

PETITIONER:

A. K. K. NAMBIAR

Vs.

RESPONDENT:

UNION OF INDIA & ANR.

DATE OF JUDGMENT:

28/10/1969

BENCH:

RAY, A.N.

BENCH:

RAY, A.N.

SHAH, J.C.

SHELAT, J.M.

VAIDYIALINGAM, C.A.

HEGDE, K.S.

CITATION:

1970 AIR 652 1970 SCR (3) 121

1969 SCC (3) 864

CITATOR INFO :

F 1974 SC1957 (12)

RF 1991 SC1557 (21)

ACT:

All India Service (Appeal and Revision) Rules, 1955-Rule 7-Order of suspension of officer charged with criminal offence--Order is under P. 7(3) and not R. 7(1)-Mala fides--Proof of--Affidavits, verification of.

HEADNOTE:

The appellant was appointed to the Indian Police Service in 1935. In November 1956 he was posted in Andhra Pradesh as Inspector-General of Police and in August 1967 he was posted as Special Inspector-General of Police for revision of Police Standing Orders. In that year the Chief Minister of Andhra Pradesh ordered the Chief Secretary to make an enquiry with regard to certain allegations against the appellant. The Chief Secretary recommended that the matter be referred to the Vigilance Commissioner who advised that the matter be investigated by the Central Bureau of Investigation. Thereafter the said Bureau made an enquiry, considered the appellant's explanations and made a report. In July 1968 the Government of India, Ministry of Home Affairs placed the appellant under suspension. The appellant filed a writ petition in the High Court at Delhi and failing there filed an appeal in this Court. The appellant's contentions that fell for consideration were (i) that under sub-r. (1) of R. 7 of the All India Service (Appeal and Discipline) Rules, 1955 the order of suspension could be made only if disciplinary proceeding was initiated and the Government was satisfied that there should be an order; in the present case the order did not satisfy this condition and was therefore bad; (ii) that the Chief Minister of Andhra Pradesh was hostile to him and the investigation by the Central Bureau of Investigation was conducted by persons hostile to him; the Ministry of Home Affairs should not have relied on the report since the enquiry was initiated and conducted mala-fide.

HELD, : (i) The order in question had no reference to sub-r. (1) of R. 7, but was an order under R. 7(3) which states that a member of the service in respect of or against whom an investigation inquiry or trial is pending may, at the discretion of the Government under which he is serving be placed under suspension until the termination of all proceedings relating to the charge. The appellant, as appeared from the First Information Report against him stood charged with offences, under the Prevention of Corruption Act and the time of occurrence was the period 1960 to 1967. There was an investigation and the trial was awaiting relating to the criminal charge against the appellant. The order of suspension had to be read in the context of the entire case and the combination of circumstances. This order indicated that the Government applied its mind to the allegations, the enquiries and the circumstances of the case. The appellant had failed to establish that the Government acted mala fide. There was no allegation against any particular officer of the Government of India about being mala fide. The order of suspension, thus made under sub-r. (3) did not suffer from any vice of infringement of R. 7(1). [124 D-125 B]

(ii) The affidavits of the parties in the present case suffered from the mischief of lack of verification with the result that the affidavits should

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not be admissible in evidence. The importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations. In essence verification is required to enable the court to find out as to whether it will be safe to act on such affidavit evidence. [125 C-E]

The affidavit evidence assumed importance in the present case because of allegations of mala fide acts on the part of the respondents. The appellant did not name any person of the Union of India who acted in that manner and did not imply the Chief Minister as a party. In order to succeed on the proof of mala fides in relation to the order of suspension, the appellant had to prove either that the order of suspension was made mala fide or that the order was made for collateral purposes. The appellant had neither alleged nor established either of these features. [125 F-G]

The allegation of mala fide against the Central Bureau of Investigation did not arise for consideration because what was in question was not its report but the order of suspension which satisfied R. 7(3) and was in honest exercise of powers. [125 H]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1406 of 1969. Appeal from the judgment and order dated April 17, 1969 of the Delhi High Court in Civil Writ No. 611 of 1968.

The appellant appeared in person.

Jagadish Swarup, Solicitor-General, R. L. Mehta and R. N. Sachthey, for the respondents.

The Judgment of the Court was delivered by

Ray, J.-This appeal by certificate from the judgment of the High Court at Delhi challenges the order dated 5th July, 1968 placing the appellant under suspension.

The appellant canvassed two grounds : first, that the order of suspension was passed on -a report which was made mala fide, and, therefore, the order of suspension was bad;

secondly, the order of suspension was made under sub-rule (1) of Rule 7 of the All-India Service (Appeal and Discipline) Rules, 1955, and is, therefore, liable to be quashed.

The appellant was appointed to the Indian Police Service in the year 1935. He was posted as Inspector General of Police of the State of Andhra Pradesh, on 1 November, 1956. He was confirmed as Inspector General of Police, Andhra Pradesh in the year 1957. On 14 May, 1966, he reached the age of 55 years. He, however, continued to work as Inspector General of Police, Andhra Pradesh up to 1 August, 1967. He was then posted as Special Inspector General of Police for the revision of Police Standing Orders.

