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(1983) 02 KL CK 0025

High Court Of Kerala

Case No: O.P. No. 1883 of 1980-G

G. Ravindran Nair — APPELLANT

Vs

State of Kerala — RESPONDENT

Date of Decision: Feb. 23, 1983

Acts Referred:

- Constitution of India, 1950 - Article 226, 311(2)

Citation: (1983) KLJ 360

Hon'ble Judges: S. K. Kader, J

Bench: Single Bench

Advocate: V. N. Achutha Kurup, for the Appellant; A Government Pleader, for the Respondent

Final Decision: Allowed

Judgement

S. K. Kader, J.

A work superintendent, working in the Public Works (Irrigation) Department, seeks to quash Ext. P5 order dated 15-1-1980 of the Government of Kerala, barring his two increments with cumulative effect. While the petitioner was working at Walayar Dam, he was in charge of Kallepully Canal, the water of which was used for irrigating paddy fields. There were complaints against him that he was demanding bribe from the cultivators for diverting water in the Kallepully Canal and also accepting bribe. Those who did not oblige him was denied water from the irrigation canal and as a result the crops in their paddy fields were destroyed. A case was registered on a complaint by the X Branch Police, Palghat against the petitioner and the Junior Engineer. After due enquiry, a report was submitted to the Government stating that it has been prima facie disclosed that the petitioner was guilty. Some how the case against the Junior Engineer was said to have been dropped. The Government framed three charges against the petitioner as stated in Ext. P1 and called for his explanation for the same. As the explanation given was found to be unsatisfactory, the matter was sent to the Tribunal for disciplinary proceedings. The Tribunal

examined the witnesses produced on either side and fully enquired into the matter. On the conclusion of the enquiry, the Tribunal found that charge No. 1 relating to the demand and acceptance of bribe by the petitioner has not been proved; but part of charges Nos. 2 and 3 have been proved. The Tribunal recommended a minor punishment of barring two increments of the petitioner with cumulative effect. Ext. P4 is the judgment of the Tribunal. Thereafter, the Government on consideration of the report of the Tribunal accepted its finding and also the recommendation regarding punishment of barring two increments of the petitioner with cumulative effect.

2. Several grounds were urged by the learned Advocate appearing for the petitioner in support of this petition. The counsel contended that Ext. P5 is entirely vitiated by illegalities and also by violation of the principles of natural

3. The main ground urged by the counsel was that there has been flagrant violation of the mandatory provisions of Rule 15(2) of the Kerala Civil Services (Classification, Control & Appeal) Rules, 1960 in as much as no notice was given proposing the punishment and asking for his explanation. In other words, a reasonable opportunity as contemplated under Article 311(2) of the Constitution was denied to his client. The other two grounds which he strongly urged are that there is absolutely no evidence in support of charge No. 2 and that charge No. 3 is as vague and indefinite as it could be and the whole trial has been thereby vitiated resulting in serious prejudice to the petitioner.

4. In support of his contention, that Rule 15 has been violated, the counsel relied on the decisions reported, Narayanan Nair v. State of Kerala (1970 K,LJ. 1069) Koruthu v. Electricity Board (1971 KLT 780) and Surendra Sen v. Director of Survey and Land Records (1975 KLT 582). The counsel also relied on a decision reported in Afzal Ullah v. State of Uttar Pradesh (1964 S.C. 264) to show that this Court can definitely interfere even in proceedings of this nature and can enquire whether there is any evidence in support of the case. Reliance was placed on the decision reported in Surath Chandra Chakrabarty Vs. State of West Bengal, to show that vagueness and indefiniteness of the charges, vitiated the case.

5. I may say at once that there is no substance in the contention of the counsel that Rule 15 has been violated in this case. The decisions relied on in this regard do not apply to the facts of the instant case. In Narayanan Nair v. State of Kerala and another (1970 KLJ 1069) Eradi, J., as he then was, following a Division Bench ruling of the Rajasthan High Court in Kishan Singh v. State of Rajasthan (1965 (2) LLJ 235) held that "it is now well settled that before a public authority proceeds to make any order which will visit a person with adverse civil consequence it must afford to the person likely to be so affected an opportunity to show cause against such action." It was also held in that case "under Rule 16 a notice ought to have been given to the petitioner in the first instance informing him of the allegations against him and also about the nature of the action proposed to be taken against him and asking him to

