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24-P-236

Appeals Court

JOHN F. ADAMS vs. SUPERINTENDENT, DEPARTMENT OF STATE POLICE & another.¹

No. 24-P-236.

Middlesex. March 5, 2025. - June 27, 2025.

Present: Blake, C.J., Hodgens, & Toone, JJ.

State Police. Police, Suspension. Due Process of Law,
Employment. Administrative Law, Judicial review.

Civil action commenced in the Superior Court Department on February 20, 2020.

The case was heard by Shannon Frison, J., on motions for judgment on the pleadings, and a motion for reconsideration was considered by her.

Rebecca R. Krumholz, Assistant Attorney General, for the defendants.

Daniel J. Moynihan (Mark A. Russell also present) for the plaintiff.

BLAKE, C.J. An overtime fraud investigation into members of the State police led to the suspension without pay of the plaintiff, John F. Adams. In August 2018, Adams, a former State

¹ Department of State Police.

police trooper in the now-defunct Troop E, was placed on paid administrative leave pending a duty status hearing, then suspended without pay pending the outcome of an internal affairs investigation. Adams requested review of his suspension pursuant to G. L. c. 22C, § 43 (§ 43 hearing). Following that hearing, the superintendent (colonel) of the Department of State Police (department) upheld the duty status hearing decision. Adams filed a complaint in the Superior Court seeking judicial review of the colonel's decision. On cross motions for judgment on the pleadings, the judge denied the defendants' motion and allowed Adams's motion, vacated the order suspending Adams without pay, ordered Adams reinstated with retroactive salary and benefits, and remanded the matter to the duty status board for a new hearing. On the defendants' appeal, we reverse.

Background. On August 13, 2018, Adams was notified that he was being placed on administrative leave with pay and that a duty status hearing, pursuant to art. 6.2.1 of the department's rules and regulations, was scheduled for August 15, 2018.² The

² Article 6.2.1 provides that a division commander may convene a duty status hearing if a member of the department is "the subject of an internal investigation." The hearing is conducted by a duty status board "consisting of three staff and/or commissioned officers." Art. 6.2.2. The board gathers and reviews facts "to make a fair determination relative to the member's appropriate duty status," makes findings, and recommends to the colonel whether the member should be continued on full duty, placed on restricted duty, suspended with pay, or suspended without pay. Arts. 6.2.2, 6.2.4.

next day, Adams received a letter advising him that he was the subject of an internal affairs investigation. He also received a copy of a letter authored by Major Brian Watson (Watson letter) dated August 9, 2018, requesting the investigation into Adams because of "irregularities" discovered during an audit of Troop E's 2015 overtime. The Watson letter listed specific dates and referred to "attached copies of . . . Pay[S]tation entries and the applicable radio affiliation logs," but those supporting documents were not attached to the copy of the letter provided to Adams. On August 15, 2018, at 5:15 A.M., Adams's license to carry a firearm was suspended and he was notified of the suspension shortly before his duty status hearing. Later that morning, the duty status board held the hearing. No witnesses were called, but the record included the Watson letter, which requested a "personnel investigation" and alleged that Adams was not present for six overtime patrols that he reported and for which he received overtime pay, and that Adams left early from seven evening-shift patrols. While the letter referred to certain attachments, discussed above, they were not provided to Adams or reviewed by the duty status board. The board recommended that Adams be suspended without pay, and that recommendation was adopted by the colonel.

Adams appealed from the duty status hearing decision under G. L. c. 22C, § 43, which provides any person aggrieved by an

order of the department with a right of appeal to the colonel.³ In September 2018, in preparation for the § 43 hearing, Adams requested copies of the records referenced in the Watson letter. He was permitted to review the PayStation entries and radio logs described in the letter in November 2018. On August 29, 2019, Major David DeBuccia conducted the § 43 hearing. There, Adams primarily argued that he had been denied due process at the duty status hearing. He submitted an affidavit, a memorandum, and exhibits in support of his § 43 appeal. He also questioned the department's attorney, the detective lieutenant who conducted the internal affairs investigation, and another former member of Troop E. The department introduced the records referenced in the Watson letter and questioned the same detective lieutenant and former member of Troop E. After the § 43 hearing, the colonel upheld the duty status hearing decision to suspend Adams without pay and denied Adams's § 43 appeal.⁴

³ The colonel-superintendent is the executive and administrative head of the department. See G. L. c. 22C, §§ 1, 3; art. 3.1 of the department's rules and regulations.

