

S. Nanjundeswar Vs. State of Mysore

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Court : Karnataka

Decided On : Jan-20-1959

Reported in : AIR1960Kant159; AIR1960Mys159

Judge : S.R. Das Gupta, C.J. and ;A.R. Somnath Iyer, J.

Acts : [Constitution of India](#) - Article 311; General Circulars and Standing Orders - Rules 245, 247 and 250

Appeal No. : Writ Petn. No. 196 of 1957

Appellant : S. Nanjundeswar

Respondent : State of Mysore

Judgement :

S.R. Das Gupta, C.J.

(1) The petitioner before us was a Sub-Inspector of Police and he was in the II Grade. He has been reduced to the rank of a Jamadar for two years by order of the Government dated 24-8-1957. It is this order which the petitioner is challenging in this writ petition.

(2) It appears that in June 1953 four charges were framed against him. An enquiry was made on those charges. During the course of the enquiry made on those charges. During the course of the enquiry another additional charge was added and the

said charge was also enquired into. 25 witnesses were called in support of the charges. It is not disputed that some of the statements of those witnesses were not recorded in the presence of the officer who conducted the enquiry. The statements of those witnesses were recorded by the Police Inspector behind the back of the petitioner. Those statements were produced before the enquiring officer and it appears from the record that the same were read over to the witnesses and thereafter they were allowed to be cross-examined by the petitioner.

The petitioner in support of his case called seven witnesses whose statements both in examination-in-chief and in cross-examination were recorded before the enquiry officer. On the conclusion of the enquiry the enquiring officer gave his report. He held that charge 1 and 5 were proved, but the rest of the charges were not proved, but the rest of the charges were not proved. On the question of punishment to be inflicted, the enquiring officer recommended that in view being taken and reverting him as III Grade Sub-Inspector on Rs. 80/- for a period of two years with a pre-condition that his promotion to the next higher grade will depend on his good conduct during that period would meet the ends of justice.

It appears that the said report was forwarded to the Government by the Special Officer, Efficiency Audit. It also appears that the said Special Officer in forwarding the report of the inquiring officer also made his own report in connection with the enquiry. He reported that Charge 1 was proved on then state of evidence which was adduced at the enquiry. We called for that Special Officer's report and on perusal thereof we find that the Special Officer has given his own reasons for coming to the said conclusion.

He has also accepted the reasoning and the conclusion of the enquiring officer. When the matter came up before the Government it, in its order dated 28-4-1955 observed that the Special Officer, Efficiency Audit, has stated that the first charge of having received as illegal gratification bags of paddy is proved beyond doubt and the charge is a grave offence involving moral turpitude. The Government further stated in its said order that the Special officer has recommended that the delinquent may be reduced as a Jamedar for two years with a severe warning.

Having recited these facts the Government by its said order ordered, agreeing with the findings of the Special Officer, Efficiency Audit, that the petitioner be reduced as a Jamadar for two years and that his reinstatement after the period specified is conditional on his good work and conduct in the meanwhile.

It should be noted that before making this order the Government did not supply the petitioner with a copy of the report of the enquiring officer nor did it issue a show case notice to the petitioner as required by Art. 311 of the Constitution. The petitioner having brought this fact to the notice of the government the Government by its order dated 12-3-1956 withdrew its previous order dated 28-4-1955 and gave a fresh notice to show case, to the petitioner. In the said notice it was stated that the Government having been satisfied that the charge that the petitioner as Sub-Inspector of krishnarajanagar Kasaba accepted on 24-1-1953, 3 pallas and 15 1/4 seers of paddy from Kurubally Veeranna and Siddamma of Kalyanapura village for showing favour in the disposal of a complaint against them by Chikkaveorathappa, having been proved, propose to reduce him as a Jamadar for two years.

The petitioner was directed within 15 days from the date of receipt of this notice to show-case as to why the said punishment should not be imposed on him. The petitioner on receipt of this notice asked the Government to supply him several documents as mentioned in his letter dated 30-3-1956. The said documents, copies of which the petitioner wanted from the Government, included the report of the enquiring officer and also the report of the Special Officer. The petitioner also asked for the report of the Public Service Commission whom the Government had consulted in this matter. The Government did not supply him with any of those documents except the report of the enquiring officer.

