
(1982) 07 KL CK 0014
In the High Court Of Kerala
Case No : O.P. No. 1397 of 1980

Issac Joseph

APPELLANT

Vs

The Senior Superintendent of Post Offices

RESPONDENT

Date of Decision : 15-07-1982

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2)

Citation : (1982) KLJ 471 : (1982) 2 KLT 412

Hon'ble Judges : M.P. Menon, J

Bench : Single Bench

Advocate : O.V. Radhakrishnan and K. Radhamani Amma, for the Appellant; P.V. Madhavan Nambiar, for the Respondent

Judgement

M.P. Menon, J.—While working as Sub Post Master at Mattupetti the petitioner was charge sheeted on 12-12-1974 for alleged, shortage of office cash. His explanation to the memo of charges was found unsatisfactory, and a departmental enquiry was ordered. During the enquiry the petitioner requested for the assistance of another employee, P. Balakrishnan by name, but that request was declined on the ground that he was already assisting two other employees. A similar request for the assistance of one D" Cruz was also turned down for the same reason. The enquiry officer found the petitioner guilty as per report dated 11-3-1979; and by Est. P8 order dated 31-3-1979, he was dismissed from service. His appeal to the Post Master General was also dismissed, as per Ext. P10. This Original Petition is directed against Ext. P8 and P10. The findings were concurrent, and even Mr. Radhakrishnan for the petitioner did not urge, with any amount of confidence, that they could be disturbed by this Court in "the present proceedings.

2. A point was however raised that by declining to arrange for assistance by Messrs. Balakrishnan and D" Cruz, the authorities had denied reasonable opportunity to the petitioner to defend himself. Rule 14(8) of the Central Civil Service (Classification, Control and Appeal) Rules, 1965 provides that a

delinquent employee can take the assistance of another Government servant to present his case, but the "Note" thereto adds that such other Government servant should not have "two pending disciplinary cases on hand". Balakrishnan and D" Cruz had admittedly two such other cases on hand, and the action of the authorities was therefore in accordance with the Rules. The petitioner has no case that assistance by any other Government servant of his choice was denied; it is even conceded at the hearing that another such servant was actually assisting him at the enquiry. The complaint regarding denial of reasonable opportunity, based on Rule 14(8), cannot be sustained under the circumstances.

3. The only other contention is that the petitioner should have been given a second opportunity to show cause against the proposed penalty, despite the amendment of Article 311(2) with effect from 3-1-1977, and of Rule 15 of the Classification, Control and Appeal Rules, in August, 1978. The argument is that the petitioner had a substantive or constitutional right to the second opportunity when proceedings were initiated in 1974, and that the subsequent amendments were powerless to deprive him of such a right, unless they were retrospective.

4. Article 311 (2), as it stood before the Forty-second Amendment, and so far as is relevant for the present purposes, was in these terms: --

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an enquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of the charges and where it is proposed, after such enquiry, to impose on him any such penalty, until he has been given a reasonable opportunity of making representation on the penalty proposed, but only as the basis of the evidence adduced during such enquiry.

The relevant provisions after the amendment are these:-

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed:

And Rule 15 (4) of the Classification, Control and Appeal Rules, after the amendment of August, 1978 reads:-

(4) If the disciplinary authority having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of the opinion that any of the penalties specified in clauses (v) to (ix) of rule 11 should be imposed on the Government servant, it shall make an order imposing such penalty and it shall not be necessary to give the government servant any

opportunity of making representation on the penalty proposed to be imposed:

5. The rule against retrospective operation of statutes is at best a rule of construction; where the language and intention of the legislature are otherwise clear, there is no scope for invoking it. The rule itself rests on the theory that the legislature does not intend what is unjust; it is assumed that statutes are intended to operate only on facts which come into existence after they are passed. This presumption is subject to two well-known exemptions: (1) if the terms of the Act are clear, either by reason of express language or by necessary and distinct implication that retrospectivity is to be attributed, that should be given effect to; and (2) the presumption is not generally applicable to matters of procedure. The rule against retrospectivity is not rigid and inflexible, but one to be applied in the light of the language of the statute and its subject-matter. In practice, it has been applied to cases where retrospectivity would prejudicially affect vested rights. But no one has a vested right in any course of procedure. When substantive law is altered during the pendency of action in court, the courts determine the rights of parties according to the law as it existed at the commencement of the action, unless the new statute shows a clear intention to vary such rights. The leaning is against modification of substantive rights, and not against alteration of rules of procedure.

6. The second opportunity rule in Article 311(2), as it stood before 1977, was a matter of procedure. Its thrust was against the imposition of major penalties except in accordance with the procedure of giving the delinquents an opportunity to show cause against the specific penalty proposed, besides an opportunity of being heard at the enquiry stage. It may be possible to suggest that the provisions imposed a disability on the disciplinary authority to impose major penalties and conferred corresponding rights on delinquent Government servants; but the nature of the "right" was essentially procedural. If this is the true position, the rule against retrospectivity can have little application to the second opportunity rule.

7. Even otherwise the new proviso to Article 311(2) introduced by the Forty-second Amendment states in express terms that "It shall not be necessary" to give any opportunity of making representation against the penalty proposed. The same kind of negative language is used in the amended sub-rule (4) of Rule 15. These, to my mind, clearly imply that in respect of pending disciplinary proceedings also, the intention was to do away with the second opportunity rule, even if the rule against retrospectivity had any relevance. The proper approach to the question is to examine what the content of the right was, before the amendment of the Constitution and the Rules. The rights available to a delinquent under Article 311(2) were:-

(i) to be informed of the charges against him;

(ii) to have a reasonable opportunity of being heard at the enquiry into the charges; and

(iii) to make representations against the penalty, if found guilty at the enquiry and if a major penalty is proposed.

Rights (i) and (ii) are in tact even after the amendment, and what is taken away is only the right under (iii). That right was to make representations "where it is proposed, after such enquiry, to impose on him any such penalty". The right accrued after the enquiry, after his guilt was found to be established, and in case the disciplinary authority thought it fit to propose a major penalty. In many disciplinary proceedings militated with the object of inflicting major penalties, the enquiry may ultimately reveal only minor lapses requiring imposition of minor penalties only and in such cases, the delinquent was not entitled, even as matters stood prior to January, 1977 to claim the second opportunity of making representation against the penalty. In other words, the mere circumstance that proceedings were initiated for imposition of major penalties was no guarantee for getting the second opportunity; the guarantee or the right depended upon the conclusion of the enquiry, the finding recorded and the proposal emanating at that stage. In the present case, disciplinary proceedings were no doubt initiated against the petitioner in December, 1974 under Rule 14, prescribing the procedure for imposing major penalties; but that circumstance was insufficient, even as Article 311(2) and the Rules stood at the time, to ensure him of right to make representation against the penalty to be proposed after the enquiry. The right could have accrued only after 11-3-1979 when alone the enquiry report was drawn up; there was no such right, whether substantive, procedural or constitutional, before that period. That means that no pre-existing right was affected by the amendment of Article 311 in January, 1977 or of Rule 15 in August, 1978. The amendments operated only on facts which came into existence subsequent thereto. In that sense, the case does not even raise the problem of invoking the rule against retrospectivity.

No other points are raised and the Original Petition is accordingly dismissed, but without any order as to costs.