(2003) 04 KL CK 0064

In the High Court Of Kerala

Case No : O.P. No. 15689 of 98

Vaijayanthi APPELLANT

Vs

State of Kerala RESPONDENT

Date of Decision : 30-04-2003

Acts Referred:

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

Citation : (2003) 3 ILR (Ker) 227 : (2003) 3 KLT 1055

Hon'ble Judges : Cyriac Joseph, J

Bench : Single Bench

Advocate : M.R. Rajendran Nair and M.A. Sakeena, for the Appellant; Praisy Joseph, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Cyriac Joseph, J.—The petitioner challenges Ext. P1 Government Order dated 1st July 1998 and Ext. P4 Government Order dated 17th October 1997 imposing the penalty of barring her one increment for a period of two years without cumulative effect and directing the petitioner to remit a sum of Rs. 14,069 being the loss sustained by the Government.

2. As per Ext. P-2 memo of charges dated 19th May 1997, while holding the post of Assistant Director of Agriculture, Perinthalmanna the petitioner was indifferent, irresponsible and negligent in the discharge of her official duties and she failed (i) to arrange pre-measurements of the earthwork of the foundation of the construction of a side protection wall at Melkulangara - Poonthal Parasekharam, (ii) to insist for the production of invoices of the work by the Convenor as laid down in the Government Order on the subject and (iii) to assure Engineering supersession while the construction work was being executed, which finally resulted in the overpayment of an amount Rs.56,274 to the Convenor of the Padasekhara Samithy. According to the memo of charges the above actions of the petitioner amounted to serious dereliction of duty and grave irregularity on the part of the petitioner and she was required to show cause why

disciplinary action as contemplated under the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 (hereinafter referred to as ''the K.C.S. (C.C. and A) Rules'') should not be taken against her. She was allowed 15 days to submit her written statement of defence. It was also stated that if the written statement was not received within the specified time the matter would be proceeded with on the presumption that she had no explanation to offer. A statement of allegation on which the above charges were based was also attached to the memo of charges. The petitioner was also required to state whether she desired to be heard in person.

3. In response to the memo of charges the petitioner submitted Ext. P3 explanation dated 21st June 1997. In Ext. P3 explanation the petitioner denied all the charges and submitted that the loss, if any, caused to the Government was not on account of any act of negligence or violation of rules by the petitioner. The petitioner also stated that the charges levelled against her were vague since either in the charges or in the statement of allegations it was not specifically stated as to what action or omission on her part had resulted in misconduct. According to the petitioner, during the relevant period she worked as Assistant Director of Agriculture, Perinthalmanna she had discharged her duties honestly and diligently. Regarding the first charge that the petitioner failed to arrange pre-measurements of the earthworks of the foundation of the construction of a side protection wall at Melkulangara - Poonthal Padasekharam, the petitioner specifically stated that pre-measurements were taken by the Assistant Executive Engineer and staff in the presence of Mr. M. Vijayan, Agricultural Assistant in the Office of the Agricultural Officer, Vettathur. It was also stated that details of measurements and the records relating to such measurements were within the exclusive knowledge of the Engineers concerned and that the petitioner was not liable for failure, if any, on their part. Regarding the second charge that the petitioner failed to insist for the production of invoices of the work by the Convenor as laid down in the Government Order on the subject, the petitioner specifically replied that production of invoices of work by the Convenor was required as per Circular dated 5th May 1993 of the Director of Agriculture only at the time when the final payment of subsidy was to be effected and that in the present case the work was not complete and final payment was not made. It was also stated that advance payment and part payment on the basis of valuation and measurements certified by the Assistant Executive Engineer (Agri.) were made strictly in consonance with the Government Order. Regarding the third charge that the petitioner failed to assure engineering supervision while the construction work was being executed the petitioner stated that the engineering supervision was to be ensured by the Engineers concerned and that she had no administrative control over the Assistant Executive Engineer (Agri.) who was of equivalent rank and was functioning in a separate wing independently. The petitioner also denied the allegation that no muster rolls were maintained for the work of bailing out of water and asserted that the Padasekhara Samithy had maintained muster roll and the same had been seized by the Vigilance

Department.

