

(1968) 07 KL CK 0037

In the High Court Of Kerala

Case No : Original Petition No. 607 of 1966

V. Subash Chandra Das

APPELLANT

Vs

The Inspector of Post Offices, Trivandrum, North Sub Division
and Another

RESPONDENT

Date of Decision : 23-07-1968

Acts Referred:

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

Citation : AIR 1969 Ker 244 : (1971) 21 FLR 119 : (1970) 1 LLJ 517

Hon'ble Judges : M.S. Menon, C.J;V. Balakrishna Eradi, J;P. Govindan Nair, J

Bench : Full Bench

Advocate : S.A, Nagendran, for the Appellant; C. Sankaran Nair, for the Respondent

Judgement

1. The question referred for decision is the ambit of the representation that a Government servant is entitled to make on the penalty proposed under Clause (2) of Article 311 of the Constitution. That the representation can be only on the basis of the evidence adduced at the inquiry into the charges framed against him is clear from the wording of the clause itself,

2. Clause (1) of Article 311 provides that no person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds a civil post under the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. And Clause (2), after its amendment by the Constitution (Fifteenth Amendment) Act, 1963, and omitting the proviso thereto which is not material to the case before us, reads as follows:--

"No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and where it is proposed, after such inquiry, to Impose on him any such penalty, until he has been given a reasonable opportunity of making representation on

the penalty proposed, but only on the basis of the evidence adduced during such inquiry:"

3. What Clause (2) of Article 311 stipulates is "a reasonable opportunity of making "representation on the penalty proposed". Such an opportunity should naturally permit not only a representation that the penalty proposed is excessive in quantum or character but also a representation that he is innocent of the charges and that the penalty proposed should not hence be imposed at all. That such is the ambit of the representation that can be made is clear from the following passage in *Khem Chand Vs. The Union of India (UOI)and Others*, :

"In order that the opportunity to show cause against the proposed action may be regarded as a reasonable one, it is quite obviously necessary that the government servant should have the-opportunity, to say, if that be his case, that he has not been guilty of any misconduct to merit any punishment at all and also that the particular punishment proposed to be given is much more drastic and severe than he deserves. Both the pleas have a direct bearing on the question of punishment and may well be put forward in showing cause against the proposed punishment."

4. In the case mentioned above, the Supreme Court was dealing with Clause (2) of Article 311 as it stood prior to the Constitution (Fifteenth Amendment) Act, 1963. This, however, does not affect the question as the wording of Clause (2) even before the amendment was in the following terms:---

"No such person as aforesaid shall be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:"

5. There are cases, however, which have taken the view that Clause (2) of Article 311 does not permit a plea of innocence but only a plea as to the quantum or character of the penalty proposed. In *Narayana Murthy v. State of Kerala* 1964 Ker LT 180 for example a Division Bench of this Court said :

"Once definite findings have been recorded after an enquiry with reasonable opportunity given to the civil servant to vindicate his innocence, there is no scope for his canvassing the correctness of the finding in the second stage of the proceedings, when the question is only of the proper punishment to be imposed on the basis of such finding of guilt";

or in other words, "that at the second stage the question is only of the punishment to be imposed and not of finding as to guilt".

6. That a plea of innocence is not open in a representation against the penalty proposed is apparently based on a misapprehension of a passage in AIR 1948 121 (Privy Council) ; That case was concerned with Sub-section (3) of section 240 of the Government of India Act, 1935 which provided as follows:--

"No such person as aforesaid shall be dismissed or reduced in rank until he has

been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him:"

7. In dealing with Sub-section (3) of S. 240 Lord Thankerton said;--

"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."

As pointed out in *Samuel v. Chief Conservator of Forests* 1966 Ker LT 849, a definite conclusion, however, is not necessarily a final conclusion impervious to change in the light of the subsequent representation in showing cause against the penalty proposed. A definite conclusion only means a conclusion that is not vague, nebulous or indefinite,

8. The following passage from the decision of the Supreme Court in *State of Assam and Another Vs. Bimal Kumar Pandit*, , makes the position abundantly clear:

"In issuing the second notice, the dismissing authority naturally has to come to a tentative or provisional conclusion about the guilt of the public officer as well as about the punishment which would meet the requirement of justice in his case, and it is only after reaching conclusions in both these matters provisionally that the dismissing authority issues the second notice. There is no doubt that in response to this notice the public officer is entitled to show cause not only against the action proposed to be taken against him but also against the validity or the correctness of the findings recorded by the enquiring officer and provisionally accepted by the dismissing authority. In other words the second opportunity enables the public officer to cover the whole ground and to plead that no case had been made out against him for taking any disciplinary action and then to urge that if he fails in substantiating his innocence, the action proposed to be taken against him is either unduly severe or not called for."

To the same effect is *Union of India (UOI) Vs. H.C. Goel*, :

"The object of the second notice is to enable the public servant to satisfy the Government on both the counts, one that he is innocent of the charges framed against him and the other that even if the charges are held proved against him, the punishment proposed to be inflicted , upon him is unduly severe. This position under Article 311 of the Constitution is substantially similar to the position which governed the public servants u/s 240 of the Government of India Act, 1935."

9. In a recent case *Ghanshyamdas Srivastava Vs. The State of Madhya Pradesh*, the High Court of Madhya Pradesh had occasion to deal with Clause (2) of Article 311 after its amendment by the Constitution (Fifteenth Amendment) Act, 1963. The Court said:

"In our opinion, the making of a representation on the penalty proposed at the

second stage does not mean that at that stage the Government servant can canvass only the question of the quantum or nature of the punishment. At that stage the Government servant can also urge that the charges levelled against him have not been proved or established and that no penalty of any kind should be imposed on him or that on the findings reached at the enquiry the proposed penalty should not be imposed on him. The right of making a representation on the penalty proposed would become meaningless and futile If the right is to be confined only to the quantum or nature of the punishment."

10. In the light of what is stated above we must hold that a plea of in nocence and the consequent prayer that no penalty should be inflicted at all is open to a Government servant in showing cause against the penalty proposed under Clause (2) of Article 311 of the Constitution. We answer the question accordingly and remit the petition for a further hearing and judgment in conformity with the answer we have given.