

Revanna Yeleri Vs. State of Mysore

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Court : Karnataka

Decided On : Mar-18-1965

Reported in : ILR1965KAR340; (1966)IILLJ495Kant; (1965)1MysLJ758

Judge : H. Hombe Gowda and ;Santosh Duggal, JJ.

Acts : [Constitution of India](#) - Articles 226 and 311(2); Hyderabad District Police Act - Sections 6; Hyderabad Civil Services (Classification, Control and Appeal) Rules, 1955 - Rule 22(1)

Appeal No. : Writ Petition No. 300 of 1962

Appellant : Revanna Yeleri

Respondent : State of Mysore

Judgement :

ORDER

Santhosh, J.

1. In this petition under Art. 226 of the [Constitution of India](#), the petitioner prays that this Court may be pleased to quash, by the issue of a writ of certiorari or any other appropriate writ or direction, the enquiry proceedings culminating in the order of the Government dated 19 January, 1962 dismissing the petitioner from service.

2. The petitioner, who was a Deputy Superintendent of Police in the erstwhile Hyderabad State, was allotted, after the reorganization of States, to the Mysore State. In 1959, the petitioner was serving as Deputy Superintendent of Puttur subdivision in South Kanara district. On receipt of a anonymous petition alleging certain acts of corruption against the petitioner, the Special Officer, Efficiency Audit, Bangalore, got the same enquired into by a police inspector of the Anti-corruption Department. The Special Officer, Efficiency Audit, thereafter submitted the report of the enquiry made by his Inspector to the Inspector-General of Police. The Inspector-General of Police placed the report before respondent (Government of Mysore). The Government of Mysore, respondent 1, thereafter decided to hold a departmental enquiry against the petitioner and appointed the Deputy Inspector-General of Police, Southern Range, as the enquiry officer and ordered the suspension of the petitioner pending the enquiry. The enquiry officer framed six charges against the petitioner and served the same on the petitioner. The first charge was that the petitioner preferred false travelling allowance claims, falsely showing and certifying that he had performed certain journeys by his jeep, when it was garaged for repairs in the garage of the Canara Public Conveyance Company, Mangalore, thus causing wrongful loss to the Government to the extent of Rs. 227.41. Charge 2 was that the petitioner, while he was the Deputy Superintendent of Police in Puttur, South Kanara district, between 17 and 20 August, 1958, left the district without leave or permission and proceeded to Bangalore on the sly, evidently for his own private errands. Charge 3 was that the petitioner wrote false diaries and manipulated Government records in respect of his official duties, falsely showing that he performed various duties within the subdivision, when actually during the said period, he was out of the district at Bangalore and Mysore without leave or permission. Charge 4 was that during this period he preferred false travelling allowance claims by showing journeys as on duty within his jurisdiction whereas in fact he had been out of the district to Bangalore without leave or permission and thereby caused wrongful loss to the Government to the extent of Rs. 21.60. Charge 5 was that the petitioner obtained from a taxi-driver a false receipt for a sum of Rs. 47 purporting to be the taxi-hire paid by him for a journey of 65 miles, while, in fact, no such journey was performed and on the basis of that false receipt, the petitioner drew Rs. 47 as

travelling allowance. Charge 6 was that he made long-distance trunk calls from the Government telephone for his own private purpose and charged the cost of the trunk calls to the Government.

3. In the said enquiry, the prosecution examined 15 witnesses and marked 22 documents and the petitioner examined 10 defence witnesses and marked 19 documents. The enquiry officer held that the charges 1 to 5 were proved and that charge 6 had not been made out against the petitioner. On receipt of the report of the enquiry officer, the respondent issued a notice under Art. 311(2) of the [Constitution of India](#) to the petitioner, asking him to show cause why he should not be dismissed from service. As the petitioner attained the age of superannuation on 25 September, 1961, the Government, in exercise of their power under rule 95(b) of the Mysore Civil Services Rules 1955, ordered the retention of the services of the petitioner until the final order was passed by the Government in the disciplinary proceedings. The petitioner submitted his explanation and thereafter the respondent passed the impugned order dismissing the petitioner from service. This petition is filed questioning the said order of dismissal.

