SUPREME COURT OF INDIA

M. N. Dasamma, Dr.

Vs.

State of A.P.

C.A.No.1596 of 1967

(A. N. Grover, A. K. Mukherjea and C. A. Vaidialingam, JJ.)

02.05.1973

JUDGEMENT

GROVER, J.:-

1. This is an appeal by certificate from a judgment of the Andhra Pradesh High Court dismissing a writ petition filed by the appellant challenging the order of dismissal from service.

2. The appellant who has passed the M.B.B.S. examination of the Madras University in 1940 entered the service of the State of Madras on August 14, 1941 as Civil Assistant Surgeon. On the formation of the State of Andhra Pradesh his services were allotted to the new State. In 1961 he was working as Officer-in-Charge of Vijaywada Government Headquarters Hospital.

3. On a reference by the Government of Andhra Pradesh, the Tribunal, under the Andhra Pradesh Civil Services (Disciplinary Proceedings) Tribunal Act 1960, hereinafter called the 'Act', framed a

number of charges against him. Proceedings by the Tribunal were first conducted before Shri K. Umpathy Rao, the Chairman of the Tribunal, which at all material times, consisted of two members. The charges were framed by him on August 22, l962. On or about January 7, 1963 the case was transferred to the other member Shri Nazimuddin. On the protest of the appellant that the said member would be biased against him the case was withdrawn from him and Shri K. Umpathy Rao continued the enquiry until March 21, 1963 and examined certain witnesses. On the same date the case was transferred to Shri Shankar Pershad who had succeeded Shri Nazimmudin on the latter's appointment. Shri Shanker Pershad held the inquiry until June 20, 1963 and examined a number of witnesses. He retired in July 1963. Shri C. Ramaiah Chowdhary who succeeded him continued to hold the enquiry and examined some witnesses. After the written statement of the appellant had been filed and his witnesses had been examined he heard arguments on 26-10-1963. Before he could submit a report Shri Chowdhary was transferred on February 2, 1964 and was succeeded by Shri C. Jaganathacharyulu who was then the Chairman of the Tribunal. He submitted a report on July 31, 1964. He held that out of the 22 charges only 10 had been proved. On September 15, 1964 a notice was sent to the appellant by the first respondent herein to show cause why he should not be dismissed from service. On September 3, 1964 the first respondent directed that the penalty of dismissal be imposed on the appellant.

4. The appellant moved the High Court under Article 226 of the Constitution challenging the order of dismissal principally on the ground that the proceedings before the Tribunal were vitiated from beginning to the end. While the writ petition was pending a decision was given by the Division Bench of the High Court on September 7, 1965, C. K. Doraiswamy Naidu v. State of Andhra Pradesh, ILR (1967) Andh Pra 904 construing identical provisions of the Hyderabad Public Service (Tribunal) Enquiry Act that where one member alone conducted an enquiry and submitted his report that report was invalid and opposed to the provisions of the Act and the decision of the Government on such report would be without jurisdiction. It is claimed on behalf of the appellant that in accordance with that decision the writ petition would have been allowed but for an amendment which was made in Section 7 of the Act by adding a proviso which may be noticed.

"7. On the conclusion of an inquiry, the Tribunal shall report its findings to the Government..... Provided that where a single member of the Tribunal holds an inquiry into a case as provided in sub-section (1) of Section 6, he alone shall report his findings and recommend the penalties and his report to the Government in this regard shall be deemed to be the report of the Tribunal for the purposes of this Act".

The appellant submitted to the High Court that the amendment did not make any difference and affect the merits of the case in any manner but the High Court negatived his contention and dismissed the writ petition.

5. We shall presently consider the contentions that have been pressed before us on behalf of the appellant but we cannot help observing at the threshold that the manner in which the proceedings

were conducted before the Tribunal strikes us as most extraordinary. It is somewhat surprising that even when the member who was holding the enquiry had not been transferred or had not retired and was in a position to conclude the enquiry and make a report the proceedings were transferred either to the Chairman or some other member. The relevant provisions of the Act and the rules may now be noticed. Section 3 provided for the constitution of a Tribunal for disciplinary proceedings consisting of one or more members. Where the Tribunal consists of more than one member the Government has to designate one of the members as the Chairman. Under Section 6 (1) if the Tribunal consists of more than one member an inquiry into a case referred to the Tribunal shall be held by all the members sitting together or by a single member as the Chairman may direct. Under Section 7 the Tribunal has to report its findings to the Government on the conclusion of the inquiry. Section 7, as it stood before the Amendment Act 27 of 1965, provided that on the conclusion of an inquiry the Tribunal shall report its findings to the Government. The proviso which was inserted after the judgment of the Andhra Pradesh High Court mentioned before has already been quoted.

6. Rule 7 of the Rules framed under Section 10 of the Act requires the Tribunal to fallow the procedure prescribed thereby. Under Rule 7 (2) (i) after an inquiry has been completed the Tribunal has to send the report of its findings and recommendations to the Government together with its opinion. Sub-rule (2) (iii) says:

"After the Government have arrived at provisional conclusions in regard to the penalty to be imposed, the Government servant charged shall be supplied with a copy of the report of Tribunal .....and he shall be called upon to show cause within a reasonable time.....against the particular penalty proposed to be imposed....."

