

(2024) 10 KL CK 0116

In the High Court Of Kerala

Case No : Original Petition (KAT) No. 315 Of 2014

A.Satis

APPELLANT

Vs

State Of Kerala

RESPONDENT

Date of Decision : 24-10-2024

Acts Referred:

Constitution of India, 1950 — Article 227

Central Civil Services (Classification, Control & Appeal) Rules, 1965 — Rule 14, 21(2)
(ii), 23

Kerala Police Departmental Inquiries, Punishment and Appeal Rules, 1958 — Rule 15(1)
(h)

Citation : (2024) 10 KL CK 0116

Hon'ble Judges : A.Muhammed Mustaque, J;Murali Purushothaman, J

Bench : Division Bench

Advocate : C.Valsalan, Ghosh Yohannan, K.Rakesh Roshan, Thushara.V,
P.Vijayakumar

Final Decision : Dismissed

Judgement

Murali Purushothaman, J.

1. The Original Petition (KAT) is filed by the applicant in T.A. No.2583 of 2012 (W.P.(C).No.2848 of 2008) challenging the order passed therein by the Kerala Administrative Tribunal.

2. The petitioner, while working as an Inspector of Police (Armed Reserve) in the Kerala Police Service, was deputed as an Assistant Immigration Officer in the Bureau of Immigration (BOI) under the Ministry of Home Affairs at Meenampakkam Airport, Chennai, from 01.06.2000 onwards. On 15.04.2001, he cleared three passengers going to Muscat for boarding the Gulf Airlines Flight No. GF 069. He also cleared two passengers for British Airways Flight No. BA 036 going to London on the same day. Both flights were scheduled to take off almost simultaneously. Out of the 117 passengers, who obtained boarding passes from the Gulf Airlines Flight, only 114 passengers boarded and three were found

missing. However, the said three passengers boarded the British Airlines Flight No. BA 036 and proceeded to London and they sought political asylum from the British Government as Afghans.

3. Alleging that the petitioner was careless in doing the immigration clearance of the aforesaid passengers, he was placed under suspension by the Chief Immigration Officer vide order dated 18.05.2001. Since the petitioner was working on deputation at BOI, the Chief Immigration Officer initiated departmental proceedings against the petitioner under Rule 14 of the Central Civil Services (Classification, Control & Appeal) Rules, 1965 (for short 'CCS (CCA) Rules'). Rule 14 of CCS (CCA) Rules deals with procedure for imposing major penalties. After the enquiry, the Senior Immigration Officer, the Enquiry Officer, submitted Ext. P10 report on 26.11.2001 finding the petitioner guilty of the charges.

4. On repatriation, the petitioner was relieved of his duties in BOI, Chennai on 30.04.2002. Accordingly, the disciplinary enquiry files were transmitted to the Deputy Inspector General of Police (DIG), Kannur, the disciplinary authority of the lending authority through the Director General of Police, Kerala. The DIG concurred with the findings of the Enquiry Officer and served Ext. P1 show cause notice dated 30.12.2002 on the petitioner proposing to impose a punishment of barring two increments with cumulative effect. The petitioner submitted Ext. P2 reply against the proposed punishment. The disciplinary authority overruled the objection and imposed punishment of barring of two increments with cumulative effect, as per Ext. P3 order. The punishment imposed is a minor penalty under Rule 15(1)(h) of the Kerala Police Departmental Inquiries, Punishment and Appeal Rules, 1958 ('Rules', for short).

5. The petitioner preferred an appeal under Rule 23 of the Rules against Ext. P3 order before the Inspector General of Police, Northern Zone, Kozhikode. The appellate authority dismissed the appeal by Ext. P4 order.

