Union of India v. Pritam Singh

Bishan Narain, J.

by the plaintiff in his appeal to the Inspector-General of Police, Delhi.

In a similar case an opportunity to show cause against the action proposed was given in these words—

> "It is provisionally proposed to remove you from Government service * * * *. An opportunity is given to you to show cause, if any, against the proposed action."

and the Division Bench of this Court held in *Naubat Rai* v. *Union of India* (1), that sufficient opportunity as required by Article 311(2) of the Constitution was given to the petitioner. I am, therefore, of the opinion that the plaintiff was given sufficient opportunity under Police Rule 16.24(*ix*) in the circumstances of the present case.

For all these reasons I am of the opinion that the order of dismissal passed against Pritam Singh plaintiff was validly made with the result that this appeal must be accepted and plaintiff's suit dismissed. In the circumstances of the case, however, I leave the parties to bear their own costs throughout.

Dulat, J.

DULAT, J. I agree.

CIVIL WRIT

Before Kapur, J.

MOHINDER PARTAP SINGH,—*Petitioner.*

versus

THE DIRECTOR, HEALTH SERVICES, PUNJAB AND THE STATE OF PUNJAB,—*Respondents.*

Civil Writ No. 82 of 1955

1955

Sept., 30th

Punjab Civil Service (Punishment and Appeal) Rules, 1952, Rule 14—Scope of—Enquiry against a Public servant—Power of Government to reopen enquiry—Whether principle of double jeopardy applicable—Public Inquiries—Rule of Staleness—Whether applicable.

(1) A.I.R. 1953 Punjab 137

M.P. confirmed Food Inspector in March, 1951. In May, 1951, enquiry was started against him. On 2nd November, 1951, a charge-sheet was given to him by the Director of Health Services and on 9th October, 1953, he was informed that the Punishment imposed was the stoppage of two annual increments. The Government was informed about the punishment and the explanation of M.P. on 9th September, 1953. On 8th April, 1954, the matter was considered by the Anti-Corruption Committee who held the punishment to be inadequate. The Government proposed to suspend M.P. and to institute a proper enquiry. On 22nd November, 1954, petitioner was informed that Government were ordering enquiry because the punishment awarded was inadequate and required him to submit his explanation afresh which he submitted on 24th November, 1954. On 19th January, 1955, the Government after considering the explanation decided to suspend M.P. and to proceed with the enquiry. On 14th March, 1955, petitioner moved the High Court under Article 226 of the Constitution of India against this order.

Held,—

(1) that the case is not covered by the principle of double jeopardy, nor is it contrary to natural justice;

(2) that although the Government may have taken more time than it might have, the action of the Government is not barred on the principle of staleness; and

(3) that it is not the Director of Health Services who has reopened the inquiry but it is the Government who could do so under rule 14 of the Rules.

Petition under Article 226 of the Constitution of India, praying that this Hon'ble Court may be pleased to:—

(1) Issue a Writ in the nature of Mandamus directing respondent No. 1 not to proceed with the enquiry in pursuance of the charges, dated the 9/11th February, 1955,

(2) Issue a Writ in the nature of Mandamus or any other appropriate direction commanding respondent No. 2 to cancel any direction issued for a fresh enquiry.

(3) *Prohibit the respondents from taking any action against the petitioner in pursuance of the charge-sheets.*

(4) *Grant any other relief which may be just and proper.*

Further praying that pending the decision of this petition respondents be restrained from proceeding with the enquiry.

BHAGIRATH DAS and M. S. GUJRAL, for Petitioner.

HAR PARSHAD, Assistant Advocate-General, for Respondent.

ORDER

Kapur, J. KAPUR, J. This is a rule obtained by the petitioner Mohinder Partap Singh for the issue of a writ of mandamus against the State directing them to withdraw directions for fresh enquiry and to respondent No. 1 to forbear from proceeding with any enquiry.

The petitioner was a Government Food Inspector and was confirmed in that post in March, 1951. Sometime in May, 1951 an enquiry was started in regard to certain acts done by the petitioner while he was posted at Ludhiana. On the 2nd of November, 1951, a charge sheet was given to the petitioner by the then Director of Health Services. By an order dated the 6th or 9th October, 1953, the petitioner was informed that the punishment imposed was the stoppage of two annual increments without prejudice to his future increments.

A letter dated the 19th May, 1954 shows that the Government was informed of the punishment given and of the explanation submitted by the petitioner sometime on the 9th September, 1953. On the 8th of April, 1954, the matter was considered by the Anti-Corruption Committee who were of the opinion that the punishment imposed was inadequate. The Government, therefore, decided that if the petitioner

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was a temporary Government servant, then his services may be dispensed with in accordance with the contract of service, but as they were later on informed that the peitioner was a permanent Government servant, the Government directed that he be placed under suspension and a proper enquiry instituted against him.

