

Pushkaran Vs. State of Kerala

Pushkaran Vs. State of Kerala

SooperKanoon Citation : sooperkanoon.com/730200

Court : Kerala

Decided On : Nov-05-2001

Reported in : [2002(92)FLR979]

Judge : M.R. Hariharan Nair, J.

Acts : Kerala Police Departmental Inquiries, Punishment and Appeal Rules, 1958 - Rule 15, 15(1) and 17(1)

Appeal No. : O.P. No. 12391 of 1995

Appellant : Pushkaran

Respondent : State of Kerala

Advocate for Def. : K.L. Joseph, Government Pleader

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

Disposition : Petition dismissed

Judgement :

M.R. Hariharan Nair, J.

1. Petitioner is a Police Constable. It was alleged that on 20.7.1989, while on sentryduty from 2 p.m. to 4 p.m., the petitioner hired an autorickshaw driven by one Shajiand reached Vattekkadu, from where he seized some spurious liquor

possessed by one Subran and that Subran was released without registering any case. There was an enquiry ordered by the Superintendent of Police, Trichur. Based on the enquiry report, Ext. P2 order was passed imposing punishment of withdrawing two increments with cumulative effect. It is the legality and propriety of the said proceeding that is under challenge in this Original Petition.

2. The learned counsel for the petitioner submitted that the punishment imposed herein is really punishment of reduction to a lower rank and that as such the procedure for imposing major penalties should have been followed. Yet another argument was that the enquiry was defective in so far as statements recorded from the witnesses during preliminary enquiry were relied on. It is argued that this was done in such a way that the delinquent officer did not get an opportunity to understand what exactly was the purport of the statement given by different witnesses at the preliminary enquiry. Lastly, it is argued that after the findings were received, there was no opportunity to the petitioner to show cause against the proposed punishment.

3. The enquiry in question is governed by the provisions of the Kerala Police Departmental Inquiries, Punishment and Appeal Rules, 1958. Rule 15 of the said Rules provides for different types of penalties under classification (a) to (j). Withholding of increments comes under Clause (g). It is clause (j) that provides for reduction to lower rank in the seniority list or to a lower post or time-scale. A perusal of Ext. P2 order shows that what was imposed in the present case was only withholding of increments with cumulative effect and that there was no punishment of reduction to lower rank imposed in the present case. It may be that the consequence of the punishment imposed in this case would be to deprive the petitioner of some monetary benefit and reduction in rank also might have the impact of adverse monetary impact. That does not mean that the two punishments are identical or even similar. Notwithstanding the punishment, he continues to be in the same rank; the only adverse effect being the non-receipt of increment which would otherwise have been possible. The argument of the learned counsel that the two punishments were identical has therefore to be rejected. It necessarily follows that the procedure prescribed in Rule 17(1)(b), which applies only to imposition of major penalties, is inapplicable in the present case. Of course, reduction in rank

which is a punishment under Rule 15(1)(j) comes within the scope of Rule 17(1)(b); but as already mentioned, the punishment imposed in the present case is not under Sub-rule (1)(j) but under Sub-rule (1)(g) only. In the circumstances, the contention that there was defective procedure followed in the present case has to fail.

4. The contention that there was no sufficient opportunity to the petitioner to establish his innocence for want of the copies of statements recorded during preliminary inquiry also has to fail for the reason that the Enquiry Officer, before calling upon the petitioner to cross-examine the witnesses, had, in fact, read out the depositions recorded at the preliminary stage. I have perused the enquiry file. Copies of the relevant depositions are contained in pages 51 to 68. In the statement of PW-1 Shaji available in page 51 at the concluding portion of the chief examination, it is recorded that Exts. P1(A) and P1(B) were read over to the witness and that the witness stated that he had, in fact, given such a statement and did not want to state anything more. It was thereafter that the petitioner was called upon to cross-examine that witness. A reading of the earlier statement in the presence of the petitioner posted him with sufficient information regarding the contents of the earlier statement and it is futile for him to contend that the cross-examination had to be made without being aware of what was mentioned in the earlier statement.

5. PW-3, in chief examination, stated that his earlier statements (marked as Exts. P2(A) and P2(B)) had been read over to him during chief examination and the cross examination of the witness was with reference to the contents of those statements. PW-4, in his chief examination referred to his earlier statements (P3(A) and P3(B) being read over to him in the course of recording evidence on 20.2.1990 and he was also cross-examined by the petitioner with reference to the details contained in those statements. PW-6, in his evidence, states about his earlier statement (Ext. P4) which was read over to him on 20.2.1990 on which date he was cross-examined at length by the petitioner. PW-7 also admits in his chief examination that his earlier statement (Ext. P5) was read over to him. All these witnesses admitted their earlier statements and it was in these circumstances, that the Enquiry Officer did not choose to reproduce the contents of the earlier

statement in the relevant subsequent statements.

