courtkutchehry.com

Company: Sol Infotech Pvt. Ltd.
Website: www.courtkutchehry.com
Printed For:
Date: 23/12/2025

(1984) 02 KL CK 0038

High Court Of Kerala

Case No: O.P. No. 2322 of 1982

P.B. Rocho — APPELLANT

Vs

Union of India and Others — RESPONDENT

Date of Decision: Feb. 23, 1984

Acts Referred:

- Central Reserve Police Force Act, 1949 - Section 11(1)

Citation: (1984) KLJ 487 : (1984) 2 LLJ 203

Hon'ble Judges: T. Kochu Thommen, J

Bench: Single Bench

Advocate: Pirappancode V. Sreedharan Nair, S.P. Aravindakshan Pillai and N. Mohandas, for the Appellant; P. Santhalingam and P.C. Chacko (Addl. Central Govt. Standing Counsel), for the Respondent

Final Decision: Allowed

Judgement

Dr. T. Kochu Thommen, J.

1.The petitioner was working as a Constable attached to the Central Reserve'' Police Force, Pallipuram near Trivandrum. Disciplinary proceedings were initiated against him on the basis of four charges as contained in Exts. P1 and P1 (a) dated 19-6-1979. He pleaded, not guilty. An enquiry was conducted and the petitioner was found guilty of all the four charges. Ext. P3 (a) is the enquiry report. The punishment of removal from service was imposed upon the petitioner by the 5th respondent by Ext. P5 dated 17-1-1980. This order was confirmed in appeal by the 4th respondent by Ext. P7 dated 22-4-1980. Ext. P7 was affirmed in revision by the 3rd respondent by Ext. P9 dated 26-9-1980 and again by the 2nd respondent by Ext. P11 dated 5-10-1981. The petitioner challenges Exts. P5, P7, P9 and P11. The charges read as follows:

Article I: That the said No. 700300537 Ct. P.B. Roch while functioning as Constable in GC, CRPF, Pallipuram committed an offence of misconduct in his capacity as a

member of the Force u/s 11(1) of CRPF Act 1949 in that he either directly or indirectly caused the theft of 200 Kgs of wood for the benefit of his family from the CPWD contractor of GC campus.

Article II: That during the aforesaid period and while functioning in the aforesaid office, the said No. 700300537 Const. P.B. Roch disobeyed the orders of Commandant, GC. CRPF, Pallipuram to vacate the family quarter allotted to him and refused to accept the copy of the order directing him to vacate the said family quarter.

Article III: That during the aforesaid period and while functioning in the aforesaid office, the said No. 700300537 Const. P.B. Roch disobeyed the orders of Commandant, GC, CRPF, Pallipuram to avail C/leave to take his family home.

Article IV: That during the aforesaid period and while functioning in the aforesaid office, the said No. 700300537 Ct. P.B. Roch made irrelevant and insubordinate statement in the copy of the suspension order No. P. VIII-779-GC-PPM dated 8-6-1979 issued to him on 8-6-79.

2. Seven witnesses were examined for the Department and two for the petitioner. As regards charge No. 1, the enquiry officer found that the petitioner stole "teak wood logs in the form of firewood weighing about 200 Kgs." The charge does not however refer to teak wood. It only refers to "theft of 200 Kgs. of wood." It is alleged that the wood belonged to the Department''s contractor who complained of theft of planks and braces stored by him in the campus of the Department for concrete work. He did not say in his complaint that what he lost was teak wood. The petitioner was made to pay a sum of Rs. 60/- said to be the price payable to the contractor to compensate him for the loss of his material. It is common knowledge that planks used for concrete work are usually of cheap wood, and that if teak wood weighing 200 Kgs. had been purchased in the market, the price in 1979 would have been no less than Rs. 4,000/-. In fact the sum of Rs. 60/- collected from the petitioner appears to represent the actual value in 1979 of fire wood or planks of cheap wood of the same quantity. If what was lost was teak wood and not any other wood, it is inconceivable that the contractor would not have said so in his complaint. If is equally inconceivable that the relevant charge would not have specifically referred to the type of wood if it was as valuable as teak.