4. Sri S. K. Venkataranga Ayyangar, Appearing on behalf of the petitioner, has contended that as no preliminary enquiry as laid down by the rules has been held against the petitioner, the whole departmental enquiry held against him stands vitiated. His contention is that as per the Hyderabad rules it is obligatory that the Preliminary enquiry should be held by an officer superior to the delinquent and that only the head of the department or a higher authority should direct the said preliminary enquiry. He contends that the enquiry held by an inspector of police, Anti-corruption Department, can in no sense of the term, be said to be a preliminary enquiry. In the beginning he contended that the petitioner being an allottee from the former Hyderabad State, the rules prescribed in the Hyderabad District Police Manual apply to him and that as per rule 526 of the said Police Manual, the preliminary enquiry must be held by an officer of a higher rank than that of the officer complained against. When it was pointed out that rule 526 of the said manual does not refer to any preliminary enquiry, but only refers to the final departmental enquiry and that the Hyderabad Civil Services (Classification Control and Appeal) Rules, 1955, have been framed in exercise of the power conferred by

the proviso to Art 309 of the [Constitution of India](#) and S. 6 of the Hyderabad District Police Act and that rule 3 of the said rules states that those rules shall apply to every person in the whole-time civil employment of the Government of Hyderabad Sri Venkataranga Ayyangar did not press his contention under the Hyderabad District Police Manual and conceded that the petitioner will be governed by the Hyderabad Civil Services (Classification, Control and Appeal) Rules, 1955. Since both the petitioner and the respondent agreed that the petitioner was governed by the said Hyderabad Civil Services (Classification, Control and Appeal) Rules 1955, we proceed to examine the various contentions advanced by the learned counsel for the petitioner under the said rules.

5. Rule 22(1) of the Hyderabad Civil services (Classification, Control and Appeal) Rules, 1955, which will be hereinafter referred to as 'the rules,' read as follows :

'In every case where it is proposed to impose on a government servant any of the penalties mentioned in items (v), (vi), (vii) and (viii) of rule 12, or in any other case where disciplinary action into the conduct of a Government servant is considered necessary, the authority competent to order an enquiry and appoint an inquiry officer shall be as follows :

Class of members of the State or Subordinate service -

Authority competent to order an enquiry and/or to appoint an inquiry officer.

(a) * * * (b) Class I (Junior Scale) officers and Class II officers.

Head of the Department or any higher authority (c) * * * (d) * * *'

6. The note appended to this rule reads as follows :

'For the procedure to be followed before an order of reduction, compulsory retirement, removal or dismissal is passed, please see the instructions contained in appendix I.'

7. Sri Venkataranga Ayyangar strongly relies on instruction 1(a) of the said appendix, which reads as follows :

'1. Preliminary enquiry. - (a) Before commencing any departmental enquiry against a Government servant with regard to a disciplinary matter, it is necessary that there should be sufficient evidence gathered by way of preliminary enquiry and the authority competent to order the enquiry should be satisfied that there is sufficient prima facie evidence to start disciplinary proceedings against the Government servant concerned. This preliminary enquiry may be made by any officer under whose administrative control the officer alleged to be at fault is working (or was working at the time the acts complained of were committed), but the decision to hold the enquiry can only be taken by the authority competent to hold the enquiry as prescribed under sub-rule (1) of rule 22.'

8. The contention of Sri Venkataranga Ayyangar is that as per this instruction 1(a), before a departmental enquiry takes place, it is absolutely necessary to have a preliminary enquiry; that this preliminary enquiry should be made by an officer under whose administrative control the officer alleged to be at fault is working; and the decision to hold the preliminary enquiry can only be taken by the authority competent to hold the enquiry as prescribed by sub-rule (1) of rule 22, that is, by the head of the department, i.e. the Inspector-General of Police or by the higher authority, i.e. the State Government Sri Venkataranga Ayyangar strongly relies on the decision of the Supreme Court in *State of Uttar Pradesh v. Babu Ram Upadhyaya* : 1961 CriLJ773 . Relying on this authority, he contends that the rules governing disciplinary proceedings cannot be treated as administrative directions, but shall have the same affect as the provisions of the statute under which they are made. When the appropriate authority takes disciplinary action under the rules, it must conform to the provisions of the statutes or rules which have conferred on it the power to take such action. When the rules say that a departmental enquiry should be held only after the preliminary enquiry, it is a mandatory provision and any subsequent enquiry, without complying with this provision of holding a preliminary enquiry, is vitiated and illegal. Sri Venkataranga Ayyangar contends that in the said Upadhyaya case : 1961 CriLJ773 (vide supra) their lordships held that since there was a rule that a departmental enquiry can be held only after the police investigation and since in that case police investigation had not taken place, the subsequent departmental enquiry was vitiated and set aside the order of dismissal as illegal.

