

(1960) 11 KL CK 0020
In the High Court Of Kerala
Case No : A.S. No. 1095 of 1959

N. Vasudevan Nair

APPELLANT

Vs

Government of Kerala and Another

RESPONDENT

Date of Decision : 22-11-1960

Acts Referred:

Constitution of India, 1950 — Article 266, 311(2)
Travancore Public Servants (Inquiries) Act, 1122 — Section 2

Citation : AIR 1962 Ker 43

Hon'ble Judges : M.A. Ansari, C.J; M. Madhavan Nair, J

Bench : Division Bench

Advocate : T.K. Narayana Pillai and D. Narayanan Potti, for the Appellant; C.M. Kuruvilla, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Madhavan Nair, J.—The appellant was a clerk in the Taluk Office, Meenachil, who was dismissed as per Ext. P-3 order of the 2nd respondent, the Board of Revenue, Kerala, on charges of falsification of accounts, tampering with the records and misappropriation of Government money while he was a clerk in the Jenmikaram Section of the Taluk Office. That order was, on appeal, affirmed by Ext. P-4 order of the 1st respondent, the Government of Kerala. By O. P. No. 424 of 1958 he prayed for the issuance of a writ of certiorari quashing Exts. P-3 and P-4 orders and a writ of mandamus directing the respondents to reinstate him in service. But it was dismissed by Justice Sri M. S. Menon. This appeal is against that order.

2. The contention urged by the appellant is that the proceedings which culminated in Ext. P-3 order of his dismissal were conducted in a manner violative of all rules of natural justice and as such the impugned orders are unsustainable in law.

3. The admitted facts of the case are as follows : On 10th September, 1956 the petitioner was served with a memo of charges, which is produced in this case as

Ext. P-1. It narrated, with details, four instances of misappropriation of Government money by the appellant attended with falsification of accounts and tampering with Government records. It stated how it was seen from the records that against a voucher by a Jenmi for Rs. 34-8-4, he drew a bill on treasury and collected Rs. 134-8-4 out of which the voucher amount alone was paid to the jenmi, how he appeared to have made correction, writings and interlineations in different inks in a voucher presented by another jenmi and thereby misappropriated another sum of Rs. 100, and like other charges. It further required him to put in his Written statement of defence, if any, to the charges mentioned therein within a week of the receipt of the memo, and also to state whether he desired an oral enquiry or only to be heard in person on the matter.

On 17th September, 1956 the appellant applied for time to submit his written statement; and the Enquiry Officer granted him five days" time. He did nothing further in the matter than applying for adjournments on 24th September, 1956 and On 1st October, 1956. On 19th October, 1956 he was given another memo by the District Collector, Kottayam, requiring him to submit his explanation in two days; and in response thereto he submitted his written statement on 21st October, 1956" A copy of that written statement is produced in this case as Ext. P-7. After referring to his receipt of Ext. P-1, he stated therein that the entries in the records were all "clerical mistakes" which he happened to commit on account of his inexperience and overwork in the job, that on detection of these mistakes by the auditors, he caused notices to be served on the jenmis to whom the overpayments were made, on receipt of which they have readily remitted back all their overdrawing; and that therefore he might be pardoned for his mistakes. But, he "did not mention whether he wanted any oral enquiry or even a personal hearing on the matter as he was directed to state in Ext. P-1.

On 5th December 1958 he was served with Ext. P-2 notice intimating him how the jerimis, to whom the overpayments were alleged to have been made, were examined by the Enquiry Officer when they denied the corrections, interlineations, etc., in the vouchers, and denied receipt or remittance back of any overpayments as alleged by the appellant, and other details of the evidence gathered against him. It recited further how, the jenmis have told that the appellant went over to them and made them sign refund-challans though they did not pay any amount to be refunded. It concluded with a finding that "the falsification of accounts and misappropriation of Government money stand proved," and a direction to the appellant "to show cause within 15 days why he should not be dismissed from service."