4. Thereafter the Government issued Ext. P-4 order dated 17th October 1997 finalising the disciplinary proceedings against the petitioner and four other officers involved in the case. In Ext. P4 order there is no specific reference to the explanation submitted by the petitioner. Even though it is stated that "on a detailed examination, the statements of defence submitted by the accused officers proved to be insufficient and unacceptable", the specific explanations given by the petitioner in reply to each of the charges against her are not specially dealt with in Ext. P4 order. However, it is stated in Ext. P-4 that as per G.O. (Ms.) 32/93/AD, dated 15th February 1993 the Agricultural Officers of Krishi Bhavan and Assistant Directors of Agriculture at Block level are the immediate supervisory officers for the implementation of the scheme and the Agricultural Engineers will render necessary assistance wherever necessary. It is also stated that it is the primary duty of the Agricultural Officer and Assistant Director of Agriculture to co-ordinate the work and to implement the same through Group Farming Samithy. It is further stated that as per Circular No. T.A. (1) 3109/93, dated 5th May 1993 of the Director of Agriculture the authority for checking of works recorded in the invoice, on works above Rs. 50,000 is the Assistant Director of Agriculture and the Assistant Executive Engineer. It is further stated that though as per the Circular of the Director of Agriculture the final payment will be effected on the strength of the invoices submitted by the Committee it does not mean that the checking officers are free to issue part valuation certificate without the strength of invoice. In spite of the specific explanation of the petitioner that pre-measurements were taken by the Assistant Executive Engineer and staff in the presence of Mr. M. Vijayan, Agricultural Assistant the Government have stated in Ext. P-4 that all the five officers including the petitioner failed to take pre-measurement. According to the Government the statement of Sri P.C. Unneenkutty proved that no pre-measurement had been taken for earthwork excavation. Whereas the petitioner had denied the allegation that no muster rolls were maintained for the work of bailing out of water the stand of the Government in Ext. P-4 is that the muster roll was not verified and attested by any of the accused officers and hence the credibility of the muster roll is questionable. As per Ext. P-4 order one increment of the petitioner was barred for a period of two years without cumulative effect and the petitioner was directed to remit immediately a sum of Rs. 14,069 being the loss sustained by the Government.

5. On receipt of Ext. P-4 order the petitioner submitted Ext. P-5 review petition dated 9th December 1997 specifically contending that after initiating proceedings for imposing a major penalty and issuing a charge-sheet, the disciplinary authority cannot shift from that procedure to the procedure for imposing a minor penalty. It was also contended that Ext. P4 order did not contain any finding to the effect that the petitioner was guilty of any of the charges levelled against her and that there was absolutely no evidence or other basis for coming to the conclusion that the charges were proved. It was further stated that the order

imposing penalty disclosed absolute non-application of mind to the relevant facts, circumstances and materials in the case. It was also contended that there was no finding that any loss was caused to the Government by negligence or breach of orders and therefore no recovery from the pay of the petitioner could have been ordered. In Ext. P-5 review petition the petitioner specifically stated that no oral enquiry was conducted and thereby an opportunity of being heard was denied to her. It was also pointed out that none of the submissions made by the petitioner in her written statement of defence was adverted to or dealt with in the order imposing the penalty.

6. Ext. P-5 review petition of the petitioner was rejected by the Government as per Ext. P1 order dated 1st July 1998. In Ext. P-1 order the Government reiterated the stand taken in Ext. P-4 order. Consequent on the rejection of the review petition the petitioner filed this Original Petition challenging Ext. P-4 and P-1 Government Orders.

7. The first contention urged by the learned Counsel for the petitioner is that the charges framed against the petitioner were vague. On a careful reading of the memo of charges and the statement of allegations I find that the charges framed against the petitioner were sufficiently clear to enable her to understand the nature of the allegations and to offer her explanation in the matter. Hence the first contention of the learned Counsel for the petitioner is liable to be rejected.

8. The second contention of the learned Counsel for the petitioner is that Exts. P-4 and P-1 orders are vitiated by total non-application of mind. I find considerable force in the said contention of the learned Counsel for the petitioner. I have already referred to the main averments in Ext, P-3 explanation (statement of defence) of the petitioner. Those specific averments of the petitioner are not seen specifically referred to or dealt with in Ext. P4 order, even though some of the contentions have been generally answered. Regarding the first charge that the petitioner failed to arrange pre-measurements of the earth work of the foundation of the construction, the explanation of the petitioner was that pre-measurements were taken by the Assistant Executive Engineer and staff in the presence of Mr. M. Vijayan, Agricultural Assistant. She also stated that the details of measurements and the records relating to such measurements were with the Engineers concerned. However, without conducting any further enquiry and without giving an opportunity to the petitioner to prove her case in such enquiry, the Government in Ext. P-4 order unilaterally concluded that all the officers failed to take pre-measurement and that it was proved from the statement of Sri. P.C. Unneenkutty that no measurement had been taken for earth work excavation. The Government could not have arrived at such a conclusion without giving an opportunity to the petitioner to counter the alleged statement of Sri. P.C. Unneenkutty and to prove her case in an enquiry. Similarly, in the statement of allegations the allegation was that no muster rolls were maintained for the work of bailing out of water. In Ext. P-3 explanation the petitioner asserted that muster rolls were maintained by the Padasekhara Samithy for the work of bailing

