
(1998) 02 AP CK 0019
In the Andhra Pradesh High Court
Case No : W.P.No. 8393 of 1997

K. Inbasagaran

APPELLANT

Vs

Government of India and Others

RESPONDENT

Date of Decision : 20-02-1998

Acts Referred:

All India Services (Conduct) Rules, 1968 — Rule 16(2), 16(4), 16(5), 3(1)
All India Services (Discipline and Appeal) Rules, 1969 — Rule 24, 24(1), 6
Constitution of India, 1950 — Article 226

Citation : (1998) 2 ALD 470 : (1998) 2 ALT 191

Hon'ble Judges : Y.V. Narayana, J;B. Subhashan Reddy, J

Bench : Division Bench

Advocate : V. Venkateswar Rao, for the Appellant; C.P. Sarathy and C. Jayasree Sarthy, for the Respondent

Judgement

B. Subhashan Reddy, J.—This writ petition is filed questioning the order dated 2-4-1997 passed by the Central Administrative Tribunal, Hyderabad Bench in O.A.No. 1444 of 1996. The validity of the order passed by the Government of Tamil Nadu in G.O.Ms.No.836 Public Department, dated 26-7-1996 has been challenged. But, the said G.O. was sustained by the Tribunal. Hence, this writ petition.

2. The petitioner is an I.A.S. cadre Officer and while working as Secretary, Health and Family Welfare Department of Government of Tamil Nadu, he faced disciplinary action on the following charges:

"Charge I:

That you, Thiru K. Inbasagaran, IAS, during the check period 1-4-1978 to 14-9-1993, are found to have acquired and in possession of pecuniary resources and properties held in your name and in the names of others, which are disproportionate to your own sources of income to the extent of Rs.50,00,186.82, for which you could not account satisfactorily, and thereby failed to maintain absolute integrity and conducted yourself in a manner

unbecoming of a member of the service and thereby you contravened Rule 3(1) of the All India Services (Conduct) Rules, 1968;

Charge II:

That you, Thiru K. Inbasakaran, IAS, failed to maintain absolute integrity and exhibited unbecoming conduct by entertaining at your residence in Anna Nagar, Madras-40, on 13-9-1993, with corrupt motive, Tvl. Garish A. Davey of Hemant Surgical Company and Hiran Pharma and Surgicals, Madras, Ashok K. Kotadia of Jayant Pharma Agencies, Madras and S.J. Natarajan of Balaji Agencies, Madras, who were having official dealings with you in their capacities as dealers/suppliers of medicines and drugs to Government Medical Institutions and thereby you contravened Rule 3(1) of the All India Sendees (Conduct) Rules, 1968.

Charge III:

That you, Thiru K. Inbasakaran, IAS, while submitting your property statements in proforma I to VX for the period ending 31-12-1989, failed to furnish a full and complete statement of your properties by omitting to disclose particulars regarding the Savings Bank Accounts maintained by you at (i) Syndicate Bank Extension counter, Madras 9; (ii) Canara Bank, Kilpauk Branch and (iii) Punjab National Bank, Purasavalkam, by the aforesaid acts, you failed to maintain devotion to duty and acted in a manner unbecoming of a member of the Service and thereby you contravened Rule 16(5) of the All India Services (Conduct) Rules, 1968.

Charge IV:

That you, Thiru K. Inbasakaran, IAS, failed to report to Government the following transactions in movable properties within one month of entering into them :

(i) Loans of Rs.10,000/- during 1980-81 and Rs.20,000/- during 1985-86 to Thiru G. Thangarajan and their repayment.

(ii) Loan of Rs.5,000/-during 1981-82 to Smt. J. Lalitha and its repayment.

(iii) Loans of Rs.40,000/- during 1982-83 and Rs.40,000/- during 1984-85 to Thiru K. Kannan and their repayment.

(iv) Loan of Rs.10,000/-during 1982-83 to Thiru K. Sanmughakani and its repayment.

(v) Loan of Rs.10,000/-during1985-86to Thiru K. Janarthanan and its repayment.

(vi) Financial assistance of Rs. 1,08,764/-during 1988-89 and Rs. 1,05,338/- during 1989-90 to your wife Smt. Vijaya Inbasakaran.

and thereby you contravened Rule 16(4) of the All India Services (Conduct) Rules, 1968.

