
(1973) 10 KL CK 0021
In the High Court Of Kerala
Case No : O.P. No. 461 of 1971

Appu

APPELLANT

Vs

Senior Supdt. of Post Offices, Trivandrum and Others

RESPONDENT

Date of Decision : 08-10-1973

Acts Referred:

Constitution of India, 1950 — Article 311

Citation : (1974) KLJ 168

Hon'ble Judges : P. Subramonian Poti, J

Bench : Single Bench

Advocate : T.C.N. Menon, for the Appellant;

Judgement

P. Subramonian Poti, J.—The petitioner, while functioning as a Postman in the Trivandrum Beach Post Office was charge sheeted, as indicated in Ext. P1 memorandum, by the Senior Superintendent of Post Offices, Trivandrum Division. The petitioner submitted a reply to these charges and he also requested permission to engage a legal practitioner to defend him at the inquiry in view of the large number of documents relied on against him and particularly because of the ill-will entertained against him by the Sub Postmaster, who, according to him, was responsible for levelling such charges. The request to engage a legal practitioner was declined as communicated to him by Ext. P2 letter. A further request was made to the Disciplinary authority and the inquiry officer to permit the petitioner to engage another civil servant, Sri. V.K. Syed Mohammad to assist him. But he did not get such assistance for the reason that the Senior Superintendent of Post Offices, Ernakulam Division could not relieve such officer for such assistance. The intimation about this served on the petitioner read:

It is regretted that Shri. V K. Syed Mohammed, SPM, Cochin Naval Base cannot be relieved to assist in this case. The concerned official may please be informed accordingly.

When the petitioner sought the assistance of another Officer, one Sri. Ebrahim

Kurian he was informed that his request had been forwarded to the Senior Superintendent of Post Offices but that the inquiry would not be postponed. The inquiry was held by the second respondent, the Inspector of Post Offices (Complaints). The petitioner had to conduct his own defence. To present the case in support of the charges the Inspector of Post Offices Sri. Pylee was appointed. Statement of witnesses recorded prior to the enquiry were filed and it is said that the petitioner was asked to cross-examine the witness with reference to these statements. Ultimately the petitioner was served with a show cause notice proposing punishment of dismissal and after the reply to this was submitted by the petitioner the first respondent, the Senior Superintendent of Post Offices passed orders removing the petitioner from service. An appeal filed against this order Ext. P7 was dismissed by the Director of Postal Services "Kerala Circle, by Ext. P8 order.

The only question urged by the petitioner in support of his case is that Ext. P3 order of removal as confirmed by Ext. P8 in appeal ought to be set aside by this court in that the inquiry was violative of the guarantee secured to a Government servant under Article 311 of the Constitution of India. According to the counsel Sri. T.C.N. Menon the obligation to afford reasonable opportunity to the Government servant charged with the offence has been denied in this case, particularly because petitioner's request for assistance of another civil servant at the enquiry was refused with out any reason. It cannot be denied that the provision in clause 14(8) of the Central Services (Classification Control and Appeal) Rules 1965 embodies the requirements of natural justice. The rule reads:

14 (8). The Government servant may take the assistance of any other Government servant to present the case on his behalf but may not engage a legal practitioner for the purpose unless the Presenting officer appointed by the disciplinary authority is a legal practitioner, or the disciplinary, authority having regard to the circumstances of the case, so permits.

As of right the Government servant may seek to engage a legal practitioner in the event the prosecution of the charges is conducted by a legal practitioner. If such presenting officer prosecuting the case happens to be not a legal practitioner it does not necessarily follow that the Government servant can be denied, for that sole reason, the assistance of a legal practitioner. The words of the rule or the Disciplinary authority, having regard to the circumstances of the case, so permits.

Necessarily indicates a duty on the part of the disciplinary authority to consider the circumstances of every case and irrespective of the question whether the presenting officer is a legal practitioner or not to decide whether the government servant is justified in the request for the assistance of a legal practitioner. Therefore it is not open to the Disciplinary authority to take up the stand that the assistance of a legal practitioner could be denied merely because the case in support of the charges is being presented by a departmental officer who is not a legal practitioner. It is also necessary to notice that the duty to consider the

request for assistance under the rule sought by a government servant is not an empty formality, but is of the essence of the rule of reasonable opportunity and failure to exercise that duty may vitiate the whole inquiry. For, in such a case it could not be said that the civil servant had occasion to present his case properly.