⁴ The plaintiff sought judicial review of the colonel's decision in the Superior Court. In allowing Adams's motion for judgment on the pleadings, the Superior Court judge found that Adams was not provided adequate due process at the duty status hearing; that it was arbitrary and capricious for the duty status board to suspend Adams without pay; the recommendation following the § 43 hearing to suspend without pay was arbitrary and capricious, and not based on substantial evidence; and the colonel's decision to uphold Adams's suspension without pay was based upon an error of law because the duty status hearing was

Discussion. The defendants contend that (1) our review is limited to whether the colonel's decision had a rational basis; (2) the judge erred in reversing the colonel's decision because, even if we were to review for substantial evidence, the decision was based on reliable and substantial evidence, supported by law, and in accordance with the department's rules and regulations; (3) the preliminary duty status hearing decision was not a final agency decision subject to judicial review; and (4) Adams's due process rights were not violated. We address each argument in turn.

1. Standard of review. "We review de novo [a] judge's order allowing a motion for judgment on the pleadings under [Mass. R. Civ. P. 12(c), 365 Mass. 754 (1974)]." Commonwealth v. Fremont Inv. & Loan, 459 Mass. 209, 212 (2011), quoting Wheatley v. Massachusetts Insurers Insolvency Fund, 456 Mass. 594, 600 (2010). Section 43 provides the Superior Court with "jurisdiction in equity upon [a § 43] appeal to annul [the colonel's] order if found to exceed the authority of the department or upon petition of the colonel to enforce all valid orders issued by the department." This deferential standard allows judicial review for whether the colonel's order "exceed[s] the authority of the department." G. L. c. 22C,

"constitutionally lacking in evidence." The judge denied the defendants' motion for reconsideration.

§ 43. We thus review to determine if the order was arbitrary or capricious. See Sierra Club v. Commissioner of the Dep't of Env'tl. Mgt., 439 Mass. 738, 748-749 (2003), and cases cited (arbitrary or capricious test appropriate where agency has broad discretion); Cumberland Farms, Inc. v. City Council of Marlborough, 88 Mass. App. Ct. 528, 530 (2015) ("discretionary action . . . merit[ed] review only for an arbitrary or capricious decision"). The arbitrary or capricious standard "requires only that there be a rational basis for the decision." Howe v. Health Facilities Appeals Bd., 20 Mass. App. Ct. 531, 534 (1985).

Section 43's limited grant of jurisdiction and deferential language suggest that the substantial evidence standard of G. L. c. 30A, § 14 (7), is not applicable. See Howe, 20 Mass. App. Ct. at 535-537 (where statute limited judicial review to arbitrary or capricious standard, "the somewhat more rigorous substantial evidence test" was not appropriate). The substantial evidence test requires that "agency findings must rest upon such evidence as a reasonable mind might accept as adequate to support a conclusion. Review under the standard entails scrutiny of the whole record to determine whether substantial evidence exists." (Quotation and citation omitted.)

Id. at 534. Such review exceeds the scope of § 43, and we decline to adopt it.⁵

2. The colonel's § 43 decision. On this record, we conclude that the colonel's decision to suspend Adams without pay was not arbitrary or capricious. See Sierra Club, 439 Mass. at 748-749. Suspending Adams without pay was well within the colonel's authority and consistent with the department's rules and regulations. See Greaney v. Colonel, Dep't of State Police, 52 Mass. App. Ct. 789, 792 (2001), S.C., 438 Mass. 1008 (2002) (describing "broad powers" of colonel over department). The colonel is charged with "direct[ing] all inspections and investigations" and making "all necessary rules and regulations for the government of the department," including disciplinary matters. G. L. c. 22C, § 3. See G. L. c. 22C, § 10. Article 6 of the department's rules and regulations "details the procedures by which [uniformed members of the department] may be investigated, and their misconduct adjudicated." Perez v. Department of State Police, 491 Mass. 474, 480 (2023). These regulations "ha[ve] the force of law . . . and must be accorded all the deference due to a statute." Id. at 479, quoting

⁵ To the extent Adams argues that review of a § 43 decision should be more robust because § 43 provides that the Superior Court has jurisdiction "in equity" to annul a § 43 decision, we are not persuaded where the statute plainly sets forth the standard of review.