In its letter dated 11-4-1956 addressed to the Petitioner the Government stated that that was not the stage of enquiry and what had been required of the petitioner in the show-cause notice dated 12-3-1956 was to show cause, in view of the charge proved against him, as to why he should be reduced as Jamadar for 2 years. It should be mentioned that the report of the enquiring officer was not furnished on that date. It was furnished subsequently on 6-4-1957. The petitioner

thereafter addressed a number of letters to the Government in which he insisted on production of the said documents including the report of the Special Officer. The Government, finally, by its order dated 24-8-1957 reduced the petitioner to the rank of a Jamadar for two years. The actual order which the Government made was that the petitioner be reduced as a Jamadar for two years and that his reinstatement after the period specified is conditioned on his good work and conduct as Jamadar. In the other itself the Government stated that the Special Officers. Efficiency Audit, had stated that the first charge of having received as illegal gratification 4 bags of paddy from Sri Veeranna and Siddamma to send a favourable report in connection with an enquiry against them is proved beyond doubt and the charge is a grave offence involving moral turpitude. The Government Public Service Commission has agreed that the Public Service Commission has agreed with the Special Officer, Efficiency Audit, in regard to the punishment to be awarded to the Sub-Inspector. In the second paragraph of the order it is stated as follows:

'Government have carefully examined the records as well as the explanation furnished by the Sub-Inspector in reply to the show-cause notice and agree with the findings of the Special Officer Efficiency Audit. The previous conduct of the Sub-Inspector was not above board Government also agree with the opinion of the Public service Commission who have accepted the recommendation of the Special Officer, Efficiency Adult, and direct that Sri S. Nanjundeswar, Sub-Inspector of Police, be reduced as a Jamadar for two years and that his reinstatement after the period specified is conditioned on his good work and conduct as Jamadar.

It is this order that the petitioner is challenging in this writ petition.

(3) The learned Advocate appearing in support of this petition placed his client's case on several grounds. In the first place he urged that the procedure adopted at the said enquiry was contrary to principles of natural justice and also to the rules framed under the General Circulars and Standing Orders and is therefore liable to be set aside. He contended that the evidence of all the witnesses in support of the charges should have been recorded in the presence of the enquiring officer. As I have already mentioned, the statements of some of those witnesses were not

recorded before the officer who conducted the enquiry and the learned Advocate's contention was that this was not permissible under the rules and is also contrary to principles of natural justice.

In my opinion, this contention of the learned Advocate for the petitioner is sound and should be given effect to. Rule 245 of the General Circulars and Standing Orders clearly provides that the oral and documentary evidence in support of the charges should be placed on record on a fixed date of hearing in the presence of the officer accused who may be given the right to cross-examine the witnesses, and thereafter the accused officer should be required to make his defence orally or in writing as he shall prefer. This rule, in my opinion, leaves no room for doubt that all evidence in support of the charges should be recorded on the date of hearing and in the presence of the officer accused.

The learned Government Pleader no doubt contended that the rule permits evidence to be recorded at any place provided the same is filed on the record on the date of hearing. In other words his contention was that the words, 'be placed on record' means 'brought on record'. We are wholly unable to accept that contention. It is clear, in our opinion, from the wordings of the said the fixed date of hearing and in the presence of the officer accused. We are unable to hold that the expression used in the rule viz., 'evidence in support of the charges should be placed on record' means that the same should be filed on record on the date of hearing.

That this, cannot be the true interpretation of the said rule is made more clear by the provisions of rule 247 of the said Rules. Rule 247 provides that the enquiring officer should take notes in English of all the oral evidence, which should be read aloud to each witness by whom the same was given. There cannot be, in my opinion, any meaning in saying that the enquiring officer should take notes in English of all the oral evidence, unless the said oral evidence is required to be given in the presence of the officer. In my opinion, rule 247 does not mean that the enquiring officer should take notes of the evidence already taken by some other person. I am clear in my opinion that the contention of the learned Government Pleader on this point cannot at all be accepted as sound.

(4) The learned Advocate for the petitioner referred us to a decision of the Supreme Court reported in *Union of India v. T. R. Varma*, : (1958) IILLJ259SC . In that case the proposition laid down was that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies; that the evidence of the opponent should be taken in the presence and that he should be given the opportunity of cross-examining the witnesses examined by that party. The learned Advocate relied on these observations of their Lordships and contended that rules of natural justice also require that the evidence of these witnesses should be taken in the presence of the petitioner.

