

**Narayan Das Vs. State**

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**SooperKanoon Citation :** [sooperkanoon.com/524326](http://sooperkanoon.com/524326)

**Court :** Orissa

**Decided On :** Mar-24-1967

**Reported in :** AIR1968Ori148; 33(1967)CLT1120; (1967)IILLJ567Ori;  
(1970)ILLJ571Ori

**Judge :** K. Ahmad, C.J. and ;S. Barman, J.

**Acts :** [Constitution of India](#) - Articles 14, 226 and 311(2)

**Appeal No. :** O.J.C. No. 195 of 1964

**Appellant :** Narayan Das

**Respondent :** State

**Advocate for Def. :** Government Adv.

**Advocate for Pet/Ap. :** S.C. Mohapatra, Adv.

**Disposition :** Petition dismissed

**Judgement :**

**Barman, J.**

1. The Petitioner -- until lately Rural Welfare Inspector in the Tribal and Rural Welfare Department, Government of Orissa -- challenges in this writ petition the order of the Government of Orissa dated November 6, 1964 by which he was

discharged from service on the ground of alleged misappropriation by him of public funds under items discussed in the said order agreeing with the enquiring officer's (Additional District Magistrate Keonjhar) report in the departmental proceedings against the petitioner.

2. The main grounds on which the said Government order is challenged are, in substance, these: Unfair discrimination in that no opportunity was given to the petitioner to be assisted by a lawyer in the proceedings before the Enquiring Officer. Besides, the petitioner was also not given any opportunity to effectively cross-examine the witnesses in that copies of the previous statements by the witnesses before the Vigilance Inspector were not supplied to the petitioner in spite of request. It was submitted that the punishing authority did not apply its mind in awarding the punishment to the petitioner.

3. In 1949, the petitioner -- a plucked Matriculate as he describes himself -- was appointed as a Laboratory Attendant in Entomological Section (under Director of Agriculture), Government of Orissa. The same year, he was appointed a Sardar in the Cut-tack Farm. In 1951, he was appointed as an Agricultural Teacher. In 1956 he was appointed Social Worker under the Tribal and Rural Welfare Department of the Government of Orissa in 1959, he was promoted as Rural Welfare Inspector

4. By an order dated October 17, 1960, the petitioner then posted at Sadar Sub-Division, Keonjhar, was placed under suspension for alleged misappropriation of public funds and illegal acceptance of gifts. On the same date. Government intimated to the petitioner the charges -- 5 in number --framed against him. namely, these:

'1. Out of an amount of Rs. 1200 entrusted to you on 4-3-57 by the District Welfare Officer, Keonjhar for making a well In Masanvilla Kolha Colony, you have misappropriated a sum of Rs. 536 by submitting false vouchers.

2. You have misappropriated a sum of Rs. 2572-05 P. (the figure as subsequently corrected) out of Rs. 21,050 entrusted to you during the period from 4-3-57 till 11-9-57 for construction of Kolha Colony by submitting false vouchers.

3. By submission of false vouchers, you have misappropriated about 248 cft. out of 1034.11 cft. of sawn timber purchased for construction of the said colony

4 The Collector. Keonjhar issued orders in his letter No. 127/D W. dated 12-1-57 that inhabitants of Dihanali (the name as subsequently corrected) village should be settled in Masanvlla Colony. You violated his orders by getting some Inhabitants of other villages settled in the said colony. This amounts to disobedience of orders of the superior authority.

5. You have allowed 7 persons belonging to villages other than Dihanal, to settle in Masanvilla Kolha Colony by taking one goat from each of them. This amounts to illegal self-gratification and dishonesty.'

In the petition, the petitioner states that he expressed his difficulty to understand charge No. 2 and prayed for clarification of the same, but he did not receive any reply. However, on May 5, 1961 in due course, the petitioner submitted his explanation to all the charges, as directed by Government.

5. In course of enquiry, the petitioner by his letter dated May 20, 1961 requested the Enquiring Officer to give the petitioner a list of the documents to be proved and the witnesses to be examined with extract of documents and points to be proved by the witnesses; the petitioner also prayed that permission may be given to him to engage a lawyer, in view of the position that as there are many complicated charges covering over a long period and various documents, it will not be possible for the petitioner to place the facts properly for a fair decision.

