

Govind Shankar Vs. State of Madhya Pradesh and anr.

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Court : Madhya Pradesh

Decided On : Sep-17-1962

Reported in : AIR1963MP115; 1963MPLJ139

Judge : P.V. Dixit, C.J. and ;K.L. Pandey, J.

Acts : [Constitution of India](#) - Schedule - Article 311(2)

Appeal No. : Misc. Petn. No. 103 of 1962

Appellant : Govind Shankar

Respondent : State of Madhya Pradesh and anr.

Advocate for Def. : R.J. Bhawe, G.A.

Advocate for Pet/Ap. : Y.S. Dharmadhikari, Adv.

Disposition : Petition allowed

Judgement :

Dixit, C.J.

1. By this application under Articles 226 and 227 of the Constitution the petitioner, who was formerly an Inspector of Police, prays for the issue of a writ of certiorari for quashing an order dated 1st October 1960, of the Inspector-General of Police dismissing him from service.

2. In 1959-60 a departmental enquiry was held against the petitioner in the following circumstances as stated by the department.

On 15th February 1958, 1130 tolas of ganja in two packets of the value of Rs. 2,150/- was seized by the Seoni police in connection with a criminal case. When the petitioner, who was Station Officer, Seoni, solicited orders of the Sub-Divisional Magistrate, Seoni, regarding destruction of the ganja which was no longer required for any purpose, the Sub-Divisional Magistrate, Seoni, Shri Khanna, addressed a memorandum to the Station Officer, Seoni, on 8th November 1958 to send the ganja to him for destruction. When the Sub-Divisional Magistrate, Seoni, did not receive the ganja, he reported the matter to the District Superintendent of Police, Seoni. In reply to queries made by the District Superintendent of Police the petitioner informed him that the memorandum which he had received from the Sub-Divisional Magistrate, Seoni, directed him to destroy the ganja and accordingly he had burnt it in the presence of the Circle Inspector and two respectable gentlemen of the town; and that thereafter he also informed the Sub-Divisional Magistrate, Seoni, about the disposal of the ganja in this manner. The Sub-Divisional Magistrate, however, felt some doubt about the destruction of the ganja by the petitioner and he, therefore, requested the District Superintendent of Police to make further enquiry. During the course of the enquiry the department learnt that the memorandum sent by the Sub-Divisional Magistrate on 8th November 1958 actually directed the petitioner to send the ganja to the Sub-Divisional Magistrate for destruction; that the ganja had been sold off and not destroyed; that the police station register of incoming correspondence had been interpolated so as to show that the memorandum received from the Sub-Divisional Magistrate, concerned the destruction of the ganja and the making of a report about it; that the entry in the register was interpolated by constable Balram Singh at the instance of the petitioner and that the ganja packets were neither weighed nor shown to any person before its alleged burning.

