Nathulal Vs. the State

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Court : Rajasthan

Decided On : Feb-20-1958

Reported in : AIR1958Raj153

Judge : K.N. Wanchoo, C.J. and; Jagat Narayan, J.

Acts : Constitution of India - Article 311(2)

Appeal No. : Civil Writ Case No. 129 of 1957

Appellant : Nathulal

Respondent : The State

Advocate for Def. : Kan Singh, Deputy Govt. Adv.

Advocate for Pet/Ap. : Nauratan Mal, Adv.

Disposition : Application allowed

Judgement :

Jagat Narayan, J.

1. This is an application under Article 226 of the Constitution of India by one Nathulal, who was formerly judicial clerk in the court of Sub-Divisional Officer, Begun, against an order of the District Magistrate and Collector, Chittorgarh, dated 8-9-1955, dismissing him from service. The application has been opposed on

behalf of the State. We have heard learned counsel for the parties and have perused the record. We are satisfied that the application must be allowed.

2. One Durjansingh complained to the Sub-Divisional Magistrate, Begun, alleging that Shri Nathulal, the then judicial clerk had obtained from Jairam, Bhura, Deva and Lalsingh a sum of Rs. 400/-, as illegal gratification. They were accused persons in a dacoity case pending in the court of the Sub-Divisional Magistrate. On receiving this complaint the Sub-Divisional Magistrate held an enquiry and reported to the Collector that sufficient evidence for prosecuting Nathulal was not available.

The Collector thereupon ordered departmental proceedings to be taken against him. A charge was accordingly framed against him by the Sub-Divisional Magistrate. The evidence of Durjansingh and his witnesses was taken in the presence of Nathulal who had an opportunity of cross-examining these witnesses. Nathulal was allowed to adduce evidence in his defence alsd.

On a consideration of the entire evidence the Sub-Divisional Magistrate does not seem to have come to a definite finding in clear and unambiguous terms either that the charge had been proved or that it had not been proved. He has observed that the charge has been supported by Durjansingh and his witnesses but that no independent person has come forward to support it. At the same time he said that bribe was generally not offered in the presence of independent witnesses and that in such cases it was difficult to find an independent witness.

He went on to say that if the case was sent to court it was possible that it might not succeed. Further he observed that from the evidence on record it could not be said that, Nathulal had not accepted bribe, and went on to say that it was desirable that there should be even a complaint of bribery against a Government servant. He recommended that in view of the fact that it was the first offence of Nathulal his increment for two years should be withheld and he should be deprived of future promotion to a responsible post.

3. On receiving the above report the Collec for issued the following notice to the applicant :

'Durjansingh filed an application on 8-3-1953 before Sub-Divisional Officer, Begun for holding an enquiry pertaining to bribery. An enquiry was held in the matter and you are hereby informed by notice that you should show cause on 6-9-1955-why you should not be dismissed from service for this offence. If you wish to say something personally you can appear before me on that day at your expense and say it.'

4. The applicant filed a written representation before the Collector and also appeared before him and was heard personally. On a consideration of the representation and the evidence recorded by the Sub-Divisional Magistrate the Collector held that the charge of having accepted Rs. 400/- as bribe had been proved. He ac-cordingly dismissed Nathulal from service. He assumed that the Sub-Divisional Magistrate had also come to the conclusion that the charge had been proved against Nathulal.

5. On behalf of the applicant it was urged before us that he was not given a reasonable opportunity of showing cause within the meaning of Article 311(2) of the Constitution. We have observed above that the Sub-Divisional Magistrate did not come to a definite finding that the charge had been proved against the applicant. It does not appear from the notice served on the applicant by the Collector that he applied his mind to the evidence appearing against the ap-plicant and came to the conclusion that the charge had been proved against him before issuing the notice.

The statutory provision is that a reasonable opportunity of showing cause against the action proposed to be taken in regard to him is to be given to the civil servant after the punishing authority comes to a tentative finding that the charges or some of them have been proved. It was held by the Privy Council in the High Commr. for India v. I. M. Lall. AIR 1948 PC 121 (A), while interpreting the words 'a reasonable opportunity of showing cause against the action proposed to be taken' occurring in Section 240 of the Government of India Act, 1935:

'In the opinion of their Lordships, no action is proposed within the meaning of the sub-section until a definite conclusion has been come to on the charges, and the actual punishment to follow is provisionally determined on. Prior tothat stage, the

charges are unproved and the suggested punishments are merely hypothetical.

