

(2001) 12 KL CK 0023
In the High Court Of Kerala
Case No : O.P. No. 13381 of 1997

Kunhikannan Nambiar

APPELLANT

Vs

Government of Kerala

RESPONDENT

Date of Decision : 24-12-2001

Acts Referred:

Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 — Rule 11, 11(1), 15, 16, 16(1)

Citation : (2001) 12 KL CK 0023

Hon'ble Judges : K.K. Denesan, J

Bench : Single Bench

Advocate : E.V. Nayanar, for the Appellant; Sreelatha Parameswaran, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

K.K. Denesan, J.—In 1978, the petitioner was working as Village Assistant, Keezhallur Village. Subsequently he was promoted as Village Officer. While working as Village Officer, Keezhur, he was served with Ext. P1 memo of charges dated 13.3.1990 directing him to show cause why he should not be awarded with penalty of stoppage of annual increment for 3 years with cumulative effect. The following were the charges framed against him:

"I. That you while working as Village Assistant, Keezhallur have dishonestly reported to the Tahsildar, Tellicherry that there is only an extent of 4.05 acres of land in the possession of Smt. Kariath Kadeesumma W/o. P.A. Mammoo in R.S. No. 3/II of Kothari desom in Keezhallur Village, Tellicherry Taluk though the Land Board in its revised order TLB. 1212/73 (TLY) dated 28.4.78 have ordered to take possession of an extent of 4.75 acres of land in R.S. No. 3/II of Kothari desom Keezhallur Village, Tellicherry Taluk from Smt. Kariath Kadeesumma, W/o. P.A. Mammoo.

II. That you have misled the higher authorities by submitting false report and preparing incorrect sketch and mahazar in respect of land taken possession from

Kariath Kadeesumma W/o. P.S. Mammoo on 18.7.78 by the Tahsildar, Tellicherry.

III. That while taking possession of the land in R.S. NO. 3/II of Kotheti desom, Keezhallur Village you have suppressed facts, mis-used your official position and played foul play and concealed 70 cents of land with ill-motive.

IV. That you have fraudulently helped Smt. Thenasserai Madhavi Amma the assignee of 5 cents of land adjacent to 70 cents of land concealed for collecting usufructs from the entire 75 cents and thereby sustained heavy loss to Government."

2. Petitioner submitted Ext. P4 explanation to the memo of charges, denying the allegations made against him. He submitted that he was not the Officer who filed the report, but it was done by this superior. He emphatically denied the allegation that he had acted dishonestly, fraudulently etc. His case is that the true facts have not been taken into consideration by the disciplinary authority. In the penultimate paragraph of Ext. P4 he submitted as follows:

"In the circumstances I submit that I am innocent of the charge alleged against me and I may be exonerated.

If however, the Sub Collector is not satisfied with explanation I pray that I may be given a chance to explain things better and any adducing further evidence."

3. The 3rd respondent Sub Collector passed Ext. P5 finding the petitioner guilty of the charges. After going through the explanation of the petitioner and the Village Officer and report of the Tahsildar it was found that the petitioner acted mala fide in measuring the land as 4.05 acres, as against the required extent of 4.75 acres.

4. Against Ext. P5 petitioner preferred Ext. P6 appeal before the 2nd respondent. But it was dismissed by Ext. P7. Finally he filed a petition before the 1st respondent-Government. That petition was rejected as per Ext. P8. Petitioner has prayed for quashing Exts. P5, P7 and P8.

5. I have heard Sri. E.V. Nayannar, learned counsel for the petitioner and the learned Govt. Pleader for the respondents.

6. The main contention of the petitioner is that he had performed the duties entrusted to him under the direct supervision and instructions of the Village Officer. He submits, after referring to the relevant provisions of the Kerala Land Reforms Act, that the Village Assistant is not the officer authorised to take possession of the property declared as excess land. The lowest authority to take such possession is the Village Officer as can be seen from the Land Reforms (Ceiling) Rules. In fact, the report was submitted by the Village Officer. The work assigned to the petitioner was to prepare a sketch of the property and that work he did in the presence and under the direct supervision of the Village Officer. According to him, the neighbouring owners claimed possession of a portion of the property and therefore of the Village Officer could take possession

of only the undisputed extent of land. According to the petitioner he has been found guilty even for transaction that had taken place subsequent to his transfer from the Village Office and for things that had happened when he was working elsewhere. It is further contended that though the penalty proposed against him and inflicted on him is a minor penalty under the KCS (CC & A) Rules, considering the complicated nature of the facts, it was necessary to prove the charges by means of oral evidence or documentary evidence in a formal enquiry so that the petitioner also would have got the opportunity to establish that the facts alleged against him were not true.

