

A THE STATE OF TAMIL NADU AND ORS.

v.

M. NATARAJAN AND ANR.

JULY 7, 1997

B [K. RAMASWAMY AND D.P. WADHWA, JJ.]

*Service Law:*

C *Removal from service—Police personnel—Departmental enquiry for misconduct—Criminal case also filed but withdrawn later—Failure to appear before the Enquiry Officer, who had passed exparte report recommending stoppage of 3 increments with cumulative effect—When Disciplinary Authority gave notice for imposing major penalty, the employees asking for opportunity to cross-examine witnesses and sought fresh enquiry on the ground that the criminal case against them had been withdrawn—Request declined and*

D *punishment of removal from service imposed—Tribunal setting aside the order on grounds of violation of principles of natural justice—On appeal held, no illegality committed in conducting the enquiry—Report of the Enquiry Officer recommending stoppage of 3 increments with cumulative effect justified—Order of removal from service set aside—Instead disciplinary authority*

E *directed to impose punishment of stoppage of 4 increments with cumulative effect.*

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 4611-12 of 1997.

F From the Judgment and Order dated 30.4.96 of the Tamil Nadu Administrative Tribunal, Chennai in O.A. No. 3804 and 3805 of 1991.

A. Mariarputham for the Appellants.

S. Nandakumar and L.K. Pandey for the Respondents.

G The following Order of the Court was delivered :

Leave granted. We have heard learned counsel for both sides.

H These appeals by special leave arise from the judgment and common order of the Tamil Nadu Administrative Tribunal, Chennai, made on

30.4.1996 in OA Nos. 3804/91 and 3805/91.

The admitted facts are that on 10.2.1987, the respondents misbehaved with two ladies and outraged their modesty and took them into the lock up in the earlier hours, i.e., at 0200 hours. When two persons intervened, they were beaten by them. As a consequence, an enquiry was held and a criminal case was also instituted against the respondents. When they were asked to appear before the Enquiry Officer, they failed to appear in spite of several opportunities given to them. As a result, the Enquiry Officer was constrained to record the findings and recommend imposition of the punishment of stoppage of three increments with cumulative effect. After the receipt of the report, the disciplinary authority had issued notices to the respondents as to why major penalty should not be given to the respondents. The respondents asked for opportunity to cross-examine the witnesses and sought fresh enquiry on the ground that by that date the criminal case filed against the respondents was withdrawn. The competent authority declined to accede to the request and imposed the punishment of removal from service. Feeling aggrieved, they filed O.As. in the Tribunal. The Tribunal allowed the O.As. on the ground that the disciplinary authority did not consider the evidence to justify the finding of proof of charges and violated the principles of natural justice. We find that the Tribunal was not justified in reaching the conclusion for the reason that the Tribunal itself has categorically recorded findings at pages 8-10 as under:

"The applicants were asked to appear before the Enquiry Officer, but, they wrote them saying that since the Criminal case was proceeding against them in a Criminal Court they would suggest that the departmental proceedings might be postponed till the disposal of the criminal proceedings. The Enquiry Officer was right in holding the view that there was no bar for departmental proceedings to go while the criminal proceedings were being conducted at the appropriate forum. The applicants had chosen not to participate in the departmental proceedings because of the reason that the criminal proceedings and the departmental proceedings should not go simultaneously. Though ignorance of law is not an excuse, the Enquiry Officer should have taken some steps to convince the applicants of the settled principle of law that both the criminal and departmental proceedings could go simultaneously and advised them to participate in the enquiry. But the

A applicants did not yield and only after the criminal case was withdrawn against them, they chose to appear before the authorities concerned for the enquiry. The Enquiry Officer did not wait for the stage to materialise and he passed his ex-parte findings. The applicants refused to appear for the oral enquiry instead of several opportunities given to them. Therefore, it was decided to

B examine the prosecution witness in the absence of the applicants. After the examination of P.Ws. the applicants were directed to appear to cross-examine the prosecution witnesses if they so desired. Even then they did not appear. Therefore, the Enquiry was treated as closed after examining the prosecution witnesses

C and a finding was arrived at based on the materials available with the prosecution side. The applicants were even asked to submit their list of witnesses to be examined as Defence Witnesses, but they did not submit the same and they were also asked to submit their written statement of defence if they desired, but they did not do that also. Finally, the applicants wrote saying that they submitted their representation to the Superintendent of Police and he replied and after receiving the reply from the Superintendent of Police, a representation for the change of Enquiry Officer was turned down by the Superintendent of Police. Finally, enquiry was closed and ex-parte minute was prepared. Based on the findings of the Enquiry Officers' report in both the cases, the Superintendent of Police awarded the punishment of reduction in time scale of pay for three years with cumulative effect to the applicant in O.A. No. 3804/91 and removed the applicant in O.A. 3805/91 from service."

F In view of these findings, we think that no procedural illegalities were committed in conducting the enquiry. The question is: what punishment should be awarded to the respondents? The Enquiry Officer himself has recommended to impose penalty of stoppage of three increments with cumulative effect. We find that the Enquiry Officer was justified. On the facts and circumstances of the case, we set aside the order of the removal

G from service. Instead, the disciplinary authority is directed to impose the punishment of stoppage of four increments with cumulative effect.

The appeals are accordingly allowed. No costs. The respondents are not entitled for any back wages.

G.N.

Appeals allowed.