Paragraph 6 of the affidavit of the petitioner shows that he was informed on the 22nd November, 1954, that the Government were ordering an enquiry because the punishment imposed was inadequate, that he (the petitioner) was required to submit his explanation afresh and that he submitted an explanation of protest on the 24th November, 1954. On the 19th January, 1955 the Government sent a letter, Annexure E, that after considering the explanation given by the petitioner they were of the opinion that the petitioner should be suspended and that he (the petitioner) will be informed when the Enquiry Officer required the petitioner to present himself at Ludhiana for the purposes of enquiry.

The petitioner then made an application to this Court on the 14th of March, 1955, and on the 15th of March proceedings in regard to the enquiry were stayed.

Counsel for the petitioner supports his application on four grounds (1) that he having been punished once no second enquiry can be ordered because that would be exposing him to 'double jeopardy' which is contrary to natural justice, (2) that the Government cannot take action after the lapse of such a long period inasmuch as a period of one year and 4½ months has elapsed between the two punishments dated the 6th October, 1953 and the order of fresh enquiry made in February, 1955, (3) that the Director of Health Services cannot re-open an enquiry which had ended with his order of punishment on the 6th October, 1953 and (4) that rule 14 of the

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Punjab Civil Services (Punishment and Appeal) Rules, 1952, has no application to the facts of the present case.

In support of his plea as to double jeopardy Mr. Bhagirath Das relied on *Jagjit Singh* v. *The State of Punjab* (1). In that case some persons then in a jail made a general assault on jail officials and some of them who were removed into cells resorted to hunger strike. They were punished by the Jail Superintendent by being separately confined and their letters and interviews were stopped. Some months after the hunger strike the Jail Superintendent filed complaints before a Magistrate under rule 41(2) of the Punjab Communist Detenus Rules for committing jail offences and under several sections of the Indian Penal Code. It was held that the Jail Superintendent having taken action under rule 41(1) and having awarded punishment to the detenus could not make a complaint against them again for the same offence. Their Lordships of the Supreme Court examined the scheme of rule 41 and observed—

> "It is only when the Jail Superintendent considers that the offence is not adequately punishable by him that he can send the case to the Magistrate. If he actually himself punishes, he cannot under this rule, refer the case again to the Magistrate. A reference by him after punishment will be wholly unauthorised and without jurisdiction and the prosecution before the Magistrate would be illegal and not in accordance with procedure established by law."

This case, therefore, is not an authority of the proposition which was contended for by Mr. Bhagirath Das. That case was decided simply on the basis of the

(1) 1953 S.C.R. 730, 744

power of the Superintendent. Their Lordships have in a later case specifically decided the question of departmental punishment in *Venkataraman v. The Union of India* (1). There the principles that a man must not be put twice in peril for the same offence, the doctrine of *autrefois acquit* and *autrefois convict* as also the fifth amendment of the American Constitution which provides *inter alia*—

> "Nor shall any person be subjected for the same offence to be put twice in jeopardy of life and limb."

were examined. It was held that the words "Prosecuted and punished" are to be taken not distributively so as to mean prosecuted or punished, but both the factors must co-exist in order that the operation of clause 2 of Article 20 may be attracted.

In *Maqbool Hussain's case* (2), it was held that the words of this Article (Article 20(2)) afford a clear indication that the proceedings in connection with the prosecution and punishment of a person must be in the nature of criminal proceedings before a Court of law or judicial Tribunal and not before a Tribunal which entertains a departmental or administrative enquiry even though set up by statute but which is not required by law to try a matter judicially and on legal evidence.

In Venkataraman's case (1), an officer of Government had been dismissed after a departmental enquiry and then criminal proceedings were started against him and he pleaded that he could not be tried for the same offence as he had already been punished with dismissal, but this contention was repelled.

(1) 1954 S.C.A. 466
(2) 1953 S.C.R. 730

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Mr. Bhagirath Das, however, submits that even if Article 20(2) of the Constitution of India may in terms be inapplicable the principle underlying it should be held to apply to departmental enquiries, and because his client has once been punished with stoppage of two yearly increments, no second enquiry can be started against him. Assuming though not deciding that the doctrine of double jeopardy applies to administrative matters also, although one may search the law reports in vain for a precedent in support thereof, in the present case it cannot avail the petitioner as the rules to which my attention has been drawn show that after a punishment has been given if the Government are of the opinion that the punishment is inadequate, they can order a fresh enquiry to be held. Rule 14 of the Punjab Civil Services (Punishment and Appeal) Rules, 1952, before the amendment stood as follows :—

> "14. The Government or the Health Department may call for and examine the records of any case in which a subordinate authority passed any order under rule 10 or has inflicted any of the penalties specified in rule 4 for which no order of penalty inflicted has been passed and after making further investigation, if any, may confirm, remit, reduce or, subject to the provisions of sub-rule (1) of rule 11, increase the penalty or subject to the provisions of rules 7, 8 and 9 inflict any of the penalties specified in rule 4."

