
(1968) 01 CAL CK 0007
In the Calcutta High Court
Case No : Civil Rule No. 590 (W) of 1964

Sanat Kumar Banerjee

APPELLANT

Vs

Collector

RESPONDENT

Date of Decision : 24-01-1968

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)

Citation : (1969) 1 ILR (Cal) 473

Hon'ble Judges : D. Basu, J

Bench : Single Bench

Advocate : Arun Prokash Chatterjee and Ajay Kumar Das, for the Appellant; B.C. Dutt and Murari Mohan Dutt, for the Respondent

Judgement

D. Basu, J.—The Petitioner, who was appointed a lower division clerk in 1952, was at the material time serving, on promotion, as Assistant Revenue Officer at Lalbagh (Murshidabad).

2. On April 24, 1962, he was suspended by the order at annEx. A to the petition and on July 8, 1962, he was served with the charge-sheet at annEx. B to the petition to show cause why he "should not be dismissed from Government service or otherwise suitably punished" for having committed a temporary defalcation of a specified sum and certain acts alleged to be done by the Petitioner with an intention to defraud the Government. Sri Sen Gupta, Magistrate, First Class, was appointed Inquiry Officer. The Inquiry Officer who submitted his report on October 15, 1962, held that though "there was some circumstantial evidence to suspect, the charges of temporary defalcation and of false entry in the loans ledger do not appear to have been established...beyond reasonable doubt". In the circumstances, the Inquiry Officer recommended (annEx. F) that the Petitioner "be degraded to a lower post or be given a post of the grade of his present post in which he will not have to deal with Government money".

3. The Collector (Respondent No. 1), however, by his order dated September 11,

1963, differed from the report of the Inquiry Officer and held the Petitioner guilty of all the charges under 13 counts and proposed to punish the Petitioner by awarding five penalties (ann Ex. F) and directed the Petitioner to submit his representation against the proposed punishments. The Petitioner appeared before the Collector and made oral submissions which were, however, rejected and the proposed penalties were imposed by the Collector's order of October 10, 1963 ann Ex. G), which penalties are:

- (i) Reversion to the post of lower division clerk;
- (ii) His pay, on reversion, should be reduced to the first stage in the time scale for a lower division clerk;
- (iii) Stoppage of increment for five years;
- (iv) On the expiry of the said period of five years the Petitioner shall earn the first increment in the time scale and his previous service during the period of reduction shall not count towards increment;
- (v) Denial of consideration for any promotion during the said period of five years;
- (vi) The entire balance at his credit as security shall be forfeited to the Government in satisfaction of Rs. 325 held to have been defalcated by the Petitioner in charge No. 5.
- (vii) The period of suspension will not count towards pension;
- (viii) He shall not be paid any proportion of his pay and allowances during the period of suspension than what he has already got (i.e. 1/4 of his pay and allowances as subsistence allowance--vide annEx. A).

4. The Petitioner's appeal to the Commissioner (Respondent No. 2) having been dismissed on January 28, 1964 ann Ex. H), the Petitioner has obtained this Rule on May 6, 1964, to have the order of punishment ann Ex. G) and the appellate order ann Ex. H) quashed.

5. Since the original order has merged in the appellate order, the Petitioner is not entitled to any relief unless the appellate order is set aside, or it is established that the original order is a nullity, which no confirmation can validate.

6. So far as the appellate order ann Ex. H) is concerned, the Commissioner has affirmed the findings as well as the punishments, which according to him are "lenient" rather than being "severe".

7. I do not find, however, any challenge to the appellate order in the list of grounds in the petition, nor has anything been said at the hearing.

8. We have, therefore, to see whether there is anything which makes the original order a nullity.

9. It is urged in the petition that the entire proceedings are vitiated on the

ground that in the charge-sheet itself, the punishing authority made up his mind and proposed the punishment.

10. It is true that in the charge-sheet the Petitioner was asked to show cause why he "should not be dismissed from Government service or otherwise suitably punished".