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Some time in the year 1967 the Chief Minister of Andhra Pradesh ordered that the Chief -Secretary should make an enquiry with regard to certain allegations against the appellant. The Chief Secretary recommended that the Vigilance Commissioner in the State of Andhra Pradesh might be requested to look into the matter. The Vigilance Commissioner advised that the enquiry should be conducted by an independent agency like the Central Bureau of Investigation. The Central Bureau of Investigation thereafter made an enquiry. The appellant was given allegations to answer. The appellant submitted explanation and was examined. The Central Bureau of Investigation made a report on the enquiry.

On 11 July, 1968 the Government of India, Ministry of Home Affairs made an order placing the appellant under suspension. The appellant alleged as follows. The Chief Minister of the State of Andhra Pradesh was inimical and hostile to the appellant since the time of the General Elections in the year 1967. The investigation by the Central Bureau of Investigation was conducted by persons who were hostile to the appellant. The Ministry of Home Affairs' Government of India, should not have relied on the report because the initiation and the conduct of the enquiry were motivated mala fide on the part of the Chief Minister of the State and other persons.

The other contention of the appellant was that under sub-rule (1) of Rule 7 of the All-India Service (Appeal and Discipline) Rules, 1955 the order of suspension could be made only if disciplinary proceeding was initiated and the Government was satisfied that there should be an order and in the present case the order did not satisfy the provisions of the rule, and therefore, the order is bad.

The pre-eminent question in this appeal is whether the order of suspension is in infraction of Rule 7. Rule 7 is as follows

"(1) If having regard to the nature of the charges and the circumstances in any case the Government which initiates any disciplinary proceeding is satisfied that it is necessary or desirable to place under suspension the member of the Service against whom such proceedings are started that Government may-

(a) if the member of the Service is serving under it pass an order placing him under suspension, or

(b) if the member of the Service is serving another Government, request that Government to place him under suspension, pending the conclusion of the inquiry and the passing of the final order in the case

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Provided that in cases where there is a difference of opinion between two State Governments the matter shall be referred to the Central Government whose decision thereon shall be final.

(2).....

(3) A member of the Service in respect of or against whom, an investigation, inquiry or trial relating to a criminal charge is pending may, at the discretion of the Government under which he is serving, be placed under suspension until the termination of all proceedings relating to that charge, if the charge is connected with his position as a Government servant or is likely to embarrass him in the discharge of his duties or involves moral turpitude".

Rule 7 sub-rule (1) contemplates suspension when disciplinary proceeding is initiated and the Government is satisfied that it is necessary to place a member of the Service under suspension. It was contended by the appellant that the order of suspension was made under sub-rule (1) in the present case without any disciplinary proceedings. The order does not have any reference to sub-rule (1) of Rule 7. The order recites first that there are 'serious allegations of corruption and malpractice against the appellant, secondly that the enquiry made by the Central Government revealed that there is a prima facie case and thirdly that the Government of India after considering the available material and having regard to the nature of the allegations against the appellant, the circumstances of the case is satisfied that it is necessary and desirable to place the appellant under suspension.

At the hearing of the appeal Mr. Solicitor General produced the correct copy of the First Information Report dated 17 August, 1967 under section 154 of the Code of Criminal Procedure. It will appear from the report that the appellant was charged with offences under the Prevention of Corruption Act, 1947 and the time of occurrence was the period 1960 to 1967.

Sub-rule (3) of Rule 7 states that a member of the Service in respect of, or against whom, an investigation, inquiry or trial relating to a criminal charge is pending may, at the discretion of the Government under which he is serving, be placed under suspension until the termination of all proceedings relating to that charge. The appellant contended that the- appellant was not suspended under sub-rule (3) of Rule 7. That is a contention. The facts are that there was an investigation and the trial is awaiting relating to a criminal charge against the appellant. The order of suspension has to be read in the context of the entire case and

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combination of circumstances. This order indicates that the Government applied its mind to the allegations, the enquiries and the circumstances of the case. The appellant has failed to establish that the Government acted mala fide. There is no allegation against any particular officer of the Government of India about acting mala fide. The order of suspension was made under subrule (3) and does not suffer from any vice of infringement of Rule 7.

The appellant made allegations against the Chief Minister of Andhra Pradesh and other persons some of whose names were disclosed and some of whose names were not disclosed. Neither the Chief Minister nor any other person was made a

party. The appellant filed an affidavit in support of the petition. Neither the petition nor the affidavit was verified. The affidavits which were filed in answer to the appellant's petition were also not verified. The reason for verification of affidavits are to enable the Court to find out which facts can be said to be proved on the affidavit evidence of, rival parties. Allegations may be true to knowledge or allegations may be true to information received from persons or allegations may be based on records. The importance of verification is to test the genuineness and authenticity of allegations and also to make the deponent responsible for allegations. In essence verification is required to enable the Court to find out as to whether 'it will be safe to act on such affidavit evidence. In the present case, the affidavits of all the parties suffer from the mischief of lack of proper verification with the result that the affidavits should not be admissible in evidence. The affidavit evidence assumes importance in the present case because of allegations of mala fide acts on the part of the respondents. The appellant alleged that the Union of India made the order of suspension because of the pressure of the Chief Minister of the State of Andhra Pradesh. The appellant, however, did not name any person of the Union of India who acted in that manner and did not implied the Chief Minister as a party. In order to succeed on the proof of mala fides in relation to the order of suspension, the appellant has to prove either that the order of suspension was made mala fide or that the order was made for collateral purposes. In the present case, the appellant neither alleged nor established either of these features. The appellant contended that the report of the