

**Babu Vs. State of Kerala**

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**Court :** Kerala

**Decided On :** Jun-24-1997

**Reported in :** (1998)ILLJ20Ker

**Judge :** P.A. Mohammed, J.

**Acts :** Kerala Civil Services (Classification, Control and Appeal) Rules, 1960 - Rules 11, 11(1), 15, 16 and 16(1)

**Appeal No. :** O.P. No. 8972/1991

**Appellant :** Babu

**Respondent :** State of Kerala

**Advocate for Def. :** P.K. Santhamma, G.P.

**Advocate for Pet/Ap. :** M.V. Bose and; Cherian Varghese, Advs.

**Judgement :**

**P.A. Mohammed, J.**

1. The writ petitioner before this Court is the Deputy Director of Training, Directorate of Industrial Training, Trivandrum. He was working as Inspector of Training, Quilon during the period from September 3, 1984 to February 28, 1989. While working as Deputy Director of Training certain allegations were levelled

against him as per memo of charges dated December 6, 1989. Ext.P1 is the copy of the memo of charges issued by the Commissioner and Secretary to Government. The allegations contained in Ext. P1 were denied as per Ext. P2 reply submitted by the petitioner on January 24, 1990. Thereafter Government passed Ext. P3 order on June 29, 1991 imposing penalty of withholding the increment for three years from August 1, 1991 without cumulative effect. The said order is under challenge in this writ petition.

2. The main contention advanced by the petitioner is that before imposing the penalty of withholding increment he had not been granted an opportunity to make representation against such proposal. His case is that under Rule 16 of the Kerala Civil Services (Classification, Control and Appeal) Rules (for short 'the Rules') an order imposing any of the penalties specified in items (i) to (iv) of Rule 11(1) shall be passed only after the Government servant is informed in writing the nature of the penalty proposed to be taken against him and given opportunity to make any representation against such penalty. He also points out that while passing Ext. P3 order Government have violated the principles of natural justice. The Government Pleader on the other hand submitted that the petitioner had been given an opportunity to explain the charges levelled against him as per Ext. P1 memo of charges and he was not entitled to any further opportunity at the time of imposing the punishment. She further adds, the petitioner in pursuance of the said charge memo has filed Ext. P2 representation. Counter affidavit filed on behalf of the first respondent also points out that the petitioner was given an opportunity to make his representation as per Ext.P1 memo.

3. The question which requires to be decided is whether the petitioner is entitled to a further opportunity to make his representation against the penalty proposed to be imposed on him.

4. Rule 16 deals with the procedure for imposing minor penalties. It provides that no order imposing any of the penalties specified in items (i) to (iv) of Rule 11(1) shall be imposed except after the Government servant is informed in writing of the proposal to take action against him and the allegations on which it is proposed to be taken and given opportunity to make any representation he may wish to make.

Clause (iii) of Sub-rule (1) of Rule 11 shows that withholding of increments or promotion is one of the penalties which can be imposed on a Government servant. The procedure to be followed for imposing major penalties is provided in Rule 15. Ext. P1 memo of charges framed by the first respondent does not indicate as to which procedure to be adopted for imposing penalty; either the procedure for major penalty under Rule 15 or minor penalty under Rule 16. What is contained in Ext. P1 is only memo of charges which directs the petitioner to file his representation against the charges. After considering such representation and after conducting the enquiry Government shall decide whether a major penalty or a minor penalty should be imposed. From Ext. P3 alone it could be seen that what was proposed by the Government was imposition of a minor penalty which attracts the procedure contemplated under Rule 16. Rule 16(1) is imperative that before imposing the penalties specified in terms (i) to (iv) of Rule 11(1) the Government servant shall be informed in writing of the proposal to take action against him. The provision contained in Sub-rule (1) of Rule 16 is crystalline that the government servant shall be give an opportunity to make his representation against the proposal to impose minor penalty.

5. The case of the respondents is that an opportunity had been granted to the petitioner to file representation as evident from the charge memo evidenced by Ext. P1 and therefore, there is sufficient compliance with the Rule. It is difficult to agree with this submission made on behalf of the respondents. The grant of opportunity to file representation against the charges levelled against the petitioner as per Ext.P1 is different from the opportunity provided in Rule 16 (a). Both cannot be clubbed together in view of the sequence of different stages in a disciplinary proceeding. The grant of opportunity to file representation contemplated under Rule 16.(a) is effective only at the stage when the disciplinary authority proposes to impose penalty. Ordinarily the proposal to impose penalty is not part of the charge memo. Such proposal can be made only after consideration of the representation submitted by the Government servant as pointed out earlier. Thus, it evinces there is violation of Sub-rule (1) of Rule 16 in this case.

6. Counsel for the petitioner invited my attention to the decision of the Supreme Court in State of U.P. v. Vijay Kumar Tripathi and Anr. (1995-II-LLJ-22). In that

case, prior opportunity of hearing or to show cause against the action proposed was not given to the respondent. However, post-decisional hearing was indeed given. In the absence of proper plea either before the Tribunal or High Court the Supreme Court did not interfere. While interpreting Rule 55B (a) of the U.P.C.C.A. Rules the Supreme Court observed the said Rule does not exclude or prohibit the observance of the principles of natural justice. The Supreme Court further observed: at P.24

'The normal rule enunciated by this Court is that wherever it is necessary to ensure against the failure of justice, principles of natural justice must be read into a provision. Such a course, of course, is not permissible where the rule excludes, either expressly or by necessary intendment, the application of the principles of natural justice but in that event validity of rule may fall for consideration. Consistent with the above rule, we must hold that, ordinarily speaking, an opportunity to show cause against the proposed imposition of penalty of censure should be given to the concerned employee before its imposition. Censure is a penalty. It cannot also be said that it has no adverse consequences; it has. Hence, the necessity to read the said principles. It would certainly be open to the competent authority in a given case to provide a post decisional opportunity instead of a pre decisional hearing. (There may indeed be exceptional situations where the principles of natural justice may have to be dispensed with, but they are an exception). It is upto the competent authority to decide whether in the given circumstances the opportunity to be provided should be prior one or a post-decisional opportunity. Normal rule, of course is prior opportunity.'

7. In the present case, the petitioner has not been told as to the nature of the punishment proposed to be imposed. It cannot be said that the punishment of withholding the increment has no adverse consequences. The petitioner, no doubt, suffers monetary loss, apart from other disadvantageous consequences. When a proposed action is likely to result in evil consequences a pre- decisional notice to the affected party is indispensable. That is a requirement in the observance of principles of natural justice. The opportunity granted in this case is only for submitting representation against the charges made against the petitioner. Rule 16 does not exclude either expressly or by necessary intendment the application of

principles of natural justice at the time of actual imposition of punishment. Therefore, the petitioner was entitled to get a pre-decisional notice before imposing the penalty in this case.

8. In view of what is said above, Ext.P3 order passed by the first respondent is set aside. Consequently, I direct the first respondent to grant an opportunity to the petitioner to make a representation, against the penalty proposed to be imposed on him. The first respondent shall consider such representation and take a decision on merits after affording a personal hearing to the petitioner. The original petition is disposed of as above.

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