6. Against Ext. P4 order, the petitioner preferred Ext. P5 revision petition before the Government under Rule 36 of the Rules. The same was rejected by the Government by Ext. P6 order. In Ext. P6, it is stated that the Government took a tentative decision to modify the punishment of withholding of increments for two years with cumulative effect awarded to the petitioner to that of withholding of increments for two years without cumulative effect and sought for the advice of the Kerala Public Service Commission. However, the Commission advised to reject the revision petition and to retain the punishment already awarded. The matter was again taken up with the Commission. The Commission maintained its earlier stand and the Government accepted the advice of the Commission and retained the punishment already awarded and rejected the revision petition. Though the petitioner preferred Ext. P7 petition before the Government, which is a non statutory representation, the same was rejected by Ext. P9 communication. The petitioner thus preferred W.P.(C) No.2848 of 2008 before this Court challenging Exts. P3, P4, P6 and P9.

7. On constitution of the Kerala Administrative Tribunal, the writ petition was transferred to the Tribunal. Before the Tribunal, the petitioner raised the following grounds.

(i) In the enquiry the presenting officer was a person interested in shifting the blame to the applicant as the said officer was actually responsible for the irregularities in the checking of the boarding passes and other happenings. So the enquiry is vitiated.

(ii) Since the borrowing authority completed the enquiry, it should have finalised the disciplinary proceedings also instead of leaving it to the lending authority to finalise the proceedings.

(iii) The exchange of boarding passes took place after the emigration clearance was over and therefore, the applicant was in no way responsible for the same.

(iv) The appellate order is a bald and cryptic order and therefore, the same is liable to be set aside.

(v) Ext. P6 order in review also is illegal for accepting the advice of the Public Service Commission blindly. The Government should have applied its mind to the advice tendered by the Public Service Commission and taken an independent decision without readily swallowing what was furnished by the Public Service Commission.”

8. As regards the contention of the petitioner that the presenting officer was biased, the Tribunal observed that there is no rule that the presenting officer should be an unbiased person and that the petitioner has no case that the enquiry officer was biased. Further, the Tribunal observed that the petitioner did not raise the said contention at the time of enquiry. The petitioner’s contention that the disciplinary proceedings should have been finalized by the BOI, the borrowing authority, was rejected by the Tribunal as being devoid of merit. The Tribunal held that, as per Rule 18A of the Rules, the lending authority can also take disciplinary action for the misconduct committed by an officer when he was working with the borrowing authority. With regard to the contention of the petitioner that the appellate order is bald and cryptic, the Tribunal observed that the said defect is cured by the Government by passing a detailed speaking order in the revision petition. Regarding the contention of the petitioner that the Government blindly accepted the advice of the Public Service Commission while rejecting the revision petition, the Tribunal observed that the decision of the Government to accept the advice of the Commission cannot be said to be irrational or perverse. The contention of the petitioner on merits of the case put forward against him was also rejected by the Tribunal on the ground that there is no reason to interfere with the findings of fact in the enquiry. The Tribunal observed that going by the proved misconduct, the punishment imposed on the petitioner can never be described as grossly disproportionate to the gravity of the offence. Accordingly, the Tribunal dismissed the Transfer Application.

9. The order of the Tribunal is impugned in the Original Petition contending that the Tribunal rejected the case put forward by the petitioner without considering the facts and circumstances in the proper perspective. It is also contended that another immigration officer by name Chandra Shekharan who also faced the same charge was absolved from the charges after the enquiry.

10. Heard the learned counsel for the petitioner, the learned Senior Government Pleader, the learned Standing Counsel for the Public Service Commission and the learned Central Government Counsel.

11. According to the petitioner, as per Rule 18A of the Rules, the borrowing authority (BOI) alone has the power of disciplinary authority to award punishment to those on deputation. Therefore, it is contended that Ext. P3 order of the disciplinary authority, Ext. P4 order of the appellate authority and Ext. P6 order of the Government passed in exercise of powers under the Rules are not sustainable. Rule 18A of the Rules reads as follows:

"18A. Provisions regarding officers lent to other Government etc.-

(1) Where the services of the member of the service are lent to another Government, Central or State, or an authority subordinate thereto or to a local or other authority (hereinafter referred to as "the borrowing authority") the borrowing authority shall have the powers of the Appointing authority for the purpose of placing him under suspension and of the Disciplinary Authority for the purpose of taking a disciplinary proceeding against him:

Provided that the borrowing authority shall forthwith inform the authority which lent his services (hereinafter in this rule referred to as "the lending authority") of the circumstances leading to the order of his suspension or the commencement of the disciplinary proceeding, as the case may be.