The appellant submitted his explanation on 18th December 1956, a copy of which is produced in this case as Ext. P-8, in which he reiterated that her was innocent of the charges levelled against him although he happened to commit certain "clerical errors" for which he requested to be pardoned. He characterised the statements given by the jenmis before the Enquiry Officer as mere extractions under threats by "certain officers." Even so, he did not seek an

opportunity to question or cross examine them or to examine anybody on his behalf. The explanation given by him in Ext. P-8 was found unsatisfactory by the Board of Revenue. Nonetheless the Board called him for a personal hearing on 25th March, 1957, In response to that invitation, tile appellant appeared before the Board and stated that he had nothing to add, by way of explanation to the charges against him, to what he had already submitted in Ext. P-8. On 13th April 1957 the Board passed Ext. P-3 order :

"The culpability of the delinquent is thus clearly established that he has on various dates not only misappropriated Government money but has made various entries in the Government register in order to protect himself and drag in other parties, Every opportunity has been given to him to prove that he is not guilty. His pleas of inexperience (with 34 years" of service to his credit) and overwork is utterly unacceptable in the present case which is one of misappropriation of Government money. The attempt by returning the amounts thus misappropriated cannot absolve him of the guilty of his actions, nor enable the Government to repose any confidence in him in the future. Sri M. Vasudevan Nair Is dismissed from service."

The appeal by him to the Government was summarily dismissed as per Ext. P-4 order.

4. The complaint that the proceedings which culminated in the appellant's dismissal from service were violative of the rules of natural justice does not appear to bear any substance. The appellant was particularly asked in Ext. P-I "memo of chaises" whether he required an oral enquiry. He did not answer the same; nor did he at any subsequent time require an opportunity to cross-examine the witnesses who have spoken against him or to tender any evidence on his part. The learned counsel for the appellant contended that evidence, not taken in the presence o? the appellant, should not have been used against him by the authorities. According to him natural justice required that all witnesses in the matter should have been examined in his presence so as to secure an Opportunity to him to cross-examine them. In support of this proposition reliance was placed on Gopinathan Nair Vs. State, In that case, no doubt", the learned Single Judge took the view :

"Finding a person guilty on the basis of evidence recorded behind his back is a flagrant violation of principles of natural justice."

and on that ground set aside the order of dismissal of a Sub-Inspector of Police who was found to have taken

"a woman to the Government Rest House for immoral purposes spent the night there in a riotous manner drinking and causing disturbance to the other occupants of the Rest House ... (and) left at 4 a.m. the next morning without making any entry in the register of the Rest House regarding occupation of the place the previous night."

5. We regret our inability to accept the above dictum in its application to disciplinary enquiries against public servants. Such enquiries are not in the nature of trials. They are only "fact finding" investigations by administrative authorities, to which the standards of a trial cannot be imported. Rules observed in trials cannot therefore be insisted in disciplinary enquiries under guise of natural justice. The requirements of natural justice must depend upon the facts and circumstances of the case in point. As observed by Lord Atkin in *General Council of Medical Education v. Spackman* 1943 2 All ER 337, the procedure which may be very just in deciding whether to close a school may not be necessarily just in deciding a charge of infamous conduct against a professional man.

"The requirements of natural justice must depend on the circumstances of the case, the nature of the enquiry, the rules under which the tribunal is acting, the subject-matter that is being dealt with and so forth."

observed Tucker, L. J , in *Russell v. Duke of Norfolk* 1949 1 All ER 109 at p. 118.

6. Proceedings in courts canvassing the legality of disciplinary actions of administrative tribunals should not be treated as appeals from, or re-hearings of trials held by the disciplinary authorities, rather than as invocations" of the limited jurisdiction of the courts to restrain the abuse of quasi-judicial proceedings", where the sole issue is whether the result be it right Or wrong, was arrived at with due regard to the principles of natural justice.

What then are the requirements of natural justice in a case of this kind? The answer may conveniently be stated in the words of Harman, J., expressed in *Byrne v. Kinematograph Renters Society* 1958 2 All ER 579, which were quoted with approval by the Privy Council in *Ceylon University v. Fernando* 1960 1 WLR 228.

"First I think that the person accused should know the nature of the accusation made; secondly, that he should be given an opportunity to state his case and thirdly, of course, that the tribunal should act in good faith. I do not myself think that there really is anything more."

7. There is no complaint in this case that the authorities were actuated by any mala fides against the appellant. The appellant was told in detail the charges levelled against him. He was also told in detail the evidence gathered against him in regard to those charges, All that he chose to say in reply to them was that the acts complained of were all clerical errors on his part and that he might be pardoned for them. The appellant was particularly asked to state whether he wanted an oral enquiry in the matter. He ought to have then stated, if he so desired, that he would like to have an enquiry in proof of the charges against him. The appellant had, at no stage before the passing of the order of his dismissal, sought an opportunity to cross-examine the witnesses who deposed against him.

