
(1965) 02 MAD CK 0034
In the Madras High Court

Felix Fernandez

APPELLANT

Vs

Integral Coach Factory (by Deputy Chief Mechanical Engineer
(Stores)) and Another

RESPONDENT

Date of Decision : 26-02-1965

Acts Referred:

Constitution of India, 1950 — Article 226, 311
Penal Code, 1860 (IPC) — Section 379

Citation : (1966) ILR (Mad) 365 : (1966) 2 LLJ 881 : (1966) 79 LW 422

Hon'ble Judges : Chandra Reddi, C.J.;Kailasam, J

Bench : Division Bench

Judgement

Kailasam, J.—The two writ appeals and the writ petition are posted together as a common question of law is involved, in Writ Petition No. 159 of 1961, against which Writ Appeal No. 14 of 1964 is preferred, Veeraswami. J., held that in an enquiry under Article 311 of the Constitution of India, if after setting out the charge a delinquent is asked to show cause why he should not be dismissed" or otherwise punished for the disciplinary conduct, the method of framing the charge is not in consonance with Article 311 of the Constitution of India. According to the learned Judge, the fact that the proposed punishment is mentioned In the charge can only show that even before the charge was enquired into and a finding arrived at on the basis of the enquiry, the delinquent had been prejudged and therefore the order of dismissal is liable to be quashed. In Writ Petition No. 462 of 1961 against which Writ Appeal No. 5 of 1964 is preferred, Srinivasan, J., found himself unable to follow the decision of Veeraswami, J., in Writ Petition No. 159 of 1961. Srinivasan, J., was of the view that the mere mention of the possible punishment in case the delinquent was found guilty of the charge would not amount to prejudging the question of guilt. In Writ Petition No. 749 of 1963 the view of Srinivasan, J., In Writ Petition No. 462 of 1961 was brought to. the notice of Veeraswami, J. As Veeraawami, J., felt that the view he took in Writ Petition No. 159 of 1961 was correct and was unable to accept the view of Srinivasan, J., he directed the matter to be placed

before a Bench.

2. Apart from the common question of law that arises in Writ Appeals Nos. 5 and 14 of 1964 and Writ Petition No. 749 of 1963, other questions that were raised in the respective causes will be referred to separately. The common question of law arising in all the cases may first be considered. The procedure contemplated in an enquiry against a public servant under Article 311 of the Constitution of India is

(1) to inform the delinquent of the charge levelled against him, and the allegations on which the charges are based,

(2) to provide an opportunity for the delinquent to cross-examine the prosecution witnesses, to examine himself and to adduce defence evidence, and

(3) to afford an opportunity to make representations as to why the proposed punishment should not be inflicted on him.

The delinquent should be given a reasonable opportunity to show cause twice before a punishment is inflicted. When the charges are enquired into, he should be given a reasonable opportunity to defend himself and again when after an enquiring authority has come to its conclusion on the charges and when the question of proper punishment to be awarded is being considered. In all the three cases before us it is not denied that the two opportunities were not given. It is contended that when the charge is followed by a memorandum calling upon the delinquent to show cause why he should not be dismissed or otherwise punished for the disciplinary conduct, the charge itself is vitiated, as the method of framing the charge is not in consonance with Article 311 of the Constitution of India and as the charge would indicate that the petitioner had been prejudged. There can be no doubt that, if the enquiring officer and the punishing authority had come to a definite conclusion about the "guilt of the delinquent at the time when the charge was given to the delinquent, there will be prejudging of the guilt of the delinquent and the entire enquiry would be vitiated. Apart from the memorandum following the charge directing the delinquent to show cause why he should not be punished, there is nothing to indicate, as a matter of fact, that there was any prejudging of the issue in any of the causes. On the other hand, in all the cases it can generally be stated that enquiries were conducted giving opportunities to the delinquent concerned, and after the report of the enquiring officer a further notice was given directing the delinquent to show cause against the punishment and after receipt of the explanation the punishment was imposed (the specific complaints made in each of the petitions regarding the enquiry will be dealt with separately). The question, therefore, is whether from the memorandum accompanying the charge calling upon the delinquent to show cause why he should not be punished it can be inferred that the delinquent's cause was prejudged. We are of opinion that no such inference can be made.

3. What is a reasonable opportunity that should be given to a delinquent in an

enquiry under Article 311 of the Constitution of India has been clearly set out by the Supreme Court in *Khem Chand v. Union of India* 1959 1 I.L.J. 167. the reasonable opportunity envisaged by the provision is summarized as follows:

(a) an opportunity to deny his guilt and establish his innocence which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally

(c) an opportunity to make his representations as to why the proposed punishment should not be inflicted on him ...

