
(2005) 10 KL CK 0030
In the High Court Of Kerala
Case No : W.A. No. 39 of 1998

Parameswaran Nair

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 13-10-2005

Acts Referred:

Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 — Rule 11, 11(1), 15, 16, 16(2)

Citation : (2005) 4 ILR (Ker) 443 : (2006) 1 KLT 167

Hon'ble Judges : M. Ramachandran, J;A.K. Basheer, J

Bench : Division Bench

Advocate : P.K. Ashokan, for the Appellant; Vaheeda Babu, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

M. Ramachandran, J.—An appeal from judgment dated 28-10-1997 in O.P.No. 14331 of 1996 has been filed by the defeated petitioner. The challenge made in the Original Petition principally was against Ext.P5 which directed recovery of an amount of Rs. 1,33,993/- from the petitioner/appellant. The appeal filed therefrom had been rejected by the Government. Learned Counsel for the petitioner Sri. P.K. Ashokan submits that the contention as had been raised by the petitioner had practically been overlooked by the learned Judge and therefore, interference is warranted.

2. We may refer to the brief facts which might be necessary for disposal of the appeal. Petitioner had been functioning as Radiographer Grade-II attached to the E.S.I. Hospital, Olarikkara. It seems that there were certain complaints against the functioning of the Institution and a memo had been issued to the petitioner on 5-9-1991 pointing out that there was anomaly found in the stock of X-ray films when verification was conducted by the Resident Medical Officer. In the reply submitted by the petitioner, he had adverted to the deficiency in the system that was prevailing there and he could not have been answerable for the

shortage of X-ray films, since a number of persons had occasion to handle films in his absence and it would not have been possible to allege that he was responsible for the shortage. In the reply (Ext.P10), he had also indicated that he was aware of his responsibility to replenish the deficiency in the stock items and he may be granted six months time for making good the loss.

3. There is nothing to indicate that the matter was proceeded with thereafter. The shortage at that time was noted as 900 films of size 12" x 15" and 50 films of size 12" x 10". Further inspections had been there in later years, which showed greater loss, on various counts not only as shortage but also because of deterioration of the quality of films. There was no proper maintenance of records and supervisory lapses were alleged. These deficiencies had been codified to charge sheet as Ext.P1 dated 22-1-1993 and the petitioner had been directed to explain the 14 charges. Similar memos were also issued to three other officers. Ext.P2 is the explanation submitted by the employee concerned and according to him, none of the allegations had any merit since he had discharged his duties as was expected of a responsible Government servant. He claimed of an exemplary service record and the proceedings were therefore misconceived.

4. This was followed by Ext.P3 dated 5-1-1994 issued by the Commissioner Secretary, Labour and Rehabilitation Department. The petitioner had been advised that the explanation submitted by him had been specifically examined, but the Government found that there was grave failure in discharge of the duties, which had resulted in loss to the Government. Therefore, the explanations were not found as acceptable. By the order, a provisional decision to recover the amount from the petitioner was communicated and he was offered opportunity to submit further explanations, if any. A further explanation was submitted as Ext.P4, by the petitioner practically reiterating his stand. He had pleaded that from the memo, it was not possible to assume what was the reason for the finding that he alone was responsible for the sizeable loss alleged and although four officers including him had been given charge sheets, it was improper that he alone had been singled out for awarding of the penalty. This amounted to making him a scape goat and the finding entered into without a full-fledged enquiry was illegal and not regular.

5. Referring to the above proceedings, final order had been passed by the Government as Ext.P5 on 20-7-1994. Petitioner had been advised that the Government had decided to recover an amount of Rs. 1,33,993/- from him as he was fully responsible for the loss. Appeal was dismissed and the Original Petition had come to be filed.

6. The learned Judge had found that since the explanation had been examined in extenso and as there were proceedings contemplated only under Rule 16(2) of the Kerala Civil Services (Classification, Control and Appeal) Rules (hereinafter referred to as "K.C.S. (CC&A) Rules"), the legal formalities appeared to have been duly complied with and interference was not necessary or expedient. The appellant submits that this approach was not justified and his submissions have

gone unnoticed.

