

State of Kerala Vs. Ranganathan

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Court : Kerala

Decided On : Jun-10-1997

Reported in : (1997)IILLJ1036Ker

Judge : K.G. Balakrishnan and; B.N. Patnaik, JJ.

Acts : Kerala Government Servant (Conduct) Rules, 1960 - Rule 24; Kerala Police Departmental Enquiries, Punishment and Appeal Rules, 1958 - Rule 15(1)

Appeal No. : W.A. No. 308/1996

Appellant : State of Kerala

Respondent : Ranganathan

Advocate for Def. : O.V. Radhakrishnan, Adv.

Advocate for Pet/Ap. : P.M. Paulose, Government Pleader

Disposition : Appeal dismissed

Judgement :

K.G. Balakrishnan, J.

1. This appeal is preferred by the State challenging the judgment of the learned Single Judge in O.P.No.13195/95. The respondent herein was the Superintendent of Police, Crime Branch CID, Kozhikode. Disciplinary proceedings were initiated

against him and Ext.P4 memo of charges was served on him. The respondent submitted a detailed explanation wherein he denied all allegations in the memo of charges. Initially there was a vigilance enquiry. That was followed by an oral enquiry as contemplated under the Kerala Police Departmental Enquiries, Punishment and Appeal Rules, 1958 and Ext.P7 order was passed by the Government. In Ext.P7, it was stated that while the respondent was working as Deputy Superintendent of Police, Malappuram, he sold a car to one M. C. Ahammedkutty who was a resident of that district, and thereby committed violation of R.24 of the Kerala Government Servants Conduct Rules, 1960 and a penalty of withholding of increment for a period of one year without cumulative effect was imposed on the respondent.

2. The respondent challenged Ext.P7 on various grounds. He contended that he had no notice of any specific charge against him and that the imposition of penalty of withholding one year's increment had a cumulative effect and thus amounted to a major penalty and hence, a detailed enquiry ought to have been conducted after giving full opportunity to the respondent. The respondent had also contended that copy of the oral enquiry report was not furnished to him. Therefore, the procedure was vitiated in view of the decision of the Supreme Court.

3. The finding of the learned Single Judge is challenged by the State. We heard the learned Government Pleader and also the counsel who appeared for the respondent. The learned Government Pleader contended that the penalty imposed on the respondent was withholding of increment for a period of one year without cumulative effect and that is a minor penalty. Therefore, no full-fledged enquiry was contemplated as per the provisions contained in the Kerala Police Departmental Enquiries, Punishment and Appeal Rules. The learned Single Judge relied on a decision reported in *Kulwant Singh Gill v. State of Punjab* 1991 Suppl. (1) SCC 504 and held that even though the imposition of the penalty on the respondent was withholding of increment without cumulative effect, it had a cumulative effect and hence, it amounted to a major penalty. The learned Single Judge examined this matter in the factual background of the case. Ext.P7 order imposing the penalty on the respondent was passed on June 26, 1995. The due date for the next increment was on July 1, 1995. Because of the penalty the

respondent did not acquire any increment on July 1, 1995. The next increment date was July 1, 1996. But by the time the respondent retired on May 31, 1996. As the respondent retired on May 31, 1996, he did not have the opportunity of acquiring the increment on July 1, 1996. This reduced the last pay drawn by him and it had also marginally affected his pension. In that view of the matter the learned Single Judge held that the impugned order of penalty had a cumulative effect. But we are unable to accept this view for the reason that in the Kerala Police Departmental Enquiries, Punishment and Appeal Rules, it is specifically stated that the withholding of increments or promotion is a minor penalty. The major penalties are classified under Rule 15(i),(j),(k),(1) and (m). They are the reduction to a lower rank in the seniority list or to the lower post or time scale, compulsory retirement, removal from service of the State Government or dismissal from service of the State Government. As the penalty imposed on the respondent does not come under any of this category and it comes only under Rule 15(1)(g), we can only hold that it is a minor penalty. Therefore, a full-fledged enquiry is not necessary and an oral enquiry will satisfy the rules provided under the Kerala Police Departmental Enquiries, Punishment and Appeal Rules, 1958.

4. Learned counsel for the respondent however contended that in the decision in Kulwant Singh Gill's case (supra) it was held that if the penalty imposed was withholding of increment for a particular period and it has a cumulative effect and therefore, it is to be construed as a major penalty. The said view was taken on the basis of the Punjab Civil Services (Punishment and Appeal) Rules, 1970. We do not think that the penalty has a cumulative effect as it has affected the pension of the respondent. Our attention was also drawn to another decision taken in M. Devaki v. State, 1994 (2) KLJ 808 wherein a learned Single Judge of this Court held that the imposition of penalty of withholding increment -with cumulative effect as per the Kerala Civil Services (Classification, Control and Appeal) Rules, 1960, will not come under the category of major penalty.

5. The learned Government Pleader contended that the learned Single Judge had held that a copy of the enquiry report should have been given to the respondent and as it was not given in the said case it had vitiated the proceedings. Reliance was placed on the decision of the Supreme Court in Union of India v. Mohammed

Ramzan Khan (1991-MJLJ-29). But in the instant case, as per R. 17(b) an enquiry is contemplated only when there is a proposal for imposition of major penalty. Rule 17(b) says that in case it is proposed to impose any of these major penalties, the member of the service shall be served with a copy of the report of the enquiry together with the findings thereon. As we had already held that the penalty imposed was a minor one, Rule 17(b) has no application. In Mohammed Ramzan Khan's case (supra) there was an enquiry by a quasi judicial authority. The Supreme Court held that the delinquent was entitled to a copy of the enquiry report, when the enquiry was conducted by the Enquiry Officer, but not when conducted by disciplinary authority. In the instant case, the enquiry itself was not contemplated and it is provided under Rule 17(b). Hence, the decision of the Supreme Court has no application. If no enquiry is contemplated for imposition of minor penalty, the delinquent Officer cannot claim as of right the report in an oral enquiry to be conducted by the disciplinary authority.

6. The learned counsel for the respondent contended before us that the respondent was not given an opportunity to submit an explanation in respect of the alleged violation of the Conduct Rules stated in Ext.P7. In Ext.P7, it is found that the respondent had sold a car to one M.C.Ahammedkutty, who was a resident of Malappuram District on October 21, 1989 when the respondent was working as the Deputy Superintendent of Police, Malappuram. In Ext. P4, charge memo there is no such allegation. Clause No. 2 of the statement of allegations is to the effect that the respondent purchased a car in the name of his mother-in-law and in the vigilance enquiry it was revealed that the mother-in-law had paid Rs. 22,000/- and another son-in-law gave Rs. 8,000/- to the respondent for the purchase of the car and the respondent had made arrangements for selling the car and the respondent was holding the car as under the behami name of his mother-in-law. The fact that the respondent sold the vehicle to M.C.Ahammedkutty and thereby violated R.24 of the Kerala Government Servants' Conduct Rules is not specifically stated in the memo of charges. This contention of the respondent is correct. When a charge memo is filed, specific allegations should be made and the delinquent Officer must get reasonable opportunity to deny the allegations. Here the charge related to some other facts and the final order imposing the penalty described another incident. Therefore, it is clear that the respondent had no opportunity to defend his

case by submitting a proper explanation. In that view of the matter the proceedings initiated against the respondent is bad in law. Therefore, we sustain the impugned judgment and hold that the appeal filed by the State is liable to be dismissed.

Accordingly, this writ appeal is dismissed.

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