Charge V:

That you, Thiru K. Inbasakaran, IAS, failed to submit your Annual Properly Returns in the prescribed proforma for the years ending 31-12-1991 and 31-12-1992. By these acts you failed to maintain devotion to duty and acted in a manner unbecoming of a member of the Service and you thereby contravened Rule 16(2) of All India Services (Conduct) Rules, 1968."

3. After completing the formalities of service of charge-memo calling and receipt of explanation, enquiry was conducted by one Mr. C. Ramachandran and after the perusal of the same, the Government of Tamil Nadu had passed the following order:

"The Government have received the report of the Inquiring Authority fifth cited. They have decided to accept the report of the Inquiring Authority and drop further action. However, the Government have also decided to warn you to be more careful in your cash transactions and to be prompt in filing property returns as well as your financial transactions to the appropriate authority under the relevant rules. You should be strict in observing the rules relating to All India Services (Conduct) Rules in all cases."

4. The same was reported to the Central Government. The Central Government had examined the same and by communication dated 23-4-1996 reiterated its earlier guidelines and it is apt to extract the entire proceedings :

"Please refer to State Govt's letter NO.E2/21-B/96, dated 29-2-1996 on the subject of the final orders passed in the disciplinary actions initiated against S/ Shri K. Inbasakaran, I.A.S. and Prithiviraj Langthasa.

2. In this connection, attention of Government of Tamil Nadu is invited to this Department's letter No.1 1018/5/79-AIS(III) dated 13-4-1981 (pp.139 of All India Services Manual Vol I.) wherein it is stated that:

"Where it is considered, after the conclusion of the disciplinary proceedings, that some blame attaches to the officer concerned which necessitates cognizance of such facts, the disciplinary authority should award one of the recognised statutory penalties. If the intention of the disciplinary authority is not to award the penalty of censure, then no recordable warning or reprimands should be awarded."

3. In view of this, the Government of Tamil Nadu may examine the above two cases for appropriate action, under report to this Department."

5. The purport of the above communique of the Central Government is that a definite finding should be there as to whether the officer is guilty of mis-conduct or not and that a mere warning should not be awarded.

6. Disciplinary enquiry is governed by All India Services (D&A) Rules, 1969. Rule 24(1) thereof confers revisional power on the Central Government, or the State Government, as the case may be, to revise the order passed in disciplinary enquiry. It is apt to extract the entire Rule 24 with its sub-rules and sub-clauses:

"24. Revision :-(1) Notwithstanding anything contained in these Rules, the Central Government or the State Government concerned as the case may be, may at any time not exceeding 6 months from the date of the order passed in appeal, if an appeal has been preferred, and where no such appeal had been preferred, within one year of the original order which gives the cause of action, either on its own motion or otherwise call for the records of any order relating to suspension or any inquiry and revise any order made under these rules or under the rules repealed by Rule 30 from which an appeal is allowed, but, from which no appeal has been preferred or from which no appeal is allowed, and may,

24(1)(a) confirm, modify or set aside the order; or

24(1)(b) confirm, reduce, enhance or set aside the penalty imposed by the order, or impose any penalty where no penalty has been imposed, or

24(1)(c) remit the case to the authority which made the order directing such authority to make such further inquiry as it may consider proper in the circumstances of the case; or

24(1)(d) pass such orders as it may deem fit;

Provided that no order imposing or enhancing any penalty shall be made unless the member of the service concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in clauses (v) to (ix) of Rule 6 or to enhance the penalty imposed by the order sought to be revised to any of the penalties specified in these clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 8 and except after consultation with the Commission;

Provided further that where the original order was passed by the Central Government or the State Government concerned as the case may be, after consultation with the Commission, it shall not be revised except after consultation with the Commission."

7. Learned Counsel appearing for the petitioner submits that the disciplinary enquiry having been initiated against the petitioner and the same having been enquired into and the report having been submitted closing the case with a warning, that became final and could not be re-opened and in any event, without issuing prior notice to the petitioner, the impugned G.O. ought not to have been issued by the 2nd respondent.

