
(1989) 04 BOM CK 0039
In the Bombay High Court
Case No : Writ Petition No. 505 of 1988

Chandrakant Deshpande	Vs	APPELLANT
Government of Maharashtra and Another		RESPONDENT

Date of Decision : 20-04-1989

Acts Referred:

Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 — Rule 8(8)

Citation : (1990) 1 BomCR 17 : (1991) 2 LLJ 1

Hon'ble Judges : M.S. Deshpande, J; M.B. Ghodeswar, J

Bench : Division Bench

Advocate : S.V. Manohar, for the Appellant; M.P. Badar, Govt. Pleader, for respondents 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

M.S. Deshpande, J.—By this petition under Articles 226 and 227 of the Constitution the petitioner challenges the order of his removal as a result of a Departmental Enquiry.

2. The petitioner joined as Jailor Grade III on March 8, 1954 and in course of time came to be promoted as Superintendent of Jails Class 1 from March 1982. He worked in that capacity as in-charge of Byculla Prison. On June 3, 1985, an undertrial prisoner one Abdul Hameed was transferred from Central Prison, Bombay to Byculla Prison on the ground of security in Prison, as the Superintendent in-charge of Central Prison. Bombay apprehended trouble as another undertrial prisoner one Karim Lala who belonged to a rival notorious gang was in that prison. The petitioner was on leave from 5th June, 1985 to July 4, 1985 and on resuming noticed that the conduct of Abdul Hameed was not in conformity with the Prison Rules and he therefore, had discussions with the respondent No. 2 the Inspector General of Prisons and Commissioner of Police for taking steps for transfer of Abdul Hameed to another jail. The transfer not being effected, several untoward incidents occurred including assault's by Abdul Hameed on the petitioner and others with knife and firing with a revolver. On

31st January, 1986 the petitioner was served with a charge sheet under 19 heads of charges some of them being that he had given special facilities to Abdul Hameed in contravention of the Prison Manual, and there were 8 other persons who were being jointly proceeded with in the Departmental Enquiry.

3. At the enquiry six witnesses were examined including the Inspector General of Prison and Deputy Inspector General of Prisons. The Enquiry Officer by his report dated 31st October 1986 found the petitioner guilty under five charges viz. Nos. 2, 3, 11, 12 and 16 and exonerated him of 14 charges. He made a report recommending that one of his increments should be withheld for a period of three years without affecting the other increments. The Disciplinary Authority i.e. the State Government, however, passed the impugned order dated 12-2-1988 holding the petitioner guilty of all the charges except charge No. 17 and directed his removal from service. It is this order which is being challenged by the petitioner in this writ petition.

4. The main contention on behalf of the petitioner was that the Presenting Officer for the department was one Shri B.S. Tikare, Principal, Prison Officer's Training School, Pune who was well versed in law and procedure and was an experienced person so far as field of law was concerned, but the petitioner was not allowed to be represented by a lawyer and his requests to that effect in the two letters written to the Government on 19-7-1986 and 28-7-1986 were turned down and he had to defend himself unaided in the proceedings. It was urged that this was in contravention of Rule 8(8) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979. While supporting the order of removal passed by the disciplinary Authority, the learned Government Pleader urged that the petitioner was a qualified person as he was an Agriculture Graduate and had risen from the position of Jailor to the post of Superintendent Class I and was, therefore, well versed in the matters relating to the prison Rules and maintenance of Prisons and therefore, no prejudice was caused to the petitioner and the enquiry against the petitioner was fair.

5. Rule 8(8) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979, is as follows :

"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."

The question in the present case is whether Shri Tikare the Presenting Officer could be described as a legal practitioner appointed for presenting the case. There is no denial of the averments in paragraph Nos. 29 and 30 of the petition in which the petitioner has stated that Shri Tikare was the Principal of the Prison Officers Training School, Pune and was well versed in law and procedure and was an experienced person so far as the field of law was concerned. In Para 27 of the

return, the respondents stated that the Presenting Officer Shri Tikare was a law graduate but was not a legal practitioner and so the request of the petitioner was rightly rejected. The expression "legal practitioner" came to be construed with reference to Regulation 12(8) of the Bombay Port Trust Employees Regulations, 1976 by the Supreme Court in Board of Trustees of the Port of Bombay v. Dilipkumar, 1983 Mh.L.J. 1 : 1983(2) Bom.C.R. 334 in the context of the procedure for Departmental Enquiry. There also the regulation provided that the employee may not engage a legal practitioner for the purpose unless the Presenting Officer appointed by the Disciplinary Authority was a legal practitioner or if the Disciplinary Authority granted permission to him to be represented by a legal practitioner. In this context it was observed as follows :

"A man of the establishment does the role of a Judge. It is held in the establishment office or a part of it. Can it even be compared to be adjudication by an impartial arbitrator or a court presided over by an unbiased Judge. The Enquiry Officer combines the Judge and prosecutor rolled into one. Witnesses are generally employees of the employer who directs an enquiry into misconduct. This is sufficient to raise serious apprehension. Add to this uneven scales, the weight of legally trained minds on behalf of the employer simultaneously denying that opportunity to delinquent employee. The weighted scales and tilted balance can only be partly restored if the delinquent is given the same legal assistance as the employer enjoys"

While construing an identical rule, Rule 15(5) of the Central Civil Services (Classification, Control and Appeal) Rules 1967, it was pointed out in C.L. Subramaniam Vs. Collector of Customs, Cochin, as follows :

"It is needless to say that R. 15 is a mandatory rule. That rule regulates the guarantee given to Government servants under Article 311. Government Servants by and large have no legal training. At any rate, it is nobody's case that the appellant had legal training. Moreover when a man is charged with the breach of a rule entailing serious consequences he is not likely to be in a position to present his case as best as it should be. The accusation against the appellant threatened his very livelihood. Any adverse verdict against him was bound to be disastrous to him, as it has proved to be . In such a situation he cannot be expected to act calmly and with deliberation. That is why Rule 15(5) has provided or representation of a Government servant charged with dereliction of duty or with contravention of the rule by another Government servant or in appropriate cases by a legal practitioner".

