ANDHRA PRADESH HIGH COURT

State of Andhra

Vs.

T. Ramayya Suri

Writ Appeal No. 19 of 1956, in Writ Petition No. 817 of 1952

(Subba Rao, C.J. and Ansari, J.)

21.09.1955. 18.01.1957

JUDGMENT

Subba Rao, C.J.

1. This is an appeal against the Order of our learned brother Umamaheswaram, J., in Writ Petition No. 817 of 1952 quashing the Order of the Government dismissing the respondent from service.

2. The respondent was an employee of the State of Madras and had put in 32 years of service. In 1947, he was Taluk Supply Officer, Vijayawada. For his alleged misconduct during that period, after making the necessary investigation through the C. I. D. the Government referred his case to the Tribunal for Disciplinary Proceedings under Rule 5 of the Madras Civil Services (Disciplinary Proceedings Tribunal) Rules, 1948. The said Tribunal framed the following four charges :

> "Charge No. 1 .- That you, actuated by corrupt motive, on or about 31st January, 1947, attempted to mislead Sri Nageswararao, Sub-Inspector of Police, Counter-blackmarketing Unit, Vijayawada in regard to Crime No. 14 of 1947, Section 7 (1) of Act (XXV of 1946), by making a false representation that Sri Konakalla Suryanarayana of Velpur, whose paddy of about 52 bags had been seized on or about 27th January, 1947, while being transported from Krishna District to Guntur District committed no offence by such transport. Charge No. 2 .- That you, actuated by corrupt motive, got up and issued an ante-dated permit with date 27th January, 1947, in favour of the accused in Crime No. 15 of 1947 who had been charged for illicit transport of about 26 bags of paddy by boat to Guntur with a view to enable him to escape prosecution and get back the paddy seized on 29th January, 1947 at Guntupalli ferry.
> Charge No. 3 .- That you, in spite of having seized 10 bags of paddy as being illicitly transported from Kolavenue to Kankipadu and sent a report to the Kankipadu Police Station, where a case under Sections 7 and 8 of Act (XXIV of 1946)-Crime No. 50 of

1947 was registered, actuated by corrupt motive, sent a note to the Police Station later, stating that the accused had applied earlier for hulling permit, that the permit has since been issued and that the seized paddy may be returned, while, in fact, the accused had made no application for a hulling permit earlier.

Charge No. 4 .- That you, actuated by corrupt motive, got up and issued two ante-dated permits with date 27th January, 1947, in favour of Syed Fasivullah and Mahaboob Unnissa of Vijayawada, whose lands were being cultivated by Mushuri Raghaviah of Perakalapudi, Guntur district, who was being proceeded with for illicit transport of about 45 bags of paddy by boat from Guntupalli of Krishna District to Guntur District, with a view to avert the accused from prosecution and help them to get back the seized paddy."

3. The Tribunal, after making the necessary enquiry in the manner provided by the rules, held that charges Nos. 1, 2 and 4 were made out. In regard to Charge No. 3, the Tribunal found that the officer out of fear or regard for prominent Congressmen went out of the way and asked the Sub-Inspector to release the paddy and that he was not actuated by any corrupt motive, that is to say, that he received no monetary consideration for the action taken by him. He held that the charge was made out to the limited extent. On the basis of these findings, the Tribunal recommended for the dismissal of the respondent from service. The Government provisionally accepted the findings of the Tribunal that Charges Nos. 1, 2 and 4 were proved. It also considered that Charge No. 3 was also fully proved. As regards the punishment, the Government accepted the recommendation of the Tribunal, which was agreed to by the Board of Revenue, that the respondent should be dismissed from service. On 27th December, 1950, the Government of Madras issued the following notice to the respondent.

"A copy of the report of the Tribunal for Disciplinary Proceedings on the subject mentioned above is communicated to Sri T. Ramayya Suri, formerly Taluk Supply Officer, Vijayawada, Krishna District. He is directed to show cause within one month from the date of receipt of this memorandum why he should not be dismissed from service. Any representation which he makes in this behalf will be duly taken into consideration by the Government before they pass final orders in the matter."

