
(1978) 07 KL CK 0009
In the High Court Of Kerala

G. Ravindran Nair

APPELLANT

Vs

Chairman, Cochin Port Trust

RESPONDENT

Date of Decision : 25-07-1978

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 408, 477A

Citation : (1979) 1 LLJ 94

Hon'ble Judges : V. Khalid, J

Bench : Single Bench

Judgement

V. Khalid, J.—The petitioner who was an employee of the Cochin Port Trust since 1967 was kept under suspension from 28-2-1975 by the second respondent, the disciplinary authority who is the Financial Adviser and Chief Accounts Officer, Central Accounts Department, Cochin Port Trust as per Ext. P1. The petitioner is a shroff in the Administration Section. Sri C.K. Ramankutty Menon, the 3rd respondent is a Senior Deputy Chief Accountant No. 1, Central Accounts Department, Cochin Port Trust. On 3-3-1975, the second respondent gave a first information statement Ext. P2 against the petitioner before the police.

2. On 28-7-1975 disciplinary proceedings were initiated against the petitioner under eight articles of charges for alleged misappropriation of a sum of Rs. 28,676.79. The criminal case and the disciplinary proceedings proceeded simultaneously. The third respondent was appointed as enquiry officer in the disciplinary proceedings. On 9-6-1977 the second respondent issued show-cause notice to the petitioner. Exhibit P6 dated 27-6-1977 is the reply to the said notice. The petitioner challenged the show-cause notice before this Court in O.P. 2098 of 1977 without success. On 22-8-1977 the petitioner was dismissed from service by the 2nd respondent as per his order, Ext. P7. Aggrieved by the said order of dismissal Ext. P7, the petitioner filed an appeal before the 1st respondent, the Chairman of the Cochin Post Trust. When the appeal was pending before the 1st respondent, the Chief Judicial Magistrate of First Class, Ernakulam before whom the criminal case against the petitioner was pending,

acquitted him as per Ext. P9 judgment. The first respondent dismissed the appeal as per Ext. P11 order. This order is under challenge in this petition.

3. In the counter-affidavit filed by the first respondent, the history of the proceedings which culminated in the dismissal of the petitioner has been given in detail. The first respondent supports the order of dismissal as being one passed in conformity with the rules governing the matter. The allegations in the petition against the enquiry officer and the procedure adopted have been denied.

4. The attack against the departmental proceedings are based on the following grounds:

(i) The enquiry officer who was appointed to enquire into the charges against the petitioner was biased against him. He is superior to the petitioner and works in the same department. He is, therefore, highly interested in finding out a scape goat for the alleged misappropriation of funds from the Port Trust.

(ii) The petitioner was prevented from actively participating in the domestic enquiry since he was refused the assistance of a lawyer and even of another employee. This also to violation of principles of natural justice.

(iii) The unseemingly haste with which the departmental proceedings were continued when a criminal case on the same charge was pending before a court of competent jurisdiction and the consequent dismissal of the petitioner before waiting for the trial Court's judgment in the criminal case show that manifest injustice was done to the petitioner. In other words the contention put forward is that the authority should have waited for the disposal of the criminal case. In any case after the acquittal of the petitioner by the criminal Court, the appellate authority should have respected the findings of the criminal Court. The entire proceedings are achieved by mala fides and malice and amount to victimisation.

5. Incidentally I may mention that an appeal against the acquittal mentioned above is pending before this Court. A fervent appeal was made by the petitioner's counsel that this writ petition be heard either along with the criminal appeal so that the entire facts of the case could be made available before this Court or at least the disposal of this writ petition be stayed till the appeal is disposed of. I was disinclined to accept this request for the obvious reason that the disposal of this writ cannot depend upon the disposal of the criminal case.

6. The petitioner's counsel Mr. Sakaria, forcefully argued the case before me in his attempt to convince me, that his client had a raw deal at the hearing of the disciplinary authority. He pressed before me, that the enquiry officer, the third respondent, was biased against the petitioner. The third respondent, it is stated, is the Senior Deputy Chief Accountant No. 1 in the Central Accounts Department, From the counter-affidavit it is seen that he was the Senior Deputy Chief Accountant in charge of traffic revenue including Cash Offices at Wharves and the Budget Section and that he, the third respondent was not in any way connected with the work of the petitioner or the transactions involved. This

averment in the counter-affidavit has not been traversed by the petitioner by filing a reply affidavit. The third respondent himself has filed a counter-affidavit denying the allegations of bias against him.

