
(1965) 12 KL CK 0026
In the High Court Of Kerala

Chandu Nair (P.)	Vs	APPELLANT
Superintendent of Police and Another		RESPONDENT

Date of Decision : 13-12-1965

Acts Referred:

Constitution of India, 1950 — Article 226, 311, 314

Citation : (1967) 1 LLJ 346

Hon'ble Judges : P. Govindan Nair, J

Bench : Single Bench

Judgement

P. Govindan Nair, J.—The petitioner who was a sub-inspector of police in the service of the State was dismissed by the State Government from service by Ex. P. 13 order. It is this order that is impugned in this writ application.

2. The first contention that has been raised is that the procedure adopted of directing the Tribunal for Disciplinary Proceedings to conduct an enquiry against the alleged misconduct of the petitioner is against the rules applicable. According to counsel for the petitioner, the enquiry against the petitioner can be conducted only in accordance with the provisions in the Kerala Police Departmental Inquiries, Punishment and Appeal Rules, 1958. It is urged that the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960, apply only to such services as are enumerated in Schs. I and II thereto. The Kerala police personnel are not included therein. So it is urged that an enquiry has to be conducted by an officer appointed in accordance with Rule 8(1)(iii) of the Kerala Police Departmental Inquiries, Punishment and Appeal Rules, 1958, or by the appointing authority or the head of the department or an officer of the department appointed by the appointing authority or the head of the department or a special officer or Tribunal appointed by the Government for the purpose. It is said that there has been no enquiry conducted as envisaged by the above rules by the authorities mentioned therein and that there has been no special appointment of any special Tribunal as envisaged by that rule. The whole enquiry proceedings conducted by the Tribunal for Disciplinary Proceedings is, therefore,

ineffective.

3. I do not think that tills contention can stand. The Kerala Civil Services (Disciplinary Proceedings Tribunal) Rules, 1960, will apply to all officers under the rule-making control of the State Government other than those referred to in Article 314 of the Constitution of India [see Rule 1(c)]. The petitioner also comes under the category of officers to whom the said rules are applicable. So the Kerala Civil Services (Disciplinary Proceedings Tribunal) Rules, 1960, will apply to the petitioner as well. Rule 4 thereof stated:

The Government may refer to the Tribunal any case or class of cases which, they consider, should be dealt with by the Tribunal.

This rule enables the Government to refer to the Tribunal a case against the petitioner and the Tribunal has been defined in Rule 2(c) to mean the Tribunal for Disciplinary Proceedings. So the reference to the Disciplinary Proceedings Tribunal in this case seems to be warranted by the provisions of the Kerala Civil Services (Disciplinary Proceedings Tribunal) Rules, 1960. The only question, therefore, is whether the provisions of the Kerala Police Departmental Inquiries, Punishment ,and Appeal Rules, 19B8, make It obligatory that action should be taken against police officers only under these rules. There is nothing like that seen from those rules. So it is for the Government to decide under which provision action will have to be taken depending upon the nature of the misconduct against the particular officer and the nature of the enquiry that will have to be conducted. The first contention raised by counsel on behalf of the petitioner must, therefore, fail.

4. Various other contentions have been raised In this writ application and have been relied on at the time of arguments. But the points that arise for determination are those relating to the contentions on the basis of which It is urged that there has been a denial of fair and reasonable opportunity and violation of the principles of natural justice. Such contentions may be grouped under the following heads:

(1) the evidence of witness 1, one Sri Ramadas, examined by the Disciplinary Proceedings Tribunal during the enquiry, should not have been relied on at all. It is urged that his position was that of a co-accused and, therefore, his statements were not credit-worthy;

(2) the non-examination of the two ladies, the room occupied by whom in the Malabar Hotel, it was alleged, was searched by the petitioner along with others, as well as the non-examination of one Sri Nayak has prejudiced the petitioner;

