

IN THE HIGH COURT OF JUDICATURE AT MADRAS

D A T E D :22.12.2020

C O R A M

The Hon'ble Mr. Justice SENTHILKUMAR RAMAMOORTHY

Writ Petition No.11861 of 2010

A.Akbar Ali

...Petitioner

Vs

The Principal Secretary to Government,
Home (Police-VI) Department,
Secretariat,
Chennai - 600 009.

...Respondent

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the Respondent herein in G.O.(3D) No.24, Home (Police -VI) Department dated 17.04.2009 imposing a punishment of stoppage of increment for a period of one year with cumulative effect and quash the same and consequently direct the Respondent herein to grant all the consequential monetary and service benefits withheld due to the above punishment to the Petitioner.

For Petitioner :Mr.Ravi Shanumugam

For Respondents:Mr.G.K.Muthukumar

Special Government Pleader

O R D E R

By an impugned order dated 17.04.2009 in a suo motu revision, the punishment of black mark that had been imposed on the Petitioner was enhanced to stoppage of increment for a period of one year with cumulative effect. The said order is impugned in this writ petition and the Petitioner also prays for consequential monetary and service benefits.

2. The Petitioner joined the services of the Police Department as a Grade - II Police Constable on 14.08.1974 and was promoted as a Grade - I Police Constable in the year 1992. On 03.05.1997, he was promoted as a Head Constable. On 25.04.2000, a charge memo dated 19.04.2000 was served on him. The charge pertained to the failure to take lawful action against the accused, Senthilkumar, and instead negotiating a compromise between the complainant, Vasudevan, and Kavithakumar,

the sister of Senthilkumar, whereby a sum of Rs.25,000/- was obtained from Kavithakumar and given to Vasudevan as compensation to settle the complaint, and the receipt of Rs.2000/- as a bribe from Kavithakumar.

3. The Additional Deputy Commissioner of Police, Prohibition Enforcement Wing, Coimbatore was the enquiry officer. By enquiry report dated 30.11.2003, he concluded that the charges against the Petitioner were not proved. A de novo enquiry was ordered by the Deputy Inspector General of Police, Coimbatore by proceedings dated 27.04.2004. The Petitioner challenged the same by filing O.A.No.2221 of 2004 before the Tamil Nadu Administrative Tribunal. By order dated 01.06.2004, the application filed by the Petitioner was allowed and the Commissioner of Police was directed to pass final orders on the basis of the enquiry report. The Disciplinary Authority, namely, the Commissioner of Police, Coimbatore City, by order dated 24.11.2005 dissented from the view expressed in the enquiry officer's report and, therefore, called upon the Petitioner to provide an explanation as to why he should not be punished. The Petitioner provided such explanation on 12.12.2005 and, upon consideration thereof, by order dated 28.01.2006, the Commissioner of Police imposed the punishment of black mark.

4. On 04.04.2008, the Government issued a show cause notice under Rule 15(A) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 (the TNPSS D&A Rules). The Petitioner submitted a further explanation to the show cause notice on 16.05.2008. By order dated 17.04.2009, the Government passed an order in the suo motu revision enhancing the punishment from that of black mark to stoppage of increment for a period of one year with cumulative effect. A co-delinquent, namely, Thiru.K.P.Selvaraju, Inspector of Police, expired while proceedings against him were pending. Therefore, no further action was taken against him. As regards another co-delinquent, namely, Thiru.S.Ramalinga Jothi, Head Constable, by order dated 21.07.2009, he was exonerated from the charges and further action to enhance the punishment was dropped. The present writ petition was filed in the above facts and circumstances.

5. I heard Mr.Ravi Shanmugam, the learned counsel for the Petitioner and Mr.G.K.Muthukumar, the learned Special Government Pleader for the Respondent.

6. The first contention of Mr.Ravi Shanmugam was that the enquiry officer recorded a categorical finding that there was no evidence against the Petitioner. By referring to the findings of the enquiry officer, Mr.Ravi Shanmugam pointed out that it was recorded that no witness had deposed against the delinquent, and that the enquiry officer concluded that the charge against

the delinquent that he did not take lawful action and settled the issue by receiving Rs.25,000/- from Kavithakumar and handing over the same to the complainant, Vasudevan, as compensation for the stolen jewels and that he received Rs.2,000/- as a bribe could not be substantiated in the absence of any deposition from Vasudevan and Kavitha. Given the said categorical findings of the enquiry officer, Mr.Ravi Shanmugam contended that the enhancement of punishment in the suo motu revision without adducing additional evidence against the Petitioner is clearly unwarranted and liable to be interfered with.