9. The learned High Court Government Pleader contends that under the rules it is not obligatory to hold a preliminary enquiry and that appendix I deals with only procedural instructions given for the guidance of officers holding departmental enquiries. He also submits that instructions 1(a) of the said appendix says that preliminary enquiry may be made by any officer under whose administrative control the officer alleged to be at fault is working. The word used is 'may' and not 'shall' and the enquiries conducted by others are not ruled out. The holding of a preliminary enquiry is not a pre-requisite for the validity of a departmental enquiry and if no preliminary enquiry is held, this will not vitiate the departmental proceedings.

10. Instruction 1(a) of appendix I starts by saying.

'Before commencing any departmental enquiry against a Government servant with regard to a disciplinary matter, it is necessary that there should be sufficient evidence gathered by way of preliminary enquiry and the authority competent to order the enquiry should be satisfied that there is sufficient prima facie evidence to start disciplinary proceedings against the Government servant concerned.'

11. Thereafter, as the learned High Court Government Pleader contends, it says :

'This preliminary enquiry may be made by any officer under whose administrative control the officer alleged to be at fault is working.'

12. This clearly shows that preliminary enquiry may be made by any officer and does not say it shall be held by the said officer. This does not rule out the possibility of the preliminary enquiry being held by any other method. The main purpose of the preliminary enquiry seems to be to satisfy the authority competent to order the enquiry that there is sufficient prima facie evidence to start the disciplinary enquiry. Sri Venkataranga Ayyangar also contends that the decision to hold a preliminary enquiry can only be taken by a competent authority to hold the enquiry as prescribed by sub-rule (1) of rule 22. His contention is that either the Inspector-General of Police being the head of the department or any higher authority should direct the preliminary enquiry. We are unable to agree with this contention. The latter part of the rule relating to the decision to hold an enquiry to

be taken by the authority competent to hold the enquiry, only relates to the final departmental enquiry and not the preliminary enquiry. From a reading of the rule, it is apparent that the rule, whenever it refers to the preliminary enquiry, specifically uses the words 'preliminary enquiry' and whenever it refers to a department's enquiry the word used is only 'enquiry.' In this particular case, so far as the departmental enquiry is concerned, it is not disputed that the decision to hold the enquiry was taken by the Government, after the papers of the preliminary enquiry held by the Anti-corruption Department were forwarded to it by the Inspector-General of Police. As per rule 22(1), the decision to hold an enquiry can be taken either by the head of the department or any other higher authority. As the Government is admittedly the higher authority as referred to in rule 22(1), there does not seem to be any defect in the procedure followed in ordering the departmental enquiry against the petitioner. There is considerable force in the contention of the learned High Court Government Pleader that the preliminary enquiry need not be held by an officer under whose administrative control the delinquent is working but it may be held by following other methods. Instruction 20(a) of appendix I of the said rules, reads as follows :

'20. Cases of alleged criminal misconduct of Government servants. - The following procedure should normally be adopted in case of alleged criminal misconduct of Government servants : (a) As soon as sufficient evidence is available for the purpose in the course of investigation in cases of misconduct, whether such investigation is conducted departmentally, through the Anti-corruption Department or through the police, action should be taken under the Hyderabad Civil Services (classification, Control and Appeal) Rules, 1955, or other appropriate disciplinary rules, and disciplinary proceedings should be initiated forthwith. Such departmental proceedings need not interfere with the police investigation, which may be continued, where necessary. After the departmental proceedings are concluded, and the penalty, if any, imposed as a result thereof, the question of prosecution should be considered in the light of such material as may have become available as a result of the investigation.'

13. Instruction 20(a) clearly indicates that preliminary investigation into cases of misconduct may be conducted departmentally, through the Anti-corruption

Department or through the police. In this case, on receipt of an anonymous petition alleging acts of corruption against the petitioner, the special Officer, Efficiency Audit, directed his inspector of police to hold a preliminary enquiry. The said inspector, after holding the preliminary enquiry submitted the papers to the Special Officer, Efficiency Audit, who in turn sent the papers to the Inspector-General of Police. The Inspector-General of Police sent the papers to the Government and the Government, after going through the papers, were of opinion that a prima facie case had been made out against the petitioner and directed that a departmental enquiry should be held by the Deputy Inspector-General of Police, Southern Range.

