
(2002) 03 KL CK 0015
In the High Court Of Kerala
Case No : O.P. No. 31148 of 1999 (G)

Saseendran Nair C.

APPELLANT

Vs

D.G.M., State Bank of Travancore and Another

RESPONDENT

Date of Decision : 19-03-2002

Acts Referred:

Citation : (2002) 95 FLR 185 : (2003) 1 LLJ 165

Hon'ble Judges : K. Balakrishnan Nair, J

Bench : Single Bench

Advocate : G.D. Panicker and Jeena Joseph, for the Appellant; M. Pathros Mathai, for the Respondent

Judgement

K. Balakrishnan Nair, J.—The petitioner challenges the disciplinary action taken against him by the State Bank of Travancore which resulted in his discharge from service. The brief facts necessary for the case are the following:

2. While the petitioner was working as a Record Keeper of TTP (Campus) Branch, Kochuveli, Thiruvananthapuram of the State Bank of Travancore, he was charge-sheeted by the second respondent Assistant General Manager on December 13, 1997. The charges levelled against him were the following:

1. The petitioner received Rs. 1,000/- on September 2, 1997 and also certain title deeds from one Mr. Asokan, giving him false promise that the petitioner will get a loan sanctioned for him.

2. On October 7, 1996, the petitioner received an amount of Rs. 200/- from the Branch as advance for postage. But, neither stamps were purchased, nor the amount was accounted and thereby misappropriated Rs. 200/-.

3. He is in the habit of absenting himself without proper leave applications or medical certificates and without permission from the Branch Manager/competent authority.

3. The petitioner submitted a detailed reply to the charge-sheet on January 24,

1998 denying the allegations. The Disciplinary Authority by order dated February 12, 1998 found his explanation not satisfactory and therefore ordered to hold a domestic enquiry into the charges levelled against him. The Enquiry Officer Shri C. Jagadeesh, Branch Manager of State Bank of Travancore, Engineering College Branch held an enquiry into the charges between May 15, 1998 and December 30, 1998 and submitted a Report on January 7, 1999. The findings of the Enquiry Officer, briefly stated, are the following:

1. The petitioner accepted the title deeds from Mr. Asokan unauthorisedly. But the allegation of receipt of Rs. 1,000/- as illegal gratification is not proved.
2. The charge of receiving Rs. 200/- from the Branch and not utilizing it for postage and not accounting it in the Register stood proved.
3. The third charge of taking leave without submitting proper applications in time was also found proved.
4. On the basis of the Enquiry Report, the petitioner was served with Ext. P2 show cause notice dated March 24, 1999 proposing to remove him from service for the second charge and also proposing other lesser punishments for charge Nos. 1 and 3. The petitioner submitted a reply to the same on April 19, 1999. But, overruling his objections, the Disciplinary Authority by Ext. P3 dated July 15, 1999 imposed the punishment of discharge from service for Charge No. 2. The punishments proposed for Charge Nos. 1 and 3 which were minor in nature, were also affirmed by the said order. Against Ext. P3, the petitioner preferred Ext. P 4 Appeal before the first respondent Appellate Authority. The Appellate Authority by Ext. P5 order dated September 29, 1999 affirmed the order of the Disciplinary Authority.
5. The petitioner challenges Exts. P3 and P5 on various grounds. The respondents have filed a counter affidavit supporting the impugned orders. I heard both sides. The respondents raised a preliminary objection that the Original Petition is not maintainable, as the petitioner has got an equally efficacious and convenient remedy under the provisions of the Industrial Disputes Act. The learned counsel for the respondents even went to the extent of saying that by hearing the matter under Article 226 of the Constitution of India, they are prejudiced for the reason that if the Labour Court finds the enquiry defective, the respondents will get a further chance to sustain the charges by adducing evidence. This chance is not available before this Court. If the petitioner was turned away to invoke the statutory remedy at the threshold, he may not have any serious grievance. But, after admitting the Original Petition and keeping it pending here for a few years, it is not proper to dismiss the same at this distance of time, holding that the petitioner has an alternate remedy. Further, the second contention urged on behalf of the respondents that they are prejudiced by a proceedings under 226 appears to be not correct. As a matter of fact, this Court can interfere with the disciplinary proceedings under Article 226 only on very limited grounds, and that too, on the basis of undisputed facts. But the powers of

the Labour Court are very wide. They can take evidence and resolve disputed questions of fact and they have got very wide powers in moulding the relief also. So, if anybody is likely to be prejudiced by a proceedings under Article 226, it is the petitioner alone. Therefore, the preliminary objection is untenable.

6. The learned counsel for the petitioner relied on various grounds raised in the Original Petition and attacked the impugned orders. Special reference was made to the following points:

(1) The Disciplinary Authority who heard the petitioner did not decide it. Thus, it violates the principles of natural justice that he who heard must decide.

(2) The second point urged is, in the appellate order his earlier punishments and past misconducts were taken into account without putting him on notice.

(3) The third point urged is, the punishment of discharge is grossly disproportionate to the offence proved under the second charge of non-accounting of Rs. 200/-. According to the learned counsel, the said charge is only an omission to account Rs. 200/-received by way of advance to purchase postage stamps.

7. The learned counsel for the respondents submitted that the violation of the principle that he who heard must decide, has not caused any prejudice to the petitioner. It is also pointed out that all the points urged by the petitioner were noted down and relying on that, the successor in office of the Disciplinary Authority has passed the impugned order. The reliance placed on past misconducts, is also justified by the counsel for the respondents. The employer being a banking institution, absolute integrity of the employees is necessary and persons with doubtful integrity cannot be retained in a banking institution. Therefore, the learned counsel strongly supports the punishment of discharge from service.