This Court while considering the expression : "legal practitioner" in Regulation 26(5) of the Khadi and Village Industries Commission Employees (Conduct, Discipline and Appeal) Regulations, 1961 observed in Venkataraman v. Union of India 1986 Mh.L.J. 60 that the words "legal practitioner" cannot be read in their narrow sense as commonly understood. It is enough if the Prosecuting Officer without being a legal practitioner is a legally trained mind with his ability and vast Experience as a prosecutor in domestic matters. Therefore, where on behalf

of the employer an inspector who had been looking after the domestic enquiries for several years with his ability any vast experience was allowed to appear and the employee claimed that he was entitled to be represented by a legal practitioner, it is clear that in such a case, the employee cannot be denied to be represented by a person having legal knowledge, and if the enquiry is carried on denying opportunity to the employee of legal assistance, such domestic enquiry and the findings therein and the action taken on that basis would stand vitiated.

6. The learned Government Pleader relied on Krishna Chandra Tandon Vs. The Union of India (UOI), and H.C. Sarin Vs. Union of India (UOI) and Others, for the proposition that the refusal to allow a legal practitioner to represent the delinquent would not vitiate the enquiry. In Krishna Chandra's case, no legal practitioner was employed by the Department and therefore, it would be of no assistance to the respondent, while in H.C. Sarin's case Rule 1730 of the Railway Establishment Code, Vol. 1, which prescribed procedure for holding a departmental enquiry said nothing in relation to the engagement of a lawyer and in regard to the provisions therein it was held that under the rule the appellant was not entitled to the services of a professional lawyer. In the present case we are dealing with an entirely different set of rules which entitle the employees to be represented by a lawyer in the event of the Department being represented by a legal practitioner.

7. The learned Government Pleader urged that since the petitioner was himself conversant with the Prison Rules and has put in 32 years of service in the jail, no prejudice has been caused to him. However, having regard to the rule which entitles the Government servant in the given circumstances to be represented by a lawyer, the question of prejudice would be entirely irrelevant. There is nothing in the return filed by the respondents to show that the petitioner was familiar with the procedure for holding Departmental Enquiries when Shri Tikare who held the high post of the Principal, Prison Officer Training School, had a distinguished record of service in the Department and was also a law graduate. Having regard to the complexity of the case as there were 19 heads of charges and there was to be a joint trial of the petitioner with 8 others, it could not be said that the enquiry was a simple affair which could have been adequately faced by the petitioner unaided. Our attention was drawn by the petitioner's Counsel to para 3(e) of the reply filed by the State in Writ Petition No. 2639 of 1987 which the petitioner had brought challenging the order of his suspension wherein the following statement was made :

"The Enquiry Officer completed the enquiry and submitted his report to Government on 5-11-1986. I say that the said report of the Enquiry Officer consists of 125 pages and the evidence collected for the enquiry is very bulky. There are 8 co-delinquents of the petitioner and as many as 19 charges have been levelled against the petitioner. The charges are very serious. Some of the charges relates to giving of impermissible extra facilities to the under trial prisoner, gross negligence of duties in which he failed to control the prisoner a

notorious criminal Abdul Hamid in the Byculla District Prison when the later was threatening the staff member with pistol/knife. Such an action on the part of the petitioner and others constitutes a very serious matter."

8. The above extract would show how the Disciplinary Authority itself was of the view that the matter was highly complicated and it would therefore, be idle to pretend that in a matter so complicated, the petitioner who had no legal training could easily put up his defence. The circumstance that two highly placed superior officers viz. Inspector General of Prisons and Deputy Inspector General of Prisons were witnesses at the trial and had to be cross-examined, also indicate the constrains under which the petitioner would be, if such witnesses were to be cross-examined by him in person without any proper assistance. It is not, therefore, possible for us to agree with the learned Government Pleader that the petitioner despite all the experience he had, was in a position to adequately defend himself at the Disciplinary Enquiry. The consequence would be too serious for the petitioner if he were to falter in defending himself at such an enquiry. This disposes of the contention of the learned Government Pleader that no prejudice was caused to the petitioner by not permitting him to engage a lawyer.

9. Obviously the petitioner had a right to be represented by a lawyer, and he was not permitted to engage a lawyer. The enquiry would be vitiated and the order of removal which came to be passed by the Disciplinary Authority while reversing the finding on some of the charges recorded by the Enquiry Officer and substituting the punishment of removal from service instead of withholding one increment for three years would be unsupportable.

10. In the result, we allow the petition, quash the enquiry and the order of removal dated 12-2-1988 passed against the petitioner and direct the petitioner to be reinstated in service. The respondents would be at liberty to hold a fresh Departmental Enquiry, if so advised, after giving to the petitioner proper opportunity as contemplated by the rules by which he is governed. Rule made absolute in these terms. No order as to costs.