



W.P(MD)No.23273 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 05.02.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P(MD)No.23273 of 2022

and

W.M.P(MD)Nos.17367 of 2022 & 23956 of 2023

G.Gopalakrishnan

... Petitioner

Vs.

1.The Director General of Police,
O/o.The Director General of Police,
Chennai – 600 004.

2.The Deputy Inspector General of Police,
O/o.The Deputy Inspector General of Police,
Tirunelveli Range,
Tirunelveli.

3.The Superintendent of Police,
O/o.The Superintendent of Police,
Tirunelveli Range,
Tirunelveli.

4.G.Gopinath

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the third respondent vide D.O.No.710/2019 C.No. P2/PR89/2018 dated 24.04.2019 and the consequential order passed by the second respondent vide C.No. C4/3571/2020 dated 12.08.2020 and the order passed by the first respondent vide Rc.No.653640/AP.2(1) /2020 dated 10.03.2021 and quash the same and consequently direct the respondents to reinstate the petitioner in service with continuity of service and all other attendant benefits.

For Petitioner : Mr.D.Shanmugaraja Sethupathi

For Respondents : Mr.S.Shaji Bino
Special Government Pleader
for R.1 to R.3

No Appearance for R.4

ORDER

The present writ petition has been filed to call for the records relating to the impugned order passed by the third respondent vide D.O.No.710/2019 C.No. P2/PR89/2018 dated 24.04.2019 and the consequential order passed by the second respondent vide C.No. C4/3571/2020 dated 12.08.2020 and the order passed by the first



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respondent vide Rc.No.653640/AP.2(1)/2020 dated 10.03.2021 and quash the same and consequently direct the respondents to reinstate the petitioner in service with continuity of service and all other attendant benefits.

2. Heard Mr.D.Shanmugaraja Sethupathi, learned counsel appearing for the writ petitioner and Mr.S.Shaji Bino, learned Special Government Pleader appearing for the official respondents.

3. The petitioner was appointed as Gr.II Police on 01.11.2017. On completion of basic training, the petitioner reported duty at Armed Reserve Police, Tirunelveli District on 01.07.2018. On 05.07.2018, the fourth respondent who is working as Police Constable in the Armed Reserve Police, Tirunelveli District lodged a petition with the Inspector of Police, Special Branch, Tirunelveli District. In the above petition, the fourth respondent stated that on 05.07.2018 at about 10.30 a.m, when he was sleeping in his room at Armed Reserve, the mobile phone placed near him was found missing. Despite intensive search, the mobile could not be traced out. When that being so, the petitioner was enquired by the



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Sub Inspector of Police, Armed Reserve. At that time, the petitioner admitted that on 24.07.2018, when he was going to attend his nature calls, he found a mobile phone wrapped in a polythene cover at the Armed Reserve ground. After picking up the mobile phone, the petitioner inserted his SIM card into the mobile phone and used the phone for about 8 days and thereafter, handed over the mobile phone to the Sub Inspector of Police, Armed Reserve. The petitioner took up a mobile phone lying on the barrack and appropriated the mobile phone for his own. The duty cast upon a finder of lost goods is to make effort to find out the actual owner of the goods so that the goods could be surrendered to him. On the other hand, the petitioner being a member of disciplined force instead of finding out and surrendering the mobile phone to the actual owner or else to hand over the mobile phone to his superior authorities, kept the mobile phone himself and used the same for his own. On 16.08.2018, the petitioner was placed under suspension vide orders of the third respondent in C.No.P1/46728/2018, for having taken the mobile phone (Redmi Note-5) of PC 3825, G.Gopinath and used the same for his own, without handing over the mobile phone to the higher officials. Consequently, the petitioner was issued with a charge



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memorandum in PR.No.89/2018 under Rule 3(b) of Tamil Nadu Police Subordinates Services (D&A) Rules, 1955. The charges are as here under:

- “1) 05.07.2018 அன்று திருநெல்வேலி மாவட்ட ஆயுதப்படைமில் தன்னோடு பணிபுரிந்து வரும் சக காவலர் 3825 திரு.கோழிநாத் என்பவருடைய கைப்பேசியினை (Redmi Note 5 Pro) யாருக்கும் தெரியாமல் எடுத்து வைத்திருந்து அதனை சொந்த பயன்பாட்டிற்காக பயன்படுத்தியுள்ள கண்டிக்கத்தக்க செயல்.
- 2) குற்றத்தின் உண்மைத்தன்மையினை மறைத்துக் கொள்வதற்காக 31.07.2018 அன்று பொய்யான விளக்கத்தினை சமர்ப்பித்துள்ள கண்டிக்கத்தக்க செயல்.
- 3) தமிழ்நாடு சார்நிலை காவல் அலுவலர் நடத்தை விதிகள் 1964 விதி 24(1) ல் ஒவ்வொரு காவல் அலுவலரும் தன் முழு அளவில் நேர்மையும் பற்றும் கொண்டிருப்பதற்கு தகர்த எதனையும் செய்யக்கூடாது என்ற விதியை மீறிய கண்டிக்கத்தக்க செயல்.”