show cause against such action and that it is not permissible for the disciplinary authority to shift over from one procedure to the other at the stage of passing the final order so as to deprive the Government Servant concerned of an effective opportunity of showing cause against the action proposed to be taken against him." It was further held that the Rules 15 and 16 clearly contemplate that the disciplinary authority should make up its mind at the initial stage itself whether it would adopt the procedure for the imposition of a major penalty laid down under Rule 15 or whether in the circumstances of the case only the comparatively summary procedure for the imposition of a minor penalty contained in Rule 16 should be followed. In the case which His Lordship Justice Eradi was considering, the employee therein was exonerated from all the charges by the enquiring authority and thereafter the Government not being satisfied with the finding of the enquiring authority disagreed with the same and proposed to impose a minor penalty without giving any further notice or giving an opportunity to the employee to show cause why the proposed punishment should not be awarded. This decision was followed by Khalid. J. in Surendra Sen''v. Director of Survey and Land Records (1975 KLT 582). There also the facts of the case are different from the case on hand. A writ appeal was filed challenging the judgment of Eradi, J. (W.A. No. 255 of 1970) and the Division Bench of this Court modified the judgment of the learned Single Judge observing as follows:
We make it clear that we express no opinion about the scope and ambit of rules 15 and 16 of the Kerala Civil Services (Classification, Control and Appeal) Rules and as to what procedure should be followed before inflicting a minor penalty after completion of an enquiry commenced under rule 15. This question will have to be determined, if it arises again, in other appropriate proceedings.

It is therefore clear that the Division Bench has left open the question regarding the scope and ambit of rules 15 and 16 of the Kerala Civil Services (Classification, Control and Appeal) Rules. In Koruthu v Electricity Board (1971 KLT 780) more or less a similar question came up for consideration. There also the facts are different. In Enos Jeevakumar v State of Kerala (1977 KLT 733) a Division Bench of this Court has dealt with the decisions reported in Narayanan Nair v. State of Kerala and Another (1970 KLJ 1069), Surendra Sen v. Director of Survey and Land Records (1975 KLT 582) and also relied on a decision reported in Shadi Lal Gupta Vs. State of Punjab, . There an enquiry was commenced under Rule 15 of the Kerala Civil Services (Classification, Control and Appeal) Rules against the delinquent officer and on the completion of the enquiry, the enquiring authority found that none of that charges framed against the delinquent officer has been substantiated and the proceedings were submitted to the disciplinary authority viz. the Government of Kerala. On a perusal of the records the disciplinary authority disagreed with the Tribunal in respect of its finding on charge Nos. 2 and 3 and it directed the delinquent officer''s increment be withheld for three years with cumulative effect. This was the final order passed by the Government, without giving any notice to the delinquent officer regarding the

proposed punishment or giving him an opportunity to show cause why the final punishment should not be imposed on him. This order of the Government was attacked before the Division Bench and the Division Bench found that the penalty inflicted was in strict conformity with the provisions of sub-rule (13) of Rule 15. Two decisions of this Court referred to above cited before the Division Bench were distinguished on the facts. A Division Bench ruling of Rajasthan High Court in Kishan Sing v State of Rajasthan (1965 (2) LLJ 335 also has been referred to and considered by the Division Bench of this Court. In Shadi Lal Gupta Vs. State of Punjab, , One of the cases referred to by the Supreme Court was Roop Laly. State of Punjab (Pun & Hary) (1971 (I) S.L.R. 40). It was pointed out there that "if the procedure under rule 7 of the Rules had been followed and instead of a major punishment a minor punishment had been inflicted, no fault could be found therewith, but if no enquiry was held as envisaged under rule 7 ibid and the minor punishment was proposed to be inflicted under rule 8 thereof, then the procedure prescribed under rule 8 had to be followed," In the instant case, it is seen that all the relevant rules have been complied with by the Tribunal and the Government of Kerala.

6. The counsel for the petitioner submitted that sub-rule 12(i) of Rule 15 was not complied with by the Government. Sub-rule (12(i) of Rule 15 reads:

If the disciplinary authority, having regard to the findings on the charges, is of the opinion that any of the penalties specified in items (v) to (ix) of rule 11(l) should be imposed, it shall,-

(a) furnish to the Government a copy of the report of the Inquiring Authority and where the Disciplinary Authority is not the Inquiring Authority, a statement of its findings together with brief reasons for disagreement, if any, with the findings of the Inquiring Authority; and

(b) give him a notice stating the action proposed to be taken in regard to ham and calling upon him to submit within a specified time which may not generally exceed one month such representation as he may wish to make against the proposed action.

Provided that such representation shall be based only on the evidence adduced during the enquiry.

We are not here concerned with other clause in sub-rule. The grievance of the counsel for the petitioner is that as contemplated under sub-rule (12)(i)(b), the petitioner was not given notice stating the action proposed to be taken against him and calling upon him to submit within the time prescribed which may not generally exceed one month such representation as he may wish to make against the proposed action. Rule 15 has got several sub-rules ranging from (1) to (15).