(3) of the four charges framed against the petitioner, as seen from Ex. P. 3, the memorandum of charges only one had been found by the Tribunal to be established. Nevertheless the State Government in the show-cause notice, Ex. P. 2, have relied on three charges. It is suggested that if the State Government had not relied on charges (1) and (3) mentioned in Ex. P. 2 they might not have

come to the conclusion that the petitioner should be dismissed from service; finally

(4) It is alleged that the Government themselves have taken action of dismissing the petitioner. The right of appeal conferred on the petitioner from the action taken by the appointing authority or the head of the department, etc., under the rules, has been thus denied to the petitioner.

5. Dealing with the first of these contentions, the case is that the first witness examined, one Ramadas, was present with the petitioner as well as the Magistrate at the Casino Hotel and the Malabar Hotel and other places they visited. His evidence is, therefore, relevant and in what sense it is said, that he is a co-accused is not clear. There can be no bar in disciplinary proceedings in relying on the evidence of such a witness. The petitioner had full opportunity to cross-examine that witness and there has been no violation of the principles of natural justice. So I am not prepared to accept the contention that the examination of the said Ramadas and the reliance on his evidence have vitiated the proceedings.

6. Nor can I accept the contention that the non-examination of the two ladies and one Sri Nayak has affected the validity of the proceedings. It is said that the two ladies had left station by the time and were not available. If the petitioner wanted to examine those witnesses he should have taken steps for their examination. Those directions equally will apply to Sri Nayak as well. Charge (3) in Ex. P. 3 reads as follows:

You with deliberate intention to screen your misconduct which is covered by charge (2) fraudulently created false records of search with the active connivance of Sub-Magistrate knowing fully that you had no jurisdiction over the area.

7. It is this charge that the Tribunal has found against the petitioner. So far as this charge is concerned, the evidence of the two ladies and of Sri Nayak is not material. I, therefore, reject the contention (2) formulated above as well.

8. After dealing with the evidence of the witnesses examined regarding the movements of the petitioner and the Sub-Magistrate, the Tribunal observed in Ex. P. 10 as follows:

Two other records relied upon to support the defence contention that accused 1 and 2 were not in the Malabar Hotel before 11-45 p.m. or so on that date are Exs. P. 17 and P. 18. -Exhibit P. 17 purports to be a request that a search warrant might be issued to conduct a search of rooms in the Malabar Hotel submitted by accused 2 to accused 1 on 2 June 1961, There accused 2 refers to his noting the oar No. KLR. 2461 at about 11-30 p.m. going with two ladles suspected to be engaged in smuggling. On that basis he asked for a search warrant. On the back of it accused 1 has endorsed that be was. satisfied that there were reasonable grounds that gold and ganja were likely to be kept and since the Court seal was not with him then, he was going with the sub-Inspector and that the sub-

