

Director General of Police & Ors.

Vs

G.Dasayan

(S. C. Agrawal, K. Venkataswami, A. P. Misra JJ)

28.01.1998

JUDGEMENT

K.VENKATASWAMI J

1.Special leave granted.

2.Heard counsel on both sides.

3.The respondent was working as Police Constable in Kanyakumari District, Tamil Nadu. He was proceeded departmentally for the following charges:

"(i) Highly reprehensible conduct in having demanded and extracted gold jewels weighing 31 grams from one T.Pitchendi Asari, Thangam Jewellers, Alexandria Press Road, Nagercoil, under coercion on 28.5.1983 with other members of crime detective party.

(ii) In having not issued with any receipt to the said T.Pitchandi Asari, or in not having seized the said jewels under proper mehazar; and

(iii) In not having showed the jewels in any of the crime investigated by the Crime Detective Party.

II. Highly reprehensible conduct as a member of Crime Detective Party:

(i) In not having shown the arrest of one Hentry Victor and Shahul Hameed concerned in CCS.No.257/83 under Section 457/380 IPC which was registered on 12.5.1983 on the complaint of T.Dennison and keeping the accused for number of days without any record;

(ii) In having not recovered the property under proper mahazar and not properly accounted for the cloths and money recovered from various places in Tamil Nadu.

(iii) In having charged the actual properties recovered in Cr.No.257/83 under Sections 457, 380 IPC by changing the high quality cloths into cheaper quality of cloths while sending them in Form 95 to the Court of Chief Judicial Magistrate, Nagercoil, the receipt of which was acknowledged on 22.7.1983 in R.P.No.490 of 1983."

4.The respondent was tried along with one Head Constable and two Police Constables.Regular enquiry was held by the Deputy Superintendent of Police, Thuckalay (Kanyakumari District), who found that the first count of the charge is proved but not the second one. In the meanwhile, the respondent was transferred to Tirunelveli District. The other co-delinquents were also transferred to another neighboring District. The Disciplinary Authority for the respondent, at the relevant time, was the Superintendent of Police, Tirunelveli, who concurred with the Report of the Enquiry Officer and imposed the punishment of dismissal from service by an Order dated 21.4.87.The appeal filed by the respondent to the Deputy Inspector General of Police, Tirunelveli, was dismissed on 9.12.87.The Review filed to the Director General of Police was also rejected on 5.2.90.

5.Therefore, the respondent moved the Tamil Nadu Administrative Tribunal, Madras, by filing O.A.No.446 of 1991.The Tribunal by an order dated 6.5.96 set aside the order of dismissal mainly on the ground that the Enquiry Report was not furnished to the respondent herein before the impugned order was passed and that the authority competent to pass the order of dismissal was the Superintendent of Police, Kanyakumari District, where the respondent was working when the charge was framed. According to the Tribunal, the transfer was for administrative purpose pending Enquiry and he should have been re-transferred after the enquiry was over and the final order should have been passed by the Superintendent of Police, Kanyakumari District. One other ground also was given by the Tribunal for setting aside the order of dismissal, namely, that the co- delinquents were let off without any punishment except the Head Constable, who was only compulsorily retired. Though the charges were identical, the punishment imposed, according to the Tribunal, being discriminatory cannot be sustained.

6.Aggrieved by the order of the Tribunal the present appeal by special leave has been preferred by the appellants.

7.Mr.Mariarputham, learned counsel for the appellants, submitted that the first ground of the Tribunal for setting aside the order of dismissal is no longer sustainable in view of the judgment of this Court in Managing Director, ECIL, Hyderabad & Ors.(1993)4 SCC 727.In that case, a Constitution Bench of this Court held that the ruling in Ramzan Khan's case [(1991)1 SCC 588] is prospective in application and no order of punishment made before 20.11.90 can be tested on thus basis of the law laid down in Ramzan Khan's case. Therefore, the order passed in this case being on 21.4.87 the law laid down in Ramzan Khan's case will have no application and, therefore, the order of the Tribunal on that score cannot be supported.

8.On the second ground that the Superintendent of Police, Tirunelveli District, was not the competent authority, learned counsel for the appellants submitted that the Tribunal was not right in assuming that the transfer was for administrative purpose and during the pendency of Enquiry as the Police Standing Orders enabled the transfer of Constable of one District to another District. The relevant PSO was produced which reads that a Police Constable is liable to serve anywhere in the State. The order of transfer from Kanyakumari District to Tirunelveli District at the relevant time was not challenged. Therefore, this ground of the Tribunal in setting aside the order of dismissal cannot also be supported. The third ground that the co-delinquents except the Head Constable were let off though the charges were identical, it is stated by the learned counsel for the appellants that the Disciplinary Authority did not agree with the findings of the Enquiry Officer so far as those two delinquents were concerned. However, the Head Constable, who was also charged along with the respondent, was compulsorily retired by the Disciplinary Authority.

9.Mr.Murlidhar, learned counsel appearing for the respondent, while agreeing with the contentions

of the learned counsel for the appellants on the first two grounds, submitted that the order of dismissal at any rate cannot be sustained and if at all an order of compulsory retirement as was made in the case of the Head Constable, who was tried along with the respondent, has to be imposed.

10. We have perused the order of the Tribunal and the relevant documents. We find merit in the arguments of the learned counsel for the appellants. At the same time, we are of the view that as pointed out by the learned counsel for the respondent that a punishment of compulsory retirement in the case of the respondent as well would meet the ends of justice on the facts and circumstances of this case.

11. Accordingly, we set aside the order of the Tribunal and in the place of order of dismissal passed by the Disciplinary Authority, the order of compulsory retirement is substituted. The appeal will stand disposed of accordingly with no order as to costs.