

(1992) 01 KL CK 0003

In the High Court Of Kerala

Case No : O.P. No's. 3138, 3176 and 3932 of 1988

K. Thankappan Unnithan

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 14-01-1992

Acts Referred:

Constitution of India, 1950 — Article 20(2)

Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 — Rule 34

Citation : (1992) 01 KL CK 0003

Hon'ble Judges : Chettur Sankaran Nair, J

Bench : Single Bench

Advocate : Pirappancode V. Sreedharan Nair, in O.P. 3138/88, S. Sankara Subban, in O.P. 3176/88 and K.J. Joseph, in O.P. 3932/88, for the Appellant; D. Sreekumar, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Chettur Sankaran Nair, J.—Petitioners challenge a common order, Ext. P-6 in O.P. 3932/88, imposing punishments on them in disciplinary proceedings.

2. Petitioner in O.P. 3932/88 was an Excise Inspector, while Petitioners in O.P. 3138 and 3176 of 1988 were Preventive Officers in the same department. On the allegation that they misappropriated part of the compounding fee, realised in some cases, disciplinary proceedings were initiated against them. An enquiry was held. Ext. P-1(a) is the enquiry report. Accepting the report of enquiry, the disciplinary authority, Assistant Commissioner of Excise ordered barring of increments without cumulative effect, in the case of all Petitioners. Petitioner in O.P. 3176/88 did not appeal against the punishment, while Petitioners in O.P. 3138 and 3932 of 1988 filed appeals before the Deputy Commissioner of Excise. The appeals were dismissed by Ext. P-2 order (O.P. 3932/88). Petitioners left matters at that, and suffered the punishment. Endorsements were made in their service books, to that effect.

3. But, the Government pursued the matter further and referred the charges to

the Enquiry Commissioner and Special Judge, Trichur. He enquired into the matter and held:

I find that all three charges levelled against A-1 and one charge each levelled against each of A-2 to A-4 are establishedI would recommend that in the case of each of the accused officers increment be stopped for a period of two years with cumulative effect.

Accepting the findings in Ext. P-3 Government issued notices to Petitioners, requiring them to show cause against imposition of punishments. Petitioners answered the notice. Eventually, by Ext. P-6 Petitioner in O.P. 3932/88 was ordered to be compulsorily retired, while Petitioners in O.P. 3138 and 3176 of 1988 were reduced to a lower post. Petitioners submit that after punishments were imposed and suffered, the Government could not have held a de novo enquiry and imposed a different punishment. That was precisely what the Government did, state Petitioners. In answer, the Government Pleader would submit that the Government had only invoked the power of review inhering in them, and that the Government was within its authority, in doing so.

4. Under Rule 34 of the Kerala Civil Service (Classification, Control and Appeal) Rules, called the Rules hereinafter, the Government has the authority to call for the records of a case and "review" orders passed. What is conferred by the rule is the power to revise, not review, Rule 34, contemplates altering or changing something in existence and not a de novo act. The question is whether the Government revised something in existence and altered it, or whether it brought into existence something new, based on Ext. P-3 report. The circumstances show, that it was the latter. The order of the original authority had become final, and appeals had been dismissed. Petitioners had suffered the punishments. Endorsements had been made in the service books recording this. It was thereafter that the Government referred the charges to the Enquiry Commissioner and Special Judge. He examined fifteen witnesses, marked thirty one exhibits, and then entered a finding on the basis of the material before him which was not part of the earlier domestic enquiry. Government imposed punishments acting on Ext. P-3 report. Government did not revise anything or review anything. If did something anew. What was done pursuant to Ext. P-3, is independent of what had transpired under Ext. P-1 or Ext. P-1(a). It is thus clearly not a case of review or revision, but a case of an independent punitive action.

5. Counsel for Petitioners submitted that this is an instance of double jeopardy. The roots of this principle are found in a well established rule of English Law. It finds expression in the maxim, "Nemo debet bis vexari"- a man must not be put twice in peril for the same offence. He can plead as a complete defence, his former acquittal or conviction. This rule is embodied in Article 20(2). The Article guarantees immunity against "prosecution and punishment for the same offence", for a second time. In the case on hand, there was no prosecution or punishment. However, postulates of fair action, require that a person ought not

to suffer the same consequence twice. In *K.R. Deb Vs. The Collector of Central Excise, Shillong*, the Supreme Court held that the Government had no power to set aside an enquiry, and order Anr. enquiry in its place. Government may differ from the findings made by the disciplinary authority and reach a different conclusion on the same facts. It cannot hold Anr. enquiry and reach Anr. conclusion. In the case on hand, the Government took a different view, on different material, wiping out the earlier proceedings, leading to Ext. P-10 (O.P. 3176/88). It was held by this Court also, that a de novo enquiry cannot be ordered, erasing the earlier enquiry and the findings reached therein *Ali v. State* (1976) KLT 29 and *Kesavan Namboodiri v. State* 1982 KLT 512. Counsel for Petitioners relied on the decision in AIR 1937 27 (Privy Council) also. AIR 1937 27 (Privy Council) turned on different facts. The official had been granted invalid pension. Subsequently, the authority converted that order into one of removal. There could be no removal after an official ceased to be in service by the grant of invalid pension. The judicial committee observed that, in a case, where the competent authorities had arrived honestly at one decision, their successors in office could not arrive at Anr. conclusion, after the decision had been acted upon and was in effective operation. If on the basis of Ext. P-1(a) enquiry report Government thought that a stringent punishment than that imposed by the disciplinary authority was called for it was entirely free to impose a punishment, that in its opinion was proper. But, that is not what it did. The Government reopened the matter, held Anr. enquiry and came to an independent conclusion. Principles of fair-play interdict such a course.

6. In the circumstances, Ext. P-6 in O.P. 3932/88 is quashed. Petitioners cannot be subjected to any of the punishments imposed by Ext. P-6. The benefits denied to Petitioners in O.P. 3138/88 and 3176/88 will be restored to them and Petitioner in O.P. 3932/88 will be reinstated in service. The writ petitions are allowed. Parties will suffer their costs.