2. In every department there may be few men who may be proficient in the matter of rendering services to other government servants in the defence of cases against them. It is only natural that civil servants may choose to have the services of one or other of such civil servants at enquiries against them. The opportunity envisaged in clause 8 of Rule 14 can be positively denied to a government servant by denying the assistance of such civil servants on the ground that his services cannot be made available for administrative reasons. It is necessary to devise a rule or policy by which assistance of such government servants to those who need it, is made available in case such persons are willing to render the assistance. The best illustration of the benefit contemplated by rule 14(8) being in essence denied to a government servant is furnished by the case before me. The assistance of Sri. Syed Mohammed was sought for and the Senior Superintendent of Post Offices chose to deny such assistance for no reason indicated. Ext. P3 is silent in that respect. In the counter-affidavit by the first respondent it is mentioned.

"But the controlling officer of Sri. Syed Mohammed could not relieve him due to administrative reasons."

It is further stated with reference to Sri. Kurien, that:

Sri. Kurien himself was during the relevant period under suspension and his presence at his headquarters was necessary.

3. It has to be further noted that by Ext. P4 letter the petitioner was not only told that his request for grant of permission to take the assistance of Sri. Abraham Kurian in the inquiry has been forwarded to the Senior Superintendent of Post Offices for disposal but also that the postponement of inquiry requested for was not granted and that the inquiry will be held on 28-3-1969 as fixed earlier. The enquiry was actually commenced on 28-3-1969 as indicated in Ext. P4. Therefore as the matter stood on that day, the petitioner's request had been declined in regard to the services of Sri. Syed Mohammed and when the petitioner wanted Sri. Kurian's services to be made available he was told that before any decision thereon was taken the inquiry would be proceeded with. Subsequently, on 20-5-1969, the petitioner was again told that Sri Kurian's services would not be available as the Controlling Officer of Sri. Kurian was not willing to make his services available to the petitioner.

4. As I have indicated earlier, if Controlling Officers decline to make available the services of civil servants who may be competent to assist at enquiries, the provision in clause 8 of rule 14 to which I have adverted will be rendered meaningless and the guarantee will be illusory. On the facts of this case. I feel satisfied that this is the case here. It is seen averred in the Counter-affidavit of

the first respondent:

The inquiry officer again gave sufficient time to the petitioner postponing the inquiry several times in order to enable the petitioner to secure an assisting government servant. He resumed the inquiry only after giving a final notice to the petitioner.

This averment does not appear to reflect the position correctly. What happened up to Ext. P4 date is quite evident and the inquiry commenced on 28-3-1969, when one witness was examined Subsequently, the inquiry had necessarily to be adjourned to another date and it was so adjourned. Though it is not stated in the counter-affidavit as to how opportunity was given to the petitioner, despite the facts stated above, to seek the assistance of another government servant, counsel for the respondents at the hearing mentioned with reference to the file that on 1-4-1969 a letter was written by the inquiry officer to the petitioner as follows:

You are permitted to take the assistance of another government servant whose Controlling Officer is prepared to relieve be him for the purpose. You should intimate the name of the person nominated to this office in advance to the inquiry.

As seen from Ext. P4, the petitioner had at that time made the request for the services of Sri. Kurian and he had not been told that Sri. Kurian's services would not be available. Therefore I cannot see this letter as affording the petitioner any further opportunity. It is strange that this letter which is seen issued not by the Inquiry officer but by the Senior Superintendent of Post Offices, Trivandrum should have been sent to the petitioner when the Inquiry Officer had told him that the postponement of the inquiry was not possible. It is also seen from the file that Sri. Abraham Kurian whose assistance was sought, submitted to the Inquiry Officer a letter dated 26-4-1969 indicating his willingness to assist the petitioner under rule 14(8) and further that since he was under suspension no question of his relief arose. Anyhow, before any further communication was given to the petitioner the Inquiry Officer issued notice to the petitioner on 21-4-1969 intimating the petitioner that the inquiry was adjourned to the 5th of May 1969 and the inquiry would be held on that date. At that time the petitioner had not been told that the services of Sri Kurian will not be available because the Controlling Officer was not willing. That he was told only later by a letter dated 20-5-1969. By the same letter he was told that the inquiry was postponed to 5th June, 1969 and that it will not be postponed any further for enabling the petitioner to get assistance of any other government servant. That letter, it is seen, also mentions:

you are at liberty to secure the assistance of any other government servant whose Controlling Officer is prepared to relieve him for the purpose.

It is under such circumstances that the inquiry was held thereafter.

