Pushkaran Vs. State of Kerala

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Court : Kerala

Decided On : May-27-2005

Reported in : [2005(107)FLR144]; 2005(3)KLT657

Judge : J.B. Koshy and; K.T. Sankaran, JJ.

Acts : Constitution of India - Article 311; Punjab Civil Services (Punishment and Appeal) Rules, 1970 - Rule 5; Kerala Police Departmental Inquiries, Punishment and Appeal Rules - Rules 11 and 16

Appeal No. : W.A. No. 134 of 2002

Appellant : Pushkaran

Respondent : State of Kerala

Advocate for Def. : Vaheeda Babu, Government Pleader

Advocate for Pet/Ap. : M. Narendra Kumar, Adv.

Disposition : Appeal dismissed

Judgement :

J.B. Koshy, J.

1. The appellant, a police constable was proceeded with departmental action for major penalty and was imposed with punishment of withholding two increments

with cumulative effect. It was alleged in the charge sheet that on 27.09.1989, the delinquent police constable while on sentry duty in Kodakara police station from 2 p.m. to 4 p.m. hired an autoriksha driven by one Shaji and reached Vattekadu from where he seized some spurious liquor possessed by one Subran and the said Subran was released without registering a case and asked to come to the station next day.

2. After conducting an enquiry, the appellant was imposed with a punishment of withholding two increments with cumulative effect. It was affirmed by the Appellate Authority. In review petition also punishment was upheld. The learned Single Judge found that the enquiry was conducted fairly and no grounds were made out to interfere in the punishment. In fact, the learned Single Judge was of the opinion that the authorities if at all erred, have only erred in favour of the petitioner.

3. It is contended that punishment is liable to be set aside as copy of the enquiry report was not served on him before imposing punishment. Punishment imposed on him is only a minor punishment. It is true that in Union of India and Ors. v. Mohd. Ramzan Khan (1991 (1) LLJ 29 SC) while considering the case of termination of service and the scope of Article 311, the Supreme Court held that if enquiry is held by an officer other than the disciplinary authority, copy of the enquiry report should be furnished to the employee and only after getting his representation, punishment can be imposed. The Constitution Bench of the Supreme Court in Managing Director, E.C.I.L. v. B. Karunakar : (1994)ILLJ162SC after evaluating all the cases held that the right of the employee to receive the report of the enquiry officer is a part of 'reasonable opportunity' to defend himself. But the Court also held that Court in all cases need not interfere with the punishment imposed for not furnishing a copy of the enquiry report. But if the Court is satisfied that prejudice is caused, Court shall set aside the order. The Court held as follows:

'31. Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the court/tribunal and give the

employee an opportunity to show how his of her case was prejudiced because of the non-supply of the report. If after hearing the parties, the court/tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the court/tribunal should not interfere with the order of punishment. The court/tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the courts/tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the court/tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment.'

Court further held that the question whether in fact prejudice has been caused to the employee or not on account of the denial of the report to him, has to be considered on the facts and circumstances of each case and the principles of natural justice are not to be. invoked or rights to be preferred on all sundry occasions. If no prejudice is caused interference with punishment amounts to rewarding the dishonest and the guilty and thus stretching the concept of justice to illogical or exasperate limits. In S.K. Singh v. Central Bank of India : (1997)ILLJ537SC the Apex Court held that in the absence of prejudice, punishment cannot be interfered for mere non-supply of copy of enquiry report. Same view was followed by the Apex Court in Canara Bank v. Debasis Das : (2003)IILLJ531SC . The Apex Court also held that there shall be specific pleading to the effect that prejudice has been caused for non-supply of enquiry report. Before the appellate authority there was no such contention. He has admittedly received copy of the report along with Ext.P2 punishment order. Neither in the Writ Petition nor in departmental appeal it is contended that in view of the non-furnishing of the report, natural justice is violated; there is no contention that any prejudice has been caused to him. He had the opportunity to argue before the appellate authority after receipt of the copy of the enquiry report. On going through the files, we find that no prejudice has been caused to him for non-furnishing of a

copy of the report before orders was implemented. Here no grounds are made out to set aside the order on this ground.

4. The legal contention now raised in this Writ Appeal is that withholding of increments with cumulative effect is a major punishment. Since the procedure prescribed for imposing major penalty was not followed, the punishment imposed is illegal. Counsel also relied on the decision of the Supreme Court in Kulwant Singh Gill v. State of Punjab (1991 Supp. (1) SCC 504). The Apex Court in the above case was dealing with Rule 5(v) of Punjab Civil Services (Punishment and Appeal) Rules, 1970 wherein it was mentioned that withholding of promotion or increment is a major penalty. Rule 11 read with Rule 16 of Part III of Kerala Police Departmental Inquiries, Punishment and Appeal Rules clearly shows that withholding of promotion or increments, either temporary or permanent, is only a minor penalty. The procedure for imposing minor punishment was complied with and the matter is fully covered with the decision of the Division Bench in Balagopal v. State of Kerala (2000 (1) KLT 120).

5. High Court is not sitting in appeal over the findings of the enquiry officer or the punishment imposed by the disciplinary authority, unless the punishment is shockingly disproportionate to the charges proved. It cannot be stated in this case that the punishment imposed is shockingly disproportionate that too in Police Department where upkeep of discipline is very important. Judicial review in disciplinary matters can be exercised only if there is violation of principles of natural justice causing prejudice and patent illegality resulting in injustice. See Director General, R.P.F. and Ors. v. Ch. Saibabu : [2003]1SCR729 . The learned Single Judge has considered the matter in detail and we fully agree with the opinion of the learned Single Judge.

There is no merit in the Writ Appeal and it is dismissed.