
(1957) 04 AP CK 0020

In the Andhra Pradesh High Court

Case No : Writ Petitions No's. 65 and 119 of 1957

Narayana Rao K.V. and Another

APPELLANT

Vs

State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 04-04-1957

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : AIR 1958 AP 636 : (1958) 2 LLJ 294

Hon'ble Judges : Ansari, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Ansari, J.—The two petitioners seeking writs of certiorari had been employed in the Road Transport Department, whose assets and liabilities have since been taken over by the State Road Transport Corporation K. V. Narayana Rao, who has filed W.P. No. 65 of 1957, had been a bus conductor with ten years' service. Abdul Rahim, who has filed W.P. No. 119 of 1957, was a mechanic attached to the City bus depot at Gowliguda, Hyderabad. Both were placed under suspension by two orders of one R. K. Sharman, who was then the mechanical engineer. The orders were of 24 January 1955. Both the petitioners have been later discharged from the service and their appeals against the dismissals have been rejected. The W.P. No. 64 of 1957 seeks to vacate the dismissal order of 13 September 1956 and W.P. No. 119 of 1957 prays for setting aside a similar order of 5 October 1956. The events that culminated in passing the aforesaid orders can briefly narrated.

2. In 1954 a Comet Mk. I, new radiator, is alleged to have been removed by some of the employees from the department's stores premises at Mushirabad and sold to outsiders. An enquiry as to who had removed the radiator and how it was effected was begun in August, 1954. It was conducted by three persons; (1) Rama Reddi, the works manager, (2) K. B. Krishnan, the labour welfare officer, and (3) K. V. K. Nair, the stores officer. The committee investigated and also

recorded certain confession statements. The writ petitioners, however, were then afforded no opportunity to meet the evidence thus collected and only their statements were recorded. Among other things the committee found both the writ petitioners implicated in the conspiracy of removing the new radiator and therefore liable to be dismissed. The concluding parts of the report read as follows :

"... The committee is of the considered opinion that Mr. Venkatanarayana be dismissed from service after the formalities of chargesheet and show-cause notice are gone through in the usual manner ... Despite mechanic Abdul Rahim's insistence that he is innocent and knows nothing of this issue, the committee cannot help but come to the conclusion that he is entirely guilty, and the committee recommends that he also be dismissed from service after going through the formalities of issuing the chargesheet and show-cause notice in the usual manner ..."

3. Each of the writ petitioners was thereafter given a chargesheet consisting of four counts. The charge which is common is that each had conspired with the other and with Besterwitch a driver, Prakash Rao a warder, Narasimloo a mechanic, for the illegal removal of the radiator. The remaining three counts show the specific part each is alleged to have played in removing it. Venkatanarayana is said on 20 June 1954 to have gone to Prakash Rao's house in Seethapalmandi and informed him that arrangements had been made for the removal and that Besterwitch as well as Abdul Rahim would meet him. The next charge in his sheet states that he was present on 21 June 1954 when the radiator was removed from the stores and placed in the lorry. The last count against him is that about 6 p.m. on the same date he again went to Prakash Rao's residence and informed him about the radiator having been removed to Barkatpura where it was transferred into a private car and it had reached its destination. The several charges in the sheet against Abdul Rahim are that on 21 June 1954 the radiator was handed over to him by Ramachendra Rao in the presence of Prakash Rao and he loaded in the lorry, which was standing in the compound. The next is that he accompanied Besterwitch and Sri Ramloo inside the lorry to Barkatpura, where he again removed the radiator into another private car, in which Narasimloo was seated. The last count relates to an earlier act by this writ petitioner, namely, that on 20 June 1954 a Comet Mk. I new axle shaft was handed over to him at the S.P. Oil Mills premises, which he carried it away on his shoulders. Each of the charge sheets, which is dated 9 February 1955, is signed by R. K. Sherman and requires the addressee to submit his remarks within seven days from the receipt, as to why disciplinary action should not be taken against him. Neither charge sheets were accompanied with the extracts from the report of the committee that had recommended their dismissals. In April 1955, however, each petitioner was given a notice to show cause why he should not be dismissed from the service and the notices had relevant extracts from the report. The fact remains that before the notice the writ petitioners have had no opportunity of meeting the case against them.

Thereafter three persons constituting a committee heard the representations the petitioners had to make against the proposed action and opportunity was also afforded to them to cross-examine some of the persons whose statements had been recorded earlier, particularly Prakash Rao, who is alleged to have confessed. The persons constituting this new committee were (1) R. K. Sharman, who acted as its chairman, (2) K. V. K. Nair, the stores officer, and (3) M. K. Baje, the assistant works manager, Clearly two members of the new committee were not in the earlier committee, but K. V. K. Nair was common to both. The new committee was apparently not satisfied with the explanations that the petitioners had furnished and in September 1956 each petitioner was informed about his dismissal.