4. In the case cited, a chargesheet was given to the delinquent. After formulating several charges the document concluded as follows:

You are, therefore, called upon to show cause why you should not be dismissed from the service. You should also state in your reply whether you wish to be heard in person or whether you will produce defence.

5. It was not contended before the Supreme Court that, as the charge was followed by a memorandum calling upon the delinquent to show cause why he should not be dismissed, the issue was prejudged and the entire enquiry was vitiated.

6. In *A.N. D'silva Vs. Union of India (UOI)*, the charge that was handed over to the delinquent was followed by a memorandum directing him to show cause why in the event of the first charge being proved he should not be dismissed from service and why in the event of the second charge being proved he should not be permanently degraded. The enquiry officer held that charges 1 and 2 were proved. The punishing authority gave notice to the delinquent to show cause why he should not be dismissed from Government service. After obtaining the explanation from the delinquent the authority removed the delinquent from service. It was contended that the punishment proposed in the chargesheet was not removal for the charge for which he had been found guilty, and therefore, the order of punishment amounted to imposing a punishment different from the one which it was originally contemplated against him. The Supreme Court negated the contention holding that in the communication addressed by the enquiry officer the punishment proposed to be imposed upon the appellant, if he was found guilty of the charges, could not properly be set out. The Supreme Court further observed:

The question of imposing punishment can only arise after enquiry is made and the report of the enquiry officer is received. It is for the punishing authority to propose the punishment and not for the enquiry authority. The latter has, when so required, to appraise the evidence, to record its conclusion and if it thinks proper to suggest the appropriate punishment. But neither the conclusion on the

evidence nor the punishment which the enquiring authority may regard as appropriate is binding upon the punishing authority.

7. The duty of the enquiry officer is to record the evidence and submit a report, and the question of punishment is entirely to the hands of the punishing authority. The fact that a different punishment is mentioned by the enquiry officer would not in any way fetter the discretion of the punishing authority. In the case cited it was not contended that as in the memorandum accompanying the charge the delinquent officer was asked to show cause why he should not be dismissed, the enquiry was vitiated.

8. In *Prasada Rao (J. V.) v. South-eastern Railway, Waltair* 1959 1 I.L. J. 551, a charge-sheet with a memorandum directing the delinquent officer to show cause why he should not be reduced in rank, if the charge was made out, was served. A fresh notice was subsequently served on the delinquent to show cause why he should not be removed from service. An enquiry was conducted and after a farther notice to show cause against the punishment the delinquent was removed from service. It was contended that while the initial notice mentioned reduction to lower post, the second notice mentioned removal from service, and the proposed punishment in the second notice without communicating the new charges to the disadvantage of the delinquent was violative of the principles of natural justice and therefore not valid. The Court held that at the initial stage the civil servant concerned should be informed of the charge or the charges levelled against him so that he should be afforded an opportunity to deny his guilt and establish his innocence. The Court further observed as follows (pp. 553-554):

It is not shown that a show-cause notice issued by the competent authority cannot be cancelled nor is it shown that the authority is precluded from issuing a fresh notice. The civil servant has a right to be informed of the charge or charges levelled against him and must be given a reasonable opportunity, and so long as the opportunity given to the petitioner is not illusory, it cannot be said that the petitioner had suffered any prejudice by reason of the cancellation of the original charge-sheet and the issue of a fresh one.

9. It was not contended in that case that as the chargesheet was followed by a memorandum calling upon the delinquent to show cause why he should not be punished his cause was prejudged and therefore the enquiry was vitiated.

10. Under Article 226 of the Constitution of India the High Court is not constituted as a Court of appeal over the decision of authorities holding a departmental enquiry against a public servant. If it is satisfied that the enquiry was held by a competent authority and according to the procedure prescribed and that the requirements of natural justice had been complied with, the High Court will not interfere. If, on the other hand, it is proved that the enquiry was conducted in a manner inconsistent with the requirements of natural justice or in violation of any rules prescribed or in an arbitrary or capricious manner, the High Court will interfere. The delinquent cannot complain about any irregularity in in