7. The next contention of Mr.Ravi Shanmugam was that Mr.Ramalinga Jothi, Head Constable, was a co-delinquent as is evident from the enquiry officer's report. By drawing reference to the proceedings dated 21.07.2009, he pointed out that further action against Mr.Ramalinga Jothi was dropped. From the said proceedings, he also pointed out that further action was dropped against Thiru.K.P.Selvaraju, Inspector of Police, on account of his death on 29.03.2006. Mr.Ravi Shanmugam contends that all these co-delinquents were charged with the same offence. Therefore, it is not permissible to enhance the punishment as regards the Petitioner while exonerating the co-delinquents. The final contention of Mr.Ravi Shanmugam is that the show cause notice dated 04.04.2008 did not indicate the purpose of the suo motu revision. In particular, it did not state that it was proposed to enhance the punishment and most certainly did not specify the nature of the proposed punishment. For all these reasons, he submitted that the impugned order in the suo motu revision is liable to be quashed.

8. On the contrary, Mr.G.K.Muthukumar contended that the charge is in two parts. The first part of the charge pertains to the failure to take lawful action upon receipt of the complaint from Vasudevan against the accused, Senthilkumar, and the second part pertains to the receipt of a bribe in connection therewith. According to Mr.Muthukumar, the first part stood proved by the fact that the Petitioner did not register the F.I.R. upon receipt of the complaint and instead facilitated a negotiation between the parties. With regard to the failure to take action against the co-delinquent Ramalinga Jothi, the learned Special Government Pleader submitted that action against him was dropped on account of his retirement prior to the conclusion of the suo motu revision proceedings. He further submitted that Rule 15(A) of the TNPSS D&A Rules enables the Government to undertake a suo motu revision. Therefore, the authority of the Government to initiate suo motu revision proceedings cannot be questioned. As regards the justification for the same, he submitted that the accused, Senthilkumar, committed suicide on the date following his interrogation in the

police station. This resulted in a public outcry. In those circumstances, the suo motu revision was justified.

9. By way of rejoinder, the learned counsel for the Petitioner referred to and relied upon the judgments of the Hon'ble Supreme Court in K.R. Deb v. The Collector of Central Excise, Shillong (1971) 2 SCC 102 and the judgment reported in AIR 1977 SC 2138 for the proposition that the power of review should be exercised within a reasonable time even if no time limit is prescribed for such purpose. In the present case, he pointed out that the show cause notice in respect of the suo motu revision was issued on 04.04.2008, i.e. about two years and three months after the punishment of black mark was imposed on the Petitioner. This is an unreasonable delay in the initiation of suo motu revision proceedings and vitiates the same. He also relied upon the judgment of the Division Bench of this Court in Tamil Selvan (2008) 7 MLJ 318. In conclusion, with regard to the proposition that co-delinquents should be treated equally and one co-delinquent should not be singled out for adverse and discriminatory treatment, he referred to and relied upon the judgments in Anand Regional Co. Op Oil S. Union v. Shaileshkumar Harshadbhai Shah (Shaileshkumar Harshadbhai Shah) (2006) 6 SCC 548, The Director General of Police and Others v. G. Dasayan (Dasayan), JT 1998 (1) SC 259 and G. Thangaiah and another v. State of Tamil Nadu, Rep. By Secretary to Government, Home (IV) Department, Chennai and another (2011) 4 MLJ 817.

10. I considered the submissions of the learned counsel for the respective parties and examined the materials on record.

11. The challenge in the writ petition is confined to the order dated 17.04.2009 in the suo motu revision proceedings against the Petitioner. To put it differently, the order dated 28.01.2006 in the disciplinary proceedings whereby the punishment of black mark was imposed on the Petitioner is not under challenge. The said order was issued on 28.01.2006 and attained finality. In this context, the enquiry officer's report and the original order of punishment are relevant only for the limited purpose of determining whether the suo motu revision proceedings resulting in the enhanced punishment are liable to be interfered with. The suo motu revision proceedings commenced with the show cause notice dated 04.04.2008. It is self-evident that the said show cause notice was issued about two years and three months after the punishment order was issued in the original proceedings. The power of suo motu revision is contained in Rule 15(A) of the TNPSS D&A Rules. The said Rule 15(A) is as under:

"Rule 15. Deleted in G.O.Ms.No.2348 Home (Pol-III)
Dept. dt.26.8.77

Rule 15(A). (1) Notwithstanding anything contained in these rules:

(i) the State Government; or

(ii) the Head of the Department directly under the State Government, in the case of Government servant serving in a department or office under the control of such Head of Department; or

(iii) the appellate authority, other than the State Government within six months of the date of the order proposed to be revised; or

(G.O. Ms. No.1351 Home (Police-VI) dt. 13-12-2000)

(iv) any other authority specified in this behalf by the State Government by general or special order, and within such time as may be prescribed in such general or special order; at any time, either on their or its own motion or otherwise call for the records of any order and review any order made under these rules, after consultation with the Tamil Nadu Public Service Commission where such consultation is necessary and may:

(a) confirm, modify or set aside the order; or

(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed; or

(c) remit the case to the authority which made the order or to any other authority, such authority to make such further enquiry, as it may consider proper in the circumstances of the case; or

(d) pass such other orders as it may deem fit.

Provided that no order imposing or enhancing any penalty shall be made by any revising authority unless the Government servant concerned has been given a reasonable opportunity of making representation. Where it is proposed to impose any of the penalties specified in clauses (d), (e), (f), (h), (i) and (j) of rule 2 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in sub rule (b) of rule (3) and after giving a reasonable opportunity to the Government servant concerned of showing cause proposed on the evidence adduced during the inquiry and except after consultation with the Tamil Nadu Public Service Commission, where such consultation is necessary.

Provided further that no power of revision shall be exercised by the Head of Department unless:

(i) the authority which made the order in appeal or

(ii) the authority to which an appeal would lie where no appeal has been preferred is subordinate to him.

(2) No proceeding for review shall be commenced until after.

(i) where no appeal has been preferred before the expiry of the period of limitation to an appeal or

(ii) where an appeal has been preferred before the disposal of such appeal.

(iii) An application for review shall be dealt with in the same manner as if it were an appeal under these rules.

Provided that members of the constabulary (Police Constables and Head Constables) shall be eligible to make one representation to the Government against the orders of dismissal or removal from service after exhausting the right of appeal.

Provided further that no application for review shall be entertained if it has not been made within a period of six months from the date of receipt of the order on which such application for review is preferred." (emphasis added, wherever appropriate).

12. Upon perusal of Rule 15(A), it is clear that the power of revision may be exercised by the State Government, the head of the department, the appellate authority or any other authority specified in this behalf by the State Government by general or special order. As regards the appellate authority, such power should be exercised within 6 months of the order proposed to be revised. With regard to an application for revision by a party, a time limit of six months is imposed from the date of receipt of the order against which the revision petition is filed. As regards suo motu revision, except a suo motu revision at the instance of the appellate authority, no time limit is prescribed. In the case at hand, the show cause notice dated 04.04.2008 was issued by the Government. Therefore, the issuance of the show cause notice is clearly within the authority of the State Government in terms of Rule 15 (A) (1), and it is evident that no time limit is specified. Clearly, the intention behind the rule is to exempt suo motu revision by the State Government or the head of the department from the six month time limit but that does not lead to the inference that the power may be exercised at any time. In *State of Orissa v. Kanhu Charan Majhi* (2014) 1 SCC 156, the Hon'ble Supreme Court implied a "reasonable time" requirement for review although no time limit was prescribed and held as under:

"15. So far as the power of the Governor with regard to review of an order is concerned, Rule 31

of the Rules does not prescribe any period of limitation. Normally, when no period of limitation is prescribed, for exercising the power of review, the power of review should be exercised within a reasonable period from the date of order which is sought to be reviewed. In the instant case, the Governor had reviewed the order after about five years. In any case, period of five years cannot be said to be a reasonable period. The action with regard to review of the order, so as to make it effective, ought to have been passed within reasonable period and the facts of each case would determine as to what period would be reasonable. In the instant case, looking at the fact that Rule 32 of the Rules prescribe period of six months as limitation for exercising power of review in disciplinary cases, one can reasonably infer that period of five years cannot be said to be reasonable for exercise of power under Rule 31 of the Rules. We, therefore, conclude that even if the Governor had power to review the order dated 16-10-1995, which pertains to dropping of the departmental proceedings initiated against the respondent, the said power could not have been exercised after about five years, as by no stretch of imagination, period of five years can be said to be reasonable in the facts of the case."

