Chairman, Nimhans Vs G.N. Tumkur

Court: Karnataka High Court

Date of Decision: Aug. 19, 1988

Acts Referred: Central Civil Services (Classification, Control and Appeals) Rules, 1965 â€" Rule 25

Citation: (1988) ILR (Kar) 2747 : (1988) 3 KarLJ 9

Hon'ble Judges: Ramakrishna, J; Bopanna, J

Bench: Division Bench

Advocate: D.V. Shylendrakumar, for the Appellant; Ravivarma Kumar, for the Respondent

Judgement

Bopanna, J

1. This Writ Appeal is directed against the order of the learned single Judge in W.P. No. 6688 of 1980 quashing the order of compulsory

retirement from service of the respondent herein on the ground that he had committed gross misconduct within the meaning of the relevant C.C.A.

Rules.

2. The learned single Judge took the view that the disciplinary authority did not apply its mind to the gravity of misconduct said to have been

proved against the respondent and accordingly relying on the decision of the Supreme Court in Shankar Dass Vs. Union of India (UOI) and

Another, the learned Judge came to the conclusion that the punishment imposed was not commensurate with the gravity of misconduct in the light

of the aforesaid decision of the Supreme Court and that there was no application of mind to that aspect of the case. Therefore, he quashed the

impugned orders reserving liberty to the disciplinary authority to proceed with the inquiry from the stage at which the infirmity had occurred. He

further made a direction that the respondent would be entitled to all consequential benefits.

3. Learned Counsel for the appellants invited our attention to the relevant portion of the impugned order wherein the question of punishment was

considered by the disciplinary authority. In page-100 of the paper book, there is a consideration by the disciplinary authority as to the nature of

misconduct committed by the respondent and the punishment that the authority had proposed to impose on him. It reads as under :-

The charges against Sri G.N. Tumkur are of very serious in nature. His action of trying to put salt into the petrol tank of car No. MYO 5973 is

not only very serious but mischievous. This aspect has been very clearly brought out by the various witnesses by their deposition at the time of

enquiry and the enquiry officer also concluded that the charges against Sri G.N. Tumkur stands proved. The delinquent has not brought any new

points other than what he was brought out at the time of enquiry and in his final representation in reply to the show cause notice.

Under these circumstances, I hold that the memo of charges issued in Memo No. PF/GNT/77 dated 8-3-1977 under Rule 14 of CCC(CCA)

Rules to Sri G.N. Tumkur stand proved. Since the charge is of very grave in nature, I do not find any reason to take a lenient view in the matter. If

such mischievous and undisciplined officials are kept in service it is not good for any Institution. It will spoil the discipline of the entire Institution.

Hence a deterrent punishment has to be given. However taking his age and service into account, I would like to be little lenient and therefore

proposed the punishment of compulsory retirement in the show cause notice. Now I don''t find any reason to reduce the proposed punishment any

further. Hence, I order that Sri G.N. Tumkur, Driver, National Institute of Mental Health & Neuro Science, Bangalore, be compulsorily retired

from the service from the date of which the memo served to him.

This portion of the order was quashed by the learned single judge and consequently the respondent was entitled to all the consequential benefits in

terms of salary from the date of termination upto the date of his re-instatement.

4. This Court, by an order dated 18-12-1987, granted an interim stay of the operation of the order of the learned single Judge. An application for

early hearing was made and the same was allowed. The appeal was heard on merits and was adjourned from time to time to give an opportunity to

the parties to come to a settlement out of Court. Today, learned Counsel for the appellants submitted that this was not a proper case to be

compromised and that the appeal may be disposed of on merits. Accordingly, we have heard the learned Counsel for both sides.

5. We are of the view that it is unnecessary to go into the correctness of the finding of the learned single Judge since, by a perusal of the inquiry

report which is produced at Annexure-F in the Writ Petition, we are satisfied that the inquiry conducted by the Inquiry Officer is violative of the

principles of natural justice and the findings of the Inquiry Officer are vitiated by non-application of the mind to the relevant evidence on record. On

these grounds alone the impugned orders will have to be set aside.

