

N. Satheesh Kumar. Vs. the Director, Vigilance and Anti Corruption Department, and ors.

N. Satheesh Kumar. Vs. the Director, Vigilance and Anti Corruption Department, and ors.

SooperKanoon Citation : sooperkanoon.com/905025

Court : Chennai

Decided On : Jul-30-2010

Judge : N.Paul Vasanthakumar, J.

Acts : Constitution Of India - Article 226

Appeal No. : W.P.No.231 of 2006

Appellant : N. Satheesh Kumar.

Respondent : The Director, Vigilance and Anti Corruption Department, and ors.

Advocate for Def. : Mr.R.Murali, Adv.

Advocate for Pet/Ap. : Mr.S.Vijayan, Adv.

Judgement :

1. The prayer in the writ petition is to quash the order dated 25.6.2002 passed by the third respondent confirmed by the order of the second respondent dated 16.6.2002 and also by the first respondent's order dated 20.2.2004 and direct the respondents to reinstate the petitioner in service with all monetary benefits.

2. The brief facts necessary for disposal of the writ petition are as follows:

(a) The petitioner was appointed as Junior Assistant in the year 1993 on compassionate ground in the department of Vigilance and Anti Corruption. According to the petitioner while he was working in the office of the first respondent, he suffered with chronic fever and he took treatment for the same from the Chepauk Dispensary attached to the Government Hospital, Chennai.

(b) The Doctor who treated the petitioner advised him to take complete rest under proper care. As no one was available at Chennai and his wife was away at Viruveedu, Dindigul District, he applied for medical leave for 15 days from 17.5.2001 and also prayed for permission to leave the headquarters. The petitioner went to his native place and took treatment at Primary Health Centre, Viruveedu. After he recovered from his illness, the petitioner produced a fitness certificate on 19.6.2001 and also submitted leave application with medical certificate for the leave period from 17.3.2001 to 18.6.2001.

(c) It is claimed in the affidavit filed in support of the writ petition that after returning to duty, again his health condition deteriorated and therefore he took treatment from one Doctor at Chennai, who advised him to take complete rest. Consequently the petitioner applied for leave on 22.8.2001 for ten days with permission to leave the headquarters. At his native place he took treatment and applied for leave from 18.11.2001 to 18.12.2001. According to the petitioner, he went on medical leave with proper medical certificate from 17.3.2001 to 18.6.2001 and from 20.8.2001 to 18.12.2001.

(d) Petitioner rejoined duty on production of fitness certificate. The third respondent framed four charges on 20.12.2001 and the petitioner denied the charges. However, Enquiry Officer was appointed, who submitted a report on 31.3.2002 holding that all the charges are held proved.

(e) The third respondent accepted the findings of the Enquiry Officer and passed an order on 25.6.2002 by imposing a punishment of dismissal from service. Having aggrieved over the said punishment, he filed appeal before the second respondent which was rejected by order dated 16.10.2002. Petitioner filed further appeal before the first respondent on 3.11.2003 which was also rejected on 20.2.2004.

(f) The above said orders are challenged in this writ petition contending that the delinquent Officer left the headquarters only after submitting the leave application and extended the leave due to his health condition and therefore the charges framed for unauthorised absence without permission or sanction of leave is not maintainable; that the delay, if any, in sending application for extension of leave was only due to his ill-health; and that, the non-submission of extension of leave application was only due to his poor health condition and not on any wilful grounds.

(g) So far as the allegation that the petitioner has left the headquarters without prior permission is concerned, the petitioner applied for the said permission along with leave application. It is also stated in the affidavit filed in support of the writ petition that all the medical certificates and leave applications and the proof for sending the same through speed post were marked as Exs.P-1 to P-30 and on any event, the punishment imposed is grossly disproportionate to the gravity of the charges, even assuming that the charges are found proved.