8. Learned Counsel for the 2nd respondent - Government of Tamil Nadu - supported the order of the Tribunal on the ground that there is a power vested in the State Government to revise the order and the same has been done in accordance with the directives of the Central Government and the Order in the G.O. is not imposing any penalty and as such, for re-opening the case, there was no necessity of issuing prior notice and in the circumstances, there is no infraction of principles of natural justice. Learned Standing Counsel for the

Central Government has submitted the arguments on the same lines as that of the Counsel for the 2nd respondent

9. Learned Counsel for the petitioner places heavy reliance on the case earlier decided by the Central Administrative Tribunal in P.V. Pavithran v. State of A.P. 1987 (3) SLJ 639 and submitted that the ratio laid down in the said judgment is applicable on all fours to this case and that it was binding on the Central Administrative Tribunal and was bound to be followed.

10. While it is true that Pavithran's case (supra) was dealt with by the Central Administrative Tribunal, Hyderabad Bench acceding to the contention raised by the petitioner therein that re-opening of proceedings by setting aside the earlier order of exoneration and proposing to inflict the penalty was impermissible, but there is a vital distinction between Pavithran's case and this case, as, in the former the delinquent was exonerated after enquiry and after the change in the Government, the same re-opened and straight-away show cause notice was issued proposing inflictment of punishment, which was held to be illegal and violative of principles of natural justice. The facts of that case have got no bearing on the facts of the instant case. In the instant case, disciplinary action was initiated on the charges referred to above and then Enquiry Officer Mr. C. Ramachandran (now under suspension) held a perfunctory enquiry and on the basis of the same, the previous State Government has just dropped the case with a warning. There was no clear cut finding as to whether the petitioner was guilty of misconduct of the charges framed against him or was innocent of the same. The very purpose of holding enquiry is to find-out as to whether the delinquent is guilty or innocent and he cannot be both guilty and innocent. He should be either guilty or innocent. If he is innocent, then there should be simple exoneration and nothing more. But, if he is guilty, then punishment has to be inflicted as indicated in the rules and the quantum of punishment depends upon the gravity of charges.

11. Imposition of penalty is contained in Rule 6 of the AH India Services (Discipline and Appeal) Rules, 1969. It consists of two parts - (1) Minor Penalties and (2) Major Penalties. Minor Penalties are (i) Censure, (ii) Withholding of promotions, (iii) Recovery from pay of the whole or part of any pecuniary loss caused to the Government, (iv) Withholding of increments of pay, and Major Penalties are (v) Reduction to a lower stage in the time scale of pay for a specified period, (vi) Reduction to a lower time scale of pay, (vii) compulsory retirement, (viii) removal from service and (ix) dismissal from service. The above being the penalties, be it minor or major "warning" does not find a place therein. As the enquiry report and the consequential order passed by the previous State Government were not held and made in accordance with the rule position and also the executive instructions issued by the Government of India from time to time in consonance with the above rule position and on State Government apprising the Central Government of the warning awarded to the petitioner, but dropping the proceedings, the Central Government had correctly reacted stating

that there should be definite finding as to whether the petitioner is guilty or not and question of warning cannot arise if the petitioner is guilty and as such, a direction was issued to re-examine the case.

12. In view of the above circumstances, the impugned G.O. was issued by the Government appointing an enquiry officer for conducting enquiry afresh by cancelling the previous enquiry report and now the petitioner has to avail of that opportunity. Like Pavithran's case (supra) no second show cause notice was issued on the first enquiry report seeking to inflict the punishment. It is a de novo enquiry, which is being conducted and the 2nd respondent is perfectly entitled to do so in the circumstances stated above. There is no infraction of principles of natural justice in the issuance of the impugned Governmental Order. The 2nd respondent is also having power under Rule 24(1) of the said Rules read with the provisos and particularly second proviso to cancel the earlier enquiry report and the order passed and order de novo enquiry and appointing another Enquiry Officer. That apart, no mala fides can be attributed against the present State Government for the reason that the proceedings emanated consequent to the order passed by the Central Government, which was prior to the installation of the present Government. Hence, we do not find any error, infirmity, legal or otherwise, in the order passed by the Central Administrative Tribunal so as to invoke our extra-ordinary jurisdiction under Article 226 of the Constitution of India.

13. The Writ Petition is dismissed. No costs.