6. Then the point for consideration is whether there should be a fresh inquiry at this distance of time. That point will be considered after giving our

reasons for the first finding.

7. It is seen from the inquiry proceedings that statements of as many as six witnesses were recorded on or after the incident alleged to have taken

place on 27-11-1976. In paragraph-4 of the inquiry report, there is a reference to the list of documents and based on the same, articles of charge

had been framed against the respondent. They are :

i) Written statement dated 27-11-1976 made by Sri M. Sunder, Driver.

ii) Written statement dated 27-11-1976 made by Sri Vasupillai. Watchman on duty.

iii) Combined written statement dated 29-11-1976 made by Dr. M.G. Ramu, Senior Research Officer, Ayurvedic Research Unit and Mrs. Norma

P. Chowrappa, Stenographer.

iv) Written statement dated 29-11-1976 made by Sri G.N. Tumkur, Driver.

v) Memorandum dated 29-11-1976 to Sri G.N. Tumkur.

vi) Written (Kannada) statement dated 29-11-1976 made by Sri G.N. Tumkur (Translation of the Kannada statement translated to English).

These statements were recorded on 27-11-1976 and 29-11-1976. Copies of these statements were not given to the respondent till 5-5-1977 on

which date the inquiry commenced. This is also clear from the specific stand taken by the respondent in his reply dated 21-3-1977 to the charges

framed against him. In his reply i.e., his explanation to the charges, he has stated that the copies of the enclosures enclosed to the charge should

have been given with the memo dated 29-11-1976 issued to him by the Institute and that the delay of four months in taking action has been done

purposely and his written statement has been obtained as desired by the Institute. In the charge sheet, it is stated that he tried to put salt into the

petrol tank of the carat about 11 a.m., but he has pointed out that in the memo dated 29-11-1977 served on him it is mentioned that he had salt in

the petrol tank.

8. So, the point for consideration is whether the inquiry could be said to be an inquiry held in consonance with the principles of natural justice when

the inquiring authority used the written statements of the witnesses as evidence as could be seen from the inquiry proceedings. The procedure

adopted by the inquiry officer in the inquiry is found in paragraph-11 of the inquiry Report. The first paragraph reads:

Sri S. Vasupillai, Watchman was examined first with reference to his written statement given by him on 27-11-1976.He had given the statement

as follows :-

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In paragraph-12, there is a reference to the written statement of the very same Vasupillai and he has been cross-examined by the respondent.

9. In paragraph-13 it is mentioned that one M. Sunder, driver of the car MYO 5973 was examined next with reference to his written statement

given by him on 27-11-1976. His written statement is quoted in extend sin that paragraph. That was admitted to be correct by this witness and he

was cross-examined by the respondent. But it is not clear from the proceedings whether these witnesses were examined by the Presenting Officer

and on the basis of the statements made by them in the examination-in-chief, they were cross-examined by the respondent. The inquiry Officer has

used the word "cross-examination" in all the paragraphs. That obviously means that the Presenting Officer also cross-examined the witnesses in

order to bring out certain clarifications and that has caused grave prejudice to the respondent in the domestic inquiry held by the Inquiry Officer.

Like-wise, the statements of other witnesses are marked as evidence and they have been cross-examined by the Presenting Officer and the

respondent.

10. One more serious infirmity in the inquiry is that the Inquiry Officer has recorded the combined statement of two witnesses viz., Dr. M.G. Ramu,

Senior Research Officer, Ayurvedic Research Unit and Mrs. Norma P. Chowrappa, Stenographer. These persons were also examined as

witnesses and their combined statement recorded earlier was marked as evidence in the inquiry. It is well settled that in a domestic enquiry as also

in a Quasi-Judicial Enquiry not to speak about the judicial enquiry, a combined statement of two witnesses would be gravely prejudicial to the

defence of the delinquent official and such a procedure would vitiate the inquiry proceedings. This Court in hundreds of orders arising out of the

decisions of the Land Tribunals has quashed those orders on the ground that the combined statement of witnesses were recorded by the Tribunals.

