

INSPECTOR GENERAL OF POLICE AND ANR.

v.

THAVASIAPPAN

JANUARY 25, 1996

[S.C. AGRAWAL AND G.T. NANAVATI, JJ.]

*Service Law :*

*Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 :*

*Rules 2(h), 3(b)—Departmental proceedings against Sub-Inspector of Police—Inquiry Officer, a Deputy Superintendent of Police—Penalty of compulsory retirement imposed by Deputy Inspector General of Police—Held, inquiry officer need not be the authority competent to impose penalties referred to in Rule 3(b).*

The respondent, a Sub-Inspector of Police, was subjected to departmental proceedings. The Inquiry Officer, a Deputy Superintendent of Police, framed the charges and served the same on the respondent; and on completion of the inquiry, submitted his report to the Deputy Inspector General of Police, who imposed the penalty of compulsory retirement on the respondent. The respondent, being unsuccessful in the departmental appeal, approached the Tamil Nadu Administrative Tribunal, which accepted his contention that only the authority competent to award the proposed penalty could have framed and served the charge-memo and as the inquiry officer was not competent to award the said penalty, imposition thereof even by the Deputy Inspector General of Police was illegal. Aggrieved, the Government filed the appeal.

Allowing the appeal, this Court

**HELD :** 1. The Tribunal erred in holding that in a case falling under rule 3(b) of the Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 the charge-memo should be issued by the disciplinary authority empowered to impose the penalties referred to therein and if the charge memo is issued by any lower authority then only that penalty can be imposed which that lower authority is competent to award. [983-F]

A *State of Madhya Pradesh v. Shardul Singh*, [1970] 1 SCC 108; *P.V. Srinivasa Sastry v. Comptroller and Auditor General*, [1993] 1 SCC 419 and *Transport Commissioner, Madras v. Radha Krishna Moorthy*, [1995] 1 SCC 332, relied on.

B 1.2. Second paragraph of Rule 3(b)(i) itself contemplates that the inquiry officer may not be the authority competent to impose the penalties referred to therein. If it was intended by the rule making authority that the disciplinary authority should itself frame the charge and hold the inquiry, then it would not have provided that a report of the inquiry shall be prepared by the authority holding the inquiry whether or not such authority is competent to impose the penalty. Generally speaking, it is not necessary that the charges should be framed by the authority competent to award the proposed penalty or that the inquiry should be conducted by such authority. There is nothing to read such a requirement in rule 3(b). Besides, as to who shall initiate and conduct a disciplinary proceeding, the Rules are silent. [983-D-E, 922-H]

2. The case is remitted back to the Tribunal to consider the other contentions raised before it and to dispose of the case in accordance with law. [983-G]

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2299 of 1996.

From the Judgment and Order dated 9.12.92 of the Tamil Nadu Administrative Tribunal, Madras in O.A. No. 4236 of 1991.

F A. Mariarputham for Arputham Aruna & Co. for the Appellant.

R. Ayyam Perumal for the Respondent.

The Judgment of the Court was delivered by

G NANAVATI, J.

Leave granted.

H A departmental proceeding was initiated against the respondent, a Sub-Inspector of Police, on an allegation that in January 1988, while he was

working as PSI at Anthiyur Police Station, he not only did not register a criminal case against one Smt. Jayalakshmi for the offences found to have been committed by her but let her off and delivered back the seized articles after accepting a bribe of Rs. 2,000 from her. A Deputy Superintendent of Police was appointed as an enquiry officer. He framed the charges and served the same on the respondent. He then held an enquiry and submitted his report to the Deputy Inspector General of Police who was competent to award the proposed penalty. The Dy. Inspector General of police agreed with the findings recorded by the enquiry officer and imposed the penalty of compulsory retirement by an order dated 26.3.91. The respondent filed an appeal against that order to the Inspector General of Police who dismissed it by an order dated 16.7.91.

The respondent then filed O.A. No. 4236 of 1991 before the Tamil Nadu Administrative Tribunal. It was contended before the Tribunal that only the authority competent to award the proposed penalty could have framed and served the charge memo and as that was done in this case by a Deputy Superintendent of Police. Only that penalty could have been lawfully imposed upon the respondent which was within the powers of the Deputy Superintendent of Police. As the Deputy superintendent of Police was not competent to award the penalty of compulsory retirement imposition of that penalty even by Deputy Inspector General of Police should be regarded as illegal. It was also contended that there was no evidence to prove the charge against the respondent. A contention was also raised that the respondent was not given a reasonable opportunity to defend himself. The Tribunal did not go into the other contentions raised by the respondent and allowed his application as it was of the view that "the charge memo under Rule 3(b) should be issued by the disciplinary authority empowered to impose the penalty specified therein and if any lower authority has initiated proceedings by issuing the charge memo then the penalty will be limited to those that such lower authority can award to the delinquent concerned". As the Deputy Superintendent of Police could not have imposed the penalty of compulsory retirement, the Tribunal set aside the order of penalty and directed the petitioners herein to reinstate the respondent and remitted the case back to the Deputy Inspector General of Police to pass an appropriate order. Aggrieved by that order the petitioners who were respondents in O.A. have filed this appeal.

The order of the Tribunal is challenged on the ground that it is based

A on an erroneous interpretation of Rule 3(b). It was submitted that Rule 3(b) does not specifically or even by necessary implication so provide and no such requirement can justifiably be read into it.

B Rule 2 of the said Rules specifies the penalties that can be imposed upon members of the service. Compulsory retirement is specified as a penalty in clause (h) of that Rule. Rule 2A provides that the Governor or any other authority empowered by him by general or special order can institute disciplinary proceeding against any member of the service. Rule 4 specifies the authorities which can impose the penalties prescribed in Rule 2. Rule 3 provides the procedure that has to be followed before an order imposing penalty is passed. If any of the minor penalties mentioned in C clauses (a), (b), (c), (e) and (f) of Rule 2 is proposed to be imposed then comparatively simple procedure prescribed in Rule 3(a) has to be followed. If, however, it is proposed to impose any major penalty specified in clauses (d), (h), (i) and (j) of Rule 2 then the elaborate procedure mentioned in D clause (b) of that Rule is required to be followed. Rules 3 (a) and 3(b)(i) and 3(b)(ii) read as under :

E "Rule 3(a) - In every case where it is proposed to impose on a member of a service any of the penalties mentioned in clauses (a), (b), (c), (e) and (f) of Rule 2 he shall be given a reasonable opportunity of making any representation that he may desire to make and such representation, if any shall be taken into consideration before the order imposing the penalty is passed :"

F "Rule 3(b)(i) - In every case where it is proposed to impose on a member of a service any of the penalties specified in clauses (d), (h), (i) and (j) of Rule 2 the grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged together with a statement of the allegations on which each charge is framed and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be G required, within a reasonable time, to put in a written statement of his defence and to state whether he desires an oral inquiry or only to be heard in person. An oral inquiry shall be held if such an inquiry is desired by the person charged or is directed by the H authority concerned. At that inquiry oral evidence shall be heard

as to such of the allegations as are not admitted, the person charged shall be entitled to cross-examine the witnesses to give evidence in person and to have such witnesses called as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reason to be recorded in writing refuse to call a witness. After the inquiry has been completed, the person charged shall be entitled to put in, if he so desires, any further written statement of his defence.

Whether or not the person charged desired or had an oral enquiry, he shall be heard in person at any stage if he so desires before final orders are passed. A report of the inquiry or personal hearing (as the case may be) shall be prepared by the authority holding the inquiry or personal hearing whether or not such authority is competent to impose the penalty. Such report shall contain a sufficient record of evidence, if any, and a statement of the findings and the grounds thereof.

(ii) After the inquiry or personal hearing referred to in clause (i) has been completed, and if the authority competent to impose the penalty mentioned in that clause, is of the opinion, on the basis of the evidence adduced during the inquiry that any of the penalties specified therein should be imposed on the Government servant, it shall make an order, imposing such penalty and it shall not be necessary to give the person charged, any opportunity of making representation on the penalty proposed to be imposed."

We have not set out the provisos to Rule 3(a) and Rule 3(b)(ii) as they are not material for the purpose of this appeal.

Before we consider the requirement of Rule 3(b) we will refer to the three decisions cited by the learned counsel for the appellant. He first invited our attention to the decision of this Court in *State of Madhya Pradesh v. Shardul Singh*, [1970] 1 SCC 108. In that case a departmental enquiry was initiated against a Sub Inspector of Police by Superintendent of Police who after holding an enquiry sent his report to the Inspector General of Police who ultimately dismissed the Sub Inspector of Police from service. The order of dismissal from service was challenged before the High Court of Madhya Pradesh on the ground that the enquiry held by Superintendent of Police was against the mandate of Article 311(1) of

A the Constitution as he was incompetent to conduct the enquiry. The Sub  
Inspector of Police was appointed by the Inspector General of Police. The  
High Court allowed the petition. The State preferred an appeal to this  
Court. Rejecting the contention that the guarantee given under Article  
311(1) includes within itself a further guarantee that the disciplinary  
B proceedings resulting in dismissal or removal of a civil servant should be  
initiated or conducted by the authorities mentioned in that article, this  
Court held as under :

C "This Article does not in terms require that the authority  
empowered under that provision to dismiss or remove an official,  
should itself initiate or conduct the enquiry preceding the dismissal  
or removal of the officer or even that enquiry should be done at  
its instance. The only right guaranteed to a civil servant under that  
provision is that he shall not be dismissed or removed by an  
authority subordinate to that by which he was appointed."

D This Court further held that "we are unable to agree with the High  
Court that the guarantee given under Article 311(1) includes within  
itself a further guarantee that the disciplinary proceedings resulting  
in dismissal or removal of a civil servant should also be initiated  
and conducted by the authorities mentioned in that Article."

E The learned counsel also drew our attention to *P.V. Srinivasa Sastry*  
*v. Comptroller and Auditor General*, [1993] 1 SCC 419, wherein this Court  
in the context of Article 311(1) has held that in absence of a rule any  
superior authority who can be held to be the controlling authority can  
initiate a departmental proceeding and that initiation of a departmental  
F proceeding per se does not visit the officer concerned with any evil conse-  
quences. *Transport Commissioner, Madras v. A Radha Krishna Moorthy*,  
[1995] 1 SCC 332 was next relied upon. Therein also this Court has held  
that initiation of disciplinary enquiry can be by an officer subordinate to  
the appointing authority. These decisions fully support the contention of  
G the learned counsel for the appellants that initiation of a departmental  
proceeding and conducting an enquiry can be by an authority other than  
the authority competent to impose the proposed penalty.

H As to who shall initiate and conduct a disciplinary proceeding, the  
Rules are silent. Rule 2A which provides that the Governor or any other  
authority empowered by him may institute disciplinary proceedings is an

enabling provision. From the way it is worded it is not possible to infer that the rule making authority intended to take away the power of otherwise competent authorities, like the appointing authority, disciplinary authority or controlling authority and confine it to the authorities mentioned in Rule 2 A only. Moreover, it is difficult to appreciate how this provision can be helpful in deciding whether the charge should be framed and the enquiry should be held by that authority only which is competent to impose the penalties mentioned in Rule 3(b)(i). An act of instituting a disciplinary proceeding is quite different from conducting an enquiry. Rule 3(b)(i) provides how an enquiry should be held in a case where it is proposed to impose on a member of the service any of the penalties specified in clauses (d), (h), (i) and (j) of Rule 2. It lays down the different steps that have to be taken in the course of the enquiry proceeding. This Rule is completely silent as regards the person who should perform those acts except that the report of the enquiry has to be prepared by the authority holding the enquiry. Rule 3(b)(i) itself contemplates that the enquiry officer may not be the authority competent to impose the penalties referred to therein and that becomes apparent from the second paragraph of that sub-rule. If it was intended by the rule-making authority that the disciplinary authority should itself frame the charge and hold the enquiry then it would not have provided that a report of the enquiry shall be prepared by the authority holding the enquiry whether or not such authority is competent to impose the penalty. Generally speaking, it is not necessary that the charges should be framed by the authority competent to award the proposed penalty or that the enquiry should be conducted by such authority. We do not find anything in the rules which would induce us to read in Rule 3(b)(i) such a requirement. In our opinion, the view taken by the Tribunal that in a case falling under Rule 3(b) the charge memo should be issued by the disciplinary authority empowered to impose the penalties referred to therein and if the charge memo is issued by any lower authority then only that penalty can be imposed which that lower authority is competent to award, is clearly erroneous. We, therefore, allow this appeal. The order passed by the Tribunal is set aside and the case is remitted back to the Tribunal to consider the other contentions which were raised before it and to dispose of the case in accordance with law.

R.P.

Appeal allowed.