11. It is to be noted, however, that the above words do not indicate that, while issuing the charge-sheet, the Collector had decided that the Petitioner should be punished with dismissal in any case but simply mentioned that he would be punished if he failed to show cause to his satisfaction against the charges laid. It has been held in various cases that if a particular punishment is proposed in the charge-sheet, it would show that the punishing authority has been biased even before the charges are established, but that where the charge-sheet merely recites the various punishments that might possibly be imposed if the delinquent was found guilty, it cannot be said that he has ceased to keep his mind open. Vide *Felix Fernandez Vs. Integral Coach Factory (by Deputy Chief Mechanical Engineer (Stores)) and Another*, and *Vithal Mahadeo Kumbhar Vs. Union of India and Others*, .

12. It was urged by Mr. Chatterjee that the use of the word "proved" in para. 9 of the second show cause notice ann Ex. F) corroborates that the Collector was biased ab initio. Under Article 311(2) the first stage consists of the inquiry into the charges; it is only when the punishing authority, as a result of the inquiry, finds that the charges have been proved, than he is to arrive at a proposal to punish the delinquent. It is the proposal to punish which is to be "provisional" at the second stage, and against this proposal the delinquent is called upon to show cause. The provisional punishment is made final after a consideration of the representation of the delinquent against the show-cause notice. That the punishment proposed in annEx. F was provisional is evident from para. 10 thereof which says--"I propose to award...."

13. It cannot, therefore, be held that the Collector had a bias against the delinquent ab initio so as to vitiate the entire proceedings.

14. It was pointed out to me that in the punishment order, the written statement of the Petitioner at annEx. E was not taken into consideration. It is true that this written statement was not specifically mentioned, but it appears from the order at annEx. G that the delinquent personally appeared before the Collector in response to the show-cause notice and urged only four points, and that "he had no other representation to make". These four points have been considered by the Collector in his order. It is, therefore, not possible to hold that the Petitioner's case has not been considered at all.

15. It has been pointed out that one prosecution witness, named Muzaffar, was not examined at the inquiry and placed for cross-examination by the delinquent, but that his statement recorded by another person was made a part of the evidence at the inquiry. It has been stated in the counter-affidavit that this was

done because the witness was ill. It is to be noted, however, that the punishing authority made an independent and elaborate examination of the evidence himself and relied more on documentary than on oral evidence. There was a plurality of charges also. It does not appear from the records that the Petitioner has been punished solely on the basis of the said statement of Muzaffar. The defect pointed out then can be said at best to be an irregularity. It cannot be said to have nullified the entire proceedings.

16. The strongest point in favour of the Petitioner is that while the Inquiring Officer held that the charges could not be said to have been established beyond reasonable doubt, the punishing authority has differed from the recommendations of the Inquiring Officer and imposed severer penalties on the basis of circumstantial evidence.

17. It has, however, been laid down in several decisions of the Supreme Court that the standard of proof in a departmental proceeding is not the same as in a criminal proceeding and that the presumption of innocence at a criminal trial is also excluded in a disciplinary proceeding along with the provisions of the law of evidence: *State of Andhra Pradesh Vs. Sree Rama Rao*, . It is true that mere suspicion is no proof, but circumstantial evidence is not suspicion but is a species of evidence and sometimes -a better kind of evidence than oral evidence. this Court, sitting under Article 226, cannot interfere with a disciplinary proceeding in a case where there is some evidence to support the finding: *State of Andhra Pradesh Vs. Sree Rama Rao*, and *Union of India (UOI) Vs. H.C. Goel*, .

18. It has further been pointed out that items 6-8 of the list of documents sought for by the Petitioner (vide p. 17 of the petition) were not supplied to him (p. 18, *ibid.*). It does not appear, however, that in the order of punishment any use of these documents has been made. Hence, there has been no denial of natural justice on this score.

19. The real point of grievance of the Petitioner is that a number of penalties has been inflicted upon him. But this Court cannot interfere with the order on the ground of severity of the punishment in the absence of any statutory provisions barring cumulative punishment. Misappropriation or falsification are also serious charges against a public employee. At the same time, the State has suffered the continuance of the Petitioner in its services for more than four years since the date of the punishment order and has gained an experience of the conduct of the Petitioner during this period and the reaction of the punishments upon him. If the Respondents find him a better man, there is no reason why they should not, relieve him of the burden of some of the penalties thereby offering to a citizen the chance of leading a better life. Though this petition fails, I would like to draw the attention of the Respondents to this consideration.

20. The Rule is discharged, but I would not make any order as to costs.