(1959) 09 OHC CK 0001

In the Orissa High Court

Case No : O.J.C. No. 243 of 1958

Dinabandhu Rath APPELLANT

Vs

State of Orissa and Others RESPONDENT

Date of Decision : 03-09-1959

Acts Referred:
Constitution of India, 1950 — Article 226, 311

Citation : AIR 1960 Ori 26

Hon'ble Judges : R.L. Narasimham, C.J;G.C. Das, J

Bench : Division Bench

Advocate : B.K. Pal and S. Misra, for the Appellant; Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Narasimham, C.J.—This is a petition under Article 226 of the Constitution against an order dated 14-3-1957, passed by the Collector of Cuttack, dismissing the petitioner from Government service. An appeal against the Order of dismissal was rejected by the Revenue Divisional Commissioner on 17-8-1958.

2. The petitioner was a permanent Office Superintendent of Cuttack Collectorate. On 20-11-1949 the Director of Agriculture and Food Production Orissa, sent two decrees, for a total sum of Rs. 22000/- obtained by the State of Orissa against (1) Sri Gopabandhu Das and (2) Sri Chandra Kisore Das, to the Collector for execution and realisation of the decretal amount. No effective steps were taken in the Collectorate for filing execution petitions with the result that the execution of the decrees got time barred. This led to a preliminary investigation to fix the primary responsibility on the various ministeral officers of Cuttack Collectorate for the loss of so much money to Government. A Deputy Collector named Shri B. C. Patnaik made the preliminary investigation and in his report dated 17-2-1953 submitted to the Collector (Annexure B) he fixed the responsibility primarily on the Sadar Kanungo Shri Krushna Mohan Das (who was conveniently dead by that time) and also, to some extent, on other ministerial officers. He did not directly

apportion any blame on the Office Superintendent.

The then Collector of Cuttack (Shri R. G. Das) appears to have accepted the findings of Sri Patnaik and reported the matter to the President of the Board of Revenue, Sri N. Senapati, who, however, was not satisfied with the report. He drafted a regular departmental proceeding against the petitioner Sri Dinabandhu Rath and two clerks of the Cuttack Collectorate named Nabakishore Mohanty and Sahadeb Das and also wrote to the Collector demiofficially directing him to place them under suspension, conduct the proceedings and punish them himself. A copy of this demi-official letter (No 661 PBR dated 29-9-1953), addressed to the Collector, is reproduced below as some argument was addressed on the contents of that letter (Ann. T) :

"D.O. No. 661 PBR. Cuttack, 29-9-1953.

My dear Anantha Krishnan,

I have sent you separately a copy of my re port on the loss to Government caused by failure on the part of the Collector of Cuttack io execute cer tain decrees. I have have drafted proceedings against Sri Dinabandhu Rath, Office Superintendent, Sri Nabakishore Mohanty, clerk and Sri Sahadeb, Clerk. You should sign the proceedings and serve it on them. You should also place them under suspen sion. You should conduct the proceedings and pu nish them yourself. Government hope that the pro ceedings will be conducted expeditiously.

Sri V. V. Anantha Krishnan Yours sincerely.

I.A.S.

Collector of Cuttack

Sd N. Senapati. 29-9-53

.. .. On receipt of Mr. Senapati''s s letter, the Collector Mr. Anantha Krishnan framed two charges against the petitioner. They are as follows :

"(1) You persistently neglected your most important duty, viz., inspection of the work of the Assistants in the Collectorate''s Office including the Munshikhana where execution of decrees is being dealt with; and your negligence has resulted in a loss of about Rs. 22,000/- to Government due to non-execution of decrees against Sri Gopabandhu Das and Chandra Kishore Das sent to the Collectorate by the Agricultural Department for execution and which decrees got time barred by limitation.

(2) You suppressed information from the Collector relating to the loss of decrees, against Chandra Kishore Das and two others which is a grave dereliction of duty." (vide annexure D),

On receipt of the charges, the petitioner requested the Collector to give him copies of the statements of some of the ministerial officers of the Collectorate recorded during the preliminary investigation made by Sri B. C. Patnaik and also of some other papers. He also prayed for time to go through & take notes'' from certain relevant files of the Cuttack Collectorate. His prayer was substantially allowed by the Collector by his order dated 31-12-1.953 (Annexure G) and then he submitted a lengthy explanation on 30-1-1954 (Annexue I).