(2) In the light of the findings in the disciplinary proceedings taken against the member of service:

(i) if the borrowing authority is of the opinion that any of the penalties specified in items (a) to

(h) of Rule 15(1) shall be imposed on him, it may, in consultation with the lending authority, pass such orders on the case as it deems necessary:

Provided that in the event of a difference of opinion between the borrowing authority and the lending authority, the services of the member of the service shall be placed at the disposal of the lending authority;

(ii) if the borrowing authority is of the opinion that any of the penalties specified in items (i) to

(m) of Rule 15(1) shall be imposed on him, it shall replace his service at the disposal of the lending authority and transmit to it the proceedings of the inquiry and thereupon the lending authority may, if it is the Disciplinary Authority, pass

such orders thereon as it deems necessary or if it is not the Disciplinary Authority, submit the case to the Disciplinary Authority which shall pass such orders on the case as it deems necessary according to the procedure prescribed under these rules, or after holding such further enquiry as it may deem necessary.

An appeal shall lie to the Government of Kerala from the orders passed by the borrowing authority by virtue of the powers vested in them under this rule."

'Member of the service' has been defined under Rule 3 (c) of the Rules to mean a member of the Kerala Police Service or the Kerala Police Subordinate Service, as the case may be. The petitioner, an Inspector of Police (Armed Reserve) is a member of the Kerala Police Service. As per Rule 18A of the Rules, the borrowing authority shall have the powers of the Disciplinary Authority for the purpose of taking disciplinary proceedings against a member of the Kerala Police Service lent to that authority, namely the BOI. The disciplinary proceeding was initiated by the borrowing authority under the CCS (CCA) Rules while the petitioner was on deputation with the BOI. Rule 2 (g) of the CCS (CCA) Rules defines "disciplinary authority" to mean the authority competent under the said Rules to impose on a Government servant any of the penalties specified in Rule 11. Rule 2(h) of the CCS (CCA) Rules defines a "Government servant" to mean a person who (i) is a member of a Service or holds a civil post under the Union, and includes any such person on foreign service or whose services are temporarily placed at the disposal of a State Government, or a local or other authority; (ii) is a member of a Service or holds a civil post under a State Government and whose services are temporarily placed at the disposal of the Central Government; (iii) is in the service of a local or other authority and whose services are temporarily placed at the disposal of the Central Government. After the completion of the enquiry, an enquiry report was submitted on 26.11.2001 finding the petitioner guilty of the charges. On repatriation, the petitioner was relieved of his duty in BOI on 30.04.2002. Accordingly, the files relating to the enquiry was transmitted to the lending authority by the BOI and further disciplinary proceedings culminating in Ext. P3 order was taken by the Disciplinary Authority of the lending authority, under the Rules.

12. The borrowing authority as well as the lending authority is competent to take disciplinary proceedings against the officer lent. However, when the disciplinary proceedings are initiated by the borrowing authority while the officer is on deputation with them, the borrowing authority shall forthwith inform the authority which lent his services of the circumstances leading to the commencement of disciplinary proceedings. In case the borrowing authority on the basis of the findings in the disciplinary proceedings is of the opinion that any of the punishments specified in items (a) to (h) of Rule 15 of the Rules shall be imposed on the delinquent, the borrowing authority may in consultation with the lending authority, pass such orders on the case as it deems necessary. It further provides that in the event of difference of opinion between the borrowing

authority and the lending authority, the services of the member of the service shall be placed at the disposal of the lending authority. If the borrowing authority is of the opinion that any of the major penalties specified in items (i) to (m) of Rule 15 shall be imposed on the delinquent, it shall replace his service at the disposal of the lending authority and transmit to it the proceedings of the enquiry and thereupon the lending authority may, if it is the disciplinary authority, pass such orders thereon as it deems necessary. Similar provisions are there under the CCS (CC&A) Rules and Rule 21 thereof reads as follows:

"21. PROVISIONS REGARDING OFFICERS BORROWED FROM STATE GOVERNMENTS, ETC.:

(1) Where an order of suspension is made or a disciplinary proceeding is conducted against a Government servant whose services have been borrowed by one department from another department or from a State Government or an authority subordinate thereto or a local or other authority, the authority lending his services (hereinafter in this rule referred to as "the lending authority") shall forthwith be informed of the circumstances leading to the order of the suspension of the Government servant or of the commencement of the disciplinary proceeding, as the case may be.