3. On this information a departmental enquiry was held against the applicant on the following charges :

- '1. Failing to take any action from 13-11-58 to 22-12-58 on memo No. Q/R-58 dated 8-11-58 of the S. D. M. Seoni, requiring the seized ganja to be sent to him;
2. Failing to comply with the SDM's memo dated 8-11-58 requiring the seized ganja to be sent to him for destruction;
3. Falsifying and fabricating with the help of constable Balram Singh the entries in the Correspondence Register and Dak Memo dated 23-12-58 of P. S. Seoni by altering the contents of the SDM's order requiring the production of the illicit ganja as entered in the Correspondence register to read as an order for the destruction of the ganja and by falsely inserting at a later date the despatch of SDM's memo in the Dak Memo dated 23-12-58 when, in fact, it was not despatched from the P. S.;
4. Failing to weigh the packets of ganja before witnesses and to show the ganja to the witnesses, which is normally done, before its alleged destruction by burning'. The enquiry was conducted by Shri J. S. Kand, District Superintendent of Police, Seoni. The petitioner participated in the enquiry. At the end of the enquiry Shri Kand found all the charges established against the petitioner and made a report accordingly on 20th February 1960. On 9th May 1960 the Inspector-General of Police issued a notice to the applicant expressing his concurrence with the findings of the Enquiry Officer and the Deputy Inspector-General of Police Central Range, Jabal-pur and stating his provisional conclusion that the above-stated charges had been proved against the petitioner and calling upon him to show cause why he should not be dismissed from service. In response to this notice the petitioner gave his explanation which did not satisfy the Inspector-General of Police. Accordingly the order of dismissal under challenge was passed.
4. Shri Dharmadhikari, learned counsel appearing for the petitioner, assailed the order of the Inspector-General of Police on the ground that it was vitiated inasmuch no reasonable opportunity of making his defence was given to the petitioner. It was said that the Enquiry Officer, who was the District Superintendent of Police, Seoni, was biased against him and was not competent to hold the enquiry as he i. e., the petitioner, had intended to prove certain documents at the enquiry by his evidence; that serious irregularities had occurred in the procedure followed by the Enquiry Officer; that the Enquiry Officer and the Inspector-General!

of Police had acted on material which was not made available to the petitioner; that copies of the correspondence exchanged between the District Superintendent of Police, who was the Enquiry Officer, and the Deputy Inspector General of Police with regard to the initiation of departmental enquiry against him were not given to him; that a copy of the comments made by Shri Kand on the application which the i. e., the petitioner, had submitted to the Inspector-General for transferring the enquiry to some other officer had not been furnished to him; and that the Enquiry Officer also refused to permit him to examine certain witnesses in defence.

It was also urged that the notice to show cause against the proposed punishment issued by the Inspector-General of Police on 9th May 1950 was not legal as it was not issued after the Inspector-General of Police, had reached the conclusion that the first three charges narrated earlier had been established against the petitioner and that the notice also failed to indicate the separate punishments proposed to be awarded to the petitioner for the different charges.

5. In our judgment, there is no substance in the contention advanced on behalf of the petitioner that Shri Kand, the Enquiry Officer, was biassed against him. The contention about bias was sought to be rested on the circumstances that Shri Kand himself had made a preliminary enquiry before the departmental enquiry was decided upon and commenced; that the main witnesses in the departmental enquiry appearing for the department were his subordinates; that in the comments which Shri Kand made on his transfer application, Shri Kand expressed the opinion that constable Balram 'had not been made an accused as he was subordinate to the petitioner and had been exploited by the applicant' ; that in the charge-sheet also, which was given to the applicant, Shri Kand referred to the entry in the correspondence register as 'suspicious entry' and said that it was clear from the statement of head-constable Abdul Gani that the ganja packets had not been weighed; and that similarly in the letter which the Enquiry Officer addressed to Shri M. B. Dixit, Government Examiner of Questioned Documents, asking him to examine the entry in the correspondence register of the police station, Secni, and to give his opinion, it was stated-

'In order to hide the non-compliance the delinquents in the D. E., falsely contended that the order of S. D. M. Seoni actually require the destruction of ganja at the P. S. and the submission of a report to him'.

6. In our opinion, none of these circumstances shows that the Enquiry Officer had any personal prejudice or bias against the applicant. The fact that Shri Kand held a preliminary enquiry before it was decided to hold a departmental enquiry against the petitioner did not debar him from conducting the departmental enquiry; nor can it be regarded as in any way indicative of bias against the applicant. There can also be no valid reason to suppose that as some of the witnesses appearing in the departmental enquiry were his subordinates, he was not in a position to give a fair hearing to the petitioner. The statements of Shri Kand relied on by the learned counsel for the petitioner to show his bias against the applicant are more in the nature of a narration of facts alleged than any expression of opinion for or against the petitioner.

