

Jayadevan and ors. Vs. Commandant M.S.P. and ors.

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Court : Kerala

Decided On : Feb-10-1984

Reported in : (1984)ILLJ521Ker

Judge : M.P. Menon, J.

Appellant : Jayadevan and ors.

Respondent : Commandant M.S.P. and ors.

Judgement :

M.P. Menon, J.

1. The petitioners were Havildars/Constables of the M.S.P.'C' Company at Malappuram. They were also office-bearers of the local unit of the Kerala Police Association. The first petitioner was the Secretary, the second the President, and the third, a member of the Committee. The Association had made a demand that Constables of the M.S.P., K.A.P. and S.A.P. should be allowed to go over to the Armed Reserve Police, and that direct recruitment to the Armed Reserve should be discontinued for the purpose. It is said that at a conference held on 10th April, 1980 the Home Minister had agreed to this proposal. However, direct recruitment was again made. The M.S.P. unit of the Association decided to register its protest against this development. The protest took the form of 'boycotting mess' and taking out a procession. Mess was boycotted on 8th December, 1980, in pursuance of a written notice given by the Association on 7th December 1980. The

procession was taken out between 5.30 and 6.45 P.M. on 9th December, 1980 inside the campus from the Drill Hall to the Main gate. The men performed their normal duties on these two days. Everything was peaceful and orderly.

2. The authorities were naturally alarmed. This was a Police force where absolute discipline was essential. The formation of an Association and its recognition under certain conditions were no grounds to condone or encourage such trade union activity. On 18th December, 1980, the Deputy Inspector General of Police directed the Commandant of the unit to 'issue show-cause notice to all the participants in the agitation.' On 19th December, 1980 the DIG sent another message that 'before issuing show-cause notice a preliminary enquiry should be conducted to fix the identity of the participants.' The Commandant thereupon authorised the 2nd respondent Assistant Commandant to hold a preliminary enquiry.

3. The Assistant Commandant conducted the preliminary enquiry on 30th December, 1980. Sixty nine Constables had participated in the boycott and eighty eight, in the procession. Their names were available. They were all notified about the proposed enquiry, but they did not participate. The Assistant Commandant examined a few witnesses, marked certain documents and submitted the preliminary report on 31st December, 1980, stating: 'in this enquiry report, I have found prima facie case against the participants in both counts for violation of statutory rules undermining the discipline of the force.'

The two 'counts' were the boycott on 8th December, 1980 and the holding of the procession on 9th December, 1980. In the course of the report, the Assistant Commandant had also stated that the boycott was instigated by the office bearers of the M.S.P. unit of the Association.

4. On receipt of the preliminary report, the Commandant drew up charges against all the Constables concerned. There were two separate sets of charge-sheets, one relating to the boycott, and the other, relating to the procession. As regards the petitioners herein, an additional charge of instigation was also included under each head. The 2nd respondent Assistant Commandant was authorised to hold this 'formal' or 'oral' enquiry also. The petitioners protested, on the ground that the officer was likely to have a closed mind in view of the preliminary enquiry and

finding, and requested for appointment of another enquiry officer; but the Commandant turned down the request. An 'appeal' to the D.I.G. was also rejected. The 2nd respondent thereafter proceeded with the enquiry. The witnesses who were examined at the preliminary enquiry were themselves examined as witnesses in support of the charge; they confirmed that the contents of the statements given by them on 30th December, 1980 (i.e. at the preliminary 'enquiry') were true. The petitioners cross examined them. They were also allowed to examine defence witnesses. The documents marked on 30th December, 1980 (and probably a few more) were also marked again. Considering the material on record, the enquiry officer reported that all the charges against the petitioners were proved. And after issuing a show-cause notice to the delinquents and after considering the representations made by them, petitioners (1) and (2) were removed from service by Exts. P9 and P10 Orders passed on 8th October, 1981.