8. In the above circumstances, we prefer to adopt the dicta laid down by the Judicial Committee of the Privy Council in a similar case in 1960 1 WLR 228. The plaintiff in that case sat for the degree examination of Bachelor of Science in the Ceylon University and did all the papers so well as to secure a first class in the result. But, Miss Balasingham, another candidate for that examination, came with the allegation that he had had prior knowledge of the contents of the question-paper. As he happened to be the nephew of a professor who set the question-paper concerned, the Vice Chancellor took a serious view of the matter and set up a commission of inquiry to go into the matter. They sat on three occasions, in the first and last of which the plaintiff was interviewed; but he was not invited to be present at the second when they examined Miss Balasingham and some other witnesses on the matter.

The commission came to the conclusion that the allegation against the plaintiff had been substantiated, and on their report the Board of Residence and Discipline suspended the plaintiff indefinitely from all University examinations. Thereupon the plaintiff instituted the action for a declaration that the finding of the commission of inquiry and the decision of the Board of Residence and Discipline were null and void, mainly on the ground that the mode of inquiry adopted by the commission was in violation of the principles of natural justice. The question before the Judicial Committee of the Privy Council was "whether there had been such breach of the principles of natural justice as was necessary to warrant the intervention of the court in the case". Their Lordships observed :

"The plaintiffs contention to the effect that he was not adequately informed of the case he had to meet, and was not given any adequate opportunity of meeting it and that the course taken by the Vice-Chancellor or the commission of inquiry in these respects failed to satisfy the requirements of natural justice, depended almost entirely on the admitted fact that Miss Balasingham and the other witnesses were not questioned in the presence and hearing of the plaintiff, who consequently was not able to question them on the statements they made

But this did not, in Their Lordships' view, in itself involve any violation of the requirements of natural justice The Vice-Chancellor was not bound to treat the matter as if it was a trial, had not power to administer an oath, and need not examine witnesses but could obtain information in any way he thought best.

..... it was open to him, if he thought fit, to question witnesses without inviting the plaintiff to be present.

But, while there was no objection to the Vice-Chancellor informing himself in this way, it was undoubtedly necessary that a fair opportunity must have been given to the plaintiff to correct or contradict any relevant statement to his prejudice The Vice-chancellor's evidence and indeed the plaintiff's own admission, make it abundantly plain that at the outset of the first interview the plaintiff was told that Miss Balasingham had made this charge against him, and

the nature of the charge was explained to him in detail.

,.....,.. Their Lordships are, accordingly, satisfied that the plaintiff was adequately informed of the ease he had to meet.

As to the adequacy of the opportunity of meeting the case alleged against him afforded by the two interviews, the plaintiff in his evidence complained that the interviews were not fairly conducted in the respects that he was plied with questions which he was not given a chance of answering fully and was prevented from saying all he wanted to say. The trial judge rejected these complaints and accepted the Vice-Chancellor's evidence to the effect that the two interviews were fairly conducted. Their Lordships see no reason for dissenting from this finding.

Their Lordships are therefore satisfied that the interviews, so far as they went, were fairly conducted and gave the plaintiff an adequate opportunity of stating his case. But it remains to consider whether in the course they took the interviews must be held to have fallen short of the requirements of natural justice on the ground that the plaintiff was given no opportunity of questioning Miss Balasingham. She was the one essential witness against the plaintiff, and the charge in the end resolved itself into a matter of her word against his. In their Lordships' view this might have been a more formidable objection if the plaintiff had asked to be allowed to question Miss Balasingham and his request had been refused. But he never made any such request although he had ample time to consider his position in the period of 10 days or so between the two interviews. There is no ground for supposing that if the plaintiff had made such a request it would not have been granted. It therefore appears to their Lordships that the only complaint which could be made against the commission on this score was that they failed to volunteer the suggestion that the plaintiff might wish to question Miss Balasingham, or, in other words, to tender her unasked for cross-examination by the plaintiff. Their Lordships cannot regard this omission, or a fortiori the like omission with respect to other witnesses, as sufficient to invalidate the proceedings of the commission as failing to comply with the requirements of natural justice in the circumstances of the present case."

