

(1999) 06 KL CK 0039
In the High Court Of Kerala
Case No : W.A. No. 304/99

M.R. Narayana Panicker

APPELLANT

Vs

State of Kerala and Others

RESPONDENT

Date of Decision : 29-06-1999

Acts Referred:

Government Servants Conduct Rules, 1973 — Rule 3, 6
Kerala Civil Services (Vigilance Tribunal) Rules, 1960 — Rule 8(10), 8(15)
Prevention of Corruption Act, 1947 — Section 5

Citation : (1999) 06 KL CK 0039

Hon'ble Judges : P.A. Mohammed, J; M.R. Hariharan Nair, J

Bench : Division Bench

Advocate : V. Giri, for the Appellant; P.V. Asha, Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Hariharan Nair, J.—In this, appeal, Petitioner in O.P. 12881/92 challenges the dismissal of his application seeking to quash Ext. P-3 order of the Government, ordering compulsory retirement of the Petitioner from the service from the date of suspension, viz., 31st March 1989.

2. The Petitioner was a Last Grade Servant working in the Forensic Medicine Department of the Medical College, Kottayam. On 14th May 1985, one Sivaraman filed a complaint before the Principal of the said Medical College raising certain allegations which are shocking to human conscience. He alleged that on 10th May 1985, his 7 year old son Vineesh who was involved in a bus accident died while at the Casualty Department of the Medical College and that when he approached the Forensic Department on the next day for release of the dead body which had been subjected to autopsy, he was informed that the body could be released only if he was prepared to go by certain customs and conventions. The complainant was constrained to tender a sum of Rs. 50 for the purpose and he was then told that others concerned also would have to be bribed. Further

delay was caused in releasing the dead body as the complainant was unwilling to pay the amount. Ultimately, he could get the dead body at about 3 p.m.

3. A vigilance case was registered against the person named in the complaint namely, Shri Gopi and the fact that the present Appellant also received bribe from the complainant came to light. Thereupon regular enquiry was constituted through the Vigilance Tribunal, Trivandrum. The present Petitioner was arrayed as 2nd accused in the case. After detailed enquiry, the Tribunal found that the first accused Gopi whose name was mentioned in the complaint, while working as Mortuary Technician in the Medical College, Kottayam abused his official position as a public servant, demanded and received illegal gratification for releasing the dead body and thus failed to maintain absolute integrity and devotion to duty and that the present Appellant (2nd accused) also received a sum of Rs. 50 as illegal gratification for the purpose of releasing the said dead body and thereby failed to maintain absolute integrity and devotion to duty. The Tribunal, however, was inclined to take a lenient view in the matter of punishment for the misconduct and hence recommended only the award of punishment of reduction of the Appellant's scale of pay to the lowest stage of the last grade service for 5 years.

4. On receipt of the aforesaid findings and recommendation, the Government, however was disinclined to take a lenient view. After accepting the finding of guilty, it decided to award the penalty of compulsory retirement to the delinquent. That penalty was inflicted as per Ext. P-3 order dated 20th February 1991.

5. The contentions raised by the Appellant against the said order did not find favour with the learned Single Judge who decided his O.P. 12881/92. The Original Petition was dismissed and it is that judgment that is impugned in the present appeal.

6. The learned Counsel for the Appellant vehemently contended that the impugned order is bad for three reasons. Firstly it is pointed out that in Ext. P-1, the aggrieved party had no case at all that the present Appellant had received any illegal gratification from him. The second argument is that even assuming that there was acceptance of the sum of Rs. 50 as alleged in the disciplinary proceedings, it was not preceded by any demand therefore and as such the ingredients of the misconduct alleged are not fulfilled. Thirdly, it was argued that the Government, on receipt of the findings and recommendation of the vigilance Tribunal, had no discretion to enhance the punishment suggested by the Tribunal and that in the instant case, what was suggested being only reduction to a lower rank, the punishment of compulsory retirement is unjustified. Lastly it was argued that in any event when the allegations against the delinquent are considered, the punishment inflicted is grossly disproportionate to the alleged misconduct and unjustified.

7. It is true that in Ext. P-1 complaint, the complainant had not mentioned the

name of the present Appellant as the person who demanded illegal gratification or as the recipient of the gratification. The purpose of the complaint was only to bring to the notice of the Principal of the Medical College who was the head of the institution, his grievances about the shameful incident of demand of bribe for releasing the dead body of a child his father. Demand of bribe is often done in secrecy and the offenders always have their own stealthy methods to screen their acts from the notice of the public. Even if a group of people are involved in such crimes, it may be one among them who might approach and tip off the man in need about the necessity for tendering illegal gratification. In such state of affairs, the victim may not always be aware of the persons working behind the scheme.

8. As revealed in the enquiry, it was the first accused mentioned in Ext. P-3 order of the Tribunal who had directly approached the complainant and that was why he could name him. Nevertheless, the victim had made it clear in his complaint that others were also involved in the scheme and that the said first accused had disclosed to him the need to bribe the others also. It was only when vigilance enquiry was initiated against the said first accused that the involvement of the present complainant also came to light and that was how he was arrayed as the second accused in the disciplinary proceedings. It is not the sine qua non in such matters that the name of the offender should invariably find a place in the complaint.