It is on that stage being reached that the statute gives the civil servant the opportunity for which Sub-section (3) makes provision. Their Lordships would only add that they see no difficulty in the statutory opportunity being reasonably afforded at more than one stage.

If the civil servant has been through an enquiry under Rule 55, it would not be reasonable that he should ask for a repetition of that stage, of duly carried out but that would not exhaust his statutory right, and he would still be entitled to represent against the punishment proposed asthe result of the findings of the enquiry.'

6. The words occurring in Article 311(2) of the Constitution are similar. The Privy Council also quoted with approval the following passage from the judgment of the learned Chief Justice of the Federal Court in that case.

'In our judgment each case will have to jurn on its own facts, but the real point of the sub-section is in our judgment that the person who is to be dismissed or reduced must know that the punishment is proposed as the punishment for certain acts or omissions on his part and must be told the grounds on which it is proposed to take such action and must be given a reasonable opportunity of showing cause why such punishment should not be imposed.'

7. Punishment is imposed on the civil servant when some charges are proved against him. These charges constitute the 'acts or omissionson his part' for which punishment is proposed. The reasoning by which it is held that the charge or charges have been proved against the civil servant constitute the 'grounds on which it is proposed to take action' against him.

An opportunity of showing cause is to be given not only against the quantum of punishment but also against the ground? on which the proposed action is based, that is against the reasoning by which the authority concerned comes to a finding that the charges have been proved.

8. In a case in which the enquiring officer is different from the punishing authority the procedure which should be adopted is this. The punishing authority should apply its mind to the report of the enquiring officer and see whether it agrees with it wholly or in part. If it agrees with it wholly, that is if it agrees both with the findings and the reasoning given for arriving at the conclusions, the punishing authority should say so specifically in its order under which it issues notice of the proposed punishment which it thinks suitable in the circumstances of the case.

A copy of the report of the enquiring officer containing the reasoning by which he arrives at the conclusion that the charges have been proved should be handed over to the civil servant so that he has an opportunity of showing cause against the reasoning. Where the punishing authority agrees with part of the findings and disagrees with the rest it should again say so specifically in its order under which it issues notice of the proposed punishment.

If the authority comes to the conclusion that certain charges, which in the opinion of the enquiring officer have not been proved, have also been substantiated then the authority should give its reasoning in support of this finding. A copy of the findings of the enquiring officer on the charges held by him to have been proved together with a copy of the findings of the punishing authority holding the other charges to have been substantiated should be handed over to the civil servant in order to afford him an opportunity of making representation against the accuracy of facts found by the punishing authority.

9. Where the punishing authority itself holds the enquiry there also it should arrive at tentative findings of fact and should give a copy of these findings to the civil servant so that he may have an adequate opportunity of making representations against the accuracy of findings of fact arrived at by it.

10. As We have observed above, the Collector did not apply his mind to the evidence recorded by the Sub-Divisional Magistrate at all before issuing notice. The notice was therefore premature and the order of dismissal passed on it is illegal.

11. Further the applicant had no opportunity of showing cause against the grounds on which it was proposed to take action against him, since neither a copy of the report of the Sub-Divisional Magistrate was given to him nor a copy cf the tentative findings of the Collector. The Collector had not arrived at any finding before issuing notice.

12. We therefore allow the application and set aside the order of dismissal passed against the applicant.

13. The present Collector and District Magistrate Chittorgarh should apply his mindafresh to the evidence recorded by the Sub-Divisional Magistrate. If he is of the opinion that the charge has been substantiated he should record his finding giving reasons in support of it, and should issue a copy of it to the applicant.

If he agrees with the finding of the Collector contained in his order (dated 8-9-1955) that the charge had been proved and also agrees with the reasoning given by him in support of the findings he may say so specifically and may issue a copy of that order (dated 8-9-1955) to the applicant to enable him to show cause against it. If on the other hand the Collector is of the opinion that the charge has not been proved then he should reinstate the applicant.

14. In the circumstances of the presentcase we direct that parties shall bear their owncosts.