Borden, Inc. v. Commissioner of Pub. Health, 388 Mass. 707, 723, cert. denied sub nom. Formaldehyde Inst., Inc. v. Frechette, 464 U.S. 936 (1983).

Adams's duty status hearing was properly conducted according to these regulations because a duty status hearing may be convened where, as here, a member of the department "is the subject of an internal investigation." Art. 6.2.1(2). In particular, the allegations in the Watson letter, if true, were violations of the department's rules and regulations and warranted both the convening of the duty status hearing and the duty status hearing decision. Suspension without pay was an appropriate recommendation by the duty status board. See art. 6.2.4.

The colonel's decision to sustain the duty status determination after the § 43 hearing was likewise lawful. Following a recommendation by the duty status board, the colonel has discretion to "impose a Duty Status consistent with the Board's recommendation," or "impose a different Duty Status if facts, circumstances, evidence, aggravating or mitigating factors or any other matters so dictate." Art. 6.2.5. Regardless of whether Adams was provided with adequate process at the duty status hearing, addressed infra, there was ample evidence before the colonel to support Adams's suspension after the § 43 hearing. The colonel reviewed a recommendation based

on the record developed at the hearing, including the relevant pay logs, the relevant radio logs, and other documents supporting the allegations. As the judge recognized, "These records can be reasonably read to indicate that Adams was not active for six overtime shifts that he reported working." This sufficed to sustain Adams's suspension.⁶

3. The duty status hearing. a. Scope of review under § 43. The familiar principle that "only final agency decisions are subject to judicial review," Paquette v. Department of Env'tl. Protection, 55 Mass. App. Ct. 844, 847 (2002), applies as equally to § 43 as it does to appeals brought under G. L. c. 30A, § 14. Section 43 provides an administrative appeals process for department members like Adams to challenge the department's disciplinary actions. See Doherty v. Civil Serv. Comm'n, 486 Mass. 487, 495 (2020) (§ 43 provides State police troopers "internal appellate rights" from discipline decisions, including sanctions not subject to review by Civil Service Commission). The process culminates in the § 43 appeal and the colonel's decision, which is the final action reviewable by the

⁶ Notwithstanding the review undertaken by the colonel, he did not need to reach the facts underlying the duty status hearing as that was limited to determining whether there was reason to suspend Adams, i.e., a pending internal investigation under art. 6.2.1(2) of the department's rules and regulations. Put differently, the question for the colonel was whether the duty status hearing was based on "reasonable grounds."

Superior Court. See G. L. c. 22C, § 43 ("The superior court shall have jurisdiction . . . to annul such order . . ."). [emphasis added]).

Here, the judge exceeded the scope of judicial review under § 43 by reviewing the duty status hearing and subsequent recommendation. In addition, the judge premised her decision to reverse the colonel's § 43 decision, at least in part, on her conclusion that the duty status hearing was improperly conducted. The record and Massachusetts case law do not support focusing on the duty status hearing. To the contrary, at the § 43 hearing, Adams introduced evidence and developed the record to challenge his suspension. The colonel then reviewed the record de novo and exercised his discretion. See Massachusetts Correction Officers Federated Union v. County of Bristol, 64 Mass. App. Ct. 461, 469-470 & n.12 (2005) (administrative appeal allows agency to remedy errors based on more expansive review). The colonel's decision had a rational basis in the evidence and was not arbitrary or capricious. In these circumstances the judge erred in focusing on the duty status hearing.

b. Due process. Because the § 43 hearing provided Adams with adequate due process (and Adams does not argue otherwise), we need not evaluate the quantum of process provided to Adams at the duty status hearing. Nevertheless, we note that the procedural protections afforded to Adams at that hearing were

sufficient to satisfy the due process guarantees of the United States Constitution and the Massachusetts Declaration of Rights. See Hoffer v. Board of Registration in Med., 461 Mass. 451, 454 n.5 (2012); School Comm. of Hatfield v. Board of Educ., 372 Mass. 513, 515 & n.2 (1977) (Federal and Massachusetts due process provisions are "subject to the same analysis").