14. We will next examine Babu Ram Upadhyaya case : 1961 CriLJ773 (vide supra) on which Sri Venkataranga Ayyangar strongly relies. In that case, their lordships were considering the effect of Para. 486, rule 1, of the Uttar Pradesh Police Regulations which reads as follows :

Every information received by the police relating to the commission of a cognizable offence by a police officer shall be dealt with in the first place under Chap. XIV, Criminal Procedure Code, according to law, a case under the appropriate section being registered in the police station concerned.'

15. Considering the question whether the said rule is mandatory or directory, their lordships have stated that the said rule says that the police officer shall be tried in the first place under Chap. XIV of the Criminal Procedure Code. The word 'shall' in its ordinary import is 'obligatory.' Their lordships have further stated in Para. 30, at P. 765 as follows :

'What is more, Paras, 487 and 489 makes it abundantly clear that the police investigation under the Criminal Procedure Code is a condition precedent for the departmental trial. Paragraph 477 emphasizes that no officer appointed under S. 2 of the Police Act shall be punished by executive order otherwise than in the manner provided under Chap. XXXII of the Police Regulations. This is an imperative injunction prohibiting inquiry in non-compliance with the rules.'

16. So, their lordships clearly held that police investigation before the departmental enquiry was a condition precedent and that there was imperative injunction prohibiting departmental enquiry to be held without the preliminary police investigation. In view of these circumstances, their lordships came to the conclusion that it was obligatory to hold preliminary investigation by the police and as such any departmental enquiry held without the preliminary police investigation is illegal and bad. As stated earlier, in the instant case, there is no such rule, making it a condition precedent to hold a preliminary enquiry. In fact, rule 22(1) does not at all refer to any preliminary enquiry. It is only in the procedural instructions given in appendix I that a preliminary enquiry is referred to and as stated earlier, the word used is 'may.' We have also referred to instruction 20(a), which says a preliminary enquiry or investigation can be conducted through the Anti-corruption department or the police. In view of these circumstances. We are clearly of opinion that the holding of a preliminary enquiry under instruction 1(a) of appendix I is only directory and not mandatory and that even if the said instruction is violated, it does not vitiate the subsequent departmental enquiry held against the officer.

17. The learned High Court Government pleader has also relied on the decision of the Supreme Court in Champaklal Chimanlal Shah v. Union of India [1964 - I L.L.J. 752]. At p. 762 referring to the preliminary enquiries, their lordships have observed as follows :

'Therefore, so far as the preliminary enquiry is concerned, there is no question of its being governed by Art. 311(2), for that enquiry is really for the satisfaction of Government to decide whether punitive action should be taken or action should be taken under the contract or the rules in the case of a temporary Government servant or a servant holding higher rank temporarily to which he has no right. In short, a preliminary enquiry is for the purpose of collection of facts in regard to the conduct and work of a Government servant in which he may or may not be associated so that the authority concerned may decide whether or not to subject the servant concerned to the enquiry necessary under Art. 311 for inflicting one of the three major punishments mentioned therein. Such a preliminary enquiry may even be held ex parte, for it is merely for the satisfaction of Government, though

usually for the sake of fairness, explanation is taken from the servant concerned even at such an enquiry. But at that state he has no right to be heard, for the enquiry is merely for the satisfaction of the Government and it is only when the Government decides to hold a regular departmental enquiry for the purposes of inflicting one of the three major punishments that the Government servant gets the protection of Art. 311 and all the rights that that protection implies as already indicated above. There must therefore be no confusion between the two enquiries and it is only when the Government proceeds to hold a departmental enquiry for the purpose of inflicting on the Government servant one of the three major punishment indicated in Art. 311 that the Government servant is entitled to the protection of that article.'

18. In this case, the learned counsel for the petitioner has not contended, and cannot contend, that the departmental enquiry held by the Deputy Inspector-General of Police was without jurisdiction. All the witnesses were examined in the presence of the delinquent and opportunity was given to him to cross-examine them. The petitioner also examined many defence witnesses and marked a number of documents on his behalf. The enquiry officer has relied only on the evidence of the witnesses examined before him and has not relied on the preliminary enquiry held by the Inspector of Police Anti-corruption Department. As the enquiry officer has not relied on the evidence gathered by the said inspector of Anti corruption Department, we fail to see how the petitioner is prejudiced. Sri Venkataranga Ayyangar contends that the Inspector of Police of the Anti-corruption Department was biased against the petitioner. This fact has been denied by the respondent in its counter-affidavit. The earlier enquiry was only to satisfy the Government whether there was any prima facie case made out against the petitioner. Sri Venkataranga Ayyangar contends that if somebody else had conducted the earlier enquiry against the petitioner, there was the possibility of the Government holding that no prima facie case had been made out against the petitioner and dropping the proceedings against him. We are not impressed by this argument. Five of the six charges against the petitioner have been held to have been fully proved as a result of the separate departmental enquiry held against him. In view of these facts, it is too much to contend, when the charges themselves are held to be fully proved, that there was a possibility of the

Government holding that there was no prima facie case against the petitioner and dropping the proceedings against him.