These witnesses did not make any statement orally in the presence of the respondent. Had their oral statements been recorded, it would have been

possible for the respondent to bring out the contradictions in the earlier statements made in writing and the statements made before the Inquiry

Officer. In our view, the procedure adopted by the Inquiry Officer has resulted in substantial failure of justice and if any authority is necessary,

there are decisions of the Supreme Court in Kesoram Cotton Mills Ltd. Vs. Gangadhar and Others, and State of Mysore Vs. S.S. Makapur, In

Shivabasappa"s case the Supreme Court observed as follows :-

For a correct appreciation of the proposition, it is necessary to repeat what has of ten been said that tribunals exercising quasi-judicial functions

are not Courts and that there-fore they are not bound to follow the procedure prescribed for trial of actions in Courts nor are they bound by strict

rules of evidence. They can Unlike Courts, obtain all information material for the points under enquiry from all sources, and through all channels,

without being fettered by rules and procedure which govern proceedings in Court. The only obligation which the law casts on them is that they

should not act on any information which they may receive unless they put it to the party against whom it is to be used and give him a fair

opportunity to explain it.

In Kesoram Cotton Mill''s case, the Supreme Court observed :

It is urged on behalf of the appellant that rules of natural justice are the same whether they apply to inquiries under Article 411 or to domestic

inquiries by managements relating to misconduct by workmen, It may be accepted that rules of natural justice do not change from tribunal to

tribunal. Even so the purpose of rules of natural justice is to safeguard the position of the persons against whom an inquiry is being conducted so

that he is able to meet the charge laid against him properly. Therefore the nature of the inquiry and status of the person against whom the inquiry is

being held will have some bearing on what should be the minimum requirements of the rules of natural justice. Where, for example, lawyers are

permitted before a tribunal holding an inquiry and the party against whom the inquiry is being held is represented by a lawyer it may be possible to

say that a mere reading of the material to be used in the inquiry may sometimes be sufficient : (see New Prakash Transport Co. Ltd. Vs. New

Suwarna Transport Co. Ltd., but where in a domestic inquiry in an industrial matter lawyers are not permitted, something more than a mere reading

of statements to be used will have to be required in order to safeguard the interest of the industrial worker. Further we can take judicial notice of

the fact that many of our industrial workers are illiterate and sometimes even the representatives of labour union may not be present to defend

them. In such a case to read over a prepared statement, in a few minutes and then ask the workmen to cross-examine would make a mockery of

the opportunity that the rules of natural justice require that the workmen should have to defend themselves. It seems to us therefore that when one

is dealing with domestic inquiries in industrial matters, the proper course for the management is to examine the witnesses from the beginning to the

end in the presence of the workman at the inquiry itself. Oral examination always stakes much longer than a mere reading of a prepared statement

of the same length and brings home the evidence more clearly to the person against whom the inquiry is being held. Generally speaking therefore

we should expect a domestic inquiry by the management to be of this kind. Even so, we recognise the force of the argument on behalf of the

appellant that the main principles of natural justice cannot change from Tribunal to Tribunal and therefore it may be possible to have another

method of conducting a domestic inquiry (though we again repeal that this should not be the rule but the exception)and that is in the manner laid

down in State of Mysore Vs. S.S. Makapur, The minimum that we shall expect where witnesses are not examined from the very beginning at the

inquiry in the presence of the person charged is that the person charged should be given a copy of the statements made by the witnesses which are

to be used at the inquiry well in advance before the inquiry begins and when we say that the copy of the statements should be given well in advance

we mean that it should bo given at least two days before the inquiry is to begin. If this is not done and vet the witnesses a re not examined in chief

fully at the inquiry, we do not think that it can be said that principles of natural justice which provide that the person charged should have an

adequate opportunity of defending himself are complied with in the case of a domestic inquiry in an industrial matter. In the present case all that had

happened was that the prepared statements were read over to the workmen charged and they were asked then and there to cross-examine the

witnesses. They were naturally unable to do so and in the circumstances we agree with the Tribunal - though for different reasons - that the inquiry

did not comply with the principles of natural justice.