6. None of the provision in the Kerala Police Departmental Inquiries, Punishment and Appeal Rules makes it mandatory that the Enquiry Officer, should, during the regular enquiry, re-record the entire statements given by the witnesses during the preliminary enquiry. I am convinced that there was no suppression of relevant material which had prejudiced the delinquent officer in his defence. May it also be mentioned here that the petitioner, at no stage of enquiry, protested against the procedure or demanded copies of any of the earlier statements. In these circumstances, the contention regarding prejudice and improper procedure, alleged by the petitioner now, has no leg to stand on.

7. I shall now refer to some of the decision cited by the learned counsel for the petitioner. Ranganathan v. State of Kerala (ILR 1996 (1) Kerala 201) was relied on in support of the contention that the punishment imposed in the case, though styled as withholding of increments, actually amounts to reduction in rank, which is a major punishment. On a perusal of the decision I find that the facts of the case were different. That was a case where the delinquent was due to retire before expiry of the period of punishment resulting in permanent reduction in pension. That is not the position in the present case and that makes all the difference.

8. The decision in State of Mysore and Ors. v. Shivabasappa Shivappa Makapur (AIR 1963 SC 375) relied on by the petitioner was also a case of different facts. There the enquiry in question was governed by the Bombay Police Manual, according to which, it was essential that the officer conducting the inquiry should recall all necessary witnesses in support of the charge and in the defaulter's presence, has to read out any statements they may have given in the preliminary inquiry and record, if necessary, any further statements they may have to make. In the rules applicable to the present petitioner there is no such specific stipulation. Nevertheless, the Enquiry Officer has substantially followed the same procedure by reading out to the witness his earlier statement in the chief examination itself so that the petitioner, who was present, could understand the full scope and purport of the statements before he proceeded to cross-examine the witness. Hence there is no prejudice caused to the petitioner in the said matter.

9. *Kuldeep Singh v. Commissioner of Police & Ors.* (1999) 2 SCC 10) cited by the petitioner is also a case of different facts. There the crucial document was a voucher for Rs. 1,000/-. That document was not mentioned in the charge sheet. On the other hand, the charge mentioned that only two other documents were proposed to be relied on; namely, a copy of the report of the SHO against the petitioner therein and a copy of the labourers' statement. The punishment imposed in the case was interfered with as there was violation of principles of natural justice in so far as the crucial document was withheld from the notice of the petitioner and yet relied on. The said decision also can be distinguished.

10. *Yoginath D. Bagde v. State of Maharashtra* (1999) 7 SCC 739) was a case where the disciplinary authority decided to go against the finding of not guilty entered by the Inquiry Authority. It was considering the fact that the findings on the enquiry were all in favour of the delinquent officer and also considering the fact that the Disciplinary Authority did not give any opportunity of hearing to him before taking a different decision regarding delinquency that the Apex Court set aside the punishment. As far as the present case is concerned, the enquiry report itself was against the petition and there is no provision in the rules concerned warranting communication of the report to the delinquent before acting upon it.

11. *K.P.S.C. v. Premprakash* (2000 (2) KLJ 357) was relied on to show that when the evidence is oral, normally the examination of the witness in its entirety, should take place in the presence of the party charged, who will have full opportunity to cross-examine him. In fact, the decision in the said case is one against the delinquent officer. It was the Kerala Public Service Commission, who challenged the decree passed by the Civil Court granting benefits to the delinquent, who had filed the suit seeking to set aside the disciplinary action taken against him. This Court held that in such a suit the court need only ensure that rules of natural justice were complied with even in the matter of enquiry and that if there was sufficient compliance with the rules of natural justice, it was not for the Court to interfere or to act as an appellate body and consider whether the findings of the authority were really justified. That apart, in the present case, as already mentioned, before calling upon the petitioner to cross-examine 7 witnesses the statement given by these witnesses at the preliminary enquiry stage had been read out in full in the presence

of the petitioner and as such he has absolutely no justification even for making a contention that he was unaware of the contents of the earlier statement.

12. In these circumstances, I am of the view that the petitioner has miserably failed to show any valid ground justifying interference with Ext. P2 order. The Police is a disciplined force and it is essential that proper behavioral patterns are enforced. When the allegations against the petitioner are considered, the punishment imposing minor penalty was certainly one of lesser grade than what was due to the petitioner in this case. The authorities, if at all they erred, have only erred in favour of the petitioner.

13. The petition, in the circumstances, is found to be without and it is accordingly dismissed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com