3. It is found that a quantity of about 200 Kgs. of "teak wood logs in the form of firewood" had been recovered from the petitioner''s house when a search was conducted on 16-5-1979 in his absence. It is further found that at the time of recovery the petitioner''s wife was present. No list or mahazar or report of any kind was prepared at the time of the search and the alleged recovery. Admittedly the wood recovered was not weighed. No signature was obtained from the wife to evidence recovery of any material. None in the neighbouring houses witnessed the recovery. Apart from the Department''s witnesses, who are officers, no person of the

locality, except the contractor, was present. The contractor, who had originally no case that what he lost was teak, testified at the enquiry that the wood he lost was teak, but accepted the price commensurate with the value of firewood and far short of the market value of teak. While one of the Department''s witnesses deposed before the enquiry officer that a quantity of 200 Kgs. of wood was recovered, another witness stated that it was 80 Kgs. and yet another witness stated that it was 40 Kgs. There is such wide discrepancy in their evidence. This is significant because no note or report was prepared by them and they did not weigh the wood at the time of the alleged recovery.

4. In the absence of any contemporaneous record evidencing search and recovery, I see little weight in the testimony of the Department''s witnesses, who widely disagree as to the quantity recovered, to connect the petitioner or his family with the alleged recovery of the wood in question. Secondly, in so far as the charge did not mention that the wood was teak and the witnesses have described the wood as logs in the shape of firewood, and, again in so far as the value collected from the petitioner is suggestive of the price payable for the same quantity of firewood, and far short of the price of teak, the alleged recovery of any wood from the petitioner''s house appears to be highly suspicious and improbable. Assuming that ordinary firewood was recovered from the petitioner''s house, that fact without more would not connect him with the alleged theft, for that is ordinary house-hold material which can be recovered from any house. It would be most unusual if some quantity of firewood for fuel was not stored in the petitioner''s house, Recovery of such articles is no evidence to connect the petitioner with the theft mentioned in the charge. In fact there was evidence that the petitioner had purchased firewood in April and May 1979. That evidence was totally ignored by the enquiry officer.

5. It is alleged that wood was recovered from several other houses of employees in different quantities and what was recovered was teak. Yet admittedly no action was taken against those employees. It would indeed be strange conduct on the part of the Department if what had been recovered from those houses were teak wood logs, and yet no action was taken pursuant to such recovery. It would however appear from the enquiry officer''s remarks that what was recovered on 16-5-1979 from the various houses, including that of the petitioner, was firewood. Only at the time of the enquiry did the firewood loom as teak wood. Yet those articles were not shown to the enquiry officer. There is no evidence as to what happened to them. It is therefore not possible to imagine what the enquiry officer would have thought of the recovered articles had they been produced before him. Would he have found them to be teak wood in the shape of firewood or mere firewood? It is strange that the articles recorded were neither evidenced by any contemporaneous document nor shown to the enquiry officer. Yet he relied on a note sheet prepared by another officer (Devan Rajan) who was not present at the time of the alleged search and recovery. All this lends weight to a reasonable feeling that no proper charge was framed against the petitioner concerning the contractor''s complaint, that no proper

enquiry was conducted against him in regard to charge No. 1, and that no reliable evidence was adduced against him to establish that charge.

6. Charge No. 2 relates to the petitioner''s refusal to vacate his quarters. It is alleged that as soon as the petitioner was suspected of having stolen the wood, he was asked to vacate his house. It is admitted that the very reason for asking the petitioner to vacate the house was the alleged theft. The petitioner had stated that his wife was pregnant with child and their youngest child was only 9 months of age. Yet mercilessly they were turned out of the house in the belief that he or the members of his family had stolen the wood. I have no doubt that the sustainability of charge No. 2 depends entirely upon the merits of the finding of charge No. 1.

7. Charge No. 3 is that the petitioner disobeyed orders to go on leave. No Rule or order has been placed before me to show that the superior officers were competent to force an employee like the petitioner to go on leave. I would therefore presume that, in the circumstances of this case, there was no justification to compel the petitioner to go on leave. If his presence in the office was thought to be undesirable on account of the pending enquiry, the officers had the power to keep him under suspension. They did not do so then. I am told that the petitioner was subsequently kept under suspension. But that would not justify the earlier order by which he was asked to go on leave, the disobedience of which gave rise to charge No. 3. This charge must necessarily fail.