In view of the proceedings initiated under Rule 3(b) of the Tamil Nadu Police Subordinate Services (D&A) Rules, 1955 an oral enquiry was conducted against the petitioner. In the said enquiry, on the side of the prosecution, 4 witnesses were examined and 9 documents were marked and the petitioner cross examined the prosecution witnesses. On the side of the petitioner, no witnesses were examined and no documents were



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marked. On completion of enquiry, the enquiry officer held all the 3 charges framed against the petitioner were proved in the enquiry. Thereafter, on 08.04.2019, the petitioner submitted his representation refuting the charges and at the same time, the petitioner admitted that he took up the mobile phone, which was lying on the ground. Thereafter, on 22.04.2019, the disciplinary authority i.e., the third respondent concurred with the findings of the enquiry officer and inflicted the petitioner with the punishment of dismissal from service vide D.O.No.710/2019, C.No.P2/PR.No.89/2018, dated 22.04.2019.

4. Pursuant to the order of “Dismissal from service”, the petitioner preferred an appeal before the second respondent and the same was dismissed on 28.05.2019 through orders in C.No.C4AP.26/2019. However, the petitioner took up the matter before this Court in W.P(MD)No.1951 of 2020, praying to quash the same. This Court by its orders dated 31.01.2020, set aside the order and remanded back the matter to the second respondent for fresh consideration following the guidelines provided under the Tamil Nadu Police Subordinate Services (D&A) Rules, 1955.



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5. Pursuant to the orders of this Court, the second respondent directed the petitioner for personal hearing and upon considering all the materials on record held the charges against the petitioner are amply proved. However, the second respondent considering the age and other relevant circumstances modified the punishment of “Dismissal from Service” into that of “Removal from Service” vide proceedings in C.No.C4/3571/2020, dated 12.08.2020. Thereafter, the petitioner filed a revision petition / mercy petition dated 05.10.2020, before the first respondent requesting to cancel the punishment imposed on him. After having gone through the materials on record, the first respondent held that the punishment inflicted upon the petitioner does not warrant interference and hence, rejected the claim of the petitioner vide proceedings in Rc.No.653640/AP.2(1)/2020, dated 10.03.2021. Challenging the same, the present writ petition came to be filed.

6. The offence of theft could be substantiated only through the chain of circumstances and the guilt admitted by the offender himself. The essential element required to attract the offence of theft is dishonestly taking away the movable property of another person without



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that person's consent. Therefore, the contention of the petitioner is that the fourth respondent had not seen the petitioner while taking away his mobile phone and he is not the eye witness to the offence of theft, is not sustainable. Whereas, the petitioner himself admitted in his appeal petition presented to the second respondent that the petitioner took a mobile phone in the AR ground and utilized it and after 7 days of its usage, the petitioner came to know through Cyber Crime Unit that it belonged to the fourth respondent. Moreover, during enquiry, the petitioner handed over the phone and tendered apology and he undertook not to commit such type of mistake in future.

7. During the time of cross-examination of P.W.2, Ganapathy / Sub Inspector of Police, the petitioner himself admitted that he took up the mobile phone on 24.07.2018 and handed over the phone on 31.07.2018. When the petitioner himself admitted that he took up the phone and kept it for a period of 7 days without informing or handing over the same to the higher officials, no other proof is required to prove the delinquency against the petitioner. It is pertinent note that nowhere the petitioner denied the delinquency of theft of mobile phone. Instead, the petitioner



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himself has admitted that he had taken the mobile phone, which was contained in a polythene cover.

8. Mr.D.Shanmugaraja Sethupathi, learned counsel appearing for the petitioner relied upon the case of G.Rajendrakumar Vs The Commandant, T.S.P.IX Batalian, Manimutharu in W.P(MD)No.2234 of 2007 dated 02.11.2007. Wherein this Court has dealt a case of similar nature and the portion relied upon by the learned counsel appearing for the petitioner is extracted as follows:

“Be that as it may, simply because, he was a new entrant, the department cannot be harsh towards him. Certainly, I am of the considered opinion that the charges as against him were not so serious, warranting termination from service. In this connection, the learned counsel for the petitioner also would place reliance on the decision of this Court in A.Lourdhusamy v. Deputy Chief security Commissioner, Railway Protection Force, Southern Railway, Chennai-600 003 and Other reported in 2007(5) CTC 157. An excerpt from it would run thus:

"Heard the learned counsel on either side and went though the entire materials placed on record. Apart from inordinate and unexplained delay in initiating in framing the charges, there is no material to show that the stolen



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property was recovered from the possession of the appellant. Moreover, we see that the confessional statement of Ponnusamy Nadar, based on which the appellant was charge-sheeted was neither marked nor a copy of the same was furnished to the appellant. That apart, the said Ponnusamy Nadar was not examined during the departmental enquiry nor was he made available for cross-examination by the appellant. Therefore, unless the contents of the confessional statement is corroborated by the oral evidence of Ponnusamy Nadar, it cannot be taken into consideration as an admissible piece of evidence. Moreover, it is an admitted fact that the said Ponnusamy Nadar was acquitted by the Criminal Court as regards the said offence. In such circumstances, we are of the view that the Department ought not to have proceeded against the appellant and dismissed him from service. In the absence of direct evidence to connect the appellant to the offence, solely on the basis of circumstantial evidence, when it lacks corroboration, the major punishment of dismissal from service, imposed on the appellant is illegal and unsustainable. It is not known why the appellant alone was singled out and meted out a different treatment while there were other persons, as per the confessional statement of Ponnusamy Nadar, involved in the alleged



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theft. The conduct of the Department in imposing the capital punishment of dismissal from service without even conducting an enquiry at the first instance speaks volumes about their intention".

17. The reformatory theory and opportunity being given to delinquent to correct himself is applicable even to the criminal law, which is also equally applicable with added force to service law also. Hence, in this view of the matter, while not disturbing the findings on charges, I set aside the order of termination passed as against the petitioner and within one month from the date of receipt of a copy of this order, the petitioner shall be reinstated in service and I make it clear that for the past period the principle "no work no pay" shall be applicable and let him be given with all future benefits. For other purposes period of termination may be treated as though he was in service."

He relied upon yet another case of A.Lourduswamy Vs Deputy Chief Security Commissioner & Another in W.A.No.989 of 2001 dated 03.04.2007, wherein the Hon'ble Division Bench of this Court has dealt with a case of disciplinary proceedings initiated against the member of RPF Personal and the portion relied upon by the learned counsel for the petitioner is extracted as follows:



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“6. ...In the absence of direct evidence to connect the appellant to the offence, solely on the basis of circumstantial evidence, when it lacks corroboration, the major punishment of dismissal from service, imposed on the appellant is illegal and unsustainable. It is not known why the appellant alone was singled out and meted out different treatment while there were other persons, as per the confessional statement of Ponnusamy Nadar, involved in the alleged theft. The conduct of the Department in imposing the capital punishment of dismissal from service without even conducting an enquiry at the first instance speaks volumes about their intention.”

He relied upon yet another case in W.P(MD)No.4655 of 2020 dated 24.08.2023. However all the three cases are not relevant to the facts and circumstances of this case.

9. Mr.S.Shaji Bino, learned SGP relied upon the case of ***Union of India Vs Ex.Constable Ram Karan reported in (2022) 1 SCC 373***. The relevant portion is extracted as follows:

“22. The nature of allegations against the respondent are indeed grave in nature as the respondent



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not only threatened the Doctorcomplainant but has misbehaved and abused and injured him and made false allegations against him of sexual harassment to his wife. Such a nature of misconduct which has been committed by the respondent once stand proved is unpardonable and if the authority has considered it appropriate to punish him with penalty of removal from service by an Order dated 14-7-2004 and confirmed by the appellate/revisional authority and by the High Court in the impugned judgment leaves no sympathy for retention in service and that too in a discipline force like CRPF.

23. The well-ingrained principle of law is that it is the disciplinary authority, or the appellate authority in appeal, which is to decide the nature of punishment to be given to the delinquent employee. Keeping in view the seriousness of the misconduct committed by such an employee, it is not open for the Courts to assume and usurp the function of the disciplinary authority.

24. Even in cases where the punishment imposed by the disciplinary authority is found to be shocking to the conscience of the Court, normally the disciplinary authority or the appellate authority should be directed to reconsider the question of imposition



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of penalty. The scope of judicial review on the quantum of punishment is available but with a limited scope. It is only when the penalty imposed appears to be shockingly disproportionate to the nature of misconduct that the Courts would frown upon. Even in such a case, after setting aside the penalty order, it is to be left to the disciplinary/appellate authority to take a call and it is not for the Court to substitute its decision by prescribing the quantum of punishment. However, it is only in rare and exceptional cases where the court might to shorten the litigation may think of substituting its own view as to the quantum of punishment in place of punishment awarded by the competent authority that too after assigning cogent reasons.