7. In Ext. P5 order it is stated that the remarks of the Tahsildar, Thalassery, was called for on the explanation of the delinquent officers, and the Tahsildar reported that the Village Assistant had played some foul play and concealed 70 cents of land in R.S. No. 3/11 of Kothari Desom of Keezhallur Village, that an extent of 5 cents of land was assigned to one Thenassari Madhavi Amma adjacent to the 70 cents of land thus concealed and the said Madhavi Amma who is the wife of the elder brother of the Village Assistant was collecting usufructs from the entire area of 75 cents of land. Ext. P5 proceeds to say that the Tahsildar further remarked that the Village Officer and Village Assistant were fully responsible for the lapses in taking over a lesser extent of land as against the order of the Taluk Land Board. It is evident from the next paragraph contained in Ext. P5 that the finding was reached based on the Tahsildar's report dated 24.9.1991. It is pertinent to note in this connection that the memo of charge (Ext. P1) is dated 13.3.1990 and the explanation of the petitioner to that memo is dated 30.5.1990 (Ext. P4).

8. Ext. P6 is the appeal memorandum submitted by the petitioner against Ext. P5. In Ext. P6 the petitioner has stated that pursuant to the order issued by the Taluk Land Board, the Village Officer himself inspected the property along with the Taluk Tahsildar and during inspection the declarant/owner of the property was not present there. No distinctive boundaries were available to separate the extent the extent of land to be taken possession of from the adjacement stranger's properties. Moreover, a dispute was pending with regard to the boundary between the declarant and those in possession of the neighbouring properties. Accordingly, as instructed by the Tahsildar and the Village Officer, the petitioner measure the property on 18.7.1998 and a sketch was prepared for an extent of 4.05 acres only, since the balance extent of property was said to be in the possession and enjoyment of one Chambil Makunnath Abdulla and another Kunhikannan as per oral lease. Subsequently it was learnt that the above named persons got assignment of the properties by executing separate registered assignment deeds for 25 cents and 31 cents respectively from the declarant.

9. The appeal memorandum raising various grounds is seen disposed of by the 2nd respondent by passing Ext. P7 order. The 2nd respondent has allotted just one short paragraph to deal with the merits of the case. All other paragraphs speak about the history of the disciplinary proceedings. The relevant paragraph

extracted below:

"The case has been examined in detail with reference to the records of enquiry and the contentions raised by the appeal petitioner. The written filed by the appeal petitioner is not convincing. He has not been able to give one single ground for setting aside the order of the Sub-Collector. Hence the appeal petition is dismissed."

A perusal of Ext. P6 memorandum of appeal and the order extracted above clearly shows that the Appellate Authority has disposed of the appeal by avoiding a proper discussion about the grounds raised therein. The appellate authority has got the duty to say for what reason he felt that the grounds raised in the appeal were not "grounds" in his opinion. The appellate authority cannot escape judicial scrutiny by not stating the reasons in support of his conclusion. The facts and reason mentioned in the appeal memorandum have not been adverted to, at least briefly, by the 2nd respondent while issuing Ext. P7 order. I have no hesitation to hold that Ext. P7 is vitiated for the aforesaid legal infirmities and is liable to be set aside on that grounds alone.

10. The review petition submitted by the petitioner was disposed of by the 1st respondent by Ext. P8 order. Ext. P8, for the first time, reveals the fact that, in order to ascertain the truth of the allegations in the charge memo, some other competent person was deputed to re-measure the property. Ext. P8 says that the Addl. Taluk Surveyor, Thalassery was deputed for the purpose of ascertaining the correctness of the measurement and report was obtained from him on 20.11.1993, that is long after the disciplinary authority passed final orders in the disciplinary proceedings. There is no reference to the above report dated 20.11.1993 in the memo of charge dated 13.3.1990 or the statement of allegations appended thereto. There cannot be any reference to the said report upto the stage of the disposal of the appeal memorandum, because at the time when the charge was framed and the order imposing punishment was passed, the report of the Taluk Surveyor obtained on 20.11.1993 was not in existence. Undoubtedly, the said report obtained much later and behind the back of the petitioner cannot be made use by the Government to sustain the original or the appellate order. This is a glaring illegality which vitiates Ext. P8.