5. The challenge in this writ petition is to the disciplinary proceedings which culminated in Exts. P9 and P10 and the main ground of attack is that the enquiry officer had no open mind while holding the formal or oral enquiry. Reliance is also placed on Rule 8 of the Kerala Police Departmental Inquiries, Punishment and Appeal Rules, 1958, as also a provision in the Constitution of the Police Association, said to be approved by a Government Order dated 17th November, 1979, recognising the right of its members to voice demands, grievances and aspirations of 'policemen in general', in a disinclined manner, without delaying, disrupting or impeding the performance of lawful duties. It is also complained that the findings are perverse and that the penalties are disproportionate.

6. Rules (6) to (14) in Part II of the 1958 Rules deal with 'Inquiries'. Sub-rules (1) and (2) of Rule 6 read:

6. Procedure for Inquiry: (1) Whenever on a complaint or otherwise, it is found necessary to inquire into the conduct of a member of the service the departmental superior under whom such member is employed shall make a preliminary inquiry and determine whether there are grounds for further action;

Provided that no such preliminary inquiry shall be necessary if prima facie grounds for action against the member of the service have already been established to the

satisfaction of the departmental superior, or any authority to whom such superior is subordinate.

(2) If prima facie grounds for departmental action are established in a preliminary inquiry as prescribed in Sub-rule (1) or under the proviso thereto, such grounds shall be reduced to the form of a definite charge or charges, which shall be communicated to the member of the service charged, together with a statement of the allegations on which such charge is based, and of any other circumstances which it is proposed to take into consideration in passing orders in the matter.

The other sub-rules in Rule 6 provide for a written statement of defence, an oral inquiry by an 'Inquiry Officer' involving examination of witnesses and submission of his findings. Rule 8(1) provides that the oral inquiry, if it is likely to involve imposition of major penalties, shall be held by the Appointing Authority or another officer appointed by him, 'who has nothing to do with the subject matter of the enquiry.'

7. Article 311(2) of the Constitution insists on the giving of a reasonable opportunity before infliction of major penalties on government servants. Rules framed under Article 309 usually take care of the procedural aspect of this guarantee so that compliance with them ordinarily satisfies the constitutional requirement. But a mechanical application of the Rules may not be sufficient in all cases; adherence to the rules by an enquiry officer without an open mind may still offend the sense of fair play of a court. The courts, in such cases, will have to examine all the relevant facts to find out whether in substance the opportunity given was fair and reasonable.

8. Counsel submits that an officer conducting a preliminary inquiry is ipso facto unfit to hold the inquiry under Rule 8, as the findings recorded at the first stage are bound to influence him at the second. In *Sreeramulu v. State* AIR 1970 A.P. 114, Jaganmohan Reddy CJ. (as he then was) said: there can be no doubt that certain basic principles of natural justice apply equally to administrative enquiries as to judicial enquiries. A person who has conducted a preliminary enquiry and found a prima facie case for a regular enquiry, will not be permitted to conduct a regular enquiry because he has already in some way formed an opinion in the case, or

where an administrative superior has expressed definite views on the conduct of a delinquent officer, he will not be permitted to hold an enquiry.

But in *Sunil Kumar Banerji v. State of W.B.* : [1980]3SCR179 the Supreme Court pointed out that it was usual for a Magistrate to frame charges on the basis of prima facie findings, and proceeded to try the case himself. That case was not strictly a case of a preliminary enquiry followed by a regular enquiry by the same officer; the enquiry officer had only looked into the records of the preliminary investigation for the limited purpose of framing charges. Whether the Assistant Commandant of a Police unit could be equated to a trained Judicial Officer, and a domestic enquiry to a full-fledged trial, with counsel and the strict rules of evidence, is another point. But even the decision in *Banerji* recognises the principle that a reasonable apprehension of bias or prejudice can, in certain cases, vitiate an enquiry. And on the facts of the present case, I think the petitioners had reasonable grounds for such apprehension in the matter of the second enquiry held by the 2nd respondent.