7. Exhibit R10 can be usefully read in this context. Exhibit R 10 dated 29-9-1975 is a communication by the petitioner addressed to the second respondent. Paragraph 8 thereof reads as follows:

8. In these circumstances I would request you to adjourn the proposed enquiry for at least one month within which time I sincerely hope that I shall succeed to find an employee to assist me. I would also request you to give me the necessary permission to specify the record I shall have to inspect and take extracts from and also to file a written statement before I enter my defence.

This was relied upon by the respondent's counsel to contend that the petitioner had no objection in the third respondent conducting the enquiry and that he was fully prepared to participate in the enquiry and establish his innocence.

8. In the counter-affidavit filed by the third respondent, it is stated that when he was appointed as enquiry officer, he was Senior Deputy Chief Accountant in charge of traffic revenue including cash offices at Wharves and Budget Section. The cash offices at wharves are not concerned with the cash payments. It only receives cash from various clearing agents, shippers, etc., and remits them to the main office. Therefore, the subject-matter of the enquiry has no relation or connection to the wharves cash offices. He denied, in the counter-affidavit, the allegation of prejudice against the petitioner in the following words:

There is absolutely no substance in the contention that this respondent is prejudiced or any way influenced by mala fide intention against the petitioner. The enquiry was conducted properly and in accordance with the principles of natural justice. The petitioner was also given full opportunity to participate in the enquiry.

But the petitioner's counsel would contend that he had at the earliest opportunity objected to the third respondent conducting the enquiry on the ground of bias and had persisted in doing so. In support of this, he relied upon Ext. R8 produced by the first respondent along with his counter-affidavit. Paragraph 2 of Ext. R8 dated 8-9-1975 reads as follows:

2. Sri C.K. Ramankutty Menon who is appointed as the enquiry officer was and is an office incharge of the accounts and cash of the section of which I was a shroff. It is in his own interest that somebody may be made responsible for the irregularities alleged to have been committed in his section. Therefore, he is not and cannot be an impartial Enquiry Officer. The same applies also to Sri K. Kesavan who is appointed as the Presenting Officer.

He would further contend that he wanted to examine the third respondent as a witness on his side which is evident from the list of defence witnesses shown at page 88 of the paper book produced by the first respondent. I have no material

before me to find out as to the exact date on which the petitioner gave the list of witnesses including the name of the third respondent to be examined as a witness on his side. It is true that the case of bias is mentioned in Ext. R8 and that he wanted to examine the third respondent as one of his witnesses. But the subsequent proceedings would reveal an attitude of acquiescence on his part in the domestic enquiry conducted by the third respondent. This is evidenced by Ext. R10 about which mention has already been made wherein he made a request to the second respondent to give him time.

9. It would be useful in this context to refer to the various stage of the proceedings conducted by the third respondent, to examine whether the petitioner's case is well-founded.