7. Sri. Asokan had referred to a decision reported in *Vaijyanthi Vs. State of Kerala*, . He points out that as in the above case, initially the proposal was to hold an enquiry as contemplated under Rule 15 of the K.C.S.(CC& A) Rules, but later on, a decision was taken to proceed in the matter as if there was only proposal for imposing a minor penalty as envisaged under Rule 16 of the above Rules. Referring to the observations made in the judgment, it was pointed out that the proceedings as above are vitiated. The further submission was that the explanation submitted had been practically ignored, as there was no advertence to the defence when Ext.P5 was issued. The next submission was that the authorities had erred in comprehending the issue. They were obsessed by the presence of Ext.P10 which had come to be submitted on a previous occasion and it should not have been considered as a substratum for imposition of any penalty. The proceedings commencing from Ext.P1 were independent in all respects.

8. The learned Government Pleader submits that the explanations given by the petitioner had been adequately considered by the Disciplinary Authority. In disciplinary proceedings, this Court should be slow to interfere. The learned Judge had meticulously examined all relevant aspects. The contentions raised in the appeal have no merit. The very decision of the Government to proceed under Rule 16 of the K.C.S.(CC&A) Rules, shows that there is proper application of mind. Records, prima facie, indicate that the Government had borne in mind all the relevant aspects and therefore no interference is warranted. It is further pointed out that fresh charge sheet had been issued as a continuation, when serious defaults were noticed and only after giving adequate and due notice, further disciplinary steps had been initiated. In the matter of prescription of a minor penalty, rules had been complied with. It is not as if the Government is bound to continue proceedings under Rule 15, once such steps are initiated and at any time depending on the facts of the case, proceedings as authorised by the Rules could be taken. Even in a case where the initial intent was to resort to Rule 16, nothing prevents the Government to convert the proceedings as one under Rule 15 and the position vice versa also could be resorted to, subject to the condition that procedural Rules were strictly observed. The Rules were never intended to fetter the rights of the Government to proceed against an erring Officer.

9. However, we feel that it may not be necessary to go to the above controversy. We may, for the time being, assume that Rule 16 proceedings were possible. But taking into account the second limb of the argument, we may examine as to whether in the frame work of the said Rule, the procedure adopted in the present case could be held as valid and had served the mandate of the Rule.

10. We may at this point, refer to the nature of jurisdiction that is being exercised by the Government while dealing with minor penalties as also major penalties, when such disciplinary proceedings are contemplated. Rule 11 of the K.C.S (CC& A) Rules refers to the nature of penalties, that could be imposed on a

Government servant for good and sufficient reasons. The penalties referred to as 11(1)(i to iv) are generally classified as minor penalties and the rest of the penalties namely from (v) to (ix) are classified as major penalties. Under Rule 15, orders prescribing the penalties specified in items (v) to (ix) of Rule 11(1) are to be passed only after an inquiry is held as far as may be, in the manner provided. When a complaint is received, or on consideration of the report of an investigation, or for other reasons, when the Disciplinary Authority empowered by the Government is satisfied that there is a prima facie case for taking action against a Government servant, such authority is to frame definite charges and after obtaining explanations, has to proceed with the other formalities, such as appointment of an Enquiry Officer. The charges are to be substantiated on the basis of evidence let in. Adequate opportunity is to be given to the delinquent employee to lead evidence as well. In fact, the proceedings are to be followed and completed in all respects, complying with principles of natural justice and opportunity at every stage as prescribed by the rules requires to be given.

11. However, in the matter of imposition of minor penalties, the procedure to be followed is comparatively simple. No order imposing any of the penalties specified in items (i) to (iv) of Rule 11(1) (as mentioned above) are to be passed, except after the Government servant is informed in writing of the proposal to take action against him and of the allegations on which it is proposed to be taken. He is also to be given opportunity to make any representation, he may wish to make. Such representation, if any, is to be taken into consideration by the Disciplinary Authority and penalty could be imposed thereafter.