11. Apart from this infirmity, even the finding of the Inquiry Officer, in our view, is wholly based on suspicion and not on the basis of any proof.

The defence taken by (he respondent was that (i) he was not in the Institute on the date in question, which was rightly negatived by the Inquiry

Officer and that (ii) he was not in the garage at the time of the incident in question, which was also rightly negatived by the Inquiry Officer. On the

charge against the respondent that he attempted to put salt to the petrol tank of the car belonging to the Institute, the Inquiry Officer himself found

in para-30(v)() of his report that nobody had seen the respondent actually putting salt to the petrol tank of the staff car. Having observed so, he

relies on the statement of one of the witnesses viz., M. Sunder who had deposed in his statement that he noticed grains of salt on the cape of the

petrol tank cup and grains of salt in the petrol tank passage and some grains of salt on the dicky also. The Inquiry Officer relies on the clarification

by Sunder that the petrol tank cap cannot be taken out as it is not "lock type" and all the salt cannot be put into the tank at one time and can be put

only in small quantities. From this clarification, he comes to the conclusion that a person who performed the act could not put large quantity of salt

into the petrol tank as he would have got the suspicion of being watched by somebody and while attempting to perform the act in a hurry the salt

might have fallen on the cap of the petrol tank, dicky and near the garage. Having drawn this in ference, he finds that the witness Sunder himself

might have put some little quantity into the petrol tank. To quote his own words:

As Sri Sunder had also noticed some grains of salt in the passage of the petrol tank, he might have put some little quantity into the petrol tank

also.

12. However, the learned Counsel for the appellants argued that that sentence does not refer to Sunder. The last words "also" makes it clear that

the Inquiry Officer had no doubt in his mind that Sunder was also a culprit. However, in paragraph 30(v)(b) of the inquiry report, the Inquiry

Officer refers to some suspicion that Vasupillai had when he came to the garage from the portico and he found Sunder sitting in the car. To quote

his own words:

b) It would appear from the written statement of Sri S. Vasupillai that when he brought back the salt thrown by Sri Tumkur from the ditch, he saw

no other person in the garage except Sri Sunder who was sitting inside the car. He had shown Sri Sunder the salt that has fallen near the garage

after making an inquiry with Sri Tumkur about the salt fallen near the garage. Sri Vasupillai had stated that Sri Sunder told him that since he got a

suspicion he came from portico to the garage and was sitting in the car. Sri Sunder had also stated in his written statement that when he was being

watched by a stranger, he got some suspicion and therefore proceeded to the garage from the portico. He noticed Sri G.N. Tumkur going in side

the car garage from the rear corner. He has stated that by the time he could reach the garage, Sri Tumkur had already come out from the garage

with a packet of salt which was kept in the garage. When Sri Sunder asked Sri Tumkur as to why he had put the salt to the petrol tank of the car,

Sri Tumkur had replied Sunder that he had brought the salt packet to be thrown to the ditch and he wanted to wash his hands and therefore he

went to the car garage and picked up the water bucket. It would therefore be seen from the written statement of Sri Vasupillai and Sri Sunder that

there were no other person in the garage except Sri Tumkur before Sri Sunder entered the garage from the portico to sit in the car.

c) The bringing of salt by Sri Tumkur to the garage on 27-11-1976, has been established - vide sub-para (iv) above. In the written statement

furnished by Sri M. Sunder, Sri Sunder has stated that it was replied by Sri Tumkur that the brought the salt to the garage to be thrown into the

ditch. It is really surprising whether any person could carry something from the house to the Office to be thrown into the ditch. As the reply of Sri

Tumkur does not sound to any reason, the salt should have been brought to the garage by Sri Tumkur with some intention and ulterior motive.