(5) As against the said contention, the learned Government Pleader contended before us that in the said case on which the petitioner relied, their Lordships of the Supreme Court also held that the fact that the witnesses for the defence were not examined in chief would not vitiate the proceedings. The learned Advocate contended that if the non-examination in chief of the witnesses for defence would not vitiate the proceedings, the non-examination of the witnesses in support of the charge should not also vitiate the proceedings in question.

It appears that their Lordships in that case, on the materials on record, came to the conclusion that there was nothing left to be examined of these witnesses whose examination-in-chief did not take place. In other words, their Lordships on the facts of that case held that whatever was necessary to be put to those witnesses in examination-in-chief were put to them by the other side. That being so, their Lordships did not think that the absence of examination-in-chief of those witnesses vitiated the proceedings. But it should be noted that their Lordships clearly laid down in the said case on which the learned Advocate for the Petitioner relied that the principles of natural justice require that the evidence of his opponent should be taken in the presence of the party charged and that he should be given an opportunity to cross-examine the witnesses examined by that party.

In this connection, I would refer to a decision of the Bombay high Court reported in *State of Bombay v. Gajanan Mahadev*, : AIR1954 Bom351 . In this case, Chief Justice Chagla, sitting with Mr. Justice Dixit held that the State should not countenance a departmental enquiry in which action is proposed to be taken

against the servant where a witness is produced only for being cross-examined by the servant without the servant being given an opportunity of hearing what evidence the witness is going to give. Their Lordships further held that even assuming that a statement of such a witness is furnished to the servant, it is a sound rule that courts of law should follow and which even domestic tribunals should follow that all evidence must be given in the presence of an accused person and in the presence of an accused person and in the presence of the person against whom action is proposed to be taken. 'It is one thing', their Lordships observed, 'to make a statement behind the back of a person and it is entirely a different thing to make a statement in the presence of a person against whom you are going to make serious charges'.

I am in full agreement with the view expressed by their Lordships of the Bombay High Court in the said case. In my opinion, it would make a great difference if the statement of the witness concerned is taken in the presence of the tribunal and in the presence of the person charged rather than to have it behind the back of the said person. I therefore hold that the principles of natural justice also require that the principles of natural justice also require that such statements should be taken in the presence of the persons charged and, as I have already indicated, Rule 245 of the General circulars and Standing Orders also makes a provision to that effect. This contention of the petitioner must therefore succeed.

(6) I now come to the second ground urged before us by the learned Advocate for the petitioner. It was contended by him that no report of the Special Officer, Efficiency Audit, had been furnished to his client before the punishment in question was inflicted on him. He urged--and in my opinion rightly--that the Government, as it appears from its order dated 24-8-1957, proceeded mainly, if not wholly, on the findings of the Special Officer, Efficiency Audit, and unless the report of the said Special Officer was supplied to the petitioner it cannot be said that he had reasonable opportunity of answering the notice to show cause as to why the punishment in question should not be inflicted upon him.

In P.W. No. 77/56 we have held, following two decisions, one of which is of the Federal Court, that it is not possible to say that a reasonable punishment has been

given to the person concerned, unless he has been furnished with the report of the committee which made the enquiry and on that ground we have held that the order in question was a nullity. The same reason on which we came to the said conclusion should also induce us to hold that the Government in this case should have furnished the petitioner with a copy of the report of the Special Officer, Efficiency Audit and as no copy of the said report was furnished to the petitioner it cannot be said that he had a reasonable opportunity to show cause against the proposed punishment. In this case, as it clearly appears from the order of the Government itself, the Government the order of the Government itself, the Government has taken into consideration the findings of the Special Officer, Efficiency Audit, and has based its decision mainly, if not wholly, on the said findings.

It also appears that the Government agreed with the findings of the Special Officer, Efficiency Audit, and has accepted the recommendation of the said Special Officer, and directed that the petitioner be reduced as Jamedar for two years. If then the Government relied on the findings of the Special Officer, Efficiency Audit, in coming to the said conclusion, it was necessary that the Government said give a copy of the said findings of the Special officer to the petitioner before he could be asked to give his explanation in respect of the proposed punishment. Petitioner not having been furnished with a copy of the said Report it cannot be said that he had reasonable opportunity of showing cause against the proposed punishment. In my opinion, the principles of natural justice, as laid down by their Lordships of the Supreme Court in the case to which I have referred, viz., : (1958)IILLJ259SC , also require that a copy of the said report should be given to him before he can be asked to show cause against the proposed punishment. Their Lordships inter alia observed that no materials should be relied on against the person charged without his being given an opportunity of explaining them. The report of the Special officer is certainly a material which the Government took into consideration and no opportunity was given to the petitioner of explaining the same. That being so, the order in question should also be quashed on this ground.