9. After the appellant was given notice of the evidence gathered against him detailing the addresses of the witnesses and their respective statements against him, he was invited for a personal hearing on the matter before the Board of Revenue. With all the information he had, he did not request the Board to give him an opportunity to cross-examine the witnesses who spoke against him. not to adduce any evidence on his part. The abstention from tendering the witnesses for the appellant's cross-examination without his asking for the same cannot be said to be violative of any rule of natural justice. No other ground was urged in support of the plea of violation of natural justice. We do not therefore find any ground to hold that the enquiry in the instant case has violated the principles of natural justice.

10. It was contended that under the Travancore Public Servants (Enquiries) Act, Act 11 of 1122, an enquiry in the matter as provided in the Act ought to have been conducted in this case, calling upon the petitioner to participate at the trial, giving him, copies of all the evidence against him and inviting him to cross-examine the witnesses at the enquiry, and that for want of observance; of such a procedure the order of dismissal in the instant case must be held to be illegal. We do not think that in all cases in which a public servant is sought to be proceeded in disciplinary action, the Government is bound to hold an enquiry following the procedure laid down in the said Act. That Act only lays down the procedure "for regulating inquiries into the conduct of public servants not removable from, their appointments without the sanction of the Government", that is, of Gazetted Officers only. The petitioner is not one coming within that category. Further, Section 2 of the Act shows that the Act will operate only if the Government thinks that a formal and public inquiry into the truth of any imputation, of misconduct by any particular Gazetted Officer ought to be made. No Government servant is given the option, much less the right, to insist on a public inquiry in his case.

It is expressly provided in Section 22 of that Act:

"Nothing in this Act shall be construed to affect the authority of Our Government for suspending or removing any public servant for any cause without any inquiry under this Act."

In this case, the petitioner was particularly asked whether he desired an oral enquiry. He did not care to answer the same, "If the public servant concerned does not desire an oral enquiry to be held, there is no obligation upon the authority to hold an enquiry". See *S. Kapur Singh Vs. Union of India (UOI)*, at p. 499.

A like contention raised in *Gopinathan Nair Vs. State*, was repelled by the learned Judge with the observation :

"Apart from the fact that the former is a statute prescribing the procedure for public inquiries, many of the provisions of the Act have become obsolete in view of the Constitutional safeguards contained in Article 311 of the Constitution. The matter is now governed by Article 311 which lays down that before a Government servant is dismissed, removed, or reduced in rank, he must be given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him."

We are glad to express our approval of the above dictum in toto.

Further, advertent to the very similar provisions of the Public Servants (Inquiries) Act, Central Act 37 of 1850, our Supreme Court observed in *S. A. Venkataraman v. Union, of India* AIR 1934 SC 375:

"As the law stands at present, the Only purpose for which an inquiry under Act 37 of 1850 could be made, is to help the Government to come to a definite

conclusion regarding the misbehaviour of a public servant and thus enable it to determine provisionally the punishment which should be imposed upon him prior to giving him a reasonable opportunity of showing cause as required under Article 311(2) of the Constitution. An enquiry under this Act is not at all compulsory and it is quite open to the Government to adopt any other method if it so chooses. It is a matter of convenience merely and nothing else."

11. It is not for the delinquent Government servant to dictate the manner in which an enquiry, shall be held in respect of his misbehaviour. He cannot even claim an enquiry as of right. All that he is entitled to under Article 311(2) of the Constitution is to have a notice of the charges levelled against him with opportunity to submit his explanation thereto and a further notice of the punishment that is proposed to be inflicted on him with a like opportunity to submit whatever he has to say in answer thereto. Judged by those standards the events narrated hereinabove clearly show that the proceedings in the case had been very fair.

12. The next contention was that the Kerala Civil Services (Classification, Control and Appeal) Rules, 1957 came into force on 9th April 1957 but the Ext. P-3 order of dismissal of the appellant was passed only four days thereafter on 13th April 1957, that therefore Ext. P-3 ought to have been passed under the Kerala Civil Services (Classification, Control and Appeal) Rules only, and that, such not having been in this case Ext. P-3 order must be held to be illegal and without substance. The enquiry in the case of the petitioner had been closed with the personal hearing extended to him on 25th March 1957. Any rule promulgated thereafter cannot apply to the enquiry already closed before its promulgation.

13. In the circumstances we do not find any error in the exercise of discretion by the learned Single Judge in the disposal of the Original Petition in the case to merit our interference in appeal there from.

The appeal fails and is dismissed with costs.