3. So far as charge No. 1 was concerned the main defence of the petitioner was that execution of decrees was dealt with in the Revenue Munshikhana of the Cuttack Collectorate and that branch was not under his control and consequently he was not responsible for the negligence of the staff of the Munshikhana. He relied very much on Salary Commission''s Report regarding the duties of the Office Superintendent and also urged that on no previous occasion had any Office Superintendent inspected the Revenue Munshikhana.

4. With regard to charge No. 2 the petitioner admitted that one of the assistants of the Collectorate had brought to his notice the loss of the file dealing with the two decrees, but he also added that he casually suggested to that assistant to make a search for the same in the residence of the late Sadar Kanungo and that the file was traced out after search from the Sadar Kanungo''s house. According to him, it was the duty of the assistant in charge of the Revenue Munshi-khana to bring these facts to the notice of the Collector and the Office Superintendent had nothing to do with the same.

5. On receipt of the explanation Sri Anantha Krishnan informed him that he would be given a personal hearing on 20-4-1954 at 10 a.m. On that day the petitioner was fully heard by the Collector and the substance of the talks which he had was reproduced in the form of a memorandum signed by Sri Anantha Krishnan and the petitioner (Annexure K). In that last portion o? this memorandum it was noted as follows :

"Sri Rath does not wish to adduce any other evidence. In conclusion Sri Rath spoke before me of his long service of 30 years (since 1933) and his good record in the Collectorate."

Though the petitioner thus made it absolutely clear before the Collector that he did not wish to adduce any other evidence four months later-on 17-8-1954- he filed a petition before that Officer requesting himi io supply copies of certain documents so that they may be brought on the record dealing with the departmental proceeding against him (see Annexure L). He reiterated this prayer by several further letters (Annexures L-l to L-4). But this prayer was refused and then by his order dated -30-4-1956 (An-> nexure M) the then Collector Sri S. K. Ran held that both the charges against the petitioner were proved and called upon him to show cause why lie may not be dismissed from Government Service.

This notice was given in compliance with the requirements of Article 311(2) of the Constitution. In this notice the Collector further informed the petitioner that if he so desired he would be prepared to give him another opportunity to be personally heard. To this the petitioner never submitted any definite reply, but took time after time under some pretext or other. He wanted a copy of the statement which he had made before Sri Anantha Krishnan on 20-4 1954 and that was supplied to him.

Then he wanted a copy of some confidential report made by the President, Board of Revenue, but that was refused. His prayer to go through some of the files in the Collectorate was allowed and he was permitted to take notes from those files and from some registers. Having thus inspected the papers and taken notes of the same the petitioner in his letter dated 24-9-1956 (Annexure N/3) requested the Collector to keep on the record of the departmental proceeding copies of several papers and orders numbering in all twenty-seven. Copies of these papers were not granted but he was permitted to see all the papers that were available in the Collectorate.

But the petitioner was not satisfied and he wanted to be supplied with authenticated copies of several documents. This request was not granted and finally the then Collector Sri Rammurty by his! order dated 14-3-1957, (Annexing 0) held that the petitioner was deliberately delaying the submission of his explanation to the notice under Ant. 311(2) of the Constitution that had been issued to him by his predecessor on 30-4-1956 under some pretext or other though he was given ample opportunity, and then dismissed him from Government service.

7. In support of this application Mr. B. K Pal raised two contentions :

(i) The demi-official letter of Mr. Senapaty dated 29-9-1953 addressed to the Collector amounted to a direction to that officer to punish the petitioner after holding some sort of departmental enquiry. Thus the Collector was not given a free hand to judge whether the petitioner was guilty of the charges or not, and as such the departmental proceeding was a mere farce.

(ii) Rule 55 of the Civil Services (Classification, Control and Appeal), Rules and Article 311(2) were not complied with in spirit inasmuch as the petitioner did not get a fair opportunity to adduce evidence to establish his innocence.