Reliance is placed by the petitioner on the words "or has inflicted any of the penalties specified in rule 4 for which no order of penalty inflicted has been passed." As the words stand the rule is unintelligible because when a punishment is inflicted some order has to be passed as is clear from rule 8 which provides

that no order under clauses (i), (ii) or (iv) of rule 4 shall be passed imposing a penalty on a Government servant unless he has been given an adequate opportunity of making any representation that he may desire to make, and such representation has been taken into consideration. It is not shown that any oral order can be made imposing the penalty mentioned in rule 4, and, therefore, it must mean what is now made clear by the amended rule which came into force on the 17th of August, 1954, the relevant portion of which reads :—

> " * * * * * in rule 4 or in which no order has been passed or penalty inflicted, and * *."

In my opinion, therefore, the Government had the power to call for the record and could, if they came to that conclusion, take action under rule 14.

It was submitted that amended rule 14 could not apply to the petitioner whose case was decided in October, 1953, but in my judgment the rule as it stood before meant what has been cleared up by the present rule 14 which has been substituted in place of the old rule.

The next submission raised was that the matter is a stale one and reliance was placed on an unreported judgment of Weston, C. J., where it was held that in civil revisions although the period of limitation is not 90 days, the Courts would refuse to interfere if the petition is brought more than ninety days after the passing of the order sought to be revised. It is true that ordinarily Courts will not interfere where claims have become stale, but even in the matter of civil revisions Article 181 of the Limitation Act is applicable and it cannot be said that there is no period of limitation. As a matter of practice Courts refuse to interfere in regard to stale claims, but that.

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in my opinion, has no application to the facts of the present case. I have already given the dates on which various steps were taken. The order of punishment was passed on the 6th October, 1953. The papers were then submitted to Government who in April, 1954, placed the matter before a Committee who were of the opinion that the punishment was inadequate and the Government then made an order in May, 1954, to take action under rule 14 of the Rules. On the 22nd of November, 1954, the petitioner was asked as to why he should not be suspended and the order indicated that a proper enquiry into charges of corruption would be started against him. No doubt the Government have not acted with any great promptitude and have taken more time than perhaps it might have taken, but I am not aware of any precedent, nor have the counsel placed any before me showing that the rule of staleness applies to public enquiries. Perhaps, it may be very inconvenient and many a guilty Government servant may escape if this rule were made applicable.

The basis on which this rule is sought to be pressed into service by the counsel for the petitioner is the analogy of revisions in civil and Criminal cases, but that cannot be held to apply to departmental enquiries. The period of limitation for appeals under the departmental rules is six months, and that is another argument which Mr. Bhagirath Das tried to use in support of his plea of limitation in regard to this enquiry, but I find no support for this principle being applied in regard to actions taken by the Government, although I am of the opinion that it would be more desirable if the Government were to take more prompt actions and avoid delay. But it is not for this Court to indicate how soon the Government should take actions under rule 14. Perhaps, it would be better for the administration if rule 14 was suitably amended by adding the words which are contained in

the revisional sections of the Punjab Land Revenue Act and the Punjab Tenancy Act.

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It is then submitted that if rule 14 was applicable the Director could not reopen an enquiry which had terminated with his order dated the 6th October, 1953, but as I have discussed above, the order is not of the Director but of the Government who have passed the order for fresh enquiry under rule 14 which is also clear from paragraph 6 of the affidavit of the petitioner and from the letter referred to in that paragraph a copy of which has been placed on the record by Mr. Har Parshad because I was anxious to see what order the Government has made. In my opinion, it is not the Director who has ordered a fresh enquiry, but it is the Government who have ordered it, and perhaps the charge sheet which was given to the petitioner on the 9th of February, 1955, in essence is the same as that which was the subject-matter of enquiry ending with the order of the 6th October, 1953, but then it is these contingencies which are contemplated by rule 14. In this case and in the nature of things the charge sheet cannot be different because it is the same set of facts which must necessarily form the basis of the complaint.

I am, therefore, of the opinion (1) that the case is not covered by the principle of double jeopardy, nor is it contrary to natural justice, (2) that although the Government may have taken more time than it might have, the action of the Government is not barred on the principle of staleness, and (3) that it is not the Director of Health Services who has reopened the inquiry but it is the Govenment who could do so under rule 14 of the Rules.

I would, therefore, dismiss this petition and discharge the rule. No orders as to costs.