10. The petitioner's request to permit him to be represented by a legal practitioner was rejected on 17-9-1975. Thereafter the enquiry was adjourned to 30-9-1975. Intimation about this was given to the petitioner on 24-9-1975. The petitioner made a fresh representation Ext. R10 on 29-9-1975 to the second respondent with a copy to the third respondent. In this representation he made a request that since he was denied the assistance of a legal practitioner, he may be afforded reasonable time to find out a suitable and willing employee to assist him in his defence, He wanted the enquiry to be postponed by one month so as to enable him to get the assistance of another employee and to facilitate inspection of the records and take extracts there from. The enquiry posted to 30-9-1975 was adjourned to 20-10-1975 granting the petitioner's request for scrutiny of records by him subject to the provisions of regulations. He was asked as per Ext. R11 to specify the records which he would like to inspect. In the counter-affidavit, the first respondent has sworn to the fact that the charge memo issued to the petitioner as early as 28-8-1975 was accompanied by Annexure 3 which contained all the documents necessary to meet the charges. It is further stated that the petitioner himself had all the information with him as early as 28-8-1975 and it was in spite of this that he was given time till 20-10-1975 to make the scrutiny of the necessary records. The enquiry was again reposted to 27-10-1975. On 27-10-1975 the petitioner was not present. Thereafter the enquiry was adjourned to 5-11-1975. On 5-11-1975 one witness was examined. Thereafter the petitioner again sent an application, Exhibit R12 dated 3-12-1975 requesting for a little more time to study the records and prepare for the enquiry. In Ext. R12 he expressed his inability to examine the witnesses on 5-11-1975 and wanted more time for preparation. The enquiry was therefore, postponed to 10-11-1975 intimating the petitioner, that the enquiry will be conducted continuously from 10-11-1975. The petitioner thenceforward did not participate in the enquiry. The enquiry officer, examined 24 witnesses and marked 229 documents. On a consideration of all the documents so collected, he found the petitioner guilty of the charges.

11. I thought it necessary to detail the various stages at which the domestic enquiry went through to highlight the point that the enquiry officer had, as far as

possible, accommodated the petitioner when repeated requests were made for adjournment, to hold that the case of bias was not pursued. Of course in Ext. P6 which is a reply to the second show-cause notice dated 27-6-1977, the petitioner had repeated this apprehension against the third respondent. The petitioner's counsel had a case that the petitioner had pursued it throughout, but that has not been satisfactorily substantiated.

12. According to the petitioner's counsel, the mere fact that the third respondent was a superior officer of his client in the same department, bias should be presumed against him, since he is interested in seeing that someone was held responsible for the charge of misappropriation. I cannot agree with this contention so widely put. It cannot be possible, nor feasible, for any department to get outsiders for all domestic enquiries. It is the invariable practice in all domestic enquiries. To appoint one in the department itself to hold an enquiry, for the excellent reason that the result of a domestic enquiry is not conclusive nor binding on the appellate authority or on the un-arrangement. The findings can always be attacked, challenged and set aside. Therefore simply because the third respondent is a superior to the petitioner, the charge of bias cannot be substantiated nor inferred. For this purpose, I have the counter-affidavit of the third respondent and the materials in the counter-affidavit of the first respondent to hold that there is not much of a connection between the section in which the petitioner was working and the section which is under the control of the third respondent.

13. The question of bias was then presented in another form. It was contended that the enquiry officer need not necessarily be a biased person. But if the delinquent has a remote apprehension in his mind that the enquiry officer would be biased against him, that apprehension is sufficient to render the disciplinary proceedings bad on the ground of bias. The principle of law so put, also cannot be accepted. If that be so, it will be impossible to hold a domestic enquiry by any officer in any department. It will always be easy for a delinquent to defeat a domestic enquiry by making aspersions against the officer conducting the domestic enquiry or making false imputations. Mudslinging is an easy pastime. The accusation of bias can be imputed against any departmental officer when the delinquent finds it inconvenient for him to face the charges. It is only in cases where the Court has acceptable materials to infer bias that the Court will lean in favour of a delinquent, when a charge of bias is made against the enquiry officer. Such materials are wanting in this case. In considering a similar question, Issac, J., observed in *The Superintendent, Kaliyar Estate v. O. Kuriakko* 1971 I L.L.J. 83 as follows:

It is impossible to accept the proposition that the enquiry officer would be deemed to be biased and thereby disqualified to conduct the enquiry if the delinquent worker makes imputation against the enquiry officer. If that proposition is accepted an enquiry can be made impossible by the delinquent worker, making imputations against every enquiry officer whoever he may be.

The enquiry is only a procedure to enquire into the charges. The finding of the enquiry officer is not binding on the appointing authority who has to finally decide whether the materials at the enquiry have established the charges and if so what punishment; should be awarded.