13. In our view, this finding is wholly based on suspicion and not on proof of misconduct. That apart, the appeal preferred by the respondent came

to be rejected by the Appellate Authority in one sentence holding that "there is no merit in the appeal". On that ground also, the impugned orders

are liable to be quashed. The order of the Appellate Authority is found at Annexure-H. It reads :

The appeal of Sri G.N. Tumkur, Ex-Driver, National Institute of Mental Health and Neuro Sciences, Bangalore, against his compulsory retirement

from service has been considered by the Chairman of the governing Body of the Institute and his appeal has been rejected.

This order is patently opposed to the provisions of Rule 25 of the C.C.A. Rules which reads as under :-

25. Consideration of appeals :-

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(2) In the case of an appeal against an order imposing any of the penalties specified in Rule 8, the Appellate Authority shall consider -

(a) Whether the procedure prescribed in these rules has been complied with, and, if not whether such non-compliance has resulted in violation of

any provisions of the Constitution or in failure of justice;

(b) Whether the findings are justified, and

(c) Whether the penalty imposed is excessive, adequate or inadequate and after consultation with the Commission, if such consultation is necessary

in the case, pass orders -

(i) setting aside, reducing, confirming or enhancing the penalty; or

(ii) remitting the case to the authority which imposed the penalty or to any other authority with such direction as it may deem fit in the circumstances

of the case;

xx xx xx

The resultant position is that the report of the Inquiry Officer is bad in law and hence the order of the Disciplinary Authority, which is based on that

report, cannot be sustained, The order of the Appellate Authority is also violative of the mandatory requirement of Rule 25 of the C.C.A. Rules,

For these reasons, the impugned orders are liable to be quashed and are accordingly quashed.

14. Now the point for consideration is whether we should remit the matter for fresh enquiry in accordance with law. This case had a very long

history of litigation. The incident occurred some time during emergency and the respondent had made a grievance that he was a victim of the

circumstances which prevailed at that time. It is on record he had examined self before the Shah Commission. The delay in disposal of these

proceedings from the stage of institution of the inquiry against the respondent upto this day could not be held against the respondent as that was not

his making. Further more, a fresh enquiry at this distance of time may not bring out the charge against the respondent and both public time and

money would be wasted in holding a denovo enquiry into this matter. However, regard being had to the fact that the appellants have expressed

themselves strongly about the undesirability of taking the respondent back to the service from the point of view of the smooth working of the

Institution and regard being had to the fact that appellant No. 1 is a National Institution for Mental Health for patients who require special care and

protection, the proper course is to direct the appellants to pay the respondent the backwages from the date of his retirement of his services upto

this date and pension in proportion to the salary he would have drawn as on this date. Accordingly, the appellants shall pay the back-wages to the

respondent on the basis of the average of the salary due to him from the date of his retirement Up to date. Had the respondent been in service, he

would have been entitled to certain increments. Taking into consideration the present salary of the car driver in the Institute, it would be reasonable

to fix the average salary of the respondent at Rs.1,200/- P.M. The backwages on the basis that the respondent was entitled to Rs. 1,200/- P.M.,

should be paid to him from the date of termination of his services upto the date of this order. Further, he is also entitled to pension since the post

held by him is admittedly a pensionable post and he has seven years of service left behind him.

15. Accordingly, the appeal is partly allowed and in ''modification of the order of the learned single Judge, we quash the impugned orders herein

and direct the appellants to pay the backwages due to the respondent at the rate of Rs. 1,200/- P.M. from the date of compulsory retirement of his

services Up to date and pensionary benefits on the basis of the salary drawn by him had he remained in service for another seven years. These

directions shall be implemented within a period of six weeks from the date of receipt of this order.