On receipt of this notice, the respondent submitted an explanation on 25th January, 1951. The Government, by its Order dated 28th April, 1951, rejected the explanation and dismissed the respondent from service from the date from which he was kept under suspension. The aforesaid writ was filed to quash the said order.

4. Umamaheswaram, J., before whom the writ came in the first instance, held that, even on the facts found by the Tribunal, Charge No. 1. was not made out, that Charges Nos. 2 and 4 were proved and that the Government had no power under the rules to differ from the finding of the Tribunal on Charge No. 3. On those findings, he quashed the Order of the Government but gave liberty to it to consider the appropriate punishment to be imposed on the respondent by reason of Charges Nos. 2 and 4 having been established against him. The Government preferred the above appeal against the said order.

5. The main question that arises for consideration is whether the Government can differ from the Tribunal on any of the findings arrived at by it on the charges framed against the officer or is its jurisdiction confined only to the nature of the punishment to be imposed on him? The learned Judge relied upon Rules 8 and 9 of the Madras Civil Services (Disciplinary Proceedings Tribunal) Rules, 1948, in support of his conclusion that the Government has no power to differ from the finding of the Tribunal on the various charges framed against the officer. The relevant rules may be extracted.

> "Rule 8 (b) .- After the enquiry has been completed, the Tribunal shall send its findings and recommendations to the Government . . . After the Government have arrived at provisional conclusions in regard to the penalty to be imposed, the person charged shall be supplied with a copy of the report of the Tribunal and be called upon to show cause within a reasonable time, not ordinarily exceeding one month, against the particular penalty proposed to be inflicted. Any representation in this behalf submitted by the person charged shall be taken into consideration by the Government before final orders are passed.

Rule 9-Notwithstanding anything contained in the Madras Civil Service (Classification, Control and Appeal) Rules, the Government shall be the authority competent to impose a penalty in cases enquired into by the Tribunal. The advice of trie Tribunal will ordinarily be accepted. If the advice is to be rejected or deviated from, the reasons for such rejection or deviation shall be communicated to the Tribunal and the remarks of the Tribunal in regard thereto shall be taken into consideration before passing orders." under Rule 8 (b), the Tribunal sends its findings and recommendations to the Government. The Government, after arriving at a provisional conclusion in regard to the penalty to be imposed, issues a notice to the officer concerned why the proposed penalty should not be inflicted. After considering the representation, the Government passes final orders. Rule 9 indicates that the Government ordinarily shall not deviate from the advice given by the Tribunal but, in extraordinary cases, it may do so after taking into consideration the opinion of the Tribunal. While R. 9 preserves the undoubted right of the Government to dismiss a Government servant it gives a caution against its differing ordinarily from the findings of the Tribunal, for the Tribunal comprising of a District Judge or Judges, who are trained to look at things objectively and to appreciate the evidence adduced before them, would be in a better position to come to a correct conclusion than the executive branch of the Government. But we cannot construe Rules 8 and 9 in such a way as to confine the power of the Government only to the imposition of the penalty as distinguished from questioning the correctness of the finding arrived at by the Tribunal. The findings and the recommendations of the Tribunal on the basis of those findings are so interconnected that it is not possible to dissect the two and demarcate the respective jurisdiction of the Tribunal for Disciplinary proceedings and the Government. The severity of the punishment will depend upon the findings on the various charges framed against the officer. The Officer, in showing cause against the penalty proposed to be inflicted on him, may have to attack the correctness of the findings arrived at by the Tribunal. Precluding him from doing so will be depriving him of an opportunity to show cause against the penalty proposed to be inflicted on him.

6. That apart, the construction accepted by the learned Judge will clothe the report of the

Disciplinary Proceedings Tribunal with a finality which the nature of the proceedings does not warrant. The Government is the ultimate power to impose penalty on an officer and the Disciplinary Proceedings Tribunal Rules are framed to give the officer concerned reasonable opportunity of showing cause against the action proposed to be taken in regard to him as provided by Article 311 (2) of the Constitution. The findings and the recommendations of the Tribunal, therefore, are more in the nature of a report to the Government to enable it to pass final orders.