(7) It was, however, urged before us by the learned Government Pleader that in view of the provisions of rule 250 of the General Circulars and Standing Orders, the government was not bound to supply to the petitioner a copy of the report of the Special Officer. Rule 250 provides that after the close of the enquiry the enquiring officer should forthwith submit to Government through the proper channel a confidential report of the enquiry and send with the record thereof his finding upon each of the articles of charge separately with such observations, as he may think fit, on the whole case. The learned Advocate contended before us that what was done in this case was that the Report of the Enquiring Officer was forwarded through the Special Officer, which was the proper channel, as was required to be done by the said rule 250.

That being so, it was not necessary that the note, if any of the forwarding authority should be supplied to the person charged. I am unable to accept this contention. The Special Officer, as I have already mentioned, was not merely a forwarding channel. He made his own report on the matter, gave his own reasons and made his own recommendation to the Government which the Government accepted.

As I mentioned before the said Special Officer has stated in his report that one of the charges has been proved against the petitioner and for that purpose the Special Officer in his report has discussed the evidence which has been adduced in this case and stated his own view of such evidence. That being so, I am of the opinion that the Government, before it could take into consideration the report of the special Officer and inflict the punishment in question upon the petitioner with a such report, has to supply the petitioner with a copy of the said report. The Government having failed to do so, the order in question should be quashed.

(8) I now come to the next contention of the learned Advocate for the petitioner on which also I hold that this petition should succeed. It was pointed out to us that in making the order of punishment, the Government has taken into consideration the previous conduct of the Sub-Inspector and has observed in its said order that the previous conduct of the Sub-Inspector was not above-board. The learned Advocate contended that no notice was given to the petitioner that his previous conduct would be taken into consideration in inflicting the punishment in question.

He urged, relying on the said decision of the Supreme Court reported in : (1958)IILLJ259SC , that principles of natural justice require that no materials should of natural justice require that no materials should be relied upon against the person charged without his being given an opportunity of explaining them.

Past conduct, according to him, is a material which has been relied upon against the Petitioner by the Government in imposing the punishment in question and the Government could not do so without giving the petitioner an opportunity of explaining the same. The petitioner in this case was not given such opportunity. In my opinion, this contention of the learned Advocate is also sound. The observations of their Lordships of the Supreme Court on which reliance has been placed, support this contention of the learned Advocate for the petitioner. The petitioner was not given an opportunity of explaining his past conduct. The Government, before relying on the said conduct, as it has done, for inflicting the punishment in question should have given the petitioner an opportunity of explaining it.

In this connection, reference may also be made to a decision of the Madhya Pradesh High Court reported in Ramchandra Gopalrao v. Deputy Inspector of Police, : (1958)IILLJ414MP . In that case, it was held that no doubt competent authorities are entitled to take into consideration the record of the past service of a civil servant in order to determine the appropriate punishment, but before taking this into consideration, the civil servant must be apprised of the record of his past service and of the fact that it would be taken into account to decide the question of punishment. In my opinion therefore, the petitioner's present contention should succeed. Before leaving this point, I should mention that the enquiring officer in his report has stated the confidential records of this Sub-Inspector are not generally bad though he had entangled himself in a criminal case during 1947 which ended in discharge.

Having regard to this statement in the report of the enquiring officer it appears to us that there is sufficient scope for the petitioner to contend that his past conduct, far from prejudicing him goes in support of his case that a more lenient punishment should have been awarded to him.

(9) As it is sufficient to dispose of this petition on these grounds, it is not necessary for us to go into the other grounds which have been urged before us by the learned advocate for the petitioner.

(10) In the result, therefore, the petition succeeds and the order of the Government dated 24-8-1957 is quashed. The petitioner is entitled to costs of this petition (Advocate's fee assessed at Rs. 100/-).

Somnath Iyer, J.

(11) I agree.

(12) Petition allowed.

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