11. As per Rule 16 read with Rule 11 of the Kerala Civil Services (C.C. & A.) Rules, 1960, punishment of barring of increments with cumulative effect is a minor penalty. To impose a minor penalty, the procedure prescribed under Rule 16 alone need be followed. Rule 16(1) of the said Rules reads:

"16. Procedure for imposing minor penalties.-

(1) No order imposing any of the penalties specified in items (i) to (iv) of Rule 11(1) shall be passed except after

(a) the Government servant is informed in writing of the proposal to take against him and of the allegations on which it is proposed to be taken and given

opportunity to make any representation he may wish to make;

(b) such representation, if any, is taken into consideration by the Disciplinary Authority; and

(c) the Commission is consulted in cases where such consultation is necessary".

Under Rule 16 of the KCS (CC&A) Rules, a formal enquiry is not a must. The procedure prescribed under Rule 15 for imposing major penalty contemplates a formal enquiry necessitating the examination of witness and production of documents with opportunity to the accused employee to cross examine witnesses and adducing his own evidence. But this does not mean that a minor penalty can be inflicted on the accused employee irrespective of the nature of the allegations and the evidence required to prove those allegations. There may arise, in minor penalty proceedings also, the necessity to adduce evidence; without such evidence the charges cannot be held to have been established against the employee. The need to adduce evidence arises in the peculiar facts and circumstances of the case, the nature of the allegations levelled against the delinquent employee and the defence pleaded in his written statement. It cannot be said as an absolute rule in all cases, where a minor penalty alone is proposed to be imposed on the delinquent employee, that the ordeal of an enquiry can be done away with. It is true that the penalty to be imposed is a relevant factor but equally important is the nature of the allegations as also the facts to be established to substantiate the charges. When charges are found on complicated facts or those involving serious allegations, it will be arbitrary to find the employee guilty, without holding an enquiry. A meaningful application of the principles of natural justice and the doctrine of reasonable opportunity to the accused employee come into play on such occasions.

12. Assuming for a moment that 70 cents of land was fraudulently or dishonestly omitted to be measured from the total extent of land on the false explanation that third persons claimed possession of that portion of the land, one fails to understand as to why the revenue authorities including the Tahsildar and the Sub Collector did not immediately arrange for an inspection of the property, re-measure it without delay and take that extent of land also into possession. What is, however, seen is that the respondents took into possession an equal extent of land belonging to the declarant from another survey number. Whether the petitioner acted bona fide or malafide, honestly or dishonestly and what were the ground realities available on the date of preparation of the sketch, mahazar etc. are matters to be proved by adducing evidence and not by a mere perusal of records prepared by superior officers behind the back of the accused employee. The contention of the petitioner that the decision to impose penalty on him was taken merely on the basis of the allegations which are not based on any evidence or reliable material, cannot be rejected as untenable.

13. The acts of delinquency alleged against the petitioner, prima facie, appear to be grave attracting the infliction of major penalty as well, unless extenuating

circumstances are pleaded and established by him. One fails to see why the disciplinary authority limited the scope of the penalty and resorted to the procedure for imposing minor penalty. It may be, that, the authorities wished to close the proceedings without following Rule 15 so that the task of adducing evidence is avoided. It is seen from Ext. P8 that materials in support of the charges collected after finding the accused employee guilty are relied on by the Government to uphold the orders passed by subordinate officers. This is a very strange procedure and has to be deprecated.

14. It is seen from the very first explanation submitted by the petitioner as per Ext. P4 that he made a request to the disciplinary authority that he may be given a chance to explain things better and by adducing evidence. Petitioner has stated in ground (b) of the Original Petition that the person who submitted Ext. P1 report was the Village Officer against whom also charges were framed but action against him was dropped when the Village Officer retired from service.

15. Having regard to the facts and circumstances of the case, I am of the view that the proper procedure that ought to have been followed by the disciplinary authority was to conduct a formal enquiry to establish the charges. It is settled law that the chargesheeted employee shall be given reasonable opportunity to defend his case. What is reasonable opportunity has to be decided in the facts and circumstances of the case and not solely based on the quantum of penalty that might finally be imposed on the employee. The impugned proceedings suffer from, at least, two infirmities (i) Charges have not been proved by adducing evidence in support of the allegations and (ii) Reasonable opportunity as required by law was not afforded to the petitioner before he was found guilty of the charges. The result is that the orders passed against the petitioner cannot be sustained. Exts. P5, P7 and P8 are liable to be quashed and I do so.

16. Original Petition is allowed. No costs.