out of water and that the muster rolls were seized by the Vigilance Department. In Ext. P-4 order the Government appears to have changed its stand because what is stated in Ext. P-4 is that "the muster roll reported to have been maintained by the Padasekhara Samithy was not verified and attested by any of the accused officers and hence the credibility of the muster roll is questionable". The petitioner did not get the opportunity to meet the new allegation that she had not verified or attested the muster roll. Moreover, there is nothing to indicate that it was the duty of the petitioner, who was the Assistant Director of Agriculture, to verify and attest the muster roll maintained by the Padasekhara Samithy. It is common knowledge that verification or attestation of the muster roll is to be conducted by the field officers, particularly of the Engineering Wing. Even assuming that the Assistant Director of Agriculture was a supervisory officer for the implementation of the scheme, the petitioner cannot be expected to verify and attest the muster roll. In reply to the charge that the petitioner did not insist on production of invoices of the work by the Convenor, the petitioner had submitted in Ext. P-3 that as per Circular No. TA (1) 3109/93, dated 5th May 1993 of the Director of Agriculture production of invoices of work by the Convenor was required only at the time when the final payment of subsidy was to be effected and that in the present case the work was not completed and the final payment was not made. It was also stated that advance payment or part payment was made on the basis of valuation and measurements certified by the Assistant Executive Engineer (Agriculture). The above position is not disputed in Ext. P-4. However, the petitioner has been held guilty on the ground that the checking officers are not free to issue part valuation certificate without the strength of invoices. The Government ignored the fact that the petitioner was not the checking officer and that she had not issued any part valuation certificate. In reply to the charge that the petitioner "failed to assure engineering supervision while the construction work was being executed" the petitioner had stated in Ext. P-3 that the Engineering supervision was to be ensured by the Engineers concerned and that she had no administrative control over the Assistant Executive Engineer (Agriculture) who was of equivalent rank and was functioning in a separate wing independently. In Ext. P-4 the Government have not disputed the position that the Engineering supervision was to be conducted by the Engineers or that the petitioner had no administrative control over the Assistant Executive Engineer (Agriculture). According to the Government it is the primary duty of the Agricultural Officer and the Assistant Director of Agriculture to co-ordinate the work and to implement the same through Group Farming Samithy. But the Government missed the point that co-ordination of the work is different from engineering supervision which can be conducted only by the technically qualified persons like Engineers and not by the petitioner. Thus, the Government miserably failed to properly apply its mind to the explanations offered by the petitioner in Ext. P-3 statement of defence. The Government made sweeping statements and general remarks in the common order passed in the case of shift officers whose duties and functions are different in nature. Differences in their cases were not properly appreciated. Ext. P-4 order was passed by the

Government without properly considering and appreciating the specific explanations offered by the petitioner. Ext. P-1 order is also vitiated by the very same infirmity. Hence, the learned Counsel for the petitioner is justified in contending that Exts. P-4 and P-1 orders are vitiated by non-application of mind and hence they are arbitrary and illegal and liable to be quashed.

9. Another contention raised by the learned Counsel for the petitioner is that Ext. P-4 order is vitiated by procedural irregularity. According to the learned Counsel, after having initiated proceedings for imposition of major penalty and having reached half way the disciplinary authority cut short the procedure by not following the procedure prescribed under Rule 15 of the KCS (CC and A) Rules for inflicting a major penalty and inflicted a minor penalty without conducting an enquiry and properly completing the procedure already initiated. It is contended that the above action of the Government is illegal in view of the Judgment of a Division Bench of this Court in Ravindranathan v. District Collector, Palakkad 1984 KLT 564. It is not disputed by the Government Pleader that by issuing Ext. P-2 memo of charges and statement of allegations dated 19th May 1997 the Government initiated action against the petitioner under Rule 15 of the KCS (CC and A) Rules for imposing major penalty. It is also not disputed that after the petitioner submitted her written statement of defence as contemplated under Rule 15(2), no formal enquiry was held into the conduct of the petitioner as envisaged under Rule 15(2). On the other hand, after the written statement of the petitioner was received the Government, without continuing with the procedure under Rule 15, issued Ext. P-4 order imposing a minor penalty on the petitioner. The stand of the Government in this regard is explained in paragraph 12 of the counter-affidavit filed on behalf of the first respondent. The said paragraph 12 of the counter-affidavit is extracted hereunder:

"12. It is true that memo of charges served on the petitioner was for initiating disciplinary action for major penalty. The defence statement filed by the petitioner was examined in detail by Government and found that the same was not satisfactory. It was found that detailed enquiry as per Rule 15 of KCS (CC and A) Rules, 1960 was not necessary. In the light of the findings arrived at, it was found that only a minor penalty need be imposed on the petitioner. There is absolutely no procedural irregularity or violation of principles of natural justice. Punishment awarded is proportionate with the gravity of the charges found proved. For imposing a minor penalty detailed enquiry is not necessary".

