

Secretary to Government of T. N.

Vs

D. Subramanyan Rajadevan

Civil Appeal No. 5262 of 1993

(S. C. Agarwal, G. T. Nanavati JJ)

09.07.1996

JUDGMENT

NANAVATI, J. –

1. This is an appeal by special leave against the judgment and order passed by the Tamil Nadu Administrative Tribunal in OA No. 2587 of 1990.

2. Some complaints of corruption and other acts of misconduct by the respondent, during the period from 5-6-1985 to 15-6-1986, while serving as a Superintendent of Police, were received by the Directorate of Vigilance and Anti-Corruption, Madras. The Directorate investigated those complaints and reported its findings to the Tamil Nadu Government. The Government after examining the records submitted to it by the Directorate decided to refer those cases to the Tribunal for Disciplinary Proceedings (hereinafter referred to as "the Disciplinary Tribunal") constituted under Rule 3 of the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 (hereinafter referred to as "the Disciplinary Proceedings Rules" for enquiring into those cases. The Tribunal framed three charges on 21-11-1989 and communicated the same to the respondent. Thereupon, the respondent approached the Tamil Nadu Administrative Tribunal (hereinafter referred to as "the Tribunal") challenging the charge memo framed against him on the grounds of delay, vagueness and breach of the requirements of Rule 17 of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules (hereinafter referred to as "the Civil Service Rules"). The grounds of delay and vagueness were not considered as sufficient by the Tribunal for quashing the charges but it was of the view that the charges were required to be formulated by the disciplinary authority as required by Rule 17 of the Civil Service Rules after applying its mind to the record of the case and after recording the tentative decision to impose any of the penalties specified in Items (iv), (vi), (vii) and (viii) of Rule 8 of the Civil Service Rules before referring the cases to the Tribunal for the purpose of holding an enquiry and as this was not done, the charges deserved to be quashed. The reasons given by the Tribunal for taking this view are as under :

"We would consider that the substantive provisions of Rule 17 of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules in regard to the functions and powers of the disciplinary authority cannot be taken away from such authority by the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955, which relate only to the enquiry which is only a component of the proceedings under Rule 17 of the Tamil Nadu Civil Services (Classification, Control and Appeal) Rules as we have emphasised in our decision in OAs Nos. 712 and 713 of 1990 dated 26-2-1991 wherein we have held as below :

Rule 17(b)(1) therefore requires that (1) There should be a decision that the facts and circumstances disclosed and the evidence in support thereof constituting the basis for the charge would justify one of the penalties specified therein if the charges are established after the enquiry into which the delinquent officer would have the opportunities as prescribed to put forward his defence, (2) With reference to the facts and circumstances disclosed and the evidence, the charge or charges should be formulated to be communicated to the person charged with a statement of allegations on which these charges are based and other circumstances which are proposed to be taken into consideration, (3) Consideration of the written statement of defence and a decision in regard to oral enquiry in the light of the written statement of defence, the request of the delinquent officer for an oral enquiry or otherwise, consideration of the evidence in support of each charge to decide whether oral evidence is necessary if the delinquent has not asked for such enquiry, (4) The conduct of the enquiry and the preparation of the report of the enquiry. The enquiry can be conducted by the disciplinary authority or by any authority designated by him. None of these can be delegated except the functions of the Inquiry Officer. Whether action should be initiated under Rule 17(b)(1) or under Rule 17(a) of TNCS (CCA) Rules is a decision which the disciplinary authority alone can take. That decision cannot be taken by any lower authority empowered to impose the penalties specified in Rule 17(a); if such lower authority initiates actions and proceeds with the elaborate enquiry as required under Rule 17(b)(1) and thereafter the disciplinary authority is of the view that the charges do not call for such proceedings, the entire proceedings would become superfluous and the delinquent would have been put to delay and inconvenience which would have been avoided, if the proceedings had been completed under Rule 17(a). The time and effort on the part of the department could also have been saved. Therefore, at this stage of formulation of charges on completion of the investigation into the allegations, imputations, defaults or misconduct a view has to be taken in the light of the results of the investigation whether action under Rule 17(b) is called for and only thereafter procedure as under that rule can be invoked.

Further decisions involved viz., whether an oral enquiry is needed which has to be taken after considering the written statement of defence and the nature of the charges and evidence in a case in which the delinquent does not ask for oral enquiry, is again a decision which can be taken only by the disciplinary authority because it involves a finding whether the charges as formulated have to be enquired into in the light of the written statement of defence, and if the charges are supported by documentary evidence whether an oral enquiry is necessary. A decision may be possible at that stage and without such consideration, an oral enquiry could not be proceeded with as a normal routine without a specific decision.

After referring to the observations of the Supreme Court in *Union of India v. E. Bashyan* [(1988) 2 SCC 196 : 1988 SCC (L&S) 531 : (1988) 7 ATC 285 : AIR 1988 SC 1000] we have held that 'the principle enunciated here is that the decision of the disciplinary authority has to be his personal decision after consideration of all the relevant facts and circumstances and evidence on record and the representation of the delinquent officer. This principle should extend to the entire classes of disciplinary action commencing from the stage of formulation of charges. As already pointed out in paragraph 4, the decisions involved are for personal consideration by the disciplinary authority and cannot be delegated. Any decision in the course of the

disciplinary action has to be that of the disciplinary authority."