3. The respondents have filed counter affidavit stating that on earlier three occasions the petitioner was proceeded on similar charges in PR.Nos.1/97, 6/97 and 1/2000 and in all the above said charges he was awarded with the punishment of stoppage of increment for one year without cumulative effect, censure, etc. Even earlier to the said charge memos, on several occasions the petitioner absented from duty and he was awarded with lesser punishment of withholding of increment for one year without cumulative effect. The petitioner did not appear before the Medical Board either at Chennai or at Dindigul and therefore the department could not subject the petitioner for medical examination to ascertain the correctness of the petitioner's contention. On 20.2.2002 the petitioner was directed to appear before the Medical Board, Chennai, without allowing him to join duty, but the petitioner did not care to appear before the Medical Board. Therefore charge memo was framed in PR.No.2 of 2001 under Rule 17(b) of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and sent the same to the petitioner's address given by the petitioner in the medical leave application and the same was returned with an endorsement by the postal authorities dated 7.11.2001 as "always door locked". The charge memo dated 31.3.2002 was personally

served on the petitioner on 25.5.2002 through a special messenger. The departmental enquiry was conducted in a fair and proper manner and the petitioner was given opportunity to defend his case. The disciplinary authority accepted the Enquiry Officer's report and imposed the punishment after considering the past record of the petitioner, particularly taking note of the fact that from 25.7.1994 to 7.11.2001 petitioner availed various kinds of leave including the period of unauthorised absence from duty for total 795 days.

4. The learned counsel appearing for the petitioner submitted that the charges framed against the petitioner were not proved in a manner known to law. The Disciplinary Authority accepted the findings of the Enquiry Officer without serving copy of the Enquiry Officer's report and without getting petitioner's remarks. The said procedure adopted by the Disciplinary Authority is not proper and in any event the punishment imposed against the petitioner is disproportionate to the gravity of allegations. The appellate authorities have not considered the appeal filed by the petitioner strictly in accordance with Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules and therefore the dismissal order is liable to be set aside with direction to reinstate the petitioner with all benefits.

5. The learned Government Advocate appearing for the respondents on the other hand submitted that the Disciplinary Authority conducted the enquiry and therefore there is no need to serve the Enquiry Officer's report before accepting the same. The appellate authorities have considered all points and rejected the appeal filed by the petitioner. Taking note of the past conduct viz. absence for 795 days over a period of seven years and the earlier lesser punishments imposed on the petitioner, the department was left with no other option except to dismiss the petitioner.

6. I have considered the rival submissions made by the learned counsel for the petitioner as well as the learned Government Advocate.

7. The absence of the petitioner from duty as per the charge memo is not in dispute. Whether the petitioner was genuinely ill and had he applied for medical leave and extension of leave are the issues to be decided.

8. The petitioner has marked Exs.P-1 to P-30 before the Enquiry Officer to prove the case that he was suffering from illness during the said period and that he had already applied for medical leave. The action of the petitioner in not reporting before the Medical Board when the department directed him to do so has caused the issuance of the charge memo and imposition of punishment.

9. The learned counsel for the petitioner submitted that for the unauthorised absence, even assuming if it is proved, the Supreme Court in the decisions reported in (2007) 15 SCC 759 (State of Tripura v. Naresh Chandra Das); (2009) 1 SCC (L&S;) 135 (A.P.SRTC v. Surender); (2009) 15 SCC 620 (Coal India Ltd v. Mukul Kumar Choudhuri) held that for unauthorised absence dismissing a person is too harsh. The said plea viz., disproportionate punishment was taken as a ground by the petitioner before the appellate authority.

10. Rule 23 of the Tamil Nadu Civil Services (Discipline and Appeal) Rules mandates how the charges are to be dealt with and how to consider whether the punishment imposed is adequate or excessive.

11. How the appellate authority shall consider the appeal and pass orders in appeal is decided in the Division Bench decisions of this Court reported in (1983) 2 MLJ 513 (G.Srinivasan v. The Government of Tamil Nadu, rep.by the Commissioner and Secretary to Government, Revenue Department, Madras-9); 2008 WLR 86 (The Joint Commissioner of Police & Another v. G.Anandan) and in the decisions of the Supreme Court reported in AIR 1986 SC 1040 : (1986) 2 SCC 651 (R.P.Bhat v. Union of India); (2006) 4 SCC 713 (Narinder Mohan Arya v. United India Insurance Company Ltd & Others) and (2009) 2 SCC 570 (Roop Singh Negi v. Punjab National Bank and Others).