8. As regards the first point, though Mr. Sena-pati''s letter has not been happily worded a fair reading of the same would show that there was no direction to the Collector to punish the petitioner irrespective of whether he was guilty or not. Mr. Senapati prepared the draft proceedings against the petitioner and told the Collector to serve them on the petitioner, place him under suspension and then conduct the proceedings and punish him. It would have been much better if he had said that the petitioner may be punished if the Collector after due enquiry found him guilty of the charges. But I think this is implicit in the letter. Moreover the manner in which the proceedings were conducted subsequently does not show that there was any attempt to hurry through the same and to punish the petitioner before arriving at a proper finding about his guilt or innocence,

Most of the documents which he wanted to see were made available to him. He was given a personal hearing and a reasoned order was written by the Collector

Sri S. K. Rau two years after the proceedings had commenced and he was held guilty of the two charges. Moreover when the petitioner was dismissed from service by Sri Rammurty on 14-3-1957 Sri Senapati had ceased to be the President of the Board of Revenue and there could be no question of the Collector being over-awed by his superior. The petitioner''s appeal was heard by the Revenue Divisional Commissioner Sri P. K. Tripathy who in his order dated 17-8-58, discussed all the facts of the case carefully and gave good reasons for upholding the Collector''s order.

Hence, though I would agree with Mr. Pal that the letter of Mr. Senapati dated 29-9-1953 might have been more happily worded so as not to create an impression that the petitioner had already been found guilty of the charges, yet the manner in which the Collector conducted the proceedings sub-sequently leaves no room for doubt that he understood that letter only to mean that a regular departmental proceeding should be conducted and the petitioner should be punished if he was found guilty of the charges.

9. As regards the second point no oral evidence was required to be adduced to prove the charges against the petitioner inasmuch as he had himself admitted in his explanation all the facts necessary to establish the same. Thus, with regard to charge No. 1, he admitted that he did not inspect the Revenue Munshikhana and! that he exercised no control over it. His explanation was that as recommended in Salary Commission''s Report that branch of the Collectorate was not kept in his charge and that on no previous occasion was it over controlled by his predecessors in Office. In view of this statement there was no necessity for the Collector to examine any witness to prove the charge and the whole question turned on whether the petitioner''s interpretation of the Report of the Salary Commission was correct or not. The Collector Sri S. K. Rau as well as the Commissioner Sri P. K. Tripathy have carefully examined this question and pointed out that the petitioner''s interpretation was incorrect.

10. Similarly, as regards charge No. 2, the petitioner admitted in his explanation that though he was not himself aware of the fact that the decrees were lost, yet an assistant of the Collectorata brought to his notice that the file dealing with that matter was missing and that it was at his (petitioner''s) instance that a search was made for the papers in the Sadar Kanungo''s house and subsequently some of the papers were recovered. Ordinarily one would expect the seniormost ministerial officer of the Collectorate, namely the Office Superintendent to inform the Collector at once when a matter of such a serious nature was brought to his! notice and also to inform him when the papers were subsequently traced out. The substance ot the second charge was that he suppressed these facts. The petitioner admitted that he did not inform the Collector about what he had heard from the Assistant or what he had suggested to him, but explained the omission by merely saying that that was not his function. This again did not require any evidence to be led against him in the enquiry.

11. In my opinion the petitioner was given an adequate opportunity to defend

himself during the departmental enquiry. It is true that in his first explanation dated 30-1-1954, he asked for a personal hearing with a view to elucidate his explanation "if necessary by adducing evidence in support of my innocence", but during the persoral hearing given to him by the Collector on 20-4-1954 he did not ask for an opportunity to adduce evidence on his behalf. On the other hand, though his attention was specifically drawn to his notes dated 27-12-1949 and 13-2-1952, on the relevant file he merely gave some explanation and did not ask for an opportunity to examine any witness in support of his explanation.

Again as regards charge No. 2, Sri Anantha Krishnan specifically drew his attention to the statement of Sri D. Misra in the preliminary investigation by Sri B. C. Patnaik and also the petitioner''s own statement before the Officer on 17-2-1958 (An-nexure A-4) in which he had clearly admitted that the loss of the decrees and other relevant papers was reported to him by Sadar Kanungo Sri Upendra Misra and that later he came to know that some of them were found out. The petitioner gave some explanation but did not ask for permission to cross-examine Sri Upendra Misra or to adduce further evidence on his behalf.