5. That the Disciplinary authority had a duty to consider whether the request for engaging a legal practitioner when a request therefore was made by a government servant is now well settled by decisions of the Supreme Court as I will presently indicate. It is not only when the case in support of the charges presented by a legal practitioner that this right is available to a government servant. The stand taken in the counter affidavit is not that the authority considered this matter independently but that since the case on behalf of the Department was not being presented by a legal practitioner it was not necessary to allow the petitioner to have the assistance of a legal practitioner. That is clearly an erroneous stand. In the circumstances of the case if the two persons whose services were sought by the petitioner and who were apparently willing to assist the petitioner could not be allowed to assist to him at least then opportunity should have been given to him to get the assistance of a legal practitioner at the inquiry. The petitioner was a postman who cannot be said to be well acquainted with the rules and procedure in disciplinary proceedings, and cannot be expected to defend himself properly against the presentation of a case by a competent Inspector of Post Offices. In these circumstances, the inquiry officer had a duty to consider how the case of the Department would be prejudiced by the petitioner being assisted by a legal practitioner and whether any prejudice would be caused to the petitioner if assistance was not given to him. He told the petitioner in letter dated 20-5-1969 that the petitioner can have the assistance of any person whom the Controlling Officer was willing to relieve which was really not of any good to the petitioner because the petitioner cannot expect to make repeated requests only to notice such request being turned down. It is especially so when the petitioner was told that the inquiry will not be postponed for that purpose. Therefore even if the letter of 20-5-1969 is read as giving the petitioner an occasion to seek the assistance of yet another government servant that does not appear to have been seriously intended and that was not effective also so far as the petitioner was concerned.

6. In the decision reported in C.L. Subramaniam Vs. Collector of Customs, Cochin, a similar rule was considered by the supreme court. Rule 15 of the Central Civil Servants (Classification Control and Appeal) Rules 1967 was more or less the same as rule 14 (8) with which I am concerned in this case. That rule gave a government servant a right to present his case with the assistance of any civil servant approved by the disciplinary authority, but not of a legal practitioner provided that he could engage a legal practitioner if the person nominated by the disciplinary authority was a legal practitioner or the disciplinary authority, having regard to the circumstances of the case permitted him to do so. The civil servant who was charged with misconduct in that case sought the assistance of a legal practitioner in the enquiry. But that was denied to him on the ground that the case in support of the charges was not being presented by a legal practitioner. It is in this context that Rule 15 came up for consideration by the learned Judges of the Supreme Court. This rule was construed as obliging the inquiry officer to consider the request for the assistance of a legal practitioner even in cases where

the prosecution of the charges is not with the assistance of a legal practitioner. The court found in that case that denial of such assistance amounted to a denial of reasonable opportunity and that violated Article 311 of the Constitution.

7. In the decision of the High Court of Calcutta reported in Director-General of Posts and Telegraphs Vs. N.C. Majumdar, the decision of the Supreme Court to which I adverted was considered by a Division Bench and dealing with the obligation of the disciplinary authority to permit the assistance of a legal practitioner under 15 (5) of the Central Civil Services (Classification Control and Appeal) Rules, 1957, the Calcutta High Court said:

From a fair reading of the above Rule, it seems clearly obligatory upon the disciplinary authority to, firstly, allow the assistance of a legal practitioner to a Government servant if the person nominated by the disciplinary authority for presentation of its case is also a legal practitioner; even if it is not so, then also it is equally obligatory upon the disciplinary authority to consider all other relevant circumstances of the case and then; either to accord or refuse such permission. In other words, even where there is no legal practitioner nominated on behalf of the disciplinary authority it is bound to consider the facts and circumstances of the given case before it could refuse permission to engage a legal practitioner to assist the Government servant. It would therefore be a clear breach of duty on the part of the disciplinary authority if it would refuse to allow the petitioner to engage a legal practitioner only on the view that no legal practitioner was nominated by the disciplinary authority in presenting its own case.

I have already indicated that the nature of the evidence in the case against the petitioner was such that the petitioner would have been justified in seeking assistance. He did seek such assistance of a legal practitioner. Apparently, that was not considered as it was only the Inspector of Post Offices who conducted the prosecution of the charges. That apparently was the only reason for refusing to permit the services of a legal practitioner. There was no occasion to consider whether in the nature of the case and in the circumstances, the petitioner should be allowed to engage a legal practitioner. Therefore, there has been a violation of Rule 14(8). Further, even the request for assistance of a Government servant has been effectively denied to him. The stand taken, no doubt, was that any Government servant whose services could be spared by the Controlling Officer could assist the petitioner. As I indicated in the circumstances of the case, there has been, in fact, a denial of the services of those who would have been in a position to assist the petitioner.

The result is I find that the order of dismissal is vitiated as reasonable opportunity has not been afforded to the petitioner to defend his case. Consequently, the order has to be vacated and I do so. Ext. P7 order of removal of the petitioner from service affirmed by Ext. P8 order is therefore quashed. If a fresh enquiry, for any reason, is considered necessary, that will be done only in accordance with law and it will also be expedited. In the circumstances of the case, the parties will suffer costs