8. The principle that he who heard shall decide, will apply to administrative decisions which are taken in the discretion of the decision maker. A decision taken by a person who did not hear the matter, is equivalent to a decision taken without hearing. If the decision is that of a Tribunal or a Court of law which should take the decision in accordance with law objectively on the basis of the evidence and materials before it, the denial of hearing can be ignored. But, when the matter which is to be decided is one within the discretion of the authority, especially in a disciplinary action where the choice of penalty is a matter within the discretion of the disciplinary authority, the violation of the above principle will cause serious prejudice.

9. In *Ridge v. Baldwin* 1964 AC 40, a Chief Constable was compulsorily retired from service on the basis of certain adverse remarks in the judgment of a Court which have become final. So, the Watch Committee which was the Disciplinary Authority removed him from service without hearing. The Revisional (sic) Court as well as the Court of Appeal rejected his application for certiorari on the ground

that the hearing is an empty formality and "the result was obvious from the start". So, those Courts were of the view that no amount of hearing will make any difference. But the House of Lords reversed the said decision on the ground that the choice of penalty was a matter within the discretion of the Disciplinary Authority and, therefore, the absence of hearing vitiated the decision. LORD REID in his speech in the House in *Ridge v. Baldwin* 1964 AC 40 at page 68 said:

"It may be convenient at this point to deal with an argument that, even if as a general rule a watch committee must hear a constable in his own defence before dismissing him, this case was so clear that nothing that the appellant could have said could have made any difference. It is at least very doubtful whether that could be accepted as an excuse. But, even if it could, the respondents would, in my view, fail on the facts. It may well be that no reasonable body of men could have reinstated the appellant. But as between the other two courses open to the watch committee the case is not so clear. Certainly, on the facts, as we know them, the watch committee could reasonably have decided to forfeit the appellant's pension rights, but I could not hold that they would have acted wrongly or wholly unreasonably if they had in the exercise of their discretion decided to take a more lenient course."

10. When the House of Lords remitted the matter for a fresh decision by the watch committee, the matter was reheard and the Chief Constable's Solicitor induced three members of the watch committee to change their mind. The learned Authors H.W.R. WADE and C.F. FORSYTH in their *ADMINISTRATIVE LAW* (8th Edition) deal with this aspect in the following manner:

"A distinction might perhaps be made according to the nature of the decision. In the case of a Tribunal which must decide according to law, it may be justifiable to disregard a breach of natural justice, where the demerits of the claim are such that it would in any case be hopeless. But in the case of a discretionary administrative decision, such as, the dismissal of a teacher or the expulsion of a student, hearing his case will often soften the heart of the authority and alter their decision, even though it is clear from the outset that punitive action would be justified."

11. In the light of the above principle, the hearing by one person and decision by another will definitely vitiate Ext. P3. The finding of guilt entered by the Disciplinary Authority, is an objective decision based on the evidence and materials. So, the said finding is not vitiated. But the choice of penalty made by the Disciplinary Authority is a subjective decision. So, if the person who actually took the decision heard the delinquent, the choice of penalty might have been different. The same being a subjective decision, absence of hearing by the decision maker vitiates the impugned order. Therefore, Ext. P3 is liable to be quashed. I find that in the impugned appellate order, various past misconducts and punishments against the petitioner have been relied on paragraph 9 to sustain the action against the petitioner. The same has been done without putting the petitioner on notice. I am not going into the legality of that question,

as I have already taken the view that the original order of the Disciplinary Authority itself is liable to be interfered with. Therefore, the appellate order being a dependent order, will naturally fall to the ground.

12. Another contention raised by the petitioner is that the punishment of discharge from service for the misconduct of not accounting Rs. 200/- is grossly disproportionate to the gravity of the offence. According to the petitioner, it is only non-accounting of Rs. 200/- received by him. He is neither a Clerk, nor an Officer. The petitioner is a glorified Peon named as Record Keeper by virtue of his seniority in the cadre. So, according to the petitioner, the high sounding principles urged by the respondents regarding the necessity of taking stringent action for the slightest lapse will not apply in the present case. But, I am not finally pronouncing anything on this case, as at this stage, a decision on this aspect will be premature and will have the effect of fettering the discretion of the Disciplinary Authority. But, I only point out that having regard to the nature of the misconduct proved, the Disciplinary authority should seriously think whether the misconduct proved is one requiring a punishment which would result in denial of employment to the delinquent. In this view of the matter, I am not referring to the various decisions cited by both sides regarding the principle of proportionality in the matter of choice of the punishment. It is also made clear that I have not interfered with any finding of fact made by the Enquiry Officer or the Disciplinary Authority. This Court is not justified in interfering with those findings of fact under Article 226 of the Constitution of India. It is also made clear that my refusal to interfere with the findings of fact will not stand in the way of the petitioner in challenging them before the appropriate Industrial Tribunal or Labour Court in case he has to approach them aggrieved by the penalty imposed on him.

13. The Original Petition is disposed of with the following directions:

(1) Exts. P3 and P5 are quashed. The Disciplinary Authority will be free to pass fresh orders in the disciplinary action against the petitioner after hearing him.

(2) The petitioner will be deemed to be in service with effect from the date of discharge by Ext. P3. In case there is a provision for deemed suspension in the service rules applicable to the petitioner, he will be deemed to be in service and continuing under suspension.