Inspector was directed to make the search in his presence. Then there is Ex. P. 18 purporting to be the search list prepared soon after the search was conducted. There the time of the search was given as 12-10 a.m. to 1 a.m. It is signed by accused 2 as well as accused 1 and also by a witness, viz., Nayak. The prosecution did not examine this witness Nayak. The defence who had full opportunity to examine him also did not choose to put him into the box. Now if the entries in the records are accepted as bona fide ones, then it is clear P.W. 1 and other witnesses who depose to the movements of accused 2 and accused 1 till they reached the Malabar Hotel, could be true. Now P.W. 1 has deposed to his meeting accused 2 in Nayak's house somewhere about 8 p.m. on that night and to his accompanying accused 2 up to the time of their reaching the Malabar Hotel after visiting the Circle Inspector's house and the Casino Hotel. I have already referred to the evidence of Casino Hotel employees who deposed to the presence of the first and second accused in that hotel long before 11 o'clock. I have also referred to the Malabar Hotel employees who depose to the two accused reaching the Malabar Hotel somewhere about 10 p.m. Besides, there is the evidence of Sri Kini, P.W. 8, to the effect that he met accused 1 and 2 in the Malabar Hotel before 11 p.m. The evidence of some of the Malabar Hotel employees go to show that they were not at all going out of their way to support the prosecution. Many of them have resiled here on certain Important points from the versions given by them to the investigating officer. The entries in the records already referred to are self-serving entries. There was a clear motive for accused 1 and 2 for manipulating the records. Accused 3, the head constable, was under accused 2 and accused 2 could easily have forced him to make the entries now found in his notebook to Support the general diary entries. It is rightly pointed out by the prosecutor that the notes on other days in Ex. P. 20 of accused 3 go to show that after his making the entry that he had left the station for his quarters if at all he returned to the station that fact was noted. But with regard to the relevant entries, there is no such thing. After he stated that he had left for his quarters, he only begins by saying, that he left with accused 2 at 8-30 p.m. So I believe the evidence of P.W. 1 and other prosecution witnesses with regard to the movements of accused 1 and 2 till they reached the Malabar Hotel at about 10 p.m. Hence it follows that the prosecution case that accused 2 went to the Circle Inspector's house, took drinks there in the company of accused 1, and then they went to the Casino Hotel and after taking drinks there went to the Malabar Hotel somewhere about 10 p.m. has to be accepted. Held accordingly.

Then dealing with point 5 formulated by the Disciplinary Proceedings Tribunal, the Tribunal came to the conclusions:

So there is clear evidence to show that all these documents except the petty case register were clearly concocted. With regard to the entries in the petty case register as I have pointed out that there is nothing in those entries connecting accused 2 or even, accused 3 with that case, it cannot be held that they are concocted entries. It can only be held that that petty case was sought to be made use of by manipulating other records for the purpose of the defence. As

accused 1's orders are found in Ex. P. 17 and his signature in Ex. P. 18 it must be held that he had a part in the fabrication of these documents as his defence also depended upon these records. As already pointed out the entries in Ex. P. 20 by accused 3 now found to be false could have been made only at the instance of accused 2 as accused 3 had no other motive.

I have carefully perused the evidence in regard to points 3 and 6 formulated by the Disciplinary Proceedings Tribunal and dealt with in Paras 19 and 22 of the report of Ex. P. 10. It is impossible to say that there is any circumstance which can be relied on in proceedings under Article 226 of the Constitution for objecting to the findings entered on charge (3) against the petitioner. This is a very grave charge. In matters like this, it is the satisfaction of the authority or the State Government that is necessary. If, therefore, there was material before the State Government which would entitle the State Government to dismiss the petitioner, the fact that they relied on additional material as well cannot vitiate the conclusion reached by them. The contention (3) raised by the petitioner also must, therefore, fail. "

9. It cannot be said that the State Government itself cannot dismiss a State employee. The only restriction is that contained in Article 311(1) that no person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. From the mere fact that if disciplinary action had been taken against the petitioner by the appointing authority he would have been enabled to appeal before the State Government it cannot be said that any right of his has been infringed by the State Government itself taking action. Even in cases of appeals before the State Government the decision has finally to be taken by the State Government. The fact that decision was taken earlier, cannot invalidate that decision. I, therefore, reject this contention as well.

10. There was one other point urged and that related to the competence of the District Superintendent of Police to suspend the petitioner. The argument is that the District Superintendent being not the appointing authority and not being an authority to which the appointing authority is subordinate he has no power to suspend the petitioner. This is also clear from Rule 7 of the Kerala Police Departmental Inquiries, Punishment and Appeal Rules, 1958. This point has been dealt with by my learned brother Justice Sri Mathew in Original Petition No. 1606 of 1965, I respectfully adopt the reasoning in that judgment and held that the District Superintendent of Police is not incompetent to pass an order suspending a sub-inspector of police pending enquiry.

11. In the result I dismiss this petition. There will be no order as to costs.