

Secretary to Government, Home Deptt. and Others

Vs

Srivaikundathan

Civil Appeal No. 4250 of 1994

(Sujata V. Manohar, D. P. Wadhwa JJ)

06.11.1997

ORDER

1. The respondent Srivaikundathan while working as a Police Constable was assigned along with Naik Joseph, the duty of escorting two prisoners from Central Jail, Palayankottai to the Court of Judicial Magistrate, IInd Class, Ambasamundram on 20-5-1987. Accordingly he along with Joseph Naik 2495 were issued handcuffs, rifles and bus warrants for prisoners' escort duty. After taking charge of the prisoners, the respondent and Joseph left the handcuffs in a petty shop near the Central Jail, Palayankottai. Both the prisoners were taken to Ambasamundram and were produced before the Judicial Magistrate, Ambasamundram. On the return journey, instead of coming directly to Palayankottai, the respondent and Joseph, along with the prisoners broke the return journey at Cheramandevi. The respondent and Joseph left their rifles at the press of Ibrahim (PW 9). One of the prisoners Ulaganatham was unauthorisedly taken to his village to visit his relations and concubine. He escaped. No complaint, however, was lodged by the respondent and Joseph until the next day at 12 p.m. when they falsely reported that prisoner Ulaganatham escaped when he was permitted by Joseph and the respondent to get down from the bus in order to relieve himself. Both the respondent and Joseph were charge-sheeted. The departmental enquiry was held in which inter alia the evidence of PW 9, Investigating Officer, was led along with other evidence. In the departmental enquiry, both were found guilty of the charges and the disciplinary authority imposed on both the punishment of dismissal from service by its order dated 31-5-1988. The Government by its order dated 15-4-1991 modified the punishment to that of compulsory retirement in the case of Joseph and it also modified the punishment imposed on the respondent to removal from service.

2. The respondent filed an application before the Tamil Nadu Administrative Tribunal for setting aside the order of punishment. The Tribunal has set aside the punishment of removal from service and has remitted the matter to the Superintendent of Police to reconsider the extent of the guilt of the respondent with the stipulation that no punishment involving termination of service should be imposed on the respondent. The Tribunal has also directed reinstatement of the respondent in service. The appellants have, therefore, preferred the present appeal.

3. The Tamil Nadu Administrative Tribunal has re-examined the entire evidence which was led before the Enquiry Officer and has come to the conclusion that the Enquiry Officer erred in holding the respondent guilty without examining the exact role of the respondent in respect of the escape of the prisoner. The Tribunal was not sitting in appeal over the findings of the Enquiry Officer, nor was the Tribunal required to examine the nature of the evidence which was led as if it were a criminal trial. Unless the findings were perverse, or unless it was found that there was no evidence whatsoever before the Enquiry Officer, the Tribunal could not have set aside the findings of the Enquiry Officer merely by expressing dissatisfaction with the evidence which was led. In the

present case, there was a clear evidence pointing to the guilt of the two employees who had not merely allowed the prisoner who was entrusted to their custody to escape, but had also lodged a false complaint in that connection. The Tribunal was not justified in setting aside the findings of the Enquiry Officer and remitting the matter as it did (see in this connection *State of Haryana v. Rattan Singh* ((1977) 2 SCC 491 : 1977 SCC (L&S) 298)).

4. The Tribunal was also not justified in interfering with the punishment which was imposed on the respondent. It is for the disciplinary authority to consider the punishment which should be imposed. The disciplinary authority in the present case, looking to the gravity of charges, and looking to the fact that both the respondent as well as Joseph were entrusted with the custody of the two prisoners and had been guilty of total dereliction of duty, as a result of which a life convict escaped, has imposed a somewhat lesser punishment of removal from service on the respondent. The Tribunal was wrong in saying that since the respondent had served only for a short period, he should be given another chance. The Tribunal, in a serious matter involving proper discharge of duty by a member of the Police Force, ought not to have interfered in this wholly unwarranted manner with the punishment imposed. Nor was there any occasion to direct that a second chance be given to the respondent and that he should not be removed from service. Not only is the order beyond the jurisdiction of the Tribunal but is also grossly improper in a case like this. The appeal is allowed and the impugned order of the Tribunal is set aside. The application of the respondent before the Tribunal is dismissed with costs.