It is only in cases where the disciplinary authority is of the opinion that any of the penalties specified in items (v) to (ix) of rule 11(1) should be imposed on the

delinquent officer or where the Government disagrees with the findings of the Tribunal or Inquiring Officer, that notice as contemplated under sub-rule (12(i)(b) has to be given to the delinquent officer. In this case, as stated earlier, the Government after due consideration of the report agreed with the findings of the Tribunal accepting its recommendation proposed to impose a minor penalty and therefore there is no necessity of complying with the provisions in sub-rule (12)(i)(b) of Rule 15. The relevant sub-rule that applies to this case is sub-rule (13) which reads:

(13). If the Disciplinary Authority having regard to its finding is of the opinion that any of the penalties specified "in items (i) to (iv) of rule 11(1) should be imposed, it shall pass appropriate orders in the case:

Provided that in every case in which it is necessary to consult the Commission the record of the enquiry shall be forwarded by the Disciplinary Authority to the Commission for its advice and such advice taken into consideration before passing the ordeRs.

The petitioner has no case that proviso to sub-rule (13) of Rule 15 applies to the case on hand. It can, therefore, be seen that there has been full and strict compliance of the provisions in Rule 15 of the Kerala Civil Services (C.C. & A) Rules.

7. The other two grounds taken by the counsel for the petitioner attacking Ext. P5 relate to charge Nos. 2 and 3. To appreciate the argument it is desirable to extract the above said charges. Charge No. 2 is now extracted.

That you, while working as mentioned above caused Sri. Pazhanan, son of Subramanyan to pay a sum of Rs. 40/- for the purchase of rod and lock for the canal sluice and accepted the amount from him but did not utilize the amount for the purpose and the necessary rod and lock was not fitted. You further made him to spend a sum of Rs. 180/ - for engaging 30 laborers at the rate of Rs. 6/- per head for the canal work supervised by you and this amount was not reimbursed to him.

The only evidence relied on by the Tribunal as well as the Disciplinary Authority in support of this charge is the evidence of P.W. 3, Pazhanan and the evidence of P.W. 8 to P.W. 11. The Tribunal after due examination of the evidence of P.W.s 8 to 11 held that the second part of the charge that the accused officer made Pazhanan (P.W 3) to spent a sum of Rs. 180|- for engaging laborers for the work of canal has been proved. As regards the first part of this charge, namely, that the delinquent officer caused P.W. 3 to pay a sum of Rs. 40/- for the purchase of rod and lock etc., the finding is that this part of the charge has not been proved. The counsel for the petitioner submitted that the finding of the Tribunal that the second part of the charge has been proved is not based on any evidence and therefore the order is vitiated, as this constitutes an error of law apparent on the face of the record. The limits of the jurisdiction of High Court in issuing a writ of certiorari under Article 226 of the Constitution of India have now been well settled by a series of decisions of the

Supreme Court. Ordinarily a writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals. Where orders are passed by inferior courts or Tribunals without jurisdiction, or in excess of their jurisdiction or as a result of failure to exercise jurisdiction, a writ of certiorari can be issued. Similarly, such a writ can be issued, where in exercise of jurisdiction conferred, an inferior court or Tribunal acts illegally or improperly by deciding the question or issue before it without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the point or issue is opposed to principles of natural justice. But this does not mean, in exercising the discretionary and supervisory jurisdiction under Article 226, the court is entitled to act as an appellate court. Therefore the findings of facts reached by the inferior court or tribunal as a result of appreciation of evidence cannot be reopened or questioned in a proceeding of this nature. An error of fact, however grave it may be, cannot be corrected in a writ proceeding. Insufficiency or inadequacy of the relevant and material evidence in support of a finding of fact cannot constitute a ground to interfere with that finding by issue of a writ of certiorari (See AIR 1964 S.C. 477; AIR 1955 S.C. 233; & AIR 1965 S.C- 1168). Nevertheless, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by issue of a writ of certiorari. In Union of India v. R. C. Goel (AIR 1964 S.C. 364) it was held that in a proceeding under Article 226, High Court can consider the question about the adequacy or sufficiency of evidence in support of a particular conclusion, but the High Court can and must enquire whether there is any evidence at all in support of the conclusion impugned. It is true that as in a criminal case, a charge need not be proved beyond reasonable doubt in a disciplinary proceedings. Although the technical rules which govern criminal trials do not apply to disciplinary proceedings or domestic enquiries, mere suspicion should not be substituted for proof in disciplinary proceedings. The principle that in punishing the guilty, scrupulous care must be taken to see that the innocent are not punished applies as well as to disciplinary proceedings under the statutory rules. Applying these principles, let us now enquire whether there is any evidence in support of charge No. 2. The evidence of Pw. 3 was made available for perusal and was read out in open court. The other witnesses, Pws 8 to 11, are laborers and they have only deposed that they have worked under Pw. 3 and Pw. 3 paid wages to them. There is nothing in the evidence of Pw. 3 to show that it was the petitioner who caused Pw. 3 to spend for engaging laborers for the work of the canal. On the other hand there is positive evidence of Pw. 3 that it was the Junior Engineer who caused him to engage laborers and spend money for them. It is therefore a case where there is no evidence in support of the conclusion of the Tribunal and the finding of the Government of Kerala, that it was the petitioner who made Pw. 3 to spend for engaging laborers for the work of the canal.