25. The principles have been culled out by a three Judge Bench of this Court way back in B.C. Chaturvedi vs. Union of India and Others² wherein it was observed as under: (SCC p.762, para 18)

“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.”

26. It has been further examined by this Court in Lucknow Kshetriya Gramin Bank (Now Allahabad, Uttar Pradesh Gramin Bank) and Another vs. Rajendra Singh³ as under: (SCC p.382, para 19)

“19. The principles discussed above can be summed up and summarised as follows:

19.1. When charge(s) of misconduct is proved in an enquiry the quantum of punishment to be imposed in a particular case is essentially the domain of the departmental authorities.



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19.2. The courts cannot assume the function of disciplinary/departmental authorities and to decide the quantum of punishment and nature of penalty to be awarded, as this function is exclusively within the jurisdiction of the competent authority.

19.3. Limited judicial review is available to interfere with the punishment imposed by the disciplinary authority, only in cases where such penalty is found to be shocking to the conscience of the court.

19.4. Even in such a case when the punishment is set aside as shockingly disproportionate to the nature of charges framed against the delinquent employee, the appropriate course of action is to remit the matter back to the disciplinary authority or the appellate authority with direction to pass appropriate order of penalty. The court by itself cannot mandate as to what should be the penalty in such a case.

19.5. The only exception to the principle stated in para 19.4 above, would be in those cases where the co-delinquent is awarded lesser punishment by the disciplinary authority even when the charges of misconduct were identical or the co-delinquent was foisted with more serious charges. This would be on the doctrine of equality when it is found that the employee concerned



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and the co-delinquent are equally placed. However, there has to be a complete parity between the two, not only in respect of nature of charge but subsequent conduct as well after the service of charge-sheet in the two cases. If the co-delinquent accepts the charges, indicating remorse with unqualified apology, lesser punishment to him would be justifiable.”

27. Adverting to the facts of the instant case, the High Court, in our considered view, fell in error in interfering with the punishment, which could lawfully be imposed by the departmental authorities for his proven misconduct. The High Court should not have substituted its own discretion for that of the authority. What punishment was required to be imposed, in the facts and circumstances of the case, was a matter which fell exclusively within the jurisdiction of the competent authority and the interference made by the High Court is in a cavalier manner while recording the finding of penalty to be disproportionate without taking into consideration the seriousness of the misconduct committed by the respondent which is unpardonable and not sustainable in law.”

This is a case where a Grade II Police Constable, that is, the petitioner



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who is serving in the Armed Reserve, Tirunelveli had indulged in a petty theft of taking away the mobile of the fourth respondent, while he went to attend his nature calls and found the fourth respondent's Redmi Note 5 mobile phone wrapped in a polythene cover in the Armed Reserve ground. Having identified the same, without immediately handing over the said phone to the appropriate authorities, he retained the same with him. He was enquired upon by the Sub Inspector of Police and thereafter admitting that the phone is in his custody. He handed over the phone following which the disciplinary proceeding has been initiated as against him by the Department. Three counts of charges were framed as against the petitioner and a charge memo was issued to the petitioner on 31.10.2018. After appropriate enquiry, an enquiry report dated 13.03.2019 was also arrived at and the same was also served on the petitioner, an appropriate explanation was sought for and the petitioner has also submitted his explanation. Following which, the third respondent passed an order of dismissal from service dated 24.04.2019. As against the same, the petitioner preferred an appeal before the second respondent. In the appeal, the second respondent modified the order of dismissal from service to removal from service vide order dated



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28.05.2019, considering his young age. Thereafter, the petitioner filed review / mercy petition before the first respondent. The first respondent confirmed the order passed by the appellate authority. Challenging the same, this writ petition came to be filed.

10. Enhancement of Police integrity and integrity of Police gains significance in a developing democratic nation. The key players in enhancing Police accountability are Police Officers themselves, as the prime bearers of responsibility for the integrity of the Police force. Achieving public confidence is crucial to effecting policy. The same could be attained only if each and every member of the Police force observe inbuilt righteousness and honesty. Even a single deviation from honesty and mischief has to be uprooted maintaining and restoring Police integrity. Hence while dealing with a case of a petty theft by a Police Constable of the Armed Reserve Force, the modification of punishment of dismissal from service to removal from service is not shockingly disproportionate. In view of the same, I am not inclined to interfere with the impugned order.



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11. This writ petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
MGA

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- 1.The Director General of Police,
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Chennai – 600 004.
- 2.The Deputy Inspector General of Police,
O/o.The Deputy Inspector General of Police,
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