7. The objection that Shri Kand was not competent to hold the departmental enquiry when the petitioner intended to prove by his evidence certain documents, to wit, the correspondence exchanged between him and the Deputy Inspector-General with regard to the initiation of an enquiry against the applicant is unsubstantial for the reason that a civil servant against whom a departmental enquiry is started is not entitled to copies of reports of the officer who made the preliminary enquiry and of the letters addressed by him to the superior officers in connection with the question whether a departmental enquiry should or should not be started. If the petitioner was not entitled to copies of the correspondence that passed between Shri Kand and the Deputy Inspector-General on the question of the start-ing of a departmental enquiry, then the question of tendering in evidence Shri Kand to prove that correspondence could not arise.

8. The petitioner is, however, on firm ground in his contention, that the Enquiry Officer and the inspector-General of Police relied on some material against him without giving him any opportunity of explaining it.

In support of the charge of falsifying and fabricating some entries in the correspondence register with the help of Balram Singh, the Enquiry Officer relied

on the evidence of Balram Singh who deposed that he had made the interpolation, and also on the report given by Shri M. B. Dixit, Government Examiner of Questioned Documents, who was not examined at all at the enquiry. In the report the Enquiry Officer said that

'the forgeries in the correspondence register and the dak memo were confirmed by the handwriting expert Shri Dixit and that his report could be read as evidence in the departmental enquiry without calling him as a witness'.

The Inspector-General of Police also took a similar view. It was argued by Shri Dharmadhikari that Balram Singh's statement was no better than that of an accomplice and that the evidence of Shri Dixit, Government Examiner of Questioned Documents, was very material for the purpose of corroborating or contradicting Balram Singh; that if he had been examined as a witness, then the petitioner would have endeavoured to show by cross-examining him that there was no interpolation in any entry of the register and that Balram Singh's version was totally false; and that if he had succeeded in that, he would have been able to demolish altogether the grave and main charge against him, namely, that of falsifying and fabricating entries in the correspondence register with the help of Balram Singh, and then perhaps he would not have been awarded the severe punishment of dismissal from service.

9. The Enquiry Officer and the Inspector-General of Police also took into consideration the circumstance that one Mahadeo had sent applications to the District Superintendent of Police and the Deputy Inspector-General saying that the petitioner had come to his shop some time in November 1958 and had offered to sell ganja to him and that he had learnt from Deepchand, his partner, that Deepchand ultimately purchased the ganja from the petitioner. This Mahadeo was also not examined at the enquiry, and the reason given for this omission was that Mahadeo could not be traced. The Enquiry Officer, however, questioned the petitioner (page 131 of the paper-book, Annexure P) with regard to the statements made by Mahadeo in the preliminary enquiry and asked the applicant to give his explanation with regard to those statements.

10. There can be no doubt that the evidence of Shri Dixit, Government Examiner of Questioned Documents, was very material in relation to the third charge. By omitting to examine him the applicant was denied the opportunity to cross-examine him for the purpose of showing that there was no interpolation in the correspondence register entries and that Bairam Singh's statement was not true. Whether the petitioner would or would not have succeeded in doing this is a different matter; but the fact remains that he did not have reasonable opportunity of meeting the third charge. The Enquiry Officer and the Inspector-General of Police were not justified in using the reports submitted by Shri Dixit against the petitioner without giving him an opportunity of testing the opinion expressed by Shri Dixit by his cross-examination. The use of statements made by Mahadeo was also unwarranted when he was not examined at the departmental enquiry.

This is clear from the observations made by the Supreme Court in *Union of India v. T. R. Varma*, (S) AIR 1957 SC 882 and *State of M. P. v. Chintaman* AIR 1961 SC 1623 with regard to the rules of natural justice which should be followed in a departmental enquiry. In (S) AIR 1957 SC 882 (supra) the Supreme Court said ;

'Stating it broadly and without intending it to be exhaustive, it may be observed 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 his presence and that he should be given the opportunity of cross-examining the witnesses examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them.