Sub-rule (6) of Rule 7 is material and is reproduced below :

"Where the Chairman or any member of the Tribunal is prevented by death, transfer or other cause from concluding an enquiry or from reporting his findings in any case referred to the Tribunal, his successor may deal with any evidence taken down by his predecessor in office as if such evidence had been taken down by him and may proceed with the enquiry from the stage at which his predecessor had left it, or report his findings to the Government."

This sub-rule (6) was added by G.O.M. 690 dated the 12th June 1964.

7. The High Court was of the view that if Shri Venkatarao who made the report could be said to have held an enquiry under S. 6 (1) then his report would be valid in view of the proviso to Section 7. It was pointed out that under sub-rule (6) of Rule 7 Shri Venkata Rao as member of the Tribunal was competent to lawfully deal with the evidence which had been taken down by his predecessor as if such evidence had been taken down by him. He proceeded to hear arguments on the 9th and 10th July l964. The hearing of arguments was a part of the enquiry under S. 6 (1). It was not, therefore,

necessary that the report must have been made by both members of the Tribunal.

8. Now it is quite clear that Shri Venkata Rao never examined any witnesses or took on record any evidence. All that he did was to hear arguments afresh Under Section 7 on conclusion of an enquiry it is the Tribunal which has to report its findings to the Government. The proviso was inserted as is clear from the Statement of Objects and Reasons contained in the Bill which was introduced for enacting the amending Act of 1965, because of the decision of the Andhra Pradesh High Court referred to before in which it was held that the purpose of having a Tribunal of more than one member was that all members should bring to bear their mind to the matter in controversy and come to the conclusion that where a single member had held an inquiry the findings of the report should be given by all the members. It was pointed out that the intention was that where a single member held an inquiry under S. 6 (1) he alone should report his findings and recommend the penalties in the report to be submitted to the Government. Where a single member held an inquiry it might not be appropriate to require the other member who had not enquired into the case and who did not have an opportunity of hearing the evidence to take part in further proceedings and recording the findings and submitting the report to the government. In order to make the intention clear and to validate the action taken by the Government in the past on the findings and the report of a single member of the Tribunal, the Andhra Pradesh Civil Services (Disciplinary Proceedings) Tribunal Amendment Ordinance 1965 had been promulgated by the Governor. That was later followed by the Amendment Act 1965.

9. As Rule 7 (6) cannot abrogate the provisions contained in the Act and the provisions of the Act must prevail, we shall have to determine what the true import and meaning of the proviso to S. 7 is. It is abundantly clear that according to the substantive part of Section 7 it is the Tribunal which has to report the findings to the Government. On the conclusion of the enquiry. In other words even if the enquiry is conducted by one member, two members have to submit their report it the Tribunal consists of two members as was the case here. The proviso only enables the report to be submitted by one member alone if the condition pre-requisite is satisfied, namely, that he has held an inquiry himself into the matter. If he has held the enquiry then instead of two members his report shall be deemed to be the report of the Tribunal. The crucial question, therefore, in the present case is whether the report of Shri Venkata Rao satisfied the conditions laid down in Section 7 and the proviso thereto. It is not in dispute that he had never conducted any part of the enquiry and that he had only heard arguments and then submitted a report giving his findings. In the judgment of the Andhra Pradesh High Court (supra) it was laid down that the word "enquiry" in Section 8 of the Act does not include a finding. The enquiry was stated to cover the hearing of the case i.e. recording evidence, admitting documents and generally completing the record upon which a finding would be based. It is only after all the material has been placed on the record by both the sides that the stage of reporting a finding would arise. We entirely concur with this view. In our opinion the stage of enquiry is completed before the arguments have to be advanced as is clear from Rule 7 (1) (iii) which is the following terms :

"At the enquiry, oral and documentary evidence shall be first adduced by the prosecution and the Government servant charged shall be entitled to cross-examine the prosecution witnesses and to

explain any documents produced by the prosecution. After the enquiry is completed, the Government servant charged shall be entitled to advance the necessary arguments and the prosecution shall have a right of reply".

The net result would be that according to the Act and the Rules framed thereunder arguments would not be a part of enquiry. As Shri Venkata Rao had only heard arguments and had not held any part of the enquiry, his report could not be deemed to be the report of the Tribunal under the proviso to Section 7 of the Act. As pointed out before sub-rule (6) of R. 7 cannot override Section 7 of the Act. Under Section 7 the position is quite clear that if the Tribunal consists of more than one member and if the enquiry is held by a single member alone can report his findings and his report shall be deemed to be a report of the Tribunal but where a single member has not held any enquiry then his report cannot be deemed to be the report of the Tribunal and it is essential that all members of the Tribunal should submit their report. As arguments could not form part of the enquiry the conditions of S. 7 could not be regarded to have been fulfilled. The High Court was entirely in error in holding that Shri Venkata Rao who had only heard arguments should be treated to have held part of the enquiry and therefore his report should be deemed to be the report of the Tribunal. The result would be that the order of dismissal based on the report submitted by Shri Venkata Rao must be held to be illegal and void.

10. For the reasons given above the appeal is allowed and the order of the High Court is set aside. The writ petition shall stand allowed with the result that the order of dismissal shall stand quashed, The appellant will be entitled to his costs in this court.

Appeal allowed.