

(1958) 12 AP CK 0021

In the Andhra Pradesh High Court

Case No : Writ Petition No. 682 of 1955

Prakasa Rao (B.S.)

APPELLANT

Vs

State of Andhra Pradesh and Another

RESPONDENT

Date of Decision : 10-12-1958

Acts Referred:

Constitution of India, 1950 — Article 226, 311

Citation : (1959) 1 LLJ 560

Hon'ble Judges : Chandra Reddi, C.J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Chandra Reddi, C.J.—This petition under Art. 226 of the Constitution is directed against the order of the Government removing the petitioner from service. The petitioner entered Public Works Department as an officer in or about the year 1940. When he was the section officer of Bezwada circle he was also in charge of the Irrigation Works in the circle including those of Manimeswaram in Krishna district. During that period, complaints were received against him from the villagers of Manimeswaram which is on the lower side of the Arthamur channel. After a preliminary inquiry into the allegations by the proper Superintending Engineer the matter was referred to Disciplinary Proceedings Tribunal. The tribunal framed as many as six charges, enumerated below, and called upon the petitioner to furnish his explanation thereto :

"(1) That you, in or about July 1950, demanded and received Rs. 100 from Sri D. China Nagayya of Manimeswaram, as illegal gratification, for allowing water to the fields of the ryots of the said village.

(2) That you, in or about the first week August 1950, when Sri A. Mallikarjuna Rao and N. Kotayya of Manimeswaram met you on behalf of the villagers and requested you to open the drop once again and allow water to their fields, at least for a few days, as the standing crops were withering, demanded payment

of an additional sum of Rs. 100 as illegal gratification. (3) That you demanded and received Rs. 70 in or about July 1949 and another sum of Rs. 70 in or about July 1950 as illegal gratification from Mutyala Venkaiah of China Pandureka for allowing water to the fields of the ryots of the village from the new Arthamur channel. (4) That you demanded and received Rs. 50 in or about July 1949 and another sum of Rs. 50 in or about July 1950, as illegal gratification from Sri Kunapareddi Rama Rao of Malleswaram village for allowing water to the fields of the ryots of Malleswaram. (5) That you demanded and received Rs. 80 during 1949 and another sum of Rs. 100 during 1950 as illegal gratification from Sri Kunapareddi Rajulu of Munjalur, for allowing water to the fields of the ryots of his village. (6) That you in or about July 1950, actuated by corrupt motive, colluded with the ryots owning lands above the Arthamur channel drop and permitted them to make as many as fourteen breaches above drop to the detriment of the lands in the lower reach." On receipt of the explanation, an inquiry was held by the tribunal in the presence of the petitioner. Ultimately, the tribunal reached the conclusion that charges 1, 2 and 6 were substantiated. With these conclusions, it submitted a report to the Government on 1 April 1952 with a recommendation that the Government servant might be removed from service. The Government of Madras sent a copy of the report of the tribunal to the Petitioner and directed him to show cause within one month of the receipt of that memorandum why the penalty of removal should not be imposed upon him. He was also told that if he wanted he could peruse the connected records of the office of the tribunal, take notes or copies thereof, etc. Accordingly, the petitioner submitted his explanation. Having considered his explanation and the attendant circumstances and the recommendation of the tribunal, the Government directed that the petitioner should be removed from service forthwith. It is this order that is sought to be quashed by the petitioner.

2. Two points are raised by Sri Kuppaswamy in support of this petition. -

(1) The tribunal having referred to several discrepancies in the evidence of the witnesses for the prosecution should not have accepted it and should have given the benefit of doubt to his client. (2) There was an infraction of the provisions of rule 8(b) of the Madras Civil Services (Disciplinary Proceedings Tribunal) Rules in that the Government did not state specifically in the second notice that they have accepted the findings of the tribunal. We find it difficult to accede to either of these contentions.

So far as the first one is concerned, it is not within the scope of an inquiry under Art. 226 of the constitution to canvass the findings of fact. Whether the evidence is sufficient to warrant the finding is entirely a matter for the tribunal to decide. This Court cannot take upon itself the task of reviewing the evidence and express its views on the soundness of the findings of the tribunal. Therefore, that submission is unacceptable and has to be rejected. The second one does not seem to fare better. In order to appreciate the second contention, it is necessary to refer to rule 8(b) of the Madras Civil Services (Disciplinary Proceedings