12. How the charges of unauthorised absence on medical ground is to be considered and punishment shall be imposed is considered by the Supreme Court in the decision reported in (2004) 4 SCC 560 : AIR 2004 SC 2131 (Bhagwan Lal Arya v. Commissioner of Police, Delhi). In paragraphs 11 and 14 it is held thus,

"11. It is not the case of the respondents that the appellant is a habitual absentee. He had to proceed on leave under compulsion because of his grave

condition of health and, therefore, the punishment of removal from service is excessive and disproportionate. We are of the view that the punishment of dismissal/removal from service can be awarded only for acts of grave nature or as cumulative effect of continued misconduct proving incorrigibility or complete unfitness for police service. Merely one incident of absence and that too because of bad health and valid and justified grounds/reasons cannot become the basis for awarding such a punishment. We are, therefore, of the opinion that the decision of the disciplinary authority inflicting a penalty of removal from service is ultra vires Rules 8(a) and 10 of the Delhi Police (Punishment and Appeal) Rules, 1980 and is liable to be set aside. The appellant also does not have any other source of income and will not get any other job at this age and the stigma attached to him on account of the impugned punishment. As a result of which, not only he but his entire family totally dependent on him will be forced to starve. These are the mitigating circumstances which warrant that the punishment/order of the disciplinary authority is to be set aside.

14. Thus, the present one is a case wherein we are satisfied that the punishment of removal from service imposed on the appellant is not only highly excessive and disproportionate but is also one which was not permissible to be imposed as per the Service Rules. Ordinarily we would have set aside the punishment and sent the matter back to the disciplinary authority for passing the order of punishment afresh in accordance with law and consistently with the principles laid down in the judgment. However, that would further lengthen the life of litigation. In view of the time already lost, we deem it proper to set aside the punishment of removal from service and instead direct the appellant to be reinstated in service subject to the condition that the period during which the appellant remained absent from duty and the period calculated up to the date on which the appellant reports back to duty pursuant to this judgment shall not be counted as a period spent on duty. The appellant shall not be entitled to any service benefits for this period. Looking at the nature of partial relief allowed hereby to the appellant, it is now not necessary to pass any order of punishment in the departmental proceedings in lieu of the punishment of removal from service which has been set aside. The appellant must report on duty within a period of six weeks from today to take benefit of this judgment." (Emphasis Supplied)

In the said judgment the Supreme Court instead of remanding the matter to the department, following the earlier decision reported in (1995) 6 SCC 749 : AIR 1996 SC 484 (B.C.Chaturvedi v.Union of India) imposed punishment by itself. In AIR 1996 SC 484, in para 18 it is held thus, "18. A review of the above legal position would establish that the disciplinary authority, and on appeal the appellate authority, being fact-finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed, or to shorten the litigation, it may itself, in exceptional and rare cases, impose appropriate punishment with cogent reasons in support thereof." (Emphasis supplied)

The same is the view taken by the Supreme Court in the decision reported in (2005) 7 SCC 338 (V. Ramana v. A.P.SRTC). Similar issue was considered by the Supreme Court in the decision reported in AIR 2009 SC 2458 (Jagdish Singh v. Punjab Engineering College). Following the said judgment, I allowed W.P.No.12619 of 2001 dated 13.11.2009 and W.P.No.40097 of 2002 dated 23.12.2009 and set aside the orders of dismissal/removal from service and denied backwages. The above said judgment of the Supreme Court is followed by the Division Bench of this Court in the decision reported in (2009) 7 MLJ 1231 (V.Senthurvelan v. High Court of Judicature at Madras).

13. Applying the said decisions to the facts of this case and in view of the fact that the appellate authority viz., the second respondent having not considered the appeal as contemplated under Rule 23, the order passed by the appellate authority viz., second respondent and the further order passed by the first respondent are set aside. The matter is remitted back to the second respondent to consider the appeal filed by the petitioner strictly in accordance with the Rule 23, including the aspect of proportionality of the punishment pleaded by the petitioner

and pass fresh orders in the light of the decisions cited supra, within six weeks from the date of receipt of copy of this order. The writ petition is disposed of with the above directions. No costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com