the framing of the charges provided he had a reasonable opportunity to rebut the charges. He cannot complain against the frame of the charges so long as he is not prejudiced and a proper opportunity is given to him to rebut the charges against him. Even in a criminal trial the Court of appeal or revision does not interfere when there is an error or omission or irregularity in the charge. In the petition before us there is no evidence to show that officers, who conducted the enquiry, were in any way prejudiced. The memorandum following the chargesheet calling upon the delinquent to show cause why he should not be punished, in case the charge is made out, would not in any way indicate that the cause has been prejudged. The departmental rules in some cases, as In the case of Rule 1707 of the Railway Rules, provide for detailing the charge against the delinquent officer and calling upon him to show cause why he should not be punished if the charge is made out. The mere mention of the possibility of a punishment in case the charges are made out in the enquiry would not contravene the scheme of Article 311 of the Constitution of India. The delinquent himself would know that a punishment would follow if the enquiry goes against him. From the frame of the charge itself, no prejudice can be inferred. Further, in departmental enquiries the enquiry officer Is different from the punishing authority, and the enquiry officer only records the evidence in the enquiry. We are of the opinion that the mention of the punishment in the charge would not by itself indicate any prejudice on the part of the enquiry officer, much less on the punishing authority. We are in agreement with the view of Srinivasan, J., that the enquiry would not be vitiated by a memorandum accompanying the charge calling upon the delinquent to show cause why he should not be punished. The question of law is answered accordingly. Now we will deal with each of the petitions separately.

11. Writ Appeal No. 5 of 1964. The appellant was working as a maistri in the Perambur Integral Coach Factory. He was placed under suspension pending enquiry into certain charges that were framed against him. The charges referred to misconduct on the part of the appellant, in that on 19 July 1960, he grossly misbehaved in having indulged in disorderly and defiant conduct, In stopping work, coming out of the factory by the stores gate and Intimidating other workers also to come out between 13 and 14 hours on that day.

12. Ordinance I of 1960 called the Essential Services Maintenance Ordinance, 1960, was passed for the purpose of maintenance of certain essential services and normal life of the community. In the Ordinance " essential services" included railway services. The Ordinance empowered the Central Government to prohibit strikes in any of the essential services. Section 4 of the Ordinance made the commencement of, or going or remaining on, or otherwise taking part in any strike, which was illegal, punishable. On 8 July 1960 the Government issued a notification, prohibiting the strike in the railways. The notification was In effect on the date on which the offence was committed by the appellant. The charge was handed over to the appellant stating that he grossly misbehaved in having indulged in disorderly and defiant conduct on 13 July 1960 by

- (a) stopping work,
- (b) coming out of the factory by the stores gate, and
- (c) intimidating other workers also to come out between 13 and 14 hours on that date.

On receipt of the charge the appellant requested the railway authorities to nominate some other person in the place of A.S.O.R. as he wanted to cross-examine him. This request was conceded and a different board of enquiry was constituted and the enquiry proceeded with. It is not in dispute that the appellant came out of the workshop by the stores gate and was found near the administrative section. According to the prosecution, the appellant was not permitted to leave his workshop or come out of the factory ; while so, the appellant was seen in front of the administrative office leading about 300 to 400 workers and trying to force his entry into the administrative office compound, when the crowd was prevented by the police. It was further alleged that the appellant led the crowd, which was trying to break entry into the administrative office. The appellant in reply did not deny that he came out of the factory and was found with the crowd. According to him, he wanted to make a representation to the officer concerned and was in no way connected with the strike.

13. The officers, who conducted the enquiry, found that the appellant did lead a crowd of workers out of the factory, since the crowd wanted him to do so. A finding was also recorded that the appellant was leading a crowd of workers outside the gate. The appellant was also found to have stopped work and came out of the factory by the stores gate. Regarding charge 3, that he intimidated other workers, the finding was that it was partially made out. It was contended by the learned Counsel for the appellant that the most serious charge against the appellant was that he intimidated other work era to come out between 13 and 14 hours, and that this charge was found only partially proved. It was submitted that " partially proved" would show that the enquiry committee was not satisfied with the proof adduced by the prosecution, and that as the most serious charge was not made out, the punishment could not be sustained. This question was not presented before the learned Judge, who heard the writ petition in the form in which it is now before us. Nor is the point raised In the memorandum of grounds of appeal. But as there was some support to the contention of the learned Counsel in the order of the enquiry committee itself, we looked Into the entire records. We are satisfied that there is ample evidence to prove that the appellant not only stopped work and came out of the factory but also led" the crowd. There can be no doubt that he took an active part in the strike which was declared illegal. There is ample material to establish the charge against the appellant, and we see no ground for interference in appeal.