6. In reply, the Enquiring Officer by his letter dated July 12, 1961 rejected the petitioner's application for engaging pleader on his behalf in the departmental proceedings against the petitioner as, according to the enquiring officer, he did not find that the charges were so complicated as to warrant engagement of a pleader. The Enquiring Officer, however stated in the said letter to the effect that all possible facilities to which the petitioner is entitled would be given to the petitioner during enquiry.

7. Ultimately in spite of repeated re-requests and appeal, the petitioner was not permitted to engage a lawyer; as regards supply of copies of the statements of witnesses before the Vigilance staff, the Enquiring Officer, however, promised to give indications regarding the nature of evidence of each such witness was to give as hereinafter discussed.

8. The first question is: Is the petitioner entitled, as of right, to be represented by a lawyer in the departmental proceedings? The settled position in law is that it is left to the discretion of the officer holding the enquiry to allow, or refuse to allow, a lawyer to represent the delinquent officer. Hence, the mere denial of such legal help will not necessarily involve failure to observe the rules of natural justice in all cases; in considering the question of prejudice, other facts, such as the nature of the charges made against the public servant and his educational and other attainments which have a bearing on his ability to defend him-self without help, should also be considered *James Bushi v. Collector of Ganjam*, ILR 1959 Cut 95= (AIR 1959 Ori 152).

9. The petitioner's point is that in consideration of his educational qualification he was not able to handle and place before the Enquiring Officer the relevant statements of a large number of witnesses and voluminous documentary evidence necessary for a fair decision on the charges arising out of complicated accounts; in fact, in course of enquiry, the petitioner prayed for clarification of charge No. 2.

10. In our opinion, the matter is of not such complicated nature which requires the assistance of a lawyer. The petitioner --though a plucked Matriculate as he describes himself -- is sufficiently competent to deal with the matter involving the relevant accounts; he entered service as a Laboratory attendant as early as 1949; evidently, he did well in service, inasmuch as, he got several promotions and ultimately he was appointed on promotion, as Rural Welfare Inspector.

Thus, having been in service for so many years, he attained experience in Accounts in his line of work, of which, he apparently had special knowledge. Thus, with his attainments and experience in service, the petitioner was competent to conduct his own defence in the departmental proceedings by himself appearing as against a senior Inspector of Police assisted by a Sub-Inspector of Police who

conducted the departmental proceedings against the petitioner.

11. The nature of the charges is such that it does not require the petitioner to be conversant with law or with complicated accounting: all the charges are only questions of pure facts within the special knowledge of the petitioner. In such a case, the engagement of a lawyer is not necessary: in fact, on the side of the State, two police officers --without assistance of any lawyer -- conducted the departmental proceedings against the petitioner before the Enquiring Officer.

If the proceedings against the petitioner had been conducted by a Court Sub-Inspector or by a prosecuting Inspector, there would be some justification for holding that the denial of legal help to the petitioner amounted to unfair discrimination and as such offended Article 14 of the Constitution. But the proceedings in the instant case were conducted by only a senior Inspector of Police assisted by a Sub-Inspector of Police; his legal attainments cannot be equated to those of a Court Sub-Inspector or prosecuting Inspector or of a lawyer practising in a criminal court.

12. Moreover, the petitioner is not an illiterate man but an experienced Rural Welfare Inspector of the Tribal and Rural Welfare Department, Government of Orissa. The petitioner's attainments were not in any way inferior to those of the said police officers so as to justify the view that he was in any way prejudiced in Ms defence by the mere refusal of the Enquiring Officer to afford him legal assistance. In our view, there was no discrimination in the matter of the Enquiring Officer not permitting the engagement of a lawyer by the petitioner in this case.

13. The next question is: Was the petitioner given reasonable opportunity of cross-examining the witnesses examined by the opponent? The petitioner's point -- as stated in paragraph 8 of his petition -- is that during the enquiry he filed an application to give him opportunity to have copies of the statements of witnesses recorded at the time of investigation, so that he may exercise his right of cross-examining those witnesses when they will be examined against him in the departmental proceedings, but the petitioner was informed to the effect that he was not entitled to get copies of such statements.

