RAJASTHAN HIGH COURT

Dwarkachand

Vs.

State of Rajasthan

Civil Writ Case No. 94 of 1956
(Wanchoo, C.J. and Dave, J.)

02.08.1957

JUDGMENT

Wanchoo, C.J.

1. This is an application by Dwarkachand under Article 226 of the Constitution against the State of Rajasthan and its officers for a writ in the nature of prohibition.

2. The facts of the case are simple and are not in dispute. The applicant was a clerk working in Tehsil Sanchore in 1954. A report was made by the Tahsildar Sanchore on 30th of August 1954 that he was alleged to have accepted illegal gratification from Kaluram Khatri of Sanchore. In that connection, the applicant had been arrested by the Deputy Superintendent of Police (Anti-Corruption Branch) though later he was released on bail. On receipt of this report, the applicant was suspended by the Collector, Jalor on the 31st of August 1954. It appears that thereafter the Deputy Superintendent of Police (Anti-Corruption Branch) asked for sanction of the Collector to prosecute the applicant. The Collector held a departmental enquiry immediately after the report of the Tehsildar reached him. This was in accordance with Circular No. F.1(6)18/ Home-I/53 dated the 24th of June 1953. According to this circular, a departmental enquiry was to be first held as expeditiously as possible. After such enquiry, only such cases were to be put in Court in which there was reasonable chance of conviction. This was ordered in order to give the head of the department a chance to take whatever action he deemed proper on the basis of the departmental enquiry even if the case did not result in conviction on some technical ground or the other. It seems that in view of this circular, the Collector made a departmental enquiry and came to the conclusion on the 19th of July 1955 that no case had been made out against the applicant. The Collector, therefore, reinstated the applicant and refused to sanction

prosecution.
This was in accordance with the circular of 1953 mentioned above. It seems, however, that thereafter the matter was taken up by the Anti-Corruption Officer, Jaipur and the Collector was asked for various reasons into which we need not go, to re-open the matter and hold a fresh departmental enquiry. Thereupon, the Collector framed a charge against the applicant on the 6th of July 1956 under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1950 and asked the applicant to give his explanation and to cross-examine witnesses and to produce defense. The present application was made by the applicant after this charge was served on him and his contention is that a fresh departmental enquiry under Rule 16 cannot be held against him when a similar enquiry was already held by the Collector Jalor previously, resulting in his exoneration. He, therefore, prays that the State, the Collector of Jalor and the Anti-Corruption Officer be prohibited from holding a fresh departmental enquiry.

3. The application has been opposed on behalf of the State. The facts, as we have said before, are not in dispute and have been narrated above. The contention on behalf of the State is that the then Collector, who held the departmental enquiry against the applicant, made certain irregularities inasmuch as he did not follow the procedure prescribed by R. 16 and did not examine certain witnesses. Therefore, it was open to the higher authorities (in this case the Government) to order a fresh departmental enquiry even after the exoneration of the applicant and his being reinstated. It is urged that a public servant holds office during the pleasure of the Governor and not during good behavior and so long as the State observes the restrictions under Article 311 of the Constitution, there is nothing to preclude it from ordering a fresh enquiry into the conduct of its servants when the previous enquiry was not full and complete. The question raised in this application is undoubtedly of great importance both to public servants and to the State which employs them and is a matter of first impression, for, we have not been able to find any authority one way or the other on this point. The contention on behalf of the applicant is that it is against fundamental principles of natural justice to hold such enquiries again and again after one enquiry has resulted in exoneration and that no such re-enquiry is contemplated under the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1950. On the other hand, it is submitted on behalf of the State that there is no law or rule which lays down that no further enquiry of this nature can be made and as such, as all public servants hold their office at the pleasure of the Governor, such re-enquiry at the instance of the master is

not barred.

4. Before we consider the point raised, we should like to make it clear that there is no dispute that the Collector who held the first departmental enquiry had complete authority to do so. The full power to appoint and dismiss public servants of the class to which the applicant belongs has been delegated to all Collectors by the rules. It is in this background that the point raised has to be considered.