On the other hand, he expressly stated that he did not wish to adduce any other evidence. It is true thai later on he changed his mind and wanted the Collector to grant him copies of certain documents so ''that they may be placed on record. In such circumstances it was within the discretion of the enquiring officer, to consider whether those documents were really material and if he considered them to be not relevant for the purpose of enquiry it was open to him to reject the prayer of the petitioner.

12. I must, therefore, hold that Rule 55 of the Civil Services (Classification, Control and Appeal) Rules has been substantially complied with. The charges were well established on the facts admitted by the petitioner himself in his first explanation and also in his own statement before Sri B. C. Patnaik on 17-2-1953 and in the statement made by him when a personal hearing was given to him by Sri Anantha Krishnan on 20-4-1954. A belated attempt was made to show that the statement was not recorded correctly by Sri Anantha Krishnan, that the petitioner was forced to sign the same and that he should not therefore be held liable for what was recorded in the memorandum. This plea was rightly rejected by the authorities concerned. The petitioner is an experienced ministerial officer with a good knowledge of English. He could not have signed the statements recorded in Annexnre K if he had felt any doubt about the correctness of the record.

13. Mr. Pal then contended, relying on some observations in Khem Chand Vs. The Union of India (UOI)and Others, that after the completion of the enquiry under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, the petitioner was again entitled to a second opportunity to establish his innocence when the notice under Article 311(2) of the Constitution was served on him, and that this opportunity was denied to him in the present case. Mr. Pal is not right in saying that even after the completion of a proper enquiry under Rule 55 of the

aforesaid Rules the petitioner was entitled to a second opportunity to establish his innocence. On the other hand in that case their Lordships of the Supreme Court definitely negatived such an argument in the following words :

"Of course if the Government servant has been through the enquiry under Rule 55, it would not be reasonable that he should ask for a repetition of that stage if duly carried out, which implies that if no enquiry has been held under Rule 55 or any analogous rule applicable to the particular servant, then it will be quite reasonable for him to ask for an enquiry."

In the instant case, however, we are satisfied that there was a substantial compliance with Rule 55 and the only opportunity which the petitioner was entitled to was the opportunity to show cause against the punishment proposed against him, namely, dismissal, as contemplated in Article 311(2) of the Constitution. That opportunity was given to the petitioner by the Collector in his order dated 30-4-1956 (Annexure M). In that order the Collector also informed the petitioner that he would be prepared to-give him a personal hearing if he so desired. Even after the receipt of this notice the petitioner did not choose to submit any explanation and he delayed the proceeding on some pretext or other.

His prayer for inspecting certain documents and files in the Collectorate was allowed except in regard to those that were considered confidential or those which were not available in that office. He. was also permitted to take notes during such inspection. In his letter to the Collector dated 24-9-1956. (Annexure N/3) he clearly admitted this fact, but in his subsequent letter (annexure N/4) dated 7-11-1955 he stated that mere inspection and taking of notes would not help him in his defence and he wanted true copies of those documents.

In these circumstances the Collector was justified in observing that the petitioner was adopting dilatory tactics. There is no necessity to have authenticated copies of the documents. If he wanted to rely on any entries in these documents in support of his explanation it was open to him to mention them briefly in his explanation because he had? already been permitted to inspect them and take notes. It would then have been the duty of the Collector to scrutinise the original documents with reference to his explanation and then give his own findings.

14. I must, therefore, hold that though the petitioner was given a reasonable opportunity to show cause against the punishment proposed against him, as required by Article 311(2) of the Constitution, he did not avail himself of the same but only tried to delay matters, on some pretext or other, for nearly eleven months from 30-4-1956 till 14-3-1957 when the final order of dismissal was passed.

15. It is not the function of this Court, in exercise of its jurisdiction under Article 226 of the Con- stitution, to examine whether the materials on record would be taken as sufficient by another authority to hold the petitioner guilty of the charges and whether the punishment was too severe in view of the fact that the charges dealt only with negligence in the discharge of his duties and did not

involve any element of corruption. These are matters to be considered by the superior officers of Government. It is still open to the petitioner to file a memorial to the Government for modification of the punishment. We are satisfied, however that the departmental enquiry against him was conducted properly and he was given adequate opportunities to defend himself as required by law.

16. The application is therefore, dismissed with costs. Hearing fee is assessed at Rs. 100/-(Rupees one hundred only).

Das. J.

17. I agree.