8. Now coining to the 3rd charge which reads:

III. That you, while working as above were partial and discriminatory m respect of supplying canal water to the cultivators in the area which you were bound to do in the discharge of your official duties and due to the discrimination and partiality, the crops of several cultivators in the area were completely destroyed.

It is on the ground of vagueness and indefiniteness that this charge is attacked by the counsel. Reliance was placed in this regard on decisions of the Supreme Court reported in Surath Chandra Chakrabarty Vs. State of West Bengal, , and decisions in Aravinda Ayyangar v. Commissioner of Police (1967 (1) L.L.J. 259) and Ramanand v. Divisional Mechanical Engineer, Northern Railway (A.I.R. 1962 Rajasthan 265).

9. In Surath Chandra''s case (A.I.R. 1971 S.C. 752) the Supreme Court held:

Rule 55 embodies a principle which is one of the basic contents of a reasonable or adequate opportunity for defending oneself. If a person is not told clearly and definitely what the allegations are on which the charges preferred against him are founded he cannot possibly, by projecting his own imagination, discover all the facts and circumstances that may be in contemplation of the authorities to be established against him.

It was further found, in that case which their Lordships were considering, that "the charge was not capable of being intelligently understood and was not sufficiently definite to furnish materials to the appellant to defend himself and that it is precisely for this reason that Fundamental Rule 55 provides that the charge should be accompanied by a statement of allegations. The whole object of furnishing the statement of allegations is to give all the necessary particulars and details which would satisfy the requirement of giving a reasonable opportunity to put up defense. The appellant repeatedly, at the very first stage, brought it to the notice of the authorities concerned that he had not been supplied with the statement of allegations and that the charges were extremely vague and indefinite. In spite of all this, no one cared to inform him of the facts, circumstances and particulars relevant to the charges.

The entire proceedings show a complete disregard of Fundamental Rule 55 in so far as it lays down in almost mandatory terms that the charges must be accompanied by a statement of allegations. We have no manner of doubt that the appellant was denied a proper and reasonable opportunity of defending himself by reason of the charges being altogether vague and indefinite and the statement of allegations containing the material facts and particulars not having been supplied to him." The Madras High Court in Aravamuda Ayyangar v. Commissioner of Police (1967 (1) L.L.J. 259) observed that a reasonable opportunity also presupposes that the charges should be framed in the clearest possible language with precise particulars as to time, place and the name of the persons who offered illegal gratification, the name of the person to whom it was offered and as to when and where it was accepted. The Rajasthan High Court in Ramanand v. Divisional Mechanical Engineer, Northern

Railway (A.I.R. 1962 Rajasthan 265) held that a charge in order to be proper and in order that it may give a reasonable opportunity for defense must not be vague or general but must be clear-cut and specific. The failure to observe this fundamental requirement is bound to make the enquiry a snare and a weapon of oppression instead of a safeguard for justice and fairplay.11. On going through charge No. 3, I find there is considerable force in the contention of the counsel for the petitioner that charge No. 3 is vague and indefinite. It may be noted that the plea that this charge is vague and indefinite has been taken by the petitioner in his written statement, at the very commencement of the enquiry. It is really difficult for the delinquent officer to answer to a vague and indefinite charge of this nature, unless it is more specific and precise in material and necessary particulars. In the light of the rulings referred to above and in view of the vague and indefinite nature of charge, it cannot be said that the petitioner was given a proper and reasonable opportunity to defend himself. It is also not disputed that the statement of facts containing the necessary particulars in respect of this charge was not furnished to the petitioner. Rule 15(2) of the Kerala Civil Services (Classification, Control and Appeal) Rules states that the concerned authorities shall frame definite charge or charges which shall be communicated to the Government servant together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case.

In the result, this original petition is allowed and Ext. P5 is hereby quashed and the petitioner is exonerated of all the charges for which he was punished. The petitioner will be entitled to all consequential reliefs.