11. Another serious irregularity which the Enquiry Officer committed was that he did not allow the petitioner to tender in evidence on his behalf A. N. Sinha and Dr. Bajpai. At the enquiry the original of the memorandum said to have been sent by the Sub-Divisional Magistrate to the petitioner on 8th November 1958 was not produced. It was not to be found in the Seoni police-station. According to the applicant, the memorandum had been returned to the Sub-Divisional Magistrate, Seoni, after due compliance. A copy of the memorandum, which was in the office of the Sub-Divisional Magistrate, Seoni, was however proved by the evidence of

the Sub-Divisional Magistrate. The petitioner wanted to prove by the evidence of A. N. Sinha that Sinha was in the police-station when the memorandum was actually received by him and that he happened to read that memorandum and it directed the petitioner to destroy the ganja.

The Enquiry Officer rejected the prayer of the petitioner for the examination of Sinha on the ground that being a non-official, he could not be presumed to know the contents of an official memorandum and that a government servant was not permitted to disclose the contents of any official communication to a non-official. In making this observation the Enquiry Officer presupposed the evidence that Sinha would have given and prejudged its value. The reasons given by the Enquiry Officer for refusing to permit the petitioner to examine Sinha might have constituted a good ground for refusing to accept his testimony, but they were utterly untenable for rejecting the petitioner's request for being allowed to examine Sinha.

12. The petitioner wanted to produce Dr. Bajpai to prove that he was one of the persons who was present at the time when he burnt the ganja and that the burning was done after weighing the packets and showing their contents to the persons. The evidence of this witness was thus in relation to the fourth charge framed against the applicant. The Inspector-General of Police no doubt found that this charge was not proved. At the same time, he observed in the order of dismissal that -

'While failure to weigh the packets before witnesses and show the contents to the witnesses cannot by itself constitute a charge, had the accused taken the precaution it would have helped him to rebut the presumption of having done away with the property without destroying it'.

This observation makes it very clear that though the Inspector-General of Police found that the fourth charge was not established, still he was overpressed by the fact that the petitioner had not been able to rebut the presumption of the ganja having been 'done away with without being destroyed'. It is thus clear that by refusing the petitioner's request for examination of Dr. Bajpai, the Enquiry Officer denied to him the opportunity of adducing relevant and material evidence on

which he relied to disprove affirmatively the fourth charge. According to the decisions of the Supreme Court referred to earlier and numerous other decisions of the Supreme Court, the applicant was undoubtedly entitled to this opportunity; and when he did not get it, he cannot be said to have had reasonable opportunity of defending himself against the fourth charge.

13. The petitioner's complaint that he was not given adequate opportunity of cross-examining Balram Singh is baseless. He had this opportunity and he fully availed of it by cross-examining Balram Singh at length. The grievance that the petitioner was not supplied with a copy of the comments made by Shri Kand on his transfer application has really no bearing on the question whether the petitioner had a reasonable opportunity of making his defence before Shri Kand. The truth or falsity of the charges levelled against the petitioner in no way depended on the comments of Shri Kand. The comments would have only enabled the petitioner to show that Shri Kand was biased against him; and the question of bias has already been disposed of by us earlier in this judgment.

14. It remains to consider the last objection of the petitioner that the notice to show cause issued by the Inspector-General of Police on 9th May 1960 was not legal and in conformity with Article 311(2). On this head, learned counsel for the petitioner first argued that under Article 311(2) the civil servant concerned was entitled to a reasonable opportunity of showing cause against the action proposed to be taken in regard to him; and 'has' according to the decision of the Privy Council in *High Commissioner for India v. I. M. Lall*, AIR 1948 P C 121 given with reference to the analogous provision contained in Section 240(3) of the Government of India Act, 1935, no action could be proposed within the meaning of Section 240(3) until a definite conclusion had been come to on the charges and the actual punishment to follow was provisionally determined on.

Learned counsel emphasized the observation of the Privy Council in paragraph 21 of the judgment in *Lall's case*, AIR 1948 PC 121, namely,--

'In the opinion of their Lordships, 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. Prior to that stage, the

charges are unproved and the suggested punishments are merely hypothetical. It is on that stage being reached that the statute gives the civil servant the opportunity for which Sub-section (3) makes provision'.