19. Sri Venkataranga Ayyangar also relied on a decision of the Madras High Court in *Rajagopala Ayyar v. State of Madras* : AIR1955 Mad182 . In that decision, it has been stated that non-observance of the rules [Madras Civil Services (Classification, Control and Appeal) Rules], which have statutory force under Art. 313 of the Constitution, and the conduct of the enquiry by a tribunal or authority not competent to do so, vitiate the order of dismissal passed against the delinquent. We are of opinion that this decision is of no assistance to the petitioner. In that case, the tribunal which held the departmental enquiry had admittedly no jurisdiction to hold the enquiry against the petitioner as he was a member of the Judicial Department. In view of the fact that the whole enquiry held was without jurisdiction, their lordships held that the dismissal of the petitioner (therein) was in violation of Art. 311(2) of the Constitution and as such, set aside the dismissal order.

20. Sri Venkataranga Ayyangar next contended that the enquiry officer was wrong in examining the handwriting expert after the whole evidence on behalf of the prosecution was practically over. He contends that the rules do not authorize such examination of the handwriting expert. The learned High Court Government Pleader submits that there are no rules prohibiting the examination of witnesses whom the enquiry officer considers necessary. It is also a fact that this handwriting expert was examined in the presence of the petitioner and opportunity was given to him to cross-examine the said witness. A division Bench of this Court in *Syed Hasan Ali v. State of Mysore* [1965 - II L.L.J. 583], has held that it is open to the enquiry officer to examine witnesses, whom he considers necessary in the interest of justice, though they might not have been cited in the chargesheet.

21. Sri Venkataranga Ayyangar next contended that the petitioner had not been given copies of the anonymous petition sent against him and the report of the inspector of police of the Anti-corruption Department. The respondent-State Government, in its counter-affidavit, have stated that the petitioner was permitted to peruse all the records including the anonymous petition and the report of the

police inspector and he accordingly perused the same in the office of the enquiry officer.

22. Sri Venkataranga Ayyangar also contended that the enquiry officer was wrong in marking Exs. P. 1 to P. 5, statements of witnesses recorded by the inspector of police, Anti corruption Department, and using them as substantive evidence. Those witnesses were examined before the enquiry officer and the statements made by them were marked as exhibits in the case. The petitioner was permitted to cross-examine the witnesses. There is no basis for the contention of the petitioner that those statements were used as substantive evidence in the case.

23. Sri Venkataranga Ayyangar also contended that Para. 9 of the Government order dated 10 August, 1959, marked as Ex. D in the case, has not been complied with in this case. Exhibit D is the copy of the order dated 10 August, 1959 wherein the procedure to be followed by the Anti-corruption Department in dealing with the petitions sent to it for enquiry, is set out. The contention of the State is that this order was passed by the Government after the preliminary enquiry against the petitioner was over. This order is only prospective and is not applicable to the enquiry conducted against the petitioner. The stand taken by the respondent is that these are only administrative directions given for the guidance of the officers and not statutory directions, and their breach, even if any, will not give any right to the petitioner to approach this Court and will not vitiate the action taken against the petitioner. We are, therefore, of opinion that there is no merit in this contention of the learned counsel for the petitioner.

24. Sri Venkataranga Ayyangar also relies on instruction 4 of appendix I of the said rules and contends that this instruction entitles the petitioner to nominate the place of enquiry and the petitioner had asked that the enquiry should take place in Mysore.

25. A reading of the said instruction clearly shows that there is no substance in this contention. All that it says is that the enquiry must be held where the Government servant asked for it. It does not refer to the place of enquiry. The option given to the delinquent is to choose whether any enquiry should be held against him.

26. We are therefore of opinion that there is no merit in any of the contentions raised by Sri Venkataranga Ayyangar, on behalf of the Petitioner.

27. In the result, for the reasons stated above, this writ petition fails and the same is dismissed. In the circumstances of the case, there will be no order as to costs.

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