8. Charge No. 4 speaks of "irrelevant and insubordinate" statement having been made by the petitioner in the office copy of the suspension order. It is stated in evidence that the petitioner described himself as Christ crucified by his superior officers. That was indeed in irresponsible statement. However, the punishment of removal would not in the normal circumstances have been imposed upon him for that statement. The punishment was admittedly cumulative in character and the severity of it was caused by the findings under the earlier charges. I have no doubt that if charge No. 4 alone had been considered, without regard to the other charges, a reasonable authority would have imposed upon him a much less severe punishment. In the context of the other charges, particularly that relating to theft, his statement looks less grave, for it was obviously made in moments of agony and despair caused by what he justifiably thought was an unreasonable accusation against him. That is also an aspect which deserves serious consideration if charge No. 4 were to be reconsidered for the purpose of punishment.

9. Theft is a serious charge. Whether the proceedings are by way of prosecution or disciplinary action, or a civil suit, the burden to establish that charge falls heavily on the person alleging the same. It is true that the standard of proof of criminal offences in civil or departmental proceedings is that of the balance of probabilities, and not proof beyond reasonable doubt, as in criminal proceedings. There is no need to import into civil proceedings, "the formula used for the guidance of juries in criminal cases": per Lord Scarman in Khawaja v. Secretary of State, (1983) 1 All ER

765, 783. Nevertheless there is no absolute standard in either proceeding. As stated by Denning, L.J. (as he then was) in Bater v. Bater, (1950) 2 All ER 458 at 459:

..... It is true that by our law there is a higher standard of proof in criminal cases than in civil cases, but this is subject to the qualification that there is no absolute standard in either case. In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. Many great judges have said that, in proportion as the crime is enormous, so ought the proof to be clear. So also in civil cases. The case may be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter. A civil court, when considering a charge of fraud, will naturally require a higher degree of probability than that which it would require if considering whether negligence were established. It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature, but still it does require a degree of probability which is commensurate with the occasion.....

The standard varies in either proceeding according to the gravity of the charge. What is the appropriate degree of probability that is required in a given case depends on what is at stake. "The nature and gravity of an issue necessarily determines the manner of attaining reasonable satisfaction of the truth of the issue" (per Dixon, J. in Wright v. Wright, (1948) 77 C.L.R. 191 at 210). Although in civil cases a preponderance of probability suffices, and not proof beyond reasonable doubt, the degree of probability must be such as to satisfy the court. But as Lord Scarman asks, "If a court has to be satisfied, how can it at the same time entertain a reasonable doubt?", (1983) I All ER 765 at 783. The distinction between the standard of proof in criminal and civil proceedings is more a matter of words and "not one of any great moment": Lord Scarman, ibid. It can indeed become too nice to be discernible, dependent upon what is at stake. This principle holds good with equal force in disciplinary proceedings before departmental authorities where, although the rules of evidence and procedure of a civil court are not strictly applicable, in cases involving serious charges with consequences as grave as dismissal, the standard of fairness and reasonableness as interpreted and adopted by the civil court will apply to meet the ends of justice: (1983) 1 All ER 765. Applying that standard, will a fair and reasonable disciplinary authority accept the evidence on record as a rational foundation for the finding, and the consequences flowing from it? That is the question.

10. In proceedings under Article 226 of the Constitution, the court refrains from substituting its own view of the facts for that of the authority. The court will not interfere with the decision of the authority except when it is shown that the authority erred in law or violated rules of natural justice or acted ''unreasonably''. If the authority has taken into account matters which are relevant and has excluded from its consideration irrelevant matters, its decision is not reviewable unless so

unreasonable that no reasonable authority would have come to it. This principle, as formulated by Lord Greene M. R. in Associated Provincial Picture Houses Ltd. v. Wednesbury Corpo. (1947) 2 All ER 680, governs judicial review of administrative actions in the generality of cases. Judged by this principle, the impugned orders, as I shall presently show, are liable to be quashed.