It was said that a notice to show cause against the action proposed to be taken should be issued only after a definite conclusion is reached on the charges; that in the notice issued by the Inspector-General of Police to the petitioner it was stated that the Inspector-General of Police had provisionally reached the conclusion that the charges levelled against the applicant had been proved against him; and that this provisional conclusion of the Inspector-General of Police was not a definite conclusion on the charges; and that, therefore, the combined notice embodying the Inspector-General's provisional conclusion on the charges and asking the petitioner to show cause why he should not be dismissed from service was illegal.

15. We are unable to accede to this contention. The flaw in the argument lies in assuming that when their Lordships of the Privy Council said that 'no action is proposed within the meaning of the sub-section until a definite conclusion has been come to on the charges', they meant that unless and until the authority competent to award punishment comes to a final conclusion on the charges a notice to show cause against the action proposed to be taken could not be issued. The words 'definite conclusion' connote 'precise' or 'exact' conclusion and not a final conclusion. A provisional conclusion on the charges can be and has to be as definite as the final conclusion. The context in which the Privy Council made the observation with regard to a definite conclusion on the charges also does not justify reading the words 'definite conclusion' as meaning 'final conclusion'.

In Lall's Case AIR 1948 PC 121 (supra) a notice to show cause why he should not be dismissed, removed, or reduced or subjected to other disciplinary action had been issued to Lall at the commencement of the departmental enquiry and along with the statement of the charges against him. The Lahore High Court rejected Lall's contention that he should have been given a notice to show cause against the action proposed to be taken against him after the finding of the enquiry officer had been considered and a conclusion had tentatively been reached and the punishment decided upon. The Federal Court, however, took a contrary view. It

was while dealing with this contention of Lall that the Privy Council, agreeing with the view taken by the majority of the Federal Court, made the observation on which the learned counsel for the petitioner has relied. The Privy Council decision does not lend any support to the contention put forward by the learned counsel for the petitioner.

16. Lall's case AIR 1948 PC 121 (Supra) was explained by the Supreme Court in Khem Chand v. Union of India, AIR 1958 SC 300 and Hukum Chand v. Union of India, AIR 1959 SC 536. In these two cases it was emphasized by the Supreme Court that the real point for decision in Lall's Case AIR 1948 PC 121 was that no opportunity had been given to the government servant concerned to show cause after a stage had been reached when the charges had been established and the competent authority had applied its mind to the gravity or otherwise of the charges proved and tentatively proposed the punishment to be given to the government servant for the charges proved.

In Khem Chand's Case, AIR 1958 SC 300 (supra) the learned Solicitor-General who appeared for the Union attempted to distinguish the decision in Lall's case, AIR 1948 PC 121 on the ground that the notice there asked Lall to show cause why he should not be dismissed, removed or reduced or subjected to any other disciplinary action, whereas in Khemchand's Case, AIR 1958 SC 300 the notice issued to the government servant before the enquiry mentioned only one punishment, namely, the punishment of dismissal. While rejecting the distinction the Court laid :

'A close perusal of the judgment of the Judicial Committee in I. M. Lall's case, AIR 1948 PC 121, will, however, show that the decision in that case did not proceed on the ground that an opportunity had not been given to I. M. Lall against the proposed punishment merely because in the notice several punishments were included, but the decision proceeded really on the ground that this opportunity should have been given after a stage had been reached where the charges had been established and the competent authority had applied its mind to the gravity or otherwise of the proved charge tentatively' and proposed a particular punishment'.

(Underlining (here in ' ') is ours)

These observations are plain enough to show that according to the Privy Council decision in Lall's Case, AIR 1948 PC 121 (supra) a notice to show cause against the action proposed to be taken is mandatory when the competent authority has applied its mind to the gravity or otherwise 'of the proved charge tentatively' and proposed a particular punishment. The words 'of the proved charge tentatively' put an end to the argument of the learned counsel for the petitioner.