5. There is no doubt that there is no provision corresponding to Section 11 of the Civil Procedure Code (res judicata), S. 403 of the Criminal Procedure Code (autrefois acquit or autrefois convict) or Article 20 of the Constitution in existence anywhere in the Service Rules; nor has any law or rule been pointed out which bars a second departmental enquiry after the first enquiry has resulted in favor of the public servant. We are also not unaware that it is open to the State to prosecute a person who had been found guilty in a departmental enquiry and given departmental punishment (vide *S. A. Venkataraman v. Union of India,*). [1] But the question that still falls for consideration is whether it is the intention of the Classification and Control Rules, under which this enquiry has been held, that a second departmental enquiry should follow a previous departmental enquiry in which a public servant has been exonerated.
It is true that a public servant like the applicant holds office during the pleasure of the Governor vide Article 310 of the Constitution. But| this matter was examined by this Court in *Union of India v. Askaran*[2] and it was pointed out there that Article 310 is subject to two restrictions. One of these restrictions is contained in Article 311 and the other in Article 309 which provides for framing rules. Reliance in that case was placed on the observations of their Lordships of the Privy Council in *B. Venkata Rao v. Secretary of State,* [3] where it was observed that Section 96-B of the Government of India Act contained a statutory and solemn assurance that the tenure of office though at pleasure will not be subject to capricious or arbitrary action but will be regulated by rule. It was pointed out in Askaran's case that Article 309 has the same effect as Section 96-B of the Government of India Act and there is a constitutional guarantee that the pleasure of the Governor provided in Article 310 shall be exercised according to law or rules framed under Article 309 and not arbitrarily or capriciously.

6. Accepting that as the correct exposition of the law as between the State and its employees, we have to see whether the State can order a fresh departmental enquiry after an earlier departmental enquiry has resulted in the exoneration of a public

servant. We have no hesitation in coming to the conclusion that in the absence of any specific rule in the Service Rules giving power to a higher authority to set aside an order exonerating a public servant in a departmental enquiry and ordering fresh enquiry, it is not open to a higher authority to order a fresh departmental enquiry ignoring the result of an earlier enquiry exonerating the public servant.

It was urged on behalf of the State that if this view is taken, it might result in great prejudice to the State inasmuch as the person holding the first enquiry might have held it in a very slipshod manner (as alleged in this case) or even dishonestly and the State would be helpless. We must say that we are not impressed by this argument for two reasons. In the first place, if a superior officer holds a departmental enquiry in a very slipshod manner or even dishonestly, the State can certainly take action against that superior officer and in an extreme case even dismiss him for his dishonesty in the departmental enquiry which he conducts. That would, in our opinion, be a salutary check which would prevent those holding departmental enquiries from acting in a slipshod manner or dishonestly. In the second place, if the case is one like the present, it would, in our opinion, be open to the State to prosecute a person like the applicant in a Court of law in spite of what a departmental officer might have decided in the departmental enquiry, for, a Court of law is not bound by the results of a departmental enquiry one way or the other. Therefore, the danger to the State is really not so great as has been submitted. On the other hand, if we were to hold that a second departmental enquiry could be ordered after the previous one has resulted in the exoneration of a public servant, the danger of harassment to the public servant would, in our opinion, be immense. If it were possible to ignore the result of an earlier departmental enquiry, then there will be nothing to prevent a superior officer, if he were so minded, to order a second or a third or a fourth or even a fifth departmental enquiry after the earlier ones had resulted in the exoneration of a public servant. We are not unmindful of the fact that such a thing is not likely to happen generally; but we cannot also overlook that it may. If for example, some higher authority is determined that a certain person should be dismissed, it may go on ordering one departmental enquiry after another till it can find someone who will do what it wishes. Therefore, of the two possible courses, we are of opinion that the one in which there is no second departmental enquiry after exoneration in the previous enquiry is the safer of the two.