The Tribunal, therefore, quashed the charges dated 21-11-1989 and directed the Government to re-examine the case in the light of the observations made by it in its order and if it thereafter considers it necessary to pursue the matter further then to formulate the charges, get the written statement of defence, to examine the case in the light of the written statement, consider the documentary evidence and the nature of oral evidence available in support of the charges and to decide whether the cases are still to be referred to the Disciplinary Tribunal.

3. The appellant is challenging the view taken by the Tribunal as wholly wrong. It was submitted by the learned counsel for the appellant that the Tribunal has misconstrued the Civil Service Rules and the Disciplinary Proceedings Rules and thus misdirected itself as regards the correct legal position. He submitted that it is incorrect to say that Rule 17 of the Civil Service Rules is a substantive provision whereas Rule 8(a)(i) of the Disciplinary Proceedings Rules is a procedural rule and that the Disciplinary Proceedings Rules cannot affect the applicability of Rule 17 of the Civil Service Rules. He further submitted that once it is found by the Government that it is a case in respect of the matters involving corruption and it decides to proceed departmentally against the government servant then the said case has to be referred to the Disciplinary Tribunal and in such a case the procedure prescribed by the Disciplinary Proceedings Rules is required to be followed and not the procedure prescribed by the Civil Service Rules.

4. We find considerable substance in the contentions raised on behalf of the appellant. The Madras Civil Services (Classification, Control and Appeal) Rules now known as Tamil Nadu Civil Services (Classification, Control and Appeal) Rules have been framed by the Government in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. They came into force on and from 1-1-1955. So also the Madras Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 now known as the Tamil Nadu Civil Services (Disciplinary Proceedings Tribunal) Rules, 1955 have been framed by the Government in exercise of the powers conferred by the proviso to Article 309 of the Constitution of India. They also came into force on 1-1-1955. Rule 2 of the Civil Service Rules provides that they shall apply to every member of the Civil Service of the State and to every person holding a civil post under the State except to the extent otherwise expressly provided : (i) by or under any law for the time being in force or in any rule, (ii) in respect of any such member by contract or agreement subsisting between such member or person and the Government. Part III of the Civil Service Rules makes provision for discipline penalties. The Rules contained in that part have specified the penalties which can be imposed, the authorities which can impose those penalties and Rule 17 provides the procedure which has to be followed before any of the penalties can be imposed. If it is proposed to impose a minor penalty then the procedure prescribed in Rule 17(a) has to be followed, but where it is proposed to impose a major penalty, i.e., any of the penalties specified in Items (iv), (vi), (vii) and (viii) of Rule 8, then the procedure contained in Rule 17(b) has to be followed. Like the Civil Service Rules, the Disciplinary Proceedings Rules apply to all the officers under the rule-making control of the State Government. Rule 2 thereof defines corruption by stating that it shall have the same meaning as criminal misconduct by a public servant under Section 5(1) of the Prevention of Corruption Act, 1947. Rule 3 provides for constitution of "Tribunals for Disciplinary Proceedings". Each such Tribunal has to consist of one person only who shall be a judicial officer of the rank of District and Sessions Judge. The Disciplinary Tribunal has to enquire into such cases as may be referred to the Tribunal and clause (a) of sub-rule (1) thereof reads as under :

"Cases relating to government servants on a monthly salary of Rs. 200 and above, in

respect of matters involving corruption on the part of such government servants in the discharge of their official duties."

Rule 5 inter alia provides that in every case referred to in clause (a) of sub-rule (1) and sub-rule (2) of Rule 4, on completion of investigation, the Directorate of Vigilance and Anti-Corruption or any other branch of the police or other departmental authority concerned, shall forward to the Government all the records of the case. It further provides that the Government shall, after examining such records and after consulting the head of the department concerned, if necessary, decide whether the case shall be tried in a Court of Law or by the Tribunal. It is then provided that if the Government decides that the case shall be tried by the Tribunal, they shall send the records to the Tribunal. Rule 8 which is an important Rule for the purpose of this appeal, provides the procedure to be followed in conducting the enquiries soon after receiving the records of such cases from the Government. The material part of that Rule reads as under :

"8.(a)(i) Notwithstanding anything contained in Rule 17 of the Madras Civil Services (Classification, Control and Appeal) Rules, the following procedure shall be adopted by the Tribunal in conducting enquiries in cases of corruption and also in cases of corruption combined with other charges. As soon as the records relating to allegations of corruption or of corruption combined with other charges against a government servant are received, the Tribunal shall frame appropriate charges, communicate them to the person charged together with a list of witnesses likely to be examined in respect of each of the charges and with information as to the date and place of enquiry ..."