9. A combined reading of Rules 6(1) and 6(2) suggests that the object of a preliminary enquiry is to ascertain whether there are grounds, prima facie, on which further action could be taken, and if so, to 'secure those grounds to the form of definite charges'. All sorts of complaints may be received against a member of the service and the superior authorities have to decide whether there is a prima facie case to frame definite charges and proceed. And when an officer holding a preliminary enquiry merely finds a prima facie case in respect of definite charges, it is at least possible to argue that he will not thereby become disqualified for holding the oral enquiry. But the D.I.G. in this case had already decided that show-cause notices should go to all the participants, though he thought that a preliminary enquiry was needed for identifying them. 'Show-cause notice' in the context could only have been a charge-sheet; and if that was so, the preliminary enquiry could have been dispensed with, in view of the proviso to Rule 6(1). Be that as it may, the 2nd respondent held the preliminary inquiry and submitted his report on 31st December, 1980. That report is available among the files, and I should say that it goes far beyond formulating the grounds for action and identifying the participants. The report begins with a consideration of the rules

relating to the constitution of the Police Association and proceeds to hold that boycotting of the mess 'is a serious default', 'a breach of discipline', and 'a form of coercive method forbidden for the constabulary'. It is then stated that there was evidence to show that the President and Secretary of the Association (petitioners 1 and 2) were physically present in the mess premises, that they prevented others from taking food, and that they were instigators and not mere participants. It was 'clear as day light' that the members of the unit boycotted the mess under the instigation of the office-bearers. It was also 'clear' that the procession was taken out under the leadership of the President and the Secretary, that no such thing had ever before taken place in the history of the M.S.P., and that the demonstration and shouting of slogans were 'against all accepted canons of discipline', 'all previous conventions and practices', and a 'clear violation of sub-paragraph (2) of paragraph 5 of the rules'. Considering that the 2nd respondent had before him at that time itself the lists of Constables who had participated in the boycott and demonstration, it is difficult to imagine that he had not formed a definite opinion in his mind as to the nature of the alleged activities, the identity of the participants, the responsibility of the petitioners as instigators, and the illegality and indiscipline involved in the whole conduct. It is impossible to think that the author of the preliminary report could thereafter have kept an open mind about the pertinent questions which would arise for consideration in the subsequent! formal enquiry which was yet to be held.

10. The matter can be examined from another angle also. As already noticed, the D.I.G. had expressed his view, as early as 18th December, 1980, that all the participants had to be charge-sheeted. In fact, it was not a mere expression of a view, but a direction to the Commandant, which the latter had duly passed on to the 2nd respondent. Was it possible for the Assistant Commandant, thereafter, to submit a preliminary report that no prima facie case for framing charges was disclosed? Assuming that the 2nd respondent was a very independent Police Officer capable of ignoring such direction, the findings recorded in the preliminary report were, as we have seen, such as to render him incapable of applying an open mind to the question, in the subsequent proceedings. I have carefully perused the statements taken during the course of the preliminary enquiry; and if they were recorded by way of questions and answers, there is intrinsic evidence to