12. Learned Government Pleader submits that in so far as a charge sheet had been issued and the Government had enquired into the circumstances in which such charges were framed and as there was opportunity given to the employee to furnish his explanation, the order is unexceptionable. The essential formalities had been duly complied with. The learned Single Judge entered satisfaction about the method so adopted. However, we have to point out that in this area, essentially the accent is about the requirement of a proper finding as regards the alleged lapses of the employee concerned. The purpose of enquiry under Rule 15 is to find out whether a person is guilty of lapses that are alleged against him. The finding necessarily has to be based on the oral and documentary evidences brought in. The Enquiry Officer is thereupon to sit and judge as to whether there have been sufficient materials to come to a conclusion that the allegations have been substantiated. Fundamentally, the endeavour is to enter into a definite finding to see whether the charges are substantiated.

13. The ultimate aim of procedure prescribed by Rule 16 is also the same. Rule 16 gives liberty to the Government to dispense with actual holding of an enquiry. The procedure could be short-circuited by giving an opportunity to the employee concerned to explain the conduct that is found as objectionable. The Memorandum of Charges is given so as to alert him about the area in which his explanation is required to be given. He gets an opportunity to substantiate his

contentions. The most important part of the rule, according to us, is that before a finding is entered into, the representation is to be taken into consideration by the Disciplinary Authority. In other words, the records or proceedings should indicate that the representations have been subjected to a consideration and then only a decision is taken. Even if the Officer had considered the objection and was still satisfied of the veracity of allegations, the thought process in the form of findings are to be put in black and white so that it may be possible, on a later occasion to assess and to find out as to whether there was proper application of mind. A Disciplinary Authority has never the freedom available to an arbitrator, who may at times would have the discretion to pass an award, without giving reasons for his findings.

14. Rule 16(2) refers to the records of proceedings mandatorily to be maintained. This includes the statement of allegations and the representation that is submitted by the delinquent. Prime importance, is given to the explanation and rightly so. The underlying objective of disciplinary proceedings would be satisfied only if the defence of the person is noticed and objectively. Subjective satisfaction has no place there. We feel that advertence to the explanation is all the more to be there in Rule 16 proceedings, as a decision is permitted to be taken, in the absence of the delinquent. In Ext.P5, there is nothing to show that advertence to the explanation has ever been there. Though they formed part of records, they received no attention.

15. Learned Counsel for the petitioner had invited our attention to several of the charges and the explanation that had been submitted by him, which according to him, would have fully exonerated him from the large majority of the allegations. It had been also pointed out that although there were four officers answerable for the loss, with sportsman spirit, three have been excluded. There is no discussion in Ext.P5 about the complicity of the workman, his involvement or his overt act or omissions. The findings do not satisfy the requirement of Rule 16 proceedings.

16. Since there is an essential failure in the judgment of Disciplinary Enquiry Authority, we are of the opinion that the consequential order requires interference. We are also satisfied that the explanation given as Ext.P10 in 1991 and the offer to recoup the loss was insufficient to enable the Government to come to a decision that whatever be the amount of loss, the appellant was liable to shoulder it. A blame worthy conduct alleged requires to be substantiated, even in disciplinary proceedings, as it involves civil consequences to the officer concerned. Petitioner is justified in pointing out that the decision of the Calcutta High Court reported in J. Mc. Gaffin and Another Vs. Life Insurance Corporation of India, comes to his rescue. Admissions can be acted upon only if they are unqualified. We do not find any unqualified admission either in Ext.P10 or in Ext.P2. In such circumstances, Ext.P5 as well as the appellate order deserve to be quashed.

17. After a lapse of about 12 years, it may be difficult for the Government to

start the proceedings de novo. But, the Government Pleader points out that when there is a technical defect in the procedure of conducting disciplinary proceedings, opportunity to the Government to make a reappraisal cannot be denied. We find that she is justified in making such submission. We quash the impugned orders, but simultaneously give liberty to the Government to proceed further in the matter if they deem that there is sufficient justification for this course to be followed. If a proposal is there to continue with proceedings as against the appellant, he has to be informed of the above, within three months from today. Thereafter, within another three months, the proceedings are to be concluded. If there is default in any of the above, the appellant should get the benefit and the respondents would have to disburse and reimburse whatever dues that might be payable to him, as if he had not been subjected to any disability. If further proceedings are taken, appropriate decisions will have to be made and communicated to him within the deadline as prescribed.

The Writ Appeal is allowed, in terms as above. No costs.