4. The several grounds taken by Venkatanarayana in his petition need only be summarized. He complains that :

(1) R. K. Sharman, the mechanical engineer, was not competent to place him under suspension or frame charges, and had prejudged the issue;

(2) there was no order by the Government constituting the committee to enquire into the allegations and the composition of the personnel of the committee was opposed to the sense of natural justice;

(3) The committee with a view to fulfil the desire expressed in the earlier report went though a force of enquiry, did not consider the explanation about his being on duty on 20 June 1954 and on leave on 21 June 1954 and gave only such portions of the records which they felt relevant;

(4) the driver and cleaner, who were alleged to have confessed, had retracted, and Prakasa Rao who was the principal offender was still retained in the service;

(5) no comet was lost and no records were produced to show possession by the stores department of any excess comet;

(6) the theft of such a comet radiator, if true, was a cognizable offence and ought to have been investigated by the police;

(7) the petitioner was a public servant and the provisions of Art. 311(2) have not been complied with in his case.

5. No useful purpose will be served in summarizing the contents of Abdul Rahim's writ petition also, because it is drafted on the same lines and was filed after the earlier petition had been admitted. The Government replies to both are of general denial. The position taken is that after a thorough and impartial enquiry into the charges and the explanation offered, the proper authority had ordered the dismissals. We are not impressed with most of the grounds taken in the petitions, but we find the complaint about the personnel of the later committee not to be, according to rules of natural justice, justified. It is clear from the extracts of the report furnished to each petitioner with the notices to show cause, the members of the earlier committee had already decided how

each offender was to be punished. It is equally clear that further procedure according to the members of that committee were bare formalities. It is not disputed that till the aforesaid notices to show cause were issued in April 1955 no reasonable opportunities were afforded to the writ petitioners to meet the case against them. In these circumstances we fail to see how K. V. K. Nair being a member of the later committee, which was to judicially determine facts and make was to judicially determine facts and make recommendations, can be treated as constituting the committee to be a judicial tribunal. It is true that proceedings before administrative tribunals need not be according to the procedure familiar to law courts, for the assumption that the methods of natural justice are ex necessitate those of courts, has been held unfounded. But the tribunals must conform to principles of natural justice and cannot act contrary to canons of fair play, In this connexion we need refer only to *Subba Rao v. State of Hyderabad* [1958 I L.L.J. 206]. There a Deputy Secretary had enquired into the conduct of the petitioner and had found him guilty of disobedience to Government order. The petitioner had taken the position that certain officers entertained prejudices and pursuant to that the enquiry was started. The petitioner further complained that he was compelled to submit to an enquiry by an officer who had already prejudged him. In those circumstances the petitioner was allowed and it was held that fundamental principle of natural justice required the enquiry to be by a person with an open mind and not by one who was either biased against whom action was sought to be taken or one who had prejudged the issue, *Subba Rao, C.J.*, as he then was, observed at p. 212 :

"If those fundamental principles are not followed by Government in selecting a person to make an enquiry, the enquiry would be a farce and would not in any sense of the term be said to give a reasonable opportunity to the officer concerned to defend himself."

6. Bias of the enquiring authority is, therefore, fatal to its decision and the position should not be different where only one of those constituting the tribunal be shown to have prejudged the issue. In *Frome Breweries Company v. Bath Justices* [1926 A.C. 586] a refusal to renew a licence by the compensation authority was quashed, because three of the justices who sat and voted as members of the authority had been parties to a resolution of the licensing justices authorizing a solicitor to appear on their behalf to oppose the renewal. We therefore hold that on general principles the participations of K. V. K. Nair in the determination of the second committee when he had earlier committed himself to the view of each of the writ petitioners being guilty and liable to dismissal, is fatal to the legality of its conclusions. Indeed the defect in the particular case goes further, for it constitutes infringement of the constitutional right conferred on the public servant by Art. 311(2). The clause firstly contains twofold protection, namely :

(1) against dismissal or removal by an authority subordinate to that by which the public servant was appointed and

(2) against dismissal without giving a reasonable opportunity of showing cause against the action proposed to be taken.

7. This second guarantee has been held to cover several stages in the fact-finding process and afford two opportunities to a civil servant of showing cause. The first is when charges framed against him are being enquired into. He then has the opportunity of entering into his defence to disprove the allegations. The second is against the projected punishment after the enquiring authority has arrived at a definite conclusion on the charges. Obviously the writ petitioner prior to the charge sheets of 5 February 1955 were afforded no opportunity to meet the case against them, and after the notices were issued the enquiry was before a committee whose one member had earlier held decided views against the petitioners. The learned Advocate for the State had argued that the entire proceedings should be looked into for determining whether any reasonable opportunity had been afforded and in his support he relies on *Joga Rao v. State of Andhra* [1956 ALT 979]. He has pressed before us that each writ petitioner was afforded ample opportunity against the proposed action. We, however, think that such opportunity before a tribunal whose one member had already prejudged the issue is no compliance with the constitutional direction. A reasonable opportunity under Art. 311(2) means no mere formality of procedure before earlier conclusions are given effect to. Obviously the clause confers the right of presentation before somebody who would determine according to the canons of fair play. If trial by an officer who had his testimony recorded in the case be shocking to judicial propriety and fair play, which is the position according to the observation in *I.P. State v. Mohd, Noor* [AIR 1958 S.C. 8], the enquiry by a committee, whose member had prejudged the issue, is similar. We therefore hold that these writ petitions must be allowed, and the impugned orders of dismissals are set aside. Our judgment will not preclude the Government from proceeding with the enquiry against the writ petitioners afresh according to law. The petitions are allowed with costs which we fix at Rs. 100 in each case and this judgment will govern both the petitions.