14. Writ Appeal No. 14 of 1964. The appellant is the State of Madras. A charge was given to the respondent on 9 October 1958 directing: him to show cause why he should not be dismissed from the force for absenting himself from duty.

He was found guilty of the charges and was dismissed on 9 February 1959. The respondent filed a petition to the Inspector-General of Police, Madras, which was rejected.

15. In the affidavit filed in support of the writ petition it was alleged by the respondent that the enquiry conducted against him was in violation of the principles of natural justice, as the enquiry was conducted in a language not known to him. It was also stated that the respondent was not permitted to cross-examine a sub-inspector and that some witnesses were examined behind his back. It was further alleged that he was not given an opportunity to examine defence witnesses. All these allegations were denied by the Assistant Inspector-General of Police. We do not see any justification for going into the merits of the allegations made by the appellant, as they have been denied. We do not see any illegality in the procedure to vitiate the enquiry. The writ appeal by the State is allowed.

16. Writ Petition No. 749 of 1963.--The petitioner was the sub-inspector of police. While he was at Perambalur, a cattle-theft case was reported and was registered as crime No. 32 of 1962 u/s 379, Indian Penal Code. The petitioner proceeded to Vriddhachalam shandi along with the complainant and on being shown the missing bulls the petitioner seized them. After seizure he took the bulls to Vriddhachalam Sub-Magistrate's Court. According to the petitioner, he was directed to take the bulls to the Sub-Magistrate's Court at Perambalur, and he handed over the bulls to the complainant for producing the same in the Court of the Sub-Magistrate, Perambalur. A chargesheet was filed and the accused in the case were acquitted. According to the prosecution, the petitioner seized Rs. 250 on 16 March, 1962 during the course of investigation of the cattle-theft case from a party without making a record of it and misappropriated the amount. After the cattle-theft case ended in an acquittal, the authorities took up the case against the petitioner. A charge was given to the petitioner. An oral enquiry was conducted. During the enquiry the petitioner submitted a list of witnesses to be examined on his behalf. The enquiry officer held that the examination of defence witnesses excepting one was unnecessary for the purpose. The petitioner preferred an appeal to the Deputy Inspector-General of Police against this order refusing to examine witnesses. The appeal was heard by the Superintendent of Police, Tiruchirappalli, who dismissed it. The enquiry officer made report that the charge against the petitioner was proved beyond doubt. The petitioner submitted further representations to the Deputy Inspector-General of Police on the proposed punishment of dismissal from service. The Deputy Inspector-General of Police after examining the records held that the offence was clearly brought home to the petitioner and dismissed the petitioner from service.

17. Apart from the question of law already decided, Sri Sharfuddin, learned Counsel for the petitioner, raised the following points on merits. As the learned Counsel submitted that arguments were not addressed on merits in the writ petition, we have permitted him to raise these questions. Learned Counsel

submitted that the enquiry was vitiated as the enquiry officer refused to permit the petitioner to examine defence witnesses cited by him. In the counter-affidavit it is explained that the witnesses who were examined in the oral enquiry did not tell about the police officers, who were cited as defence witnesses being aware of the seizure of the amount. As the prosecution did not allege that the defence witnesses knew about the seizure, and the only purpose stated by the petitioner for calling upon the witnesses is to prove that they had no knowledge, the enquiry officer was right in holding that the examination of the defence witnesses cited was unnecessary:

18. Learned Counsel further submitted that, though the petitioner preferred the appeal to the Deputy Inspector-General of Police against the order of the enquiry officer refusing to summon defence witnesses, the appeal was disposed of by the Superintendent of Police and that was an illegality. We are unable to accept this contention for the police standing orders do not provide for an appeal from an order refusing examination of witnesses to the Deputy Inspector-General of Police. The Superintendent of Police is superior to the officer making the enquiry, and has therefore powers to dispose of the appeal, though presented to the Deputy Inspector-General of Police.

19. Learned Counsel for the petitioner submitted that there were several Interlineations and corrections in the copy of the record given to him. These allegations were made only in the reply-affidavit filed by the petitioner. We have looked into the interlineations and we find that they are inconsequential in nature. The petitioner was given an additional copy to enable him to prefer an appeal to the Deputy Inspector-General of Police, and that copy was found to contain some Interlineations and corrections inconsequential in nature. We are unable to accept the contention of the learned Counsel that there was no proper enquiry. We are satisfied that there is no illegality in the proceedings taken by the authorities against the petitioner. This writ petition is therefore dismissed. There will be no order as to costs in all the cases.