Likewise, in the case at hand, unless the authority exercising the power of revision is able to cite justifiable reasons for initiation of revision proceedings after a longer delay, a time limit of about one year would ordinarily be reasonable keeping in mind that both in respect of an application for revision and in respect of proceedings initiated by the appellate authority, a six month time limit is imposed. In the present case, upon perusal of the show cause notice, I do not find any reason stated therein for the initiation of revision proceedings after two years and three months had lapsed from the date of the original order of punishment. Even the reason cited by Mr. Muthukumar, namely, that the accused, Senthilkumar, committed suicide is no justification for the delay given that it happened almost immediately after the complaint. In any event, this reason is not cited either in the show cause notice or in the enhanced punishment order.

13. Another important aspect to be borne in mind is that the proviso to Rule 15(A)(1) specifies that no order imposing or enhancing penalty shall be made unless the Government servant concerned has been given a reasonable opportunity of making representation. The show cause notice dated 04.04.2008 does not

even specify that it is proposed to enhance the punishment. Needless to say, it, therefore, does not specify the nature of the proposed enhanced punishment. Mr.Muthukumar contended that the show cause notice cannot specify that it is proposed to enhance the punishment, including by specifying the proposed nature of the enhanced punishment, because doing so would amount to pre-judging the issue. I am unable to countenance this contention especially in view of the statutory mandate that a reasonable opportunity should be provided to the Government servant concerned to make a representation in respect of the proposed enhanced punishment. In other words, in my view, the provision of a reasonable opportunity to make a representation implies that the Government servant concerned should be informed that it is proposed to enhance the punishment. Ideally, the nature of such proposed enhanced punishment should also be indicated in the show cause notice. Indeed, upon examining the reply of the Petitioner dated 16.05.2008, I find that the Petitioner has requested the Government to set aside the punishment of black mark. To put it differently, the Petitioner did not provide an explanation as to why the punishment of black mark should not be enhanced and instead provided an explanation as to why the original punishment of black mark should be set aside. The said explanation of the Petitioner itself exemplifies the necessity for stating in the show cause notice that it is proposed to enhance the punishment and also specify the nature of such proposed enhancement so as to provide a reasonable opportunity to the delinquent to show cause. In my view, the suo motu revision proceedings are vitiated by the failure to provide such reasonable opportunity.

14. The third aspect relates to the dropping of charges against the co-delinquent. On this issue, the contention of Mr.Muthukumar was that the suo motu proceedings against Mr.Ramalinga Jothi were dropped on account of the fact that he had retired on attaining the age of superannuation on 31.01.2007. The charge memo makes it abundantly clear that both the Petitioner and Ramalinga Jothi along with Karuppannan and Raju had visited the house of Senthilkumar to search for the jewels and, thereafter, interrogated him in the police station. In such circumstances, there is no justification for treating the Petitioner and Ramalinga Jothi differently. As per the ratio laid down in Shaileshkumar Harshadbhai Shah and Dasayan, co-delinquents are required to be treated equally. In addition, in the Division Bench judgment in M. Rajamanickam v. The Executive Director, Bharat Heavy Electricals Limited 1997-2-LW-941, it was held as under:

"26. We are of the view that there is no iota of evidence which would differentiate the case of the present appellant from that of the other employee Meenakshisundaram. This discrimination is

writ large on the record and the Court cannot overlook the same. Therefore, we see no justification in treating the appellant differently without pointing out how he was guilty of more serious misconduct or the degree of indiscipline in this case was higher than compared to that of Meenakshisundaram. Learned counsel for the management failed to explain to us the distinguishing features and therefore, we are satisfied in putting both of them in the same bracket. Therefore, we have no hesitation to come to the conclusion that the treatment meted to the present appellant suffers from the vice of arbitrariness and Article 14 forbids any arbitrary action which would tantamount to denial of equality as guaranteed by Article 14 of the Constitution of India. The Court must accordingly interpose and quash the discriminatory action."

15. In the present case, the authorities should not have permitted the co-delinquent, Ramalinga Jothi, to retire if it was intended to enhance the punishment of all the similarly situated co-delinquents. In my view, the present proceedings are vitiated for this reason also.

16. For all the reasons aforesaid, I am of the view that the impugned order dated 17.04.2009 whereby the punishment of the Petitioner was enhanced is not sustainable. Consequently, the impugned order dated 17.04.2009 is quashed. As a result, the Petitioner shall be entitled to consequential service and monetary benefits. The writ petition is allowed. No costs.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

The Principal Secretary to Government,
Home (Police-VI) Department,
Secretariat,
Chennai - 600 009.

+1 CC to The Government Pleader sr 43005.

W.P.No.11861 of 2010

SR(CO)
SP(20/01/2021)