The petitioner submits that he, as of right, was entitled to copies of the statements of witnesses before the Vigilance Inspector when they were examined at the enquiry stage, because, according to the petitioner, these statements were the foundation of the departmental enquiry and that the denial of that right to him clearly amounted to denial of opportunity to him to defend himself and establish his innocence.

14. On this point, what the Supreme Court laid down is this. In such matters, it is difficult and inexpedient to lay down any general rules; whether or not the officer in question has had reasonable opportunity must always depend on the facts in each case; the only general statement that can be safely made in this connection is that the departmental enquiries should observe rules of natural justice and that if they are fairly and properly conducted, the decisions reached by the enquiry officers on the merits are not open to be challenged on the ground that the procedure followed was not exactly in accordance with that which is observed in courts of law; stating it broadly and without intending it to be exhaustive, it was observed by the Supreme Court 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; it is hardly necessary to emphasise that the right to cross-examine witnesses who give evidence against him is very valuable right, and if it appears that effective exercise of this right has been prevented by the enquiry officer by not giving to the officer relevant documents to which he is entitled, that inevitably would mean that the enquiry had not been held in accordance with the rules of natural justice *Union of India v. T.R. Varma*, AIR 1957 SC 882 at p. 885: *State of Madhya Pradesh v. Chintaman Waishampayan*, AIR 1961 SC 1623 at p. 1629.

15. Now, how in this case did the Enquiring Officer deal with the petitioner's prayer for supply of copies of the previous statements of witnesses before the Vigilance Inspector? It is not that the petitioner's prayer was wholly refused; the petitioner was given indications of the nature of evidence each witness would give in the

proceedings. The relevant portion of the Enquiring Officer's reply to the petitioner's prayer for supply of copies of the statements of witnesses is this:

'With reference to your application dated 10-3-1961, you are informed that the statements of witnesses recorded by the Vigilance staff during the course of their enquiry at the preliminary stage do not form any part of the proceedings and as such you are not entitled to get copies of such statements. However, indications regarding nature of evidence each witness would give, will be supplied to you. The Vigilance Inspector at Keonjhar who has been intimated accordingly, may be contacted for the purpose '

16. Evidently, the investigation by the Vigilance staff by its nature is very confidential and is meant primarily for the purpose of finding out whether there is really a prima facie case for initiating a regular departmental enquiry against the public servant concerned. The authorities are entitled to claim privilege for statements made by witnesses in course of such secret vigilance investigation because, if such statements are disclosed, it may virtually become impossible to collect any information whatsoever. This view is supported by a decision of the Court of Appeal in England in *Auten v. Rayner*, (1958) 1 WLR 1300 where the law dealing with the claim of privilege by the Crown in respect of certain police reports was fully discussed and laid down. In that case, the question for consideration was whether or not the report made by an officer of the Scotland Yard of the Criminal Investigation Department was privileged. The claim of privilege was upheld.

17. Here, although the Enquiring Officer did not grant petitioner's prayer for supply of copies of the statements of witnesses before the Vigilance Inspector, yet the petitioner was given indications of the evidence to be deposed by each witness with reference to the charges framed against the petitioner as to which particular named witnesses (27 in number) will prove facts relating to which particular charge--all as stated in details in letter No. 188 from the Inspector, Vigilance to Deputy Secretary. Vigilance, a copy of which was admittedly given to the petitioner as indications regarding the nature of evidence each witness was to give in the proceedings before the Enquiring Officer.

18. So, the petitioner having been given, in advance, indications regarding the nature of evidence each witness was to give, it cannot be said that the petitioner was in any way prejudiced.

19. In our opinion, the petitioner was given all opportunities, in as much as that out of the five charges, the petitioner succeeded in getting the finding, in his favour, of not guilty of three charges, namely, charges Nos. 3, 4 and 5; the petitioner was however, found guilty of charges Nos. 1 and 2. There is nothing to show that the petitioner's defence at the departmental proceedings was in any way impeded or that he was in any way prejudiced. We are satisfied that the petitioner had every reasonable opportunity to defend himself at the departmental enquiry as was available to him under the law.

20. In this view of the case, the petitioner is not entitled to any relief as prayed for. This writ petition is accordingly dismissed. There will be no order for costs.

Ahmad, C.J.

21. I agree.