7. A Division Bench of the Andhra High Court, of which one of us was a member, considered the scope of the "reasonable opportunity" to be given to a person against whom action is proposed to be taken in *Jagorao v. State of Madras*[1] and summarised the law at page 982 (of Andhra WR) : (at p. 200 of AIR) thus :

> "Every member of the civil service holds his employment at the pleasure of the State. But the undoubted power of the State to dismiss him is controlled by the provisions of Article 311 of the Constitution. Except in the cases governed by the proviso to sub-clause (2) of Article 311, such a servant cannot be dismissed or removed by an authority subordinate to that by which he was appointed and that he could be removed only after he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. The action proposed to be taken in regard to a civil servant will be known only after an enquiry is held and after the authority concerned comes to a tentative conclusion on the merits, for the punishment would necessarily depend upon the gravity of the offence committed by the civil servant. Therefore, whatever machinery is provided by the State for the enquiry, whether it be through one of its executive officers or through a Tribunal for Disciplinary Proceedings, the entire enquiry from the beginning till the punishment is imposed on the officer is one process.

It is an enquiry held by the authority empowered to remove the servant. Though the enquiry may have to be held in two stages, one up to the time the authority comes to a conclusion on the question of the offence committed by the civil servant and the other from the stage notice is given to show cause against the action proposed to be taken in regard to him, the entire process of the enquiry will have to be scrutinized by ascertaining whether reasonable opportunity is given to the servant to show cause against the action proposed to be taken in regard to him. The opportunity to show cause is qualified by the word 'reasonable'. It is for the Court on the facts of each case to scrutinize the entire record to come to a conclusion whether such reasonable opportunity was given to the civil servant to defend himself by examining witnesses and by cross-examining the prosecution witnesses, it would be unreasonable to compel the authority to repeat the entire inquiry after the second stage is reached. It is true that reasonable opportunity to show cause against the action proposed to be taken includes an opportunity to canvass the correctness of the reasons for taking the proposed action. The authority should necessarily in its order requiring the civil servant to show cause should give not only the punishment proposed to be inflicted on him but also the reasons for coming to that conclusion. a civil servant can show cause by pleading that the Tribunal's report is vitiated by gross irregularities committed by it

[1]1956 Andhra WR 978 : (AIR 1957 Andhra Pra 197)

or by violating the principles of natural justice such as preventing him from examining his witnesses or cross-examining the witnesses who spoke against him or similar others. If the

finding of the Tribunal is the basis for the proposed punishment, he can also attack the correctness of the finding by showing that the finding was not based on the evidence or is not supported by evidence. But it would be unreasonable to compel the authority to have two trials as it were, one up to the stage of the notice contemplated by Article 311 and the repetition of it again after notice, though in a particular case, if the inquiry is vitiated by any of the reasons mentioned above, a further enquiry may reasonably be asked by the civil servant. To put it shortly, the entire proceedings of the inquiry must be looked into carefully to ascertain whether reasonable opportunity within the meaning of Article 311 is afforded to a civil servant or not". We have extracted the passage in extenso as it is not necessary to cover the ground over again. It is, therefore, manifest from the aforesaid observations that an officer can question the correctness of the findings in showing cause against the penalty proposed to be inflicted on him. This shows that the findings are not final and can be reviewed by the Government.

8. A Division Bench of the Madras High Court in *Kuppuswami v. State of Madras*[2], came to a similar conclusion on a consideration of the relevant rules. At page 354, Rajagopalan, J., observed :

> "The scope of the Madras Civil Services Disciplinary Proceedings Tribunal's Rules makes clear that despite the composition of the Tribunal, its role, apart from the enquiry it had to conduct and the findings it had to record on the basis of the evidence produced by Both sides in that enquiry, was advisory. The Government was the ultimate authority to decide both the relevant questions, whether the charges had been proved, and if the charges Had been proved, what the punishment should be. Rule 8 (b) makes that position quite clear. Indeed we do not understand the learned Advocate-General to dispute the proposition, that even if the Tribunal held one or more of the charges enquired into by it had been proved, it was open to the Government to disagree with the Tribunal and to decline to accept these findings as correct. Certainly in the case of the punishment recommended by the Tribunal it was open to the Government to differ from the Tribunal. Only Rule 8(b) and R. 9 required the Government to consult the Tribunal again before it departed from any of the recommendations made by the Tribunal."