In *Motor Industries Co. Ltd. v. Shaikh Mohammed* (52) F.J.R. 417 a learned single Judge of the Karnataka High Court had occasion to consider the case of bias in another context. The Court observed:

The principles of natural justice require that notice of a proposed domestic enquiry to be held should be given to the concerned workman: they do not require that even after giving notice if the concerned person remains absent, the enquiry should not be held in his absence. There is no principle of natural justice which requires that a person who had lodged a complaint cannot present the case and be a prosecutor in a domestic enquiry. Therefore, a domestic enquiry held *ex parte* after giving the concerned workman due notice and in which the complainant himself was the prosecutor would not be in violation of the principles of natural justice nor invalid.

In *Saran Motors v. Viswanath and Anr.* 1964-II L.L.J. 139 Gajendragadkar, C.J. speaking for the Bench voiced a word of caution and laid down the correct guidelines in these matters as follows:

In our opinion, this view is completely erroneous and cannot be sustained. We have repeatedly pointed out that domestic enquiries in industrial relations must be fairly conducted and whenever we are satisfied that any enquiry was not fairly conducted or its conclusions were not supported by evidence, we have unhesitatingly ignored the findings recorded at such an enquiry and held that the Tribunals must deal with the merits of the dispute for themselves; but it is impossible to accept the argument that because a person is sometimes employed by the employer as a lawyer, he becomes incompetent to hold a domestic enquiry. It is well-known that enquiries of this type are generally conducted by the officers of the employer and in the absence of any special individual bias attributable to a particular officer, it has never been held that the - enquiry is bad just because it is conducted by an officer of the employer. If that be so, it is obviously unsound to take the view that a lawyer, who is not a paid officer of the employer, is incompetent to hold the enquiry, because he is the employer's lawyer and is paid remuneration for holding the enquiry. Therefore, the first reason given by the Tribunal for ignoring the findings of the domestic enquiry must be reversed.

The above exposition of law by the Supreme Court makes it abundantly clear that a mere apprehension in the mind of an employee facing a domestic enquiry of a bald allegation or imputation against the enquiry officer cannot and will not constitute the element of bias to vitiate a domestic enquiry.

14. The petitioner's counsel took me through various authorities to reinforce his contention that any enquiry by a person having some interest in the cause with

which he is dealing will be vitiated. These authorities lay down the well-known maxim that a person cannot be a Judge of his own cause. The first case on which strong reliance was placed by him is the one reported in *William Dimes v. The Proprietors of the Grand Junction Canal and Ors.* [1852] 3 H.L.C. 759. In that case, the House of Lords set aside the decision of the Lord Chancellor on the ground that the Lord Chancellor who disposed of the case under appeal had an interest as a share-holder in the company with which that case related, although the Lord Chancellor never knew of the fact that he was dealing with that company. The cases reported in *Manak Lal v. Dr. Prem* (1957) S.C. 425 G. *Nageswara Rao v. A.P.S.R.T. Corporation* (1959) S.C. 308 *Nageswara Rao v. State of Andh. Pra.* (1959) S.C. 1376 and *A.K. Kraipak v. Union of India* (1970) S.C. 150 all lay down the same principle. But the case on hand has to be distinguished from those cases on facts. The petitioner participated in the proceedings at some length and refused to participate afterwards. The charge of bias is solely on the ground that the third respondent happened to be an officer superior to the petitioner in the same department in which he worked. I am not satisfied that the petitioner has succeeded in establishing bias against the third respondent in this case to sustain his contentions that the report of the enquiry officer was vitiated. What is more, the petitioner has not thought it necessary to counter the various materials contained in the counter-affidavit filed by respondents 1, 2 and 3 by filing a reply affidavit. The contention regarding bias is therefore rejected.

15. The second question that has to be considered is the denial by the enquiry officer to allow the petitioner to be represented by a legal practitioner or at least by a co-employee. For this purpose, the relevant regulations have to be read. Regulation 12, Clause 12 of the Cochin Port Employees (Classification, Control and Appeal) Regulations, 1964 relates to procedure for imposing major penalties. Sub-clause (6) of Clause 12 reads as follows:

(6). The disciplinary authority may nominate any person to present the case in support of the charges before the authority inquiring into the charges (hereinafter referred to as the inquiring authority). The employee may present his case with the assistance of any other employee but may not engage a legal practitioner for the purpose unless the person nominated by the disciplinary authority is a legal practitioner or unless the disciplinary authority having regard to the circumstances of the case, so permits.