Clause (d) of the said Rule provides that the provisions of the Madras Civil Services (Classification, Control and Appeal) Rules shall apply - (i) in regard to the procedure to be followed in cases other than those of corruption; and (ii) in regard to any other matter for which no specific provision has been made in the Disciplinary Proceedings Rules. Under Rule 9 the Tribunal has to send its finding and recommendations to the Government together with its opinion after the enquiry is completed. Rule 10 provides the procedure to be adopted in regard to the passing of final orders in cases enquired into by the Tribunal notwithstanding anything contained in the Madras Civil Services (Classification, Control and Appeal) Rules. Rule 11 requires that the advice of the Tribunal should ordinarily be accepted. In a case where the Government decides to disagree with the recommendations of the Tribunal, it has to refer back the case to the Tribunal and it can take the final decision only after taking into consideration the remarks of the Tribunal.

5. A comparison of the Civil Service Rules and Disciplinary Proceedings Rules clearly reveals that the Civil Service Rules are general rules applicable in all types of cases whereas the Disciplinary Proceedings Rules are special rules applicable in cases of corruption by government servants and in respect of all those disciplinary cases in which the Government proposes to revise the original orders passed on the charges of corruption. As both the Rules have been framed in exercise of powers conferred on the Government by Article 309 of the Constitution of India they have equal force of law. Therefore, the Tribunal was not right in holding that Rule 8 of the Disciplinary Proceedings Rules being a procedural rule must give way to Rule 17(b) of the Civil Service Rules which is a substantive provision in regard to the functions and powers of the disciplinary authority. The Tribunal failed to appreciate that Rule 17(b) of the Civil Service Rules is also a procedural provision and not a substantive provision as regards the powers of the disciplinary authority. Rule 17 does not deal with the powers of the disciplinary authority to punish a delinquent government servant, but only provides the procedure to be followed in a case where it is proposed to impose a

penalty on such government servant. The Tribunal has clearly misconstrued the nature and scope of Rule 17 of the Civil Service Rules.

6. That becomes all the more apparent from the fact that the Tribunal has failed to consider the effect of Rule 2 of the Civil Service Rules. The said Rule provides that the Civil Service Rules shall not apply to the extent it is otherwise expressly provided by or under any law for the time being in force or in any rule. Therefore, if we find any rule in any other rule which excludes operation of any rule of the Civil Service Rules then the said Rule will prevail over the corresponding Rule in the Civil Service Rules. Rule 8 of the Disciplinary Proceedings Rules, in clear terms, excludes the operation of Rule 17 while conducting enquiries in cases of corruption and also in cases of corruption combined with other charges. The words "Notwithstanding anything contained in Rule 17" are categorical and very clearly disclose the intention of the rule-making authority that while conducting enquiries in cases of corruption and also in cases of corruption combined with other charges the procedure prescribed in Rule 8 has to be followed and not the procedure prescribed in Rule 17 of the Civil Service Rules. As stated earlier, the Disciplinary Proceedings Rules are special rules in the matter of holding disciplinary proceedings against government servants in cases of corruption. It was desired by the Government that such cases should be enquired into by a special Tribunal consisting of a judicial officer of the rank of District and Sessions Judge. The findings and recommendations of the Tribunal ordinarily have to be accepted by the Government and if it wants to take a different decision it has to comply with the requirements of Rule 11. Even in regard to the passing of final orders in cases enquired into by the Tribunal the special procedure contained in Rule 10 of the Disciplinary Rules has to be followed, notwithstanding anything contained in the Civil Service Rules. Clause (d) of Rule 8 of the Disciplinary Proceedings Rules also makes the position clear when it provides that the provisions of the Civil Service Rules shall apply in regard to the procedure to be followed in cases other than those of corruption and in regard to any other matter for which no specific provision has been made in the Disciplinary Proceedings Rules.

7. As we are of the view that this being a case of corruption Rule 17 of the Civil Service Rules did not apply, it is not necessary to deal with the requirements of Rule 17 and the question whether the view of the Tribunal in that behalf is correct. We may, however, draw attention to the decision of this Court in *Inspector General of Police v. Thavasiappan* [(1996) 2 SCC 145 : 1996 SCC (L&S) 433 : (1996) 32 ATC 663] wherein a similar rule in Tamil Nadu Police Subordinate Service (Discipline and Appeal) Rules, 1955 was considered. In that case it has been held that Rule 3(b) of the said Rules is a procedural provision and does not provide that the disciplinary authority itself should frame a charge and if a charge memo is prepared by any other authority then it has to be regarded as invalid. As regards the decision of this Court in *Managing Director, U.P. Warehousing Corpn. v. Vijay Narayan Vajpayee* [(1980) 3 SCC 459 : 1980 SCC (L&S) 453 : (1980) 2 SCR 773], to which our attention was drawn, we fail to appreciate how the decision can be of any help to the respondent. There is no such principle of natural justice that before holding a regular departmental enquiry the disciplinary authority itself should hold a preliminary enquiry by first drawing up a charge memo and then calling for the written statement of defence before taking a decision to hold a regular departmental enquiry.

8. The view taken by the Tribunal in this case being wholly wrong, we allow this appeal and set aside the judgment and order passed by the Tribunal in OA No. 2587 of 1990, with the result that it will be open to the appellant to proceed further with the enquiry pursuant to the charge memo dated 21-11-1989. No order as to costs.