deputy Inspector-General of Police, who is the competent authority in this regard, having accepted the recommendation called upon the petitioner to show cause why his probation should not be terminated. The petitioner's explanation was not accepted by him, with the result that his probation was terminated. In his memorandum of appeal to the Inspector-General of Police, the petitioner made a complaint of the rejection his request for an oral hearing and the supply of necessary records, but no need was paid to it and the appeal was rejected. The petitioner did not fare better in his memorial to the seek his remedy under Art. 226 of the Constitution. It is urged in support of this petition that the enquiring officers have contravened the provisions of the statutory rules bearing on enquiries as these. Rule 3 of the Madras Police Subordinate Services (Discipline and Appeal) Rules, 1955, omitting that portion which is not relevant for this enquiry, is in these terms :

'3.(b)(i) In every case where it is proposed to impose on a member of a service any of the penalties mentioned in Cl. (d)(i) and (j) of rule 2 the grounds on which it is proposed to takes action shall, except where such action is proposed to be taken on facts which have led to his conviction in a criminal Court or by a military Court material, be reduced to the form of a definite charges or charges which shall be communicated to the person charged, together with a statement of the allegations on which each charge is based 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 enquiry is desired by the person charged or is directed by the authority concerned.'

3. It is plain that whenever the authorities concerned intend to impose any of the penalties including one of removal from service of the State Government, the procedure indicated in rule 3(b)(i) should be followed. It means that, if the delinquent officer requests that an oral enquiry should be held, it is obligatory on the part of the officer conducting the inquiry to hold it.

4. That the petitioner is a member of service within the range of rule 3(b)(i), through a probationer, is evident from the Madras State and Subordinate Services Manual (Vol. I), Cl. 10, rule 2, which contains the definition of a member of a service :

'Member of a service means a person who has been appointed to that service and who has not retired or resigned, been removed or dismissed, been substantively transferred or reduced to another service, or been discharged otherwise than for want of a vacancy. He may be a probationer, an approved probationer or a full member of that service.'

5. On the language of this clause, there can be no denying that the probationer is one who is entitled to invoke rule 3(b)(i) of the first mentioned rules. Apart from these provisions, considerations of natural justice require that a person who is sought to be removed should be afforded an opportunity to show that the charges are unsubstantial. In this view of the matter, it is unnecessary for us to consider the applicability of Art. 311(2) of the Constitution.

6. The learned Government Pleader invited our attention to rule 3(d)(ii) of the Madras Police Subordinate Services (Discipline and Appeal) Rules, 1955, which recites :

'If any question arises whether it is reasonably practicable to follow the procedure prescribed in sub-rule (b) the decision thereupon to remove such person or reduce him in rank as the case may be, shall be final.'

7. The existence of such a provision in the rules does not by itself indicate that the inquiring officer thought that it was not reasonably practicable to follow the procedure laid down in rule 3(b)(i). It should appear from the records that he thought that it was not practicable to give effect to the provisions of rule 3(b)(i). It is not even pretended that the Superintendent had in mind this provision of the rules. Nor is it stated anywhere that the latter officer or even the Deputy Inspector-General of Police thought that it was not reasonably practicable to follow the procedure prescribed in rule 3(b)(i). In fact, the minutes of the enquiring officer disclose that it was not for that reason that this opportunity was denied. That the termination of service of a probationer on being found guilty of inefficiency does amount to removal and therefore, attracts rule 3(b)(i), does not admit of much doubt. Such a termination is 'removal' within rule 2(i) of the Madras police Subordinate Services (Discipline and Appeal) Rules, 1955. Explanation 9(a) of the annexure to the Indian Police Cadre Rules, 1950, published in the Madras Police Gazette, dated 15 July, 1950, under the head 'Departmental Orders and Instructions' reads :

'The discharge of a person appointed on probation during or at the end of the period of probation on grounds arising out of the specific conditions laid down by the appointing authority, e.g., want of vacancy, failure to acquire prescribed special qualifications or to pass prescribed tests does not amount to removal or dismissal within the meaning of this rule. But the discharge of a probationer whether during or at the period of probation for some specific fault or on account of his unsuitability for the service amounts to removal or dismissal within the meaning of this rule.'

8. It follows that the complaint of the petitioner is well founded and he has to be afforded some relief. Therefore, all the proceedings resulting in his removal are quashed. This does not preclude the authorities concerned from holding an enquiry afresh. The respondents will pay the petitioners his costs. Advocate's fee is fixed at Rs. 100.