

(1973) 10 KL CK 0007
In the High Court Of Kerala
Case No : W.A. No. 278 of 1972

Parameswaran

APPELLANT

Vs

dy. director of panchayats

RESPONDENT

Date of Decision : 11-10-1973

Acts Referred:

Travancore-Cochin Panchayat Act, 1950 — Section 24(3)

Citation : (1973) 10 KL CK 0007

Hon'ble Judges : P. Govinda Nair, J;K. Sadasivan, J

Bench : Division Bench

Advocate : K. Chandrasekharan, for the Appellant;

Final Decision : Dismissed

Judgement

1. The appellant while working as Executive Officer of the Tirurangadi Panchayat was charged with having made a false estimate for work by inflating measurements and bills. He was asked to show cause by Ex. P1 notice dated 16-1-1969 why disciplinary action should not be taken against him on the said charge. He submitted his explanation and an enquiry was conducted. The officer who made the enquiry reported that the petitioner was guilty of the charge. Soon after the charges were framed against him he was transferred to Maniyur Panchayat as Executive Officer and there he drew his salary for the first two months as also his T.A. in full. While he was working at Tirurangadi he had drawn advances against his salary which, under the Rules, he was bound to deduct while drawing future salary. He had also been directed by the Inspector of Panchayats not to draw his full salary and D.A. without making the deduction. Under these circumstances two more charges were framed against him as per Ex. P4 dated 15-4-1969 one for drawing excess salary in violation of the alleged direction of his superior and the other for not paying back the excess amount within a reasonable time. The petitioner stated in his explanation that the refund on account of the advances drawn from Tirurangadi Panchayat could not be legally deducted from the salary due from the Maniyur Panchayat. The amount

payable to Tirurangadi Panchayat was later paid about two months after he drew his salary and T.A. from the Maniyur Panchayat and pleaded financial difficulty for the delay in remitting the amount. The explanation was rejected by the 1st respondent. Deputy Director of Panchayats, Kozhikode by order Ex. P10 dated 11-7-69 and found him prima facie guilty of the charges. He was accordingly called upon to show cause why a punishment of barring his promotion for two years should not be imposed on him. The petitioner submitted Ex-P11 explanation on 21-7-1969 and on a consideration of that the 1st respondent found that the charge of having drawn the full salary and T.A. was unsustainable. The 1st respondent, therefore, issued notice Ex. P12 dated 16-9-1969 again calling upon the petitioner to show cause why disciplinary action should not be taken against him in respect of the second charge viz., the delay in payment to the Tirurangadi Panchayat the amount he was bound to refund on account of advances drawn against salary. In answer the petitioner submitted Ex. P3 explanation on 3-10-1969. The 1st respondent on a consideration of the explanation found him prima facie guilty of the second charge. Notice Ex. P17 was sent on 18-11-69 calling upon the appellant why a punishment of reduction to lower rank should not be imposed on him in respect of the charges found against him pursuant to the enquiry conducted on the basis of Exts. P1 and P4. The appellant submitted Ex. P13 explanation on 6-4-1970. The 1st respondent, the Deputy Director examined the charge and found the appellant guilty and imposed on him the punishment of stoppage of increment with cumulative effect for one year and barring promotion for a period of 3 years. It is to quash Ex-P10 order dated 13-10-1970 that the O.P. was filed. The learned Single Judge having dismissed the O.P. the petitioner has come up in appeal. Under the Panchayat Act appeal, is provided against an order like the one impugned in the present proceedings and a preliminary objection was, in fact, raised against the maintainability of the O. P. The learned judge has also entered finding that the preliminary objection is well-founded and the O. P. has to be dismissed on that sole ground; but without dismissing the O. P. on that ground the learned judge thought it proper to deal with the petition on the merits.

2. Before us only one contention was pressed and that is regarding the propriety of imposing more than one punishment on the same charge. According to the learned counsel R.17(ii) of the Rules framed under S. 24(3) of the Travancore-Cochin Panchayats Act II of 1950 (for short the rules) have been violated. R.17 gives a list of 8 punishments and they are:

- (i) Censure;
- (ii) withholding of increments or promotions, including stoppage at an efficiency bar;
- (iii) reduction to a lower rank in the seniority list or to a lower post or time-scale or to a lower stage in a time scale;
- (iv) recovery from pay of the whole or part of any pecuniary loss caused to the

State Government or the Central Government or to a local authority by negligence or breach of order;

(v) reduction of pension;

(vi) compulsory retirement;

(vii) removal from the service;

(viii) dismissal from the service.

We are concerned here only with No. (ii) "withholding of increments or promotions, including stoppage at an efficiency bar". The punishments imposed on the appellant are stoppage of increment with cumulative effect for one year and bar of promotion for a period of three years. The argument is that these two punishments cannot be awarded conjunctively; but only disjunctively. In other words, only one of the two punishments can be awarded at a time. We are unable to agree with the contention. Unlike in the Penal Code wherein specific punishments are prescribed for particular offences, R.17 sets forth the punishments that are available to be imposed on members of the service when found guilty of any of the offences contemplated in the, Act. The authority competent to impose the punishment is left with the discretion of imposing any of these punishments, individually or collectively. The contention of the learned counsel that the use of the proposition "or" connotes that only one of the two punishments alone can be awarded is not correct. Instead of or if the conjunction "and" were used the position would be that no alternative would be left for the disciplinary authority except giving both the punishments. But by using the proposition "or" the authority is given the right to choose the one or the other or both. The proposition "or" is sometimes used in a conjunctive sense also marking an alternative. The view of the learned judge that both the punishments can at the same time be imposed is, in the circumstances, correct. The Authority inflicting the punishment is expected, of course to use his discretion in a sensible manner, so that without doing violence to the language or spirit of the Rule. No other point arises. The Writ Appeal is, therefore dismissed; but in the circumstances without costs. Dismissed.