

N. Rajarathinam

Vs

State of T. N. and Another

SLP (C) No. 19334 of 1996

(K. Ramaswamy, G. B. Pattanaik JJ)

06.09.1996

ORDER

1. Delay condoned.

2. This special leave petition has been filed against an order of the Tamil Nadu Administrative Tribunal, Madras Bench, made on 26-2-1996 in OA No. 2152 of 1991. The petitioner, while working as Assistant Commissioner of Commercial Taxes, demanded and accepted illegal gratification. Consequently, he was suspended from service on 1-10-1995. An enquiry into the charges was conducted by the Tribunal for Disciplinary Proceedings. The Tribunal recommended dismissal of the petitioner from service on the basis of the finding that the preponderance of evidence established that the petitioner had demanded and accepted illegal gratification from PW 1 (Shammugasundaram). Accepting the report, the disciplinary authority, by its order dated 6-1-1989, dismissed the petitioner from service. The petitioner then filed OA in the Tribunal. In the first instance, the Tribunal allowed the petition. Subsequently, when an appeal was filed in this Court, this Court by its order dated 8-9-1995 set aside the Tribunal's order and held that the Tribunal is not a fact-finding authority and the jurisdiction of the Tribunal in such matters is well settled. It was also held that Administrative Member cannot alone decide the matter. After the matter was remitted to the Tribunal, it held that though other witnesses had turned hostile, the evidence of PW 1 and other evidence on record was found to be sufficient to dismiss the petitioner from service. Accordingly, the Tribunal has upheld the order of dismissal from service. Thus, this special leave.

3. Mr Ambrish Kumar, the learned counsel for the petitioner, has contended that as many as 17 witnesses examined by the Government to prove the charges of demand and acceptance, have turned hostile and they were declared hostile by the prosecution. The solitary evidence by PW 1, chronic defaulter in payment of sales tax, is without corroboration on material particulars and is not sufficient for order of dismissal of the petitioner from service. We find no force in the contention. Admittedly, the Evidence Act, 1872 has no application for the disciplinary proceedings. The report of the Tribunal was material before the disciplinary authority to take action in accordance with law. It is true that the Tamil Nadu Public Service Commission had recommended to take a lenient view in the matter but the Government had not accepted the recommendation. The view of the Public Service Commission being only recommendatory, the Government was not bound to accept the recommendation made by the Public Service Commission. Taking all the facts and the circumstances of the case, the Government had accepted the finding of the Tribunal that preponderance of probabilities did establish that the petitioner had demanded and accepted illegal gratification from PW 1 and thereby he committed misconduct rightly leading to dismissal from service. This finding having been based upon the evidence of PW 1, it cannot be said that the finding is based upon no evidence. It is for the disciplinary authority to take into consideration all

the relevant facts and circumstances. If all the relevant facts and circumstances and the evidence on record are taken into consideration and it is found that the evidence establishes misconduct against a public servant, the disciplinary authority is perfectly empowered to take appropriate decision as to the nature of the findings on the proof of guilt. Once there is a finding as regards the proof of misconduct, what should be the nature of the punishment to be imposed is for the disciplinary authority to consider. While making decision to impose punishment of dismissal from service, if the disciplinary authority had taken the totality of all the facts and circumstances into consideration, it is for the authority to take the decision keeping in view the discipline in the service. Though this Court is empowered to go into the question as to the nature of the punishment imposed, it has to be considered in the peculiar facts and circumstances of each case. No doubt, there is no allegation of misconduct against the officer during his earlier career. But it does not mean that proved allegation is not sufficient to impose the penalty of dismissal from service. Considered from this perspective, we think that there is no illegality in the order passed by the Tribunal warranting an interference.

4. Accordingly, this special leave petition is dismissed.