In Clause 2(e), "employee" is defined as follows:

"Employee" means an employee of the Board and such person on foreign service or whose services are temporarily placed at the disposal of the Board and also any person in the service of the Central or a State Government or a local or other authority whose services are temporarily placed at the disposal of the Board.

Since the enquiry officer in this case is not a legal practitioner, the petitioner cannot claim the assistance of a legal practitioner to assist him. The petitioner

made a request to the enquiry officer to give him time to get the assistance of a co-employee. His complaint is that in view of the circumstances then prevailing, in the year 1975-76, he could not get the assistance of any one from the Port Trust. He, however, secured the services of a upper division clerk in the Naval Base and he applied for permission to be assisted by the said person. Clause 12 of the Regulation read with the definition of "employee" stands as a hurdle for the petitioner to get the assistance of a person from a foreign service unless his services were placed at the disposal of the Port Trust. Therefore, the denial of assistance of an employee from outside also cannot be urged as a ground to challenge the dismissal order against the petitioner.

16. According to the petitioner there cannot be a criminal trial and a parallel disciplinary proceedings at the same time against a delinquent. When there is a criminal trial pending on certain charges, it is necessary that the department should stay away from proceeding with the domestic enquiry till the disposal of the criminal trial on the same ground. He would further contend that in cases where a criminal trial ends in acquittal on merits, the department is, in law, barred from proceeding with the delinquent by a domestic enquiry. Before considering the facts of this case, the general principles that govern the trial in criminal cases and proceedings before disciplinary authorities have to be clearly borne in mind. In criminal cases, the Courts insist on a high standard of proof. Accusations against an accused have to be proved beyond reasonable doubt, in criminal cases. Not so in departmental proceedings. In the latter preponderance of probability of guilt is sufficient. Therefore, to say that the acquittal in a criminal case should always tie the hands of the departmental authorities from proceeding against a delinquent is not to put the question of law correctly. There may be exceptional cases where a Court of competent jurisdiction finds on the materials available that the charge against a delinquent is *ex facie* false and thus enters an acquittal against him.

17. In the criminal case the charge against the petitioner, as is seen from Ext. P9 judgment in C.C. No. 378 of 1975, is as follows:

On 22-2-1975 an amount of Rs. 889 to be paid to C.W. 6 as contributory provident fund as per Ext. P4 bill was received by the accused from the cashier for payment to C.W. 6. But the accused failed to pay the amount to C. W. 6 and he neglected to note that in the registers with the intention of misappropriating the amount and thus misappropriated the amount. Similarly on 24-2-1975 an amount of Rs. 1,120 as per Ext. P8 was to be given to C.W. 5 and the amount was received by the accused from the cashier but he failed to give the amount to C.W. 5 and purposely omitted to note that in the registers and thus misappropriated the amount. Again on 25-2-1975 an amount of Rs. 2,160 was to be given to C.W. 8 as per Ext. P11 bill and the amount was received by the accused from the cashier but he failed to pay the amount to C.W. 8 and purposely omitted to note that in the relevant registers with the intention of committing misappropriation and thus misappropriated the amount. The accused

thus instead of entering the amounts in the respective dates in the account books provided for that purpose and paying them to the drawing officers and getting their signed acknowledgment of receipt of the amounts dishonestly converted the amount of Rs. 4,169 for his own use and thus committed the offence of misappropriation and falsification of accounts and thus committed the offences punishable under Sections 408 and 477A IPC.

From this it is clear that the criminal case related to the dishonest conversion of an amount of Rs. 4,169. The charge which was the subject-matter of the disciplinary proceedings is seen at pages 41 and 42 of the counter-affidavit filed by the first respondent. There are, in total, eight articles of charges. From charge 2 it is seen that the amount misappropriated on various accounts amounted to Rs. 23,302.83 other than the amounts under Apprenticeship Training Scheme. I do not think it necessary to deal here with all the eight charges except to observe that the charges against the petitioner took in the subject-matter of the criminal case also. In other words, while the charge against the petitioner in the criminal case was restricted to three items of misappropriation, the disciplinary proceedings related to other charges also. In the criminal case, the learned Magistrate of First Class acquitted the accused with the following observations:

Hence in the absence of all the relevant registers before Court, it cannot be concluded that money was entrusted with the accused and that he failed to disburse the amounts to the concerned persons, The instrument is not proved by reliable and convincing evidence and when there is no entrustment there cannot be any misappropriation.