9. The non-mention of the name of the offender in an F.I.R in certain situations, may have some serious consequence in a criminal proceeding; but what we are concerned in the present appeal is not a criminal proceeding at all, but only a disciplinary matter. We are of the view that the non-mention of the name of the Appellant in the Ext. P-1 complaint was not at all material or was an aspect of much consequence. In any event, the said reason is not at all sufficient to disbelieve the findings of the Vigilance Tribunal which was rendered after a full-fledged statutory enquiry.

10. The contention that the Appellant had not demanded any bribe from the complainant is also of little consequence. The allegation against the Appellant was based on Rule 3 of the Government Servants' Conduct Rules which provides an unequivocal terms that Government servants shall be bound to maintain absolute integrity and devotion to duty. Rule 6 forbids him from accepting directly or indirectly any gift, gratuity or reward from a person not related to him. It may be seen that a demand of money preceding its receipt is not at all made an ingredient of the said misconduct. Demand is thus not an integral part of the misconduct, alleged in the charge quoted in para 3 of the Original Petition.

11. It is also a matter of common knowledge that unless there is a demand, there will be no question of payment or acceptance of any illegal gratification. Such demands are often preceded by a demand. When the law provides that acceptance of gift or reward is a misconduct, it necessarily means that a preceding demand, direct or indirect, might be there. In the instant case, the fact

that the complainant received Rs. 50 while working in the Forensic Department which had held the custody of the body of the particular child after the autopsy, is a proved fact. It is for the complainant to explain as to why there was a payment and why there was an acceptance of the amount. No one normally gives any amount to any one without any purpose. The Appellant has no case that he happened to receive the money on a misunderstanding; on a misrepresentation or in consequence of any mistake. He would not have accepted the amount without any purpose. The fact that he retained the amount shows that it was not as a result of any mistake that he accepted the money.

12. A more or less similar situation arose in *State of Gujarat v. T. Karimbhai* 1992 (2) KLT 34 (Case No. 41). A similar contention was raised before the Gujarat High Court in a proceeding u/s 5 of the Prevention of Corruption Act, 1947. The contention was rejected and it was held that a demand would be inferred in such cases and that even without a specific allegation that there was a demand preceding acceptance of illegal gratification, the offence would be complete. We do not find any reason to differ from the said conclusion albeit the Appellant was not prosecuted under the Prevention of Corruption Act. It follows that the contention of the Appellant that no misconduct is proved for want of evidence of demand of illegal gratification fails.

13. We now come to the question whether the Government was bound to accept the recommendation of the Vigilance Tribunal in the matter of penalty also. The enquiry concerned was made by the Vigilance Tribunal and its report was forwarded to the Government under Rule 8(10) of the Kerala Civil Services (Vigilance Tribunal) Rules, 1960. With regard to the procedure to be followed by the Government on receipt of the report of the enquiry authority, Rule 8(15) of the said rules provides as follows:

(15) The Government shall either consider the report of the Tribunal and the records of the enquiry, or send these to the concerned disciplinary authority, for further action and final disposal in accordance with the relevant rules relating to the consideration and disposal of the report of an Inquiring Authority in respect of the Government servant.

14. It is clear from Rule 8(15) quoted above that the Government has wide discretion in the matter of final decision. It is, therefore, open to the Government even to differ from the findings of the Tribunal. Even if general principles of natural justice are incorporated, all that the delinquent officer can claim in the matter, is an opportunity to submit his representation with regard to the penalty proposed based on the provisional conclusions which are communicated to him.

15. The Appellant has no case that he was not given any notice with regard to the proposed punishment or that the Public Service Commission was not consulted. That the disciplinary authority is not bound by the findings of the enquiry officer even with regard to the guilt or otherwise of the delinquent is covered by the decision of this Court in *Mathew v. State of Kerala* 1989 (1) KLT

88. The decision in Abdul Sathar v. Registrar, High Court 1989 (2) KLT 45 also supports this view. That was also a case where the appellate authority enhanced the penalty granted by the disciplinary authority; but even that was found justified. In the circumstances, the Appellant's contention that Ext. P-3 is bad as the punishment proposed by the Vigilance Tribunal was not accepted, also fails.

16. A perusal of Ext. P-3 order issued by the Government shows that the representation given by the Appellant in response to the notice was duly considered and that it was thereafter that it proceeded to impose the penalty of compulsory retirement. Valid reasons therefore are also given in Ext. P-3. We, therefore, find no procedural irregularity in the matter of imposition of the penalty mentioned in Ext. P-3.

17. The only argument that further remains to be considered is that relating to the propriety of the punishment based on the facts proved. No doubt, the Vigilance Tribunal has expressed the view that it was inclined to take a lenient view. The Government thought otherwise. This is a case where the illegal gratification was received for release of a dead body. It requires a cruel mind to receive bribe from a bereaved father especially when the body is that of a young child who died in pathetic situation. We do not think that in the nature of the misconduct that the Appellant committed, the punishment of compulsory retirement imposed by the Government is excessive. It is not the quantum of the illegal gratification that governs the quantum of punishment, but the various other circumstances including the factual situations leading to the demand and payment.

In the circumstances, the appeal fails and it is accordingly dismissed.