We agree with the aforesaid observations. We, therefore, hold that the findings of the Tribunal are not final and that they can be reviewed in appropriate cases before final orders are made.

9. Even so, there is another obstacle to the way of the Government Pleader. After the Tribunal sent its findings and its recommendations, the Government accepted the findings of the Tribunal that charges 1, 2 and 4 were proved and also considered that Charge No. 3 was also fully proved and as regards the punishment it also provisionally accepted recommendations of the Tribunal. Though Government sent a copy of the proceedings of the Tribunal to the officer along with the notice issued to

[2]1956-2 Mad LJ 352

show cause why he should not be dismissed from service, he was not informed that the Government differed from the finding of the Tribunal on Charge No. 3. The respondent, therefore, was not given any opportunity to make representations to the Government that the findings of the Tribunal were correct. The final order issued by the Government dismissing the

respondent clearly shows that it had adhered to its conclusion on the 3rd charge without giving any opportunity to the appellant to support the finding of the Tribunal. The learned Government Pleader argues that, even if the Government had accepted the finding of the Tribunal on the 3rd charge, there would not have been any change in the penalty imposed on the respondent for the Tribunal, notwithstanding the fact that it held that charge No. 3 was not wholly proved, recommended the dismissal of the respondent. It is not for us to predicate what the Government would have done if it had agreed with the finding of the Tribunal on the 3rd charge. As we have already pointed out, the authority should necessarily in its order requiring the civil servant to show cause give not only the punishment proposed to be inflicted on him but also the reasons for coming to that conclusion. In the present case, the Government did not disclose to the respondent one of the reasons, namely, that it did not agree with the Tribunal in regard to its finding on the 3rd charge before passing final orders. We, therefore, hold that the penalty was imposed on the respondent without giving him any opportunity to support the finding of the Tribunal.

10. We cannot also agree with the learned Judge that the first charge even on the facts found was not established. The said charge was that respondent actuated by corrupt motive on or about 31st January, 1947 attempted to mislead Sri Nageswara Rao, Sub-Inspector of Police, Counter-blackmarketing Unit, Vijayawada, by making a false representation that Sri Konakalla Suryanarayana of Velpur, whose paddy of about 52 bags had been seized on or about 27th January, 1947, while being transported from Krishna District to Guntur District committed no offence by such transport. It was found that the respondent failed to persuade the Sub-Inspector to release the paddy on the ground that the paddy was taken only from one village to another within the district itself. The learned Judge held that the charge was not established as, on the findings, the case did not fall within the mischief of Section 5 (1) of Act II of 1947. The definite charge against the respondent was that he attempted to mislead the Sub-Inspector of Police and that charge was found to have been made out by the Tribunal. The jurisdiction of a Tribunal is not confined to corruption as defined in Section 5 (1) of Act II of 1947. Rule 4 of the Disciplinary Proceedings Tribunal Rules reads :-

> "The Government shall, subject to the provisions of R. 5 refer the following cases to the Tribunal, namely :-
> (a) cases relating to Government servants on a monthly salary of Rs. 150 and above in respect of matters involving corruption on the part of such Government servants in the discharge of their official duties :
> (b) all appeals or petitions to the Government against orders passed on charges of corruption and all disciplinary cases in which the Government propose to revise original orders passed on such charges; and
> (c) any other case or class of cases which the Government considers should be dealt with by the Tribunal."

The word "corruption" is defined under the rules as criminal misconduct in the discharge of official duties under Section 5 (1) of the Prevention of Bribery and Corruption Act (Act II of 1947). Though charge No. 1 does not amount to corruption as defined under the rules, the Government has ample power under Rule 4 (c) to refer any other case and charge 1 can be sustained on the basis of the power conferred on the Government under Rule 4 (c). We, therefore, hold that charge No. 1 had also been made out against the respondent.

11. In the result, we agree with the learned Judge that the order of the Government should be quashed as it did not give any opportunity to the respondent to question its provisional conclusion on charge No. 3. This will not preclude the Government from considering the appropriate punishment to be imposed upon the respondent on the basis of the findings on charges Nos. 1, 2 and 4. The parties will bear their own costs.

Appeal dismissed.