17. The same position emerges from the decision of the Supreme Court in AIR 1959 SC 536 (supra) where, after reviewing the Privy Council decision in Lall's case, AIR 1948 PC 121 (supra) and the Supreme Court decision in Khem Chand's case, AIR 1958 SC 300 (supra), Das, J., who delivered the judgment said :

'We see nothing wrong in principle in the punishing authority tentatively forming the opinion that the charges proved merit any one of the three major penalties and on that footing asking the Government servant concerned to show cause against the punishment proposed to be taken In the alternative in regard to him..'

The words 'the) punishing authority tentatively forming the opinion' in this observation are important and show that a notice to show cause under Article 311(2) should be issued after a provisional definite conclusion on the charges is reached.

18. It is easy to see that if the contention of the learned counsel for the petitioner is accepted, then the issue of a show cause notice under Article 311(2) would be reduced to a farce. The content of the reasonable opportunity under Article 311(2) has been summarized by the Supreme Court in Khem Chand's case, AIR 1958 SC 300 (supra) thus-

'.....the reasonable opportunity envisaged bythe provision under consideration includes :

(a) An opportunity to deny his guilt and establish his innocence, which he can only do if he is told what the charges levelled against him are and the allegations on which such charges are based;

(b) an opportunity to defend himself by cross-examining the witnesses produced against him and by examining himself or any other witnesses in support of his defence; and finally

(c) an opportunity to make his representation as to why the proposed punishment should not be inflicted on him, which he can only do if the competent authority, after the enquiry is over and after applying his mind to the gravity or otherwise of the charges proved against the government servant tentatively proposes to inflict one of the three punishments and communicates the same to the Government servant.'

19. It cannot, therefore, be disputed that when the civil servant concerned receives a notice to show cause under Article 311(2), he is entitled to challenge the correctness and propriety of the findings reached by the officer competent to punish him and issuing a notice to show cause against the action proposed to be taken against him. The civil servant is also entitled to urge that he does not merit the intended punishment if the charges are held to be proved. Now, if as contended for by the learned counsel for the applicant, a notice to show cause against the action proposed to be taken must be issued after the competent authority has reached a final conclusion on the charges, then there would be very little meaning in giving to the civil servant concerned an opportunity to challenge the correctness and propriety of those findings. In that case, the findings would be 'final' and there would be no question of their revision even after a civil servant has shown cause. The contention of the petitioner is thus against the very purpose for which the show cause notice is required to be issued under Article 311(2) and cannot, therefore, be accepted.

20. Learned counsel's another objection to the validity of the notice was that it did not specify the separate punishments intended to be awarded to him for the four charges levelled against him. This contention is devoid of any substance. The Civil Services Rules do not prescribe specific punishments for different misdemeanours. The authority competent to punish has been given full discretion to select the appropriate punishment regard being had to the gravity and nature of the misdemeanour. The punishing authority may ask the delinquent to show cause

against his proposed dismissal from service for any or all the charges found to be tentatively established. But that does not preclude it from imposing a lesser punishment after the delinquent has shown cause against the action proposed to be taken against him. This is clear from the Supreme Court's decisions in Hukum Chand's Case, AIR 1959 SC 536 (supra) and A. N. D'Silva v. Union of India, AIR 1962 SC 1130. This being the position with regard to punishment, it cannot be urged with any degree of force that the show cause notice in the present case was invalid inasmuch as it did not specify the separate punishments intended to be given for the different charges.

21. For the foregoing reasons this petition is allowed. The order dated 1st October 1960 of the Inspector-General of Police dismissing the petitioner from service, is quashed with the declaration that the petitioner still continues to be in service. The applicant shall have costs of this petition. Counsel's fee is fixed at Rs. 150/-. The outstanding amount of the security deposit shall be refunded to the petitioner.

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