State of Mysore Vs K. Manche Gowda

Court: Supreme Court of India

Date of Decision: Aug. 22, 1963

Acts Referred: Constitution of India, 1950 â€" Article 311(2)
Government of India Act, 1935 â€" Section 240(3)

Citation: AIR 1964 SC 506 : (1964) 4 SCR 540

Hon'ble Judges: P. B. Gajendragadkar, J; N. Rajagopala Ayyangar, J; K. Subba Rao, J; K. N. Wanchoo, J; J. R. Madholkar, J

Bench: Full Bench

Final Decision: Dismissed

Judgement

Subba Rao, J.
This appeal by special leave is preferred against the Order of a Division Bench of the High Court of Mysore at Bangalore

quashing the order of the Government dated March 13, 1957 dismissing the respondent from service.

2. In the year 1957 the respondent was holding the post of an Assistant to the Additional Development Commissioner, Planning, Bangalore. On

June 25, 1957, the Government of Mysore appointed Shri G. V. K. Rao. I.A.S., Additional Development Commissioner, as the Enquiry Officer

to conduct a departmental enquiry against him in respect of false claim for allowances and fabrication of vouchers to support them. After giving the

usual notice, the said Enquiry Officer framed four charges against him. After making the necessary enquiry in accordance with law the said Enquiry

Officer submitted his report to the Government with the recommendation that the respondent might be reduced in rank. After considering the

report of the Enquiry Officer, the Government issued to him a notice calling upon him to show cause why he should not be dismissed from service.

The relevant part of the said show cause notice reads as follows :

The Inquiry Authority has recommended that you may be reduces in rank. As the charge proved against you are of a very grave nature and are

such as render you unfit to remain in Government Service, and the Government consider that a more severe punishment is called for in the interest

of public service, it is proposed to dismiss you from service.

3. The respondent made representation to the effect that the entire case had been foisted on him. After considering the representations of the

respondent, the Government passed an order on January 6, 1959 dismissing him from service. As the argument turns upon the terms of this order,

it will be convenient to read the material part thereof :

Government have carefully considered the report of the enquiry the explanation of Shri Manche Gowda and the opinion furnished by the Mysore

Public Service Commission. There is no reasonable ground to accept the version of Shri Manche Gowda that the entire case has been deliberately

foisted on him. The evidence on record shows conclusively that the charges framed are fully proved.

As regards the quantum of punishment, Government have examined the previous record of the Officer and have given careful consideration to the

recommendation of the Public Service Commission. Shri Manche Gowda was recruited directly as a Gazetted Officer. He had been punished

twice - first, in Government Order No. SD 19-6/A : 17. 53-12, dated 1-4-1954, for making false claims of T.A. and tampering with the accounts

and ledgers of Food Depot and again, in Government Order No. 40 MSC 57, dated 13th March 1957 for not having credited to Government

certain sums of money which he had collected from the Office Staff. Yet he failed to learn a lesson; he had indulged similar offences. It is clear that

he is incorrigible and no improvement can be expected in his conduct. In the circumstances a reduction in pay and continuance of the Officer in

Government Service, as recommended by the Public Service Commission, is no remedy. Having regard to the status of the Officer and the nature

of the charges proved against him, Government have come to the conclusion that he is unfit to continue in Government service and direct that he

may be dismissed form service forthwith.

4. It will be seen from the said Order that the reason for giving enhanced punishment above that recommended by the Inquiry Officer as well as by

the Service Commission was that earlier he had committed similar offences and was punished - once on April 1, 1954 and again on March 13,

1957. In the second notice those facts were not given as reasons for the proposed punishment of dismissal from service. The respondent filed a

petition in the High Court under Art. 226 of the Constitution for quashing the said order and the High Court quashed the order of dismissal on the

ground that the said two circumstances on which the Government relies for the proposed infliction of punishment of dismissal were not put to the

petitioner for being explained by him, in the show cause notice, which was issued to the petitioner on February 4, 1958. The impugned order was

accordingly set aside leaving it open to the State Government to dispose of the matter afresh if it desired to do so after compliance with the

requirements of Art. 311(2) of the Constitution. Hence the appeal.

5. Learned Attorney General contends, that the Government is entitled to take into consideration the previous record of a Government servant in

awarding punishment to him and it is not incumbent on it to bring to the notice of the Government servant the said fact in the second notice.

Alternatively, he argues that whether a Government servant has had a reasonable opportunity of being heard or not, being a question of fact in each

case, and in the instant case as the Officer concerned had knowledge of his two earlier punishments which formed the basis of the enhanced

punishment, he was not in any way prejudiced by their non-disclosure to him in the second notice, and therefore, the principles of natural justice

were not violated.

6. Mr. Naunit Lal, learned counsel for the respondent, says that a Government servant cannot be punished for his acts or omissions unless the said

acts or omissions are object of specific charges and are enquired into in accordance with law and that, in any view, even if the Government could

take into consideration a Government servant"s previous record in awarding punishment, the facts that form the basis of that punishment should at

least be disclosed in the second notice giving thereby an opportunity to the said Government servant to explain his earlier conduct.

7. The material part of Art. 311(2) of the Constitution which embodies the constitutional protection given to a Government servant reads thus :

No such person a aforesaid shall be dismissed or removed or reduced in rank until he had been given a reasonable opportunity of showing cause

against the action proposed to be taken in regard to him.

8. Section 240(3) of the Government of India Act was pari materia with the said clause of the Article of the constitution. That section fell to the

considered by the Federal Court in Secretary of State for India v. I. M. Lall. [1945] F.C.R. 103 139. In considering that sub-section, Spens C.J.,

speaking for the majority of the Court, made the following remark"s relevant to the present enquiry :

It does however seems to us that the sub-section requires that as and when an authority is definitely proposing to dismiss or to reduce in rank a

member of the civil service he shall be so told and he shall be given an opportunity of putting his case against the proposed action and as that

opportunity has to be a reasonable opportunity, it seems to us that the section requires not only notification of the action proposed but of the

grounds on which the authority is proposing that the action should be taken, and that the person concerned must then be given reasonable time to

make his representations against the proposed action and the grounds on which it is proposed to be taken .... In our judgment each

case will have to turn on its own facts, but the real point of the sub-section is in our judgment that the person who is to be dismissed or reduced

must know that that punishment is proposed as the punishment for certain acts or omissions on his part and must be told the grounds on which it is

proposed to take such action and must be given a reasonable opportunity of showing cause why such punishment should not be imposed.

9. This judgment was taken in appeal to the Privy Council, and the Judicial Committee, after quoting in extenso the passage just now extracted by

us from the Federal Court judgment, expressed its agreement with the view taken by the majority of the Federal Court. This Court in 284783 also

emphasized upon the impotence of giving a reasonable opportunity to a Government servant to show that he does not merit the punishment

proposed to be meted out to him. Das C.J., speaking for the Court, observed :

In addition to showing that he has not been guilty of any misconduct so as to merit any punishment, it is reasonable that he should also have an

opportunity to contend that the charges proved against him do not necessarily require the particular punishment proposed to be meted out to him.

He may say, for instance, that although he has been guilty of some misconduct it is not of such a character as to merit the extreme punishment of

dismissal or even of removal or reduction in rank and that of any of the lesser punishments ought to be sufficient in his case.

10. The relevant aspect of the case has been neatly brought out by the Nagpur High Court in Gopalrao v. State. ILR [1954] Nag. 90 There, as

here, the previous records of a Government servant was taken into consideration in awarding punishment without bringing the said fact to his notice

and giving him a reasonable opportunity of explaining the same. Sinha, C.J. speaking for the Court, observed :

Normally, the question of punishment is linked up with the gravity of the charge, and the penalty that is inflicted is proportionate to the guilt. Where

the charge is trivial and prima facie merits only a minor penalty, a civil servant may not even care to defend himself in the belief that only such

punishment as would be commensurate with his guilt will be visited on him. In such a case, even if in the show cause notice a more serious

punishment is indicated than what the finding of guilt warrants, he cannot be left to guessing for himself what other possible reasons have impelled

the proposed action. It is not, therefore, sufficient that other considerations on which a higher punishment is proposed are present in the mind of the

competent authority or are supported by the record of service of the civil servant concerned. In a case where these factors did not form part of any

specific charge and did not otherwise figure in the departmental enquiry, it is necessary that they shout be intimated to the civil servant in order to

enable him to put up proper defence against the proposed action.

11. Randhir Singh J. of the Allahabad High Court, in 95358 , distinguished the case thus :

In the present case, however, those punishments were taken into consideration which are not only within the knowledges of the applicant but

which he had suffer earlier ..... This is evidently not opposed to any principles of natural justice."" Multiplication of citation is not

necessary, as the aforesaid decisions bring out the conflicting views.

12. Under Art. 311(2) of the Constitution, as interpreted by this Court, a Government servant must have a reasonable opportunity not only to

prove that he is not guilty of the charges leveled against him, but also to establish that the punishment proposed to be imposed is either not called

for or excessive. The said opportunity is to be a reasonable opportunity and, therefore, it is necessary that the Government servant must be told of

the grounds on which it is proposed to take such action : see the decision of this Court in the 288944 . If the grounds are not given in the notice, it

would be well nigh impossible for him to predicate what is operating on the mind of the authority concerned in proposing a particular punishment :

he would not be in a position to explain why he does not deserve any punishment at all or that the punishment proposed is excessive. If the

proposed punishment was mainly based upon the previous record of a Government servant and that was not disclosed in the notice, it would mean

that the main reason for the proposed punishment was withheld from the knowledge of the Government servant. It would be no answer to suggest

that every Government servant must have had knowledge of the fact that his past record would necessarily be taken into consideration by the

Government in inflicting punishment on him; nor would it be an adequate answer to say that he knew as a matter of fact that the earlier punishments

were imposed on him or that he knew of his past record. This contention misses the real point, namely, that what the Government servant is entitled

to is not the knowledge of certain facts but the fact that those facts will be taken into consideration by the Government in inflicting punishment on

him. It is not possible for him to know what period of his past record or what Acts or omissions of his in a particular period would be considered.

It that fact was brought to his notice, he might explain that he had no knowledge of the remarks of his superior officers, that he had adequate

explanation to offer for the alleged remarks or that his conduct subsequent to the remarks had been exemplary or at any rate approved by the

superior officers. Even if the authority concerned took into consideration only the facts for which he was punished, it would be open to him to put

forward before the said authority many mitigating circumstances or some other explanation why those punishments were given to him or that

subsequent to the punishment he had served to the satisfaction of the authorities concerned till the time of the present enquiry. He may have many

other explanations. The point is not whether his explanation would be acceptable, but whether he has been given an opportunity to give his

explanation. We cannot accept the doctrine of ""presumptive knowledge"" or that of ""purposeless enquiry,"" as their acceptance will be subversive of

the principle of ""reasonable opportunity"". We, therefore, hold that it is incumbent upon the authority to give the Government servant at the second

stage reasonable opportunity to show cause against the proposed punishment and if the proposed punishment is also based on his previous

punishments or his previous bad record, this should be included in the second notice so that he may be able to give an explanation.

13. Before we close, it would be necessary to make one point clear. It is suggested that the past record of a Government servant, if it is intend to

be relied upon for imposing a punishment, should be made a specific charge in the first stage of the enquiry itself and, if it is not so done, it cannot

be relied upon after the enquiry is closed and the report is submitted to the authority entitled to impose the punishment. An enquiry against a

Government servant is one continuous process, though for convenience it is done in two stages. The report submitted by the Enquiry Officer is only

recommendatory in nature and the final authority which scrutinises if and imposes punishment is the authority empowered to impose the same.

Whether a particular person has a reasonable opportunity or not depends, to some extent upon the nature of the subject matter of the enquiry. But

it is not necessary in this case to decide whether such previous record can be made the subject matter of charge at the first stage of the enquiry.

But, nothing in law prevents the punishing authority from taking that fact into consideration during the second stage of the enquiry, for essentially it,

relates more to the domain of punishment rather than to that of guilt. But what is essential is that the Government servant shall be given a reasonable

opportunity to know that fact and meet the same.

14. In the present case the second show cause notice does not mention that the Government intended to take his previous punishments into

consideration in proposing to dismiss him from service. On the contrary, the said notice put him on the wrong scent, for it told him that it was

proposed to dismiss him from service as the charges proved against him were grave. But, a comparison of paragraphs 3 and 4 of the order of

dismissal shows that but for the previous record of the Government servant, the Government might not have imposed the penalty of dismissal on

him and might have accepted the recommendations of the Enquiry Officer and the Public Service Commission. This order, therefore, indicates that

the show cause notice did not give the only reason which influenced the Government to dismiss the respondent from service. This notice clearly

contravened the provisions of Art. 311(2) of the Constitution as interpreted by Courts.

15. This order will not preclude the Government from holding the second stage of the enquiry afresh and in accordance with law.

16. In the result the appeal is dismissed with costs.

17. Appeal dismissed.