The judgment winds up the following observation in paragraph 19:

Hence on a careful scrutiny of all the evidence adduced in this case, I find the prosecutions has failed to prove the guilt of the accused beyond the possibility of any reasonable doubt. There is no reliable and legal evidence oral or documentary adduced in the case by the prosecution to prove the charge against the accused and I find point Nos. 2 to 4 against the prosecution.

I am not prepared to agree with the respondent's counsel that this decision was rendered by giving benefit of doubt to the petitioner. But I cannot be oblivious of the fact that the decision had to be rendered thus since the investigating machinery did not make available to the Court all the necessary documents with reference to which the guilt of the accused could have been established. The learned Magistrate was in the unenviable position of not having the relevant materials before her to find out whether the charges against the accused could be made out or not. I am persuaded to make this observation to meet the contention raised by the petitioner's counsel based on a decision of the Madras High Court reported in *The Tirunelveli Tuticorin Electric Supply Co. Ltd. Vs. The Industrial Tribunal and Another*, by Ismail, J. I had this judgment in view when I observed that in exceptional circumstances where the innocence of the accused is writ large from the evidence adduced, a domestic enquiry on the same charge,

after the acquittal of the accused, will be a negation of justice. But with great respect, I have my own hesitation in subscribing to the principles so widely laid down by the learned Judge in the above decision.

18. The question relating to parallel enquiries came up for consideration before this Court and Mathew, J., as he then was, in *Spadigam v. State of Kerala* 1970-I L.L.J. 718 observed thus:

I do not think that judgment of a criminal Court acquitting an accused on the merits of a case would bar disciplinary proceeding against him on the basis of the same facts or that the judgment would operate as conclusive evidence in the disciplinary proceedings. The reason for it is not far to seek. A criminal Court requires a high standard of proof for convicting an accused. The case must be proved beyond reasonable doubt. The acquittal of an accused by a criminal Court only means that the case has not been proved against him beyond reasonable doubt. Such a standard of proof is not required for finding a person guilty in a disciplinary proceeding would be enough if there is a preponderance of probability of his guilt.

19. The Supreme Court has laid down the proper guideline to Courts and domestic enquiries when a criminal case is pending. In *J.K. Cotton Spinning and Weaving Co., Ltd. v. Its Workmen* 1965-II L.L.J. 153 the Supreme Court had to consider the case of workman who was dismissed for misconduct. He was originally charged with theft of company's property. He was convicted for the offence. He filed an appeal against his conviction. The enquiry officer considered the evidences adduced before him and found the concerned workman guilty of the charges. When the matter was before the Industrial Tribunal, the appeal against conviction was allowed. The Industrial Tribunal held that the charge was not made out. The Supreme Court held that the Industrial Tribunal went wrong in re-assessing the findings of the case since the domestic enquiry's findings were not based upon the conviction entered against the workman. This case indirectly supports the view that there is no bar in parallel proceedings before a criminal Court and before a disciplinary authority and also for the position that the acquittal in a criminal case does not necessarily bar proceedings by the disciplinary authority.

20. The jurisdiction of this Court under Article 226 of the Constitution in dealing with the awards by the Industrial Tribunal or decisions of a disciplinary authority is very limited. It is not the function of this Court to re-assess or to re-evaluate the evidence. That is the function of an appellate authority, which this Court is not, exercising jurisdiction under Article 226. In all cases where this Court finds that the Tribunal or the Disciplinary Authority has on the materials available come to reasonable conclusion, this Court will be slow to interfere with such decisions. I need not refer to the authorities on this point as this is a well established principle. In this case, I find that the appellate authority was persuaded to agree with the findings of the domestic enquiry on the ground that the charges against the petitioner were made out. On the materials available, I

do not think that a different view is possible.

21. In the result, this writ petition has to fail and is dismissed. I direct the parties to bear their respective costs.