10. It is significant that in Ext. P3 written statement of defence the petitioner had disputed the allegation that pre-measurements of the earth works of the foundation of the construction were not arranged. She had asserted that pre-measurements were taken by the Assistant Executive Engineer and staff in the presence of Mr. M. Vijayan, Agricultural Assistant and that the details of measurement and the records relating to such measurements were with the Engineers concerned. The truth of the manner could have been found out only through an enquiry. The petitioner had also denied the allegation that no muster

rolls were maintained for the work of bailing out of water. She had asserted that the Padasekhara Samithy had maintained muster roll and the same was seized by the Vigilance Department. In Ext. P-4 the Government took the stand that the muster roll was not verified and attested by any of the accused officers. Whether the muster roll was maintained or whether the, muster roll was verified and attested by the petitioner could be established only through a proper enquiry. However, the Government instead of ordering an enquiry as contemplated under Rule 15(2) of the KCS(CC and A) Rules proceeded to take a short cut to avoid an enquiry and to impose a minor punishment on the petitioner after holding her guilty. This is not permissible because, on the face of the assertions made by the petitioner in her written statement of defence, the truth of the allegations against her could be found out only through an enquiry and by avoiding such an enquiry the Government denied opportunity to the petitioner to prove her defence and to establish the stand taken by her in her written statement of defence. When the petitioner categorically denied the allegations and disputed the facts and when the disciplinary authority found her explanation unacceptable or unsatisfactory, the disciplinary authority was bound to order an enquiry as envisaged under Rule 15(2) of the KCS (CC and A) Rules. In Ravindranathan v. District Collector, Palakkad 1984 KLT 564 a Division Bench of this Court has held that after having initiated proceedings for imposition of a major penalty and having reached half way, the disciplinary authority cannot make a short cut by not following the procedure prescribed under Rule 15 of the KCS (CC and A) Rules for infliction of the major penalty and choosing to inflict a minor penalty without properly completing the enquiry following the procedure prescribed in that behalf. The Division Bench was of the view that if the court gave its seal of approval to such a procedure it would mean that the court accepted a procedure by which the disciplinary authority could inflict the punishment (may be only a minor penalty) in a case where the charge memo was one for the infliction of a major penalty as and when that authority found it inconvenient to proceed with the enquiry or to prove the charge according to the procedure prescribed in that behalf. When the allegations contained in the statement of allegations and the charges were denied by the petitioner in her written statement of defence submitted under Rule 15(2) of the KCS (CC and A) Rules, the Government had only two options before it. The first option was to accept the explanation of the petitioner and to drop further action against her. The second option was to order a formal enquiry into the conduct of the petitioner so that the petitioner would have got an opportunity to disprove the allegations against her and to prove her defence. The Government was not entitled to avoid a formal enquiry and to resort to a convenient method of considering the statement of defence submitted in response to the memo of charges and holding her guilty of the charges levelled against her and imposing aminor penalty and to take the stand that for the purpose of inflicting a minor penalty no formal enquiry is necessary. In Narayanan Nair v. State of Kerala and Anr. 1970 KLT 1069, a learned Single Judge of this Court has held that the provisions contained in the Kerala Civil Services (Classification, Control and Appeal) Rules clearly contemplate that the disciplinary authority should make up its mind at the initial stage itself whether it would adopt the procedure for the imposition of a major penalty laid down in Rule 15 or whether in the circumstances of the case only the comparatively summary procedure for the imposition of minor penalty contained in Rule 16 need be followed. It has been further held that it is not permissible for the disciplinary authority to shift over from one procedure to the other at the stage of passing final order so as to deprive the Government servant concerned of an effective opportunity of showing cause against the action proposed to be taken against him.

11. In the light of the above discussion I am of the view that Exts. P4 and P-1 orders are illegal and hence liable to be quashed. Hence Ext. P-4 Government Order G.O. (Rt) No. 1725/97/Ad, dated 17th October 1997 to the event it applies to the petitioner and Ext. P-1 Government letter No. 5569/EA3/98/AD, dated 1st July 1998 are quashed. The petitioner will be entitled to the consequential benefits on the basis of the quashing of Exts. P4 and P-1 orders.

12. The Original Petition is allowed in the above terms. No costs.