7. Let us look at the spirit of the rules framed under Article 309 or its corresponding provision in the Government of India Act. These rules may be compendiously called Service Rules. In most of them, so far as we know, there is no provision for reviewing

an order of exoneration after a departmental enquiry. The rules have been in existence for many years and if there was a real danger of departmental enquiries resulting in dishonest exonerations or exonerations due to slipshod methods, some rule providing for a fresh departmental enquiry could have been framed. The very fact that the rules exist for such a long time and no such rule has apparently been framed, so far as we know, anywhere, shows that the intention was that there should be only one departmental enquiry against a public servant and if he is exonerated, that should be the end. The rules also provide for appeals where a public servant is punished after a departmental enquiry, but no rule anywhere, so far as we know, provides for a review by a higher authority of an order of exonertion of a public servant in a departmental enquiry. It seems to us, therefore, that it is not contemplated that the order of exoneration passed in a departmental enquiry should be reviewed. What the rules contemplate apparently is that if there is an order of exoneration, the matter should end there finally. In some of the rules, there is provision for enhancement vide rule No. 10 of the Punjab Subordinate Services Punishment and Appeal Rules and we have no doubt that if such a provision for enhancement did not exist, it would not be open to the higher authority to enhance the punishment in case it considered that the punishment was inadequate. Therefore, the more we consider the matter, the more we are satisfied that it was not the intention of the Service Rules that the exoneration of a public, servant in a departmental enquiry should be open to review in the same manner as the acquittal of an accused is open to appeal in the Criminal Procedure Code. As we have said already, if that was the intention, it could have been provided in the rules somewhere in India, considering that the rules have been in existence for such a long time. We, therefore, come to the conclusion that the "pleasure" mentioned in Article 310 has to be exercised according to law or rules framed under Article 309 or analogous law. If there is no rule or law which lays down that an order exonerating a public servant in a departmental enquiry is open to revision and a fresh enquiry ordered, it is not, in our opinion, open to the State to assume such a power on the ground that Article 310 provides the tenure of public service is at the pleasure of the President or the Governor or on the ground that the State is the master and the public servant is the employee and the master can do anything to his employee.

8. We have already mentioned that we have been unable to find any case taking the view which we have taken above. We have, however, been able to lay our hands on one case and would like to quote some observations from that though the facts of that case are not on all fours with the facts of the present case. In *Kanakchandra Bairagi v.*

Superintendent of Police, Sibsagar[4] the learned Judges made the following observation though they appear to be obiter for the purposes of the case before them:

> "There is considerable force in the contention of Mr. Sen that a second departmental proceeding may not be drawn up against any Government officer "

9. On a careful consideration, therefore, of the entire matter, we are of opinion that once a departmental enquiry is over and a public servant has been exonerated, no second departmental enquiry on the same facts can be ordered unless there is a specific provision for reviewing an order of exoneration of this kind in the Service Rules or any law to that effect.

10. It is faintly urged on behalf of the State that the first enquiry in this case was not a departmental enquiry or that in any case, many irregularities were committed in it and important witnesses were not examined. It is enough to say that the order of the Collector dated 19th July 1955 definitely says that it is made in a departmental enquiry. It is in accordance with the Circular of the Home Department, 1953 which we have mentioned above. Assuming that there were some irregularities in the conduct of the enquiry, it hardly lies in the mouth of the State, which was making this enquiry through its servants, to complain of it. For the rest, if the enquiring officer has left out important evidence and the State feels that he had not acted efficiently or honestly, it has got two remedies open to it. In the first place, it can make an example of such an enquiring officer so that others may do better. In the second place, it can even now, in a case of this kind, give sanction for the prosecution of the applicant and let the matter be tried out in a court of law. But we are of opinion that on principles of justice, equity and good conscience it is wrong in the absence of provision in the Service Rules to permit a second departmental enquiry on the exoneration of a public servant on an earlier enquiry of the same kind.

11. We, therefore, allow the application and order the opposite parties not to proceed with the second departmental enquiry which has started against the applicant on the basis of the charge dated 6th July 1956. The applicant will get his costs from the State.

Application allowed.

Cases Referred.

1. AIR 1954 SC 375
2. First Appeal No. 25 of 1954, D/d. 19-4-1957 (Raj)
3. AIR 1937 PC 31
4. AIR 1955 Ass 240 at p. 242