Tribunal) Rules :- "After the enquiry has been completed, the tribunal shall send its findings; and recommendations to the Government together with its opinion, in cases in which acquittal is recommended, whether the acquittal is an "honourable acquittal" for purposes of Fundamental Rule 54(a). Where the tribunal does not express any such opinion it shall be presumed by the Government that the acquittal was not an honourable one. After the Government have arrived at provisional conclusions in regard to the penalty to be imposed, the person charged shall be supplied with a copy of the report of the tribunal (excluding the recommendations, if any, in regard to punishment made by it) and he shall be called upon to show cause within a reasonable time, not ordinarily exceeding one month, against the particular penalty proposed to be inflicted, provided that if, for sufficient reasons, the Government disagree with the whole or any part of the tribunal's findings, the point or points of such disagreement together with a brief statement of the grounds thereof shall also be communicated to him. Any representation in this behalf submitted by the person charged shall be duly taken into consideration by the Government before final orders are passed. "Stress is laid upon the language "After the Government have arrived at provisional conclusions in regard to the penalty to be imposed, the person charged shall be supplied with a copy of the report, " etc. On this language, Sri Kuppaswamy invites us to hold that the second notice should state that the Government have arrived at the provisional conclusion in regard to the penalty, etc. We do not think we can give assent to this view. That sentence only indicates that as and when the provisional conclusions have been reached, the officer accused will be supplied with a copy of the report, etc. That does not require the Government to recite that they have reached the provisional conclusions. To prescribe such a formality would be to import something into it which is not warranted by the language of the rule.

State of Andhra v. T. Ramayya [A.I.R. 1957 An. Pr. 370] relied on by the counsel for the petitioners does not afford us any guidance in this inquiry. There, after the tribunal submitted its findings and recommendations, the Government accepted its findings in regard to all charges except one, which, in the opinion of the tribunal, was not made out. While sending a copy of the report of the tribunal along with the notice against the proposed punishment, the delinquent officer was not informed that the Government proposed to differ from the tribunal in regard to one of the charges. It is in that context that the remarks called in aid for the appellant were made, namely : "As we have already pointed out, the authority should necessarily in its order requiring the civil servant to show cause give not only the punishment proposed to be inflicted but also the reasons for coming to that conclusion."

3. This passage cannot be interpreted as implying that even in cases where the Government differs from the tribunal, the accused officer should be informed of it. It is only in cases where the disagreement is to the detriment or prejudice of the officer that he should be given an opportunity to put forward his case in regard to the charge over which there is difference of opinion. Nor is it necessary

for the Government to state reasons for its agreement with the findings of the tribunal. Such an obligation is cast on the Government only when it is unable to agree with the conclusions of the tribunal. We do not think that the instant case is governed by the doctrine enunciated in *State of Andhra v. T. Ramayya* [A.I.R. 1957 A P. 370]. There is nothing in *Khemchand v. Union of India* [1959 - I L.L.J. 167] relied on by Sri Kuppuswamy which will be of any assistance to the petitioner. That was a case where the officer proceeded against was not given an opportunity to show cause against the punishment proposed. Chief Justice Das who delivered the opinion of the Court inter alia laid down that the constitutional protection ensured by Art. 311 required that the officer charged should be given an opportunity to make his representation as to why the proposed penalty should not be levied which could only be done after the enquiry was over and after the competent authority applied its mind to the gravity of the charges proved against him and reached the conclusion that a particular punishment should be inflicted. That case is not an authority for the proposition that the second notice should contain a statement that the Government had applied its mind to the matter before. It had decided to accept the findings and the recommendation of the tribunal.

4. The following passage from the judgment of the Judicial Committee in *I. M. Lall* case (1948 - II M.L.J. 55) does not lend any countenance to the theory propounded by Mr. Kuppuswamy :-

"In the opinion of their lordships, no action is proposed within the meaning of the sub-section until a definite conclusion has been come to on the charges, and the actual punishment to follow is provisionally determined on. Before that stage, the charges are unproved and the suggested punishments are merely hypothetical. It is on that stage being reached that the statute gives the civil servant the opportunity for which Sub-sec. (3) makes provision. Their lordships would only add that they see no difficulty in the statutory opportunity being reasonably afforded at more than one stage. If the civil servant has been through an inquiry under rule 55, it would not be reasonable that he should ask for a repetition of that stage, if duly carried out, but that would not exhaust his statutory right and he would still be entitled to represent against the punishment proposed as the result of the findings of the inquiry." These observations only imply that the second opportunity should be given only after the authority concerned had come to definite conclusions on the charge and decided to impose a particular punishment. Till then, any suggestion as to the punishment is merely hypothetical because the charges are yet unproved. Therefore, *Khem Chand Vs. The Union of India (UOI)* and *Others*, does not present any analogy here. In these circumstances, we do not think that the Government had acted illegally in removing the petitioner from service. It follows that the order in question has not been successfully impugned. In the result, the writ petition is dismissed with costs, advocate's fee being fixed at Rs. 100.