suggest that the inquiry officer had elicited information/opinion from the witnesses as to whether such protests were usual in the M.S.P., whether they were not opposed to the rules of discipline, and whether the Association and its office-bearers were not responsible for organising the show. Even if it is possible to ignore this attitude or approach of his, what happened at the subsequent formal enquiry is also important; so far as evidence in support of the charge was concerned, all that was done was to read out the self-same statements again and enquire whether they were not true. In other words, the evidence on which the preliminary findings were recorded were treated as evidence in the subsequent enquiry also, and there was no other evidence, barring cross-examination on the statements read over. Was it possible for the enquiry officer, however independent he was, to have reached a different conclusion on practically the same material? I am free to confess that each of the above circumstances, separately taken, may not vitiate an enquiry in all cases. For example, a mere direction from a superior to investigate a case and frame charges, if found necessary, need not always unduly influence a subordinate officer. Again recording of some findings in the course of a preliminary investigation, may not necessarily indicate a closed mind in every case. The reading out of statements recorded earlier and making available the persons concerned for cross-examination may also satisfy the requirement of natural justice in many a case. But one has to look at the cumulative effect of all that took place in the case on hand. The authorities were careful enough to conform to the rules and the form, but they had failed to see how the 2nd respondent had recorded his findings in the preliminary report, and how he had conducted the subsequent formal enquiry. Without attempting to lay down any general rule, it is possible to hold that on the facts of the case on hand, 'reasonable opportunity' in the real sense of the expression was a casualty.

11. Yet another aspect of the case that troubles me is that the petitioners (1) and (2) were marked out for special treatment not only in the matter of framing charges, but also in the matter of punishment. It is not disputed that all the other participants escaped with minor penalties; the two petitioners alone were removed from service as they were found to be the ring-leaders or the instigators. And what was the evidence to show that they were individually or even jointly responsible for instigating the boycott and the procession? Admittedly, the protest was organised

in pursuance of a formal decision of the Association of which it had given advance notice to the authorities. The only evidence of instigation to which reference has been made in the two enquiry reports is:

(1) Pw1 and Pw2 had seen the procession held on 9th December, and the President and Secretary of the Association were leading it;

(2) Pw3 had seen the Secretary of the Association near the mess hall on 8th December, (this version, given at the preliminary enquiry, was slightly modified in cross-examination at the formal enquiry by stating that the location was the Reading Room);

(3) Pw4 was asked by the Secretary on 8th December whether anyone had taken tea from the mess in the morning; and

(4) one or two of the above witnesses had also seen the President and Secretary enquiring about the success of the mess-boycott.

If the decision to boycott the mess and to hold the procession was a decision of the Association, it was only natural that the President and Secretary of the unit evinced some interest in its success. That is different from saying that they were the instigators, that they had prevented others from going to the mess, and that all the others had participated in the programme only as a result of instigation. The evidence at the enquiry was clear on the point that the protest was not spontaneous and voluntary; at any rate, there was no evidence whatsoever to indicate that but for the personal interest taken by petitioners (1) and (2) in the matter, nothing could have taken place. It is therefore safe to conclude that the said two petitioners were marked out for separate and harsher treatment, not because of anything they had actually done, but because of the circumstances that they happened to be the President and Secretary of the Association at the material time.

12. In the above view, it is unnecessary to consider the question whether Rule 8 was violated by reason of the circumstances that the 2nd respondent had something to do with the subject-matter of the enquiry. Equally unnecessary it is to

examine whether the petitioners had indulged only in activities recognised as lawful by the rules or the constitution of the Association.

13. Discipline is far more important for a Police force than other wings of the services. Therefore, when the case was heard and I felt that the penalty imposed on petitioners (1) and (2) could not be sustained, I put it to counsel appearing for the State whether the authorities were prepared to reconsider the matter, at least as regards the quantum of punishment. Minor penalties were inflicted on all the other Constables, and the result of quashing Exts. P9 and P10 would have been to allow petitioners (1) & (2) to go scot-free, in a case where they were supposed to be the ring-leaders. Counsel for (he petitioners submitted that his clients were willing to receive any minor penalty like the others and that they were also willing to tender apologies, if any one was under the impression that what they had done during the formative period of the Association was the result of something more than over-enthusiasm. But after contacting the authorities, the Additional Advocate General informed the court that there could be no re-thinking. They must have their own reasons, but that cannot ultimately weigh with the court in pronouncing on the legality of the orders impugned. Though not without hesitation, therefore, I set aside Exts. P9 and P10 and direct the petitioners (1) and (2) be reinstated in service. No costs.