11. It is however important to note that this self-imposed restraint on the power and duty of the court may run counter to the development of the safeguards which the law must necessarily provide to protect the life and liberty of subjects endangered by executive action. The Wednesbury principle formulated with reference to the conditions imposed on the issue of a licence, and ideally suited to the generality of cases under Article 226, is unworkable where the life or liberty of a subject is at stake, or where he is in danger of being deprived of his sole livelihood. In these grave cases of exceptional importance to a citizen, it is the constitutional responsibility and power of the court to carefully examine the quality of the evidence relied on by the authority to determine for itself whether the requisite standard of proof has been satisfied and where the truth lies. Where the exercise of an executive power depends on the "precedent establishment of an objective fact", it is the power and duty of the court in proceedings by way of judicial review to decide whether the "precedent requirement" has been satisfied. The degree of proof in all these cases is as high as the subject matter is grave. Khawaja v. Secretary of State (1983) 1 All ER 765, 781; see the dissenting speech of Lord Atkin in Liversidge v. Anderson (1941) 4 All ER 338, which received the approval of the House of Lords in IRC v. Rossminster Ltd. (1980) 1 All ER 80; see also Ezhugbayi Eleko v. Government of Nigeria (Officer Administering) (1931) AC 662, 670.

12. The power of the court is nevertheless supervisory, and not appellate. Where two or more views are possible, the court will not substitute its own view for that of the authority. But where, on an appraisal of the quality of the evidence, the view taken by the authority is, in the opinion of the court inconsistent with the only view that is rationally and fairly possible, or vitiated by a serious error of law or procedure, the court will intervene to quash the impugned decision. The emphasis thus shifts from what a reasonable authority would do to what it ought to do. The question is not merely ''lawful or unlawful'', but ''right or wrong''. The required standard in such cases of exceptional significance approximates to the rule of ''substantial evidence'' as adopted in American jurisprudence. As stated in the report of the (U.S.) Attorney General''s Committee on Administrative procedure, "the question whether the administrative finding of fact rests on substantial evidence.... is really a question of law, for a finding not so supported is arbitrary, capricious, and obviously unauthorised.'" See ''Legal Control of Government'', Bernard Schwartz and H.W.R. Wade, 1972 Edn. p. 229. The distinction in standard of proof is one of varying degree of caution and emphasis warranted by higher consideration of those human rights enshrined in the Constitution. Where the life or personal liberty of a subject is concerned, the court and the court alone--is the ultimate constitutional

guardian. See the principle stated in Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another, ; Ajay Hasia v. Khalid Mujib (AIR 1981 SC 487); E.P. Royappa Vs. State of Tamil Nadu and Another, .

. There is no reasonably reliable evidence to prove the charge of theft against the petitioner. The essential link to connect him with the alleged recovery of stolen articles has not been established. Whether or not any firewood was recovered or whatever was recovered, so long as there is no reliable evidence to reasonably connect the petitioner with the recovery of the stolen articles, charge No. 1 is not proved. The testimony of the Department''s witnesses, widely disagreeing, as they do, on a material particular, and unsupported, as it is, by any independent evidence, such as the signature of the petitioner''s wife or a contemporaneously recorded mahazar or the testimony of persons who had seen the petitioner removing the recovered articles from the campus or the evidence of persons in the neighbouring houses who could speak to the recovery, is totally devoid of value to reasonably connect the petitioner with the serious charge of theft and the consequences flowing from a finding of such charge. In my judgment the finding is so absurd that no fair and reasonable authority could have come to it. The finding on charge No. 1 must, therefore, fail. In the circumstances, for the reasons which I have stated, the findings on charges 2 and 3 are equally unsustainable. I do not disturb the finding on charge No. 4, but the punishment imposed upon the petitioner is unsustainable for the reasons I have indicated. While it is open to the respondents, if so advised, to reconsider the question of punishment in regard to charge No. 4 and charge No. 4 alone, I quash the impugned orders for the reasons stated. The Original Petition is allowed in the above terms. No costs.