To establish a due process violation, Adams must have been deprived of a constitutionally protected property interest. Mard v. Amherst, 350 F.3d 184, 188-189 (1st Cir. 2003), citing Cleveland Bd. of Educ. v. Loudermill, 470 U.S. 532, 538-541 (1985) (Loudermill). Assuming without deciding that Adams's suspension infringed on a protected property interest, we turn to the defendants' contention that Adams received the procedural protections he was due. See Gilbert v. Homar, 520 U.S. 924, 928-929 (1997). The judge found that "Adams was provided with adequate notice of the literal charges against him" but that the duty status hearing did not provide him "with a meaningful opportunity to be heard."⁷ We disagree.

⁷ Contrary to the conclusion of the Superior Court judge, the suspension of Adams's license to carry did not show that the duty status hearing decision was a "foregone conclusion." As the judge stated, "The revocation or suspension of such license is . . . a separate process from reviewing an officer's employment status." There is no evidence of predetermination; rather, like the duty status hearing, the suspension of Adams's license was triggered by the allegations of overtime fraud.

"[D]ue process requires that, in any proceeding to be accorded finality, notice must be given [in a manner] that is reasonably calculated to apprise an interested party of the proceeding and to afford him an opportunity to present his case." Bickford v. Colonel, Dep't of State Police, 76 Mass. App. Ct. 209, 214 (2010), quoting LaPointe v. License Bd. of Worcester, 389 Mass. 454, 458 (1983). "[The] formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings." Loudermill, 470 U.S. at 545, quoting Boddie v. Connecticut, 401 U.S. 371, 378 (1971). In Loudermill, the Court "held that pretermination process need only include oral or written notice of the charges, an explanation of the employer's evidence, and an opportunity for the employee to tell his side of the story." Gilbert, 520 U.S. at 929, discussing Loudermill, supra at 546. The Court in Gilbert explained that presuspension process requires something less than pretermination process and that the purpose of a presuspension hearing is "to assure that there are reasonable grounds to support the suspension without pay." Gilbert, supra at 933-934.

Moreover, we note that the department was required only to prove that the duty status hearing was justified, i.e., that Adams was subject to an internal investigation, not that the underlying allegations were true. See art. 6.2.1(2) (internal

investigation warrants duty status hearing). Here, there was more. Adams was notified of the duty status hearing and informed of the allegations against him in the Watson letter. While copies of the documents referenced in the Watson letter were not provided to Adams or reviewed at the duty status hearing, the letter detailed the allegations, described the department's evidence, provided the specific dates under investigation, and stated a request for an internal investigation. Adams was also given an opportunity to respond to the allegations at the duty status hearing, though he chose not to. See Wojcik v. Massachusetts State Lottery Comm'n, 300 F.3d 92, 102 (1st Cir. 2002), citing Loudermill, 470 U.S. at 545-546 (pretermination process requires notice and opportunity to respond). The duty status hearing, although brief, provided Adams with more procedural safeguards than have been required at a pretermination hearing. See Gilbert, 520 U.S. at 933-934 (lack of presuspension hearing was constitutionally adequate because arrest and felony charges provided adequate assurance that suspension had reasonable grounds). Cf. Wojcik, supra (confrontation and questioning by investigators along with full arbitration hearing was constitutionally adequate pretermination process). Compare Hall-Brewster v. Boston Police Dep't, 96 Mass. App. Ct. 12, 21-24 (2019) (under unique statutory scheme applicable to Boston police detectives, internal investigatory

interview was insufficient process where detective was not informed of evidence against him, conduct under scrutiny, or disciplinary consequences), with Perullo v. Advisory Comm. on Personnel Standards, 476 Mass. 829, 841 (2017) (court employee not deprived of due process rights because she had notice of disciplinary hearing, was provided alleged grounds for discipline imposed, and had ability to appear at hearing prior to termination). "As the Supreme Court has observed, the requisite procedures 'need not be elaborate.'" Whalen v. Massachusetts Trial Court, 397 F.3d 19, 26 (1st Cir. 2005), cert. denied, 546 U.S. 872 (2005), quoting Loudermill, supra at 545. The procedural protections afforded to Adams were commensurate with the preliminary and limited inquiry at the duty status hearing.

Conclusion. The judgment is reversed, and the case is remanded to the Superior Court for entry of judgment for the defendants.

So ordered.