(2) In the light of the findings in the disciplinary proceeding conducted against the Government servant, if the disciplinary authority is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 11 should be imposed on him, it may, subject to the provisions of sub-rule (3) of rule 15 and except in regard to a Government servant serving in the Intelligence Bureau up to the rank of Assistant Central Intelligence Officer, after consultation with the lending authority, pass such orders on the case as it may deem necessary-

(i) provided that in the event of a difference of opinion between the borrowing authority and the lending authority, the services of the Government servant shall be replaced at the disposal of the lending authority;

(ii) if the disciplinary authority is of the opinion that any of the penalties specified in clauses (v) to (ix) of Rule

11 should be imposed on the Government servant, it shall replace the services of such Government servant at the disposal of the lending authority and transmit to it the proceedings of the inquiry for such action, as it may deem necessary."

13. Though the borrowing authority as well as the lending authority is competent to take disciplinary proceedings against the officer lent, the borrowing authority can exercise disciplinary jurisdiction and impose punishment on the officer lent to it only till such time the officer is at the disposal of the borrowing authority. Going by Rule 2(g) read with Rule 2(h) of the CCS (CCA) Rules, the disciplinary authority under the CCS (CCA) Rules can impose penalties specified in Rule 11 of the said Rules on a "Government Servant" whose services are temporarily placed at the disposal of the Central Government. Once he is repatriated to his parent

service, the borrowing authority ceases to exercise control over the officer. It is trite that the word 'control' under the 'Classification, Control and Appeal Rules' indicates 'discipline' and the power of the authority to initiate disciplinary action. The Hon'ble Supreme Court in *State of U.P and Others v Ram Naresh Lal* [1970 KHC 575: AIR 1970 SC 1263: (1970) SCC 173] has held that the word "control" is a wide word and includes disciplinary jurisdiction. The borrowing authority can exercise disciplinary jurisdiction over the officer lent to it only till such time the officer is at the disposal of the borrowing authority.

14. It will not be in the interest of justice to drop the disciplinary proceedings on repatriation of the officer to the parent organisation. If the enquiry is not completed while the member of service was at the disposal of the borrowing authority, the borrowing authority can follow the procedure akin to Rule 21 (2)(ii) of the CCS (CCA) Rules or Rule 18A(ii) of the Rules and transmit to the lending authority the proceedings of the enquiry, and thereupon the lending authority may submit the case to the Disciplinary Authority which shall pass such orders on the case as it deems necessary according to the procedure prescribed under the Rules, or after holding such further enquiry as it may deem necessary.

15. The lending authority in this case has, in fact, followed the said procedure and has taken the disciplinary proceedings to a logical conclusion. There is no merit in the contention of the petitioner that the lending authority cannot continue the disciplinary action initiated by the borrowing authority and impose punishment on the petitioner.

16. As regards the contention of the petitioner that another officer who faced disciplinary proceedings along with him was exonerated, the same cannot be a ground to interfere with the disciplinary proceedings and punishment imposed on the petitioner.

17. The Tribunal has rightly found that the findings on facts in the enquiry cannot be re-appreciated by the Tribunal in exercise of powers of judicial review. We also find that the punishment imposed on the petitioner is proportionate to the gravity of the offence proved in the enquiry. We find no jurisdictional error or legal infirmity in the order of the Tribunal warranting interference in exercise of the supervisory jurisdiction of this Court under Article 227 of the Constitution of India.

Accordingly, the Original Petition (KAT) is dismissed.