

PETITIONER:
SECY. TO GOVT. AND OTHERS

Vs.

RESPONDENT:
A.C.J. BRITTO

DATE OF JUDGMENT: 19/12/1996

BENCH:
S.C. AGRAWAL, G.T. NANAVALI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

NANAVALI, J.

The respondent was appointed as a Sub-Inspector of Police in 1962. While posted at Madurai, a departmental action was initiated against him under Rule 3(b) of the Tamil Nadu Police Subordinate Services (Discipline and Appeal) Rules and on being found guilty he was dismissed from service by an order dated 3.11.79. That order was set aside in appeal by the Inspector General of Police on the ground that in conducting the inquiry there was violation of the prescribed procedure. The enquiry officer was directed to proceed further with the inquiry from the stage it was found to be bad.

As the order of dismissal was set aside the respondent was reinstated in service. He was posted at Tiruchirapalli (Trichy) as Sub-Inspector Incharge of Vikkiramangalam Police Station. He joined the duty at that Police Station on 12.11.80 and proceeded on casual leave from 13.11.80 to 19.11.80. Instead of resuming duty on 20.11.80 he applied for medical leave and thereafter went on extending it continuously till he was placed under suspension on 14.6.81. As he was remaining continuously absent on the ground of health, the Superintendent of Police, Tiruchirapalli by his memo dated 22.4.81 directed him to appear before the District Medical Officer for being presented before the Medical Committee for examination as regards his fitness to return to duty. He did not appear before the District Medical Officer on that day. The Superintendent of Police, therefore, again by a memo dated 4.6.81 directed him to appear before the District Medical Officer for the said purpose. That memo was served upon the respondent on 4.6.81 itself. The District Medical Officer, Trichy by a letter dated 4.6.81 requested the Superintendent of Police to direct the respondent to appear before the Medical Board at Government Headquarters Hospital, Trichy on 9.6.81 at 10 hours for medical examination. A communication to that effect was also served upon the respondent. As the respondent did not appear for medical examination on 9.6.81 the District Medical Officer by his letter dated 10.6.81 informed the Superintendent of Police about non-compliance

of the said directions. His non-appearance and non-compliance with the order of the Deputy Superintendent of Police were reported to Inspector General of Police. Considering it as an act of misconduct the respondent was suspended on 14.6.81 and a departmental proceeding by issuing a charge-memo was initiated against him on 27.7.81. The said charge-memo could not be served upon the respondent earlier than 2.11.81 as he was not available. The enquiry officer concluded the inquiry and found him guilty and on the basis thereof an order of dismissal was passed against him by the disciplinary authority on 24.5.84.

He challenged that order of dismissal by filing a writ petition in the High Court of Madras. That petition was subsequently transferred to the Tamil Nadu Administrative Tribunal and was numbered as T.A. No.606 of 1991. The respondent challenged his dismissal on the ground that the inquiry and the dismissal order were vitiated as the disciplinary proceedings were initiated against him by an officer subordinate in rank to the disciplinary authority. It was also challenged on the ground that by not appearing before the Medical Board the respondent cannot be said to have disobeyed the order of the superior authority and in any case, that did not amount to a misconduct of grave nature. It was also challenged on the ground that the enquiry officer, by denying him the documents which he wanted, deprived him of a reasonable opportunity to defend himself. The Tribunal relying upon its earlier judgments, held that the disciplinary authority alone can initiate a disciplinary proceeding against a Government servant under Rule 3(b) of the said Rules and as the charge-memo in this case was issued by an officer subordinate to the disciplinary authority the entire disciplinary proceeding stood vitiated. The Tribunal also held that the applicant wanted a railway warrant to enable him to appear before the Medical Board at Trichy and as the same was not given to him he cannot be said to have disobeyed the order of a superior authority. For that reason and also on the ground of absence of any provision under which non-appearance before a Medical Board can be considered as an act of misconduct the Tribunal held that there was no justification for initiating a disciplinary proceeding against him. The Tribunal also held that the enquiry officer by denying his request to have the documents which he had asked for and for perusal of a file had deprived him of a reasonable opportunity to defend himself. The Tribunal also held that as the applicant was not given a copy of the inquiry report and as the order was passed without giving him a further notice his dismissal has to be regarded as bad. The Tribunal, therefore, quashed and set aside the order of dismissal.

The State has, therefore, filed this appeal. The learned counsel for the State submitted that the view taken by the Tribunal that only the disciplinary authority can initiate a departmental proceeding against the delinquent Government servant, is contrary to the law laid down by this Court. This point is covered by the decision of this Court in *Inspector General of Police vs. Thavasiappan* (1996) 2 SCC 145 and, therefore, the contrary finding recorded by the Tribunal will have to be set aside. The learned counsel for the respondent has fairly conceded this position.

The view taken by the Tribunal as regards the effect of non-furnishing a copy of the enquiry report is also contrary to the law declared by this Court. In this case, the order of dismissal was passed on 24.5.84. Therefore, the Tribunal could not have nullified the order of dismissal in view of the judgments of this Court in *Union of India vs. Mohd.*

Ramzan Khan 1991 (1) SCC 588 and Managing Director. ECIL. Hyderabad vs. B. Karunakar 1993 (4) SCC 727. The law laid down in Mohd. Ramzan Khan's case (supra) has prospective operation only.

The third reason given by the Tribunal that there was no justification for initiating a disciplinary proceeding against the respondent is also not sustainable. The proceeding was initiated against the respondent for his indisciplined conduct in disobeying a lawful order passed by his superior officer who was competent to pass such an order. The respondent was transferred from Madras to Trichy and was posted as Sub Inspector Incharge of the Vikkiramangalam Police Station. After joining duty there on 12.11.80 he proceeded on leave from 13.11.80 and continuously remained on leave till he was called upon by the Superintendent of Police, by passing an order On 4.6.81. to appear before the Medical Board at Trichy on 9.6.81. As he was remaining absent on medical grounds and had produced certificates from different Medical Officers the Superintendent of Police becoming suspicious about the genuineness of the ground on which he was remaining absent had passed that order. The fact that he did not comply with that order is not disputed. His explanation that he had no money to travel from Madras to Trichy and, therefore, he had requested the Superintendent of Police on 8.6.1981 to issue a railway warrant and as a railway warrant was not given to him he could not remain present before the Medical Board on 9.6.81 as directed, was not accepted by the concerned authorities. We will hereafter point out that there were good reasons for the authorities not to accept the said explanation. Such an act of insubordination or disobedience of an order by a police officer has to be viewed seriously as higher degree of discipline is expected of a member belonging to the Police Force. Therefore, it cannot be said that there was no good and sufficient reason or a valid justification for initiating the disciplinary proceedings against him.

What was, however, contended on behalf of the respondent was that in absence of any Rule treating noncompliance with an order of a superior police officer or non-appearance before a Medical Board as an act of misconduct no disciplinary proceedings should have been initiated against him for the said act of delinquency. In support of this submission the learned counsel relied upon the decision of this Court in A.L. Kalra vs. Project and Equipment Corporation of India Ltd. 1984 (3) SCC 316. In that case, disciplinary proceedings were initiated against A.L. Kalra by the Corporation for committing an act of misconduct under service rule 4(1) (i) and (iii) which prescribed that every employee of the Corporation shall at all times maintain absolute integrity and do nothing which is unbecoming of a public servant. Rule 5 prescribed various misconducts for which action could be taken against an employee governed by the rules. Taking note of the fact that rule 4 was given the heading 'General' and rule 5 was given the heading 'Misconduct' this Court took the view that the draftsmen of the Rules made a clear distinction about what would constitute misconduct. It was under these circumstances this Court observed that "failure to keep such high standard of moral, ethical or decorous behaviour befitting an officer of the company by itself cannot constitute misconduct unless the specific conduct falls in any of the enumerated misconduct in Rule 5. Rule 4 was regarded as vague and of general nature and in that context it was further observed that where misconduct when proved

entails penal consequences, it is obligatory on the employer to specify and if necessary define it with precision and accuracy so that any ex post facto interpretation of some incident may not be camouflaged as misconduct. Construing the rules this Court held that "Rule 4 styled as 'General' specifies a norm of behaviour but does not specify that its violation will constitute misconduct." Rule 4 was thus construed as not specifying a misconduct. Thus the decision in that case turned upon the scheme of those rules and the construction placed upon rules 4 and 5 of those rules. This Court in that case has not laid down as a general principle that if an act is not specified by rules to be a misconduct then it cannot be regarded as such and an employee cannot be punished for committing such an act.

The observations made by this Court in *Ranjit Thakur vs. Union of India and, Ors.* 1987 (4) SCC 611 support the view that we are taking. In that case the question which arose for consideration was whether a disregard of an order to eat food by itself amounted to disobedience to a lawful command for purposes of section 41 of the Army Act 1950. This Court observed that the question "has to be examined in the context of the imperatives of the high and rigorous discipline to be maintained in the Armed Forces. Every aspect of life of a soldier is regulated by discipline. Rejection of food might, under circumstances, amount to an indirect expression of remonstrance and resentment against the higher authority. To say that a mere refusal to eat food is an innocent, neutral act might be an over-simplification of the matter. Mere inaction need not always necessarily be neutral. Serious acts of calumny could be done in silence. A disregard of a direction to accept food might assume the complexion of disrespect to, and even defiance of authority."

The Rules applicable in this case do not specify acts of misconduct for which a delinquent officer can be punished. Rule 2 empowers the competent authorities to impose upon members of the Service penalties specified therein for good and sufficient reason. Therefore, the decision of this Court in *A.L. Kalra's case* (supra) is clearly distinguishable. Before holding that there was no justification to initiate disciplinary proceeding against the respondents, the Tribunal ought to have considered whether there was 'good and sufficient reasons for initiating such proceedings against him. It was not at justified in taking that view on the ground that such an act of delinquency has not been specified in the Rules as an act of misconduct. Not obeying a legitimate order of his superior by a member of the Police Force has to be regarded as an act of indiscipline and would certainly provide a good and sufficient reason for initiating a disciplinary proceeding.

It was next contended by the learned counsel for the respondent that the intention of the respondent was not to flout the order passed by the Superintendent of Police and non-compliance was due to bona fide reason, namely, that he did not have sufficient money for travelling from Madras to Trichy and he was denied a railway warrant for that purpose. In support of his contention that mere non-compliance with an order of a superior officer should not be regarded as an act of misconduct unless there is an intention to flout the same, the learned counsel relied upon the decision in *Union of India and Ors. vs. Giriraj Sharma* reported in 1994 Supp (3) SCC 755. In that case the employee was deputed to undergo a course as an electrician. He sought leave and then applied for extension of leave. That request was rejected.

For overstaying the period of leave his services were terminated. The said order was challenged in the High Court by filing a writ petition. The High Court having set aside the order, the Union of India preferred an appeal to this Court. While dismissing the appeal this Court observed that the punishment of dismissal for overstaying the period of 12 days in the circumstances of the case was really harsh as the said circumstances showed that it was not his intention to wilfully flout the order, but the circumstances had forced him to do so.

As against that, it was submitted by the learned counsel for the appellants that in this case the respondent had started remaining absent on medical grounds immediately after he was transferred to Trichy from Madras and that clearly indicated that he did not like the transfer and wanted to remain at Madras to carry on activities of the Association of which he was the Secretary. We find some force in this contention. The certificates produced by the respondent for obtaining medical leave clearly show that he was not all the times at Madras but had gone and stayed for quite a long period at Dindigul and Madurai. This circumstance was sufficient to raise a suspicion in the mind of the authorities that the ground given by the respondent for remaining absent at Trichy was really an excuse and he was not genuinely sick. It was under these circumstances that he was directed on 24.4.81 to appear before the Medical Board. Without assigning any reason he did not do so. Therefore, he was again directed by an order dated 4.6.81 to appear before the Board on 9.6.81. This communication was received by the respondent. On 8.6.81 he addressed a letter to the Superintendent of Police expressing his inability to appear before the Medical Board on 9.6.81 on the ground that he had no money to travel from Madras to Trichy and that he would appear before the Board only on completion of his leave. He had also stated therein that a railway warrant for the journey may be granted to him. What we find from the material on record is that respondent was already in Trichy on 4.6.81 when the said order was personally served upon him. Even though he knew on that day that he was required to appear before the Medical Board at Trichy on 9.6.81 he went away to Madras and from there sent a letter on 8.6.81. The learned counsel for the respondent could not point out any provision requiring the police authorities to provide a railway warrant to a member of the Service under such circumstances. Mr. R. Balakrishnan, Deputy Superintendent of Police has filed an additional affidavit stating clearly that there is no such provision. This statement made in the affidavit has not been controverted. It, therefore, clearly appears to us that the reason given by him for not remaining present before the Medical Board was a false excuse. It was his intention not to comply with the said order. His not appearing before the Medical Board was with a view to avoid an enquiry regarding his true state of health so that he was not compelled to resume duty. It was thus an act of disobedience and indiscipline. Therefore, in the facts and circumstances of the case it cannot be said that there was no good and sufficient reason for initiating a disciplinary proceeding against the respondent.

During the enquiry the respondent had asked for copies of certain documents and had also requested the Enquiry Officer to peruse the file in C.No.A1/861/81 of D.I.G. The Tribunal has held that as a result of the refusal the respondent was deprived of a reasonable opportunity of defending himself. From the additional affidavit filed by R. Balakrishnan it appears that the relevant record was made

available to the respondent for his perusal and he had perused the same. Thereafter by his letter dated 18.1.82 he had asked for (1) a copy of the D.O. letter dated 20.6.81 written by the Superintendent of Police, Trichy (2) a copy of the proceedings of the Deputy Superintendent of Police, Trichy in connection with establishing a police association at Trichy (3) copies of the daily diaries dated 4.6.81 and (4) copies of the letters written in 1980 and 1981 to the Home Secretary requesting permission of the Government to place him under suspension for taking part in formation of police association and the reply given by the Home Secretary. Enquiry Officer by his order dated 12.5.82 rejected the requests made by respondent by his letters dated 18.1.82 and 5.2.82 on the ground that the file of the D.S.P. which the respondent wanted to peruse was not at all relevant to the charge. Similarly, the request for the letters was rejected on the ground that they were also not relevant and calling for such records would result in abnormal delay in disposal of the enquiry. It also appears that the request for copies of the daily diaries of the said three police officers was also rejected on the ground that they were not relevant. The Tribunal without considering how those documents were relevant upheld the contention of the respondent that by not supplying copies of those documents he was denied a reasonable opportunity to defend himself. The file of the D.I.G. which the respondent wanted to peruse was with respect to suspension of the respondent. Similarly, the two letters addressed to the Home Secretary and the replies thereto also appeared to be in connection with his suspension earlier in 1980 and 1981 for a different reason. The respondent had not even stated in his letter as to who had written those letters and on which dates they were written. The respondent had not stated why he wanted copies of the diaries dated 4.6.81 of those police officers but it appears from the letter dated 18.1.82 that possibly the diaries contained some information about the police meeting held on that day. It is difficult to appreciate how any of those documents and the proceedings in connection with establishing a police association at Trichy could have helped the respondent in establishing his case that he could not remain present at Trichy on 9.6.81 because he did not have sufficient money to travel from Madras to Trichy. The fact that he was directed to appear before the Medical Board on 9.6.81 and that he did not do so was not in dispute. The only defence of the respondent was that there was no intention on his part to flout the said direction but he could not comply with it because of his inability. We are, therefore, of the opinion that the Enquiry- Officer was right in rejecting the request of the respondent to supply those documents and that the respondent had not suffered in any manner in defending himself as a result thereof.

We, therefore, allow this appeal, set aside the judgment and order passed by the Tribunal in T.A. No.606 of 1991, with the result that the order of dismissal passed against the respondent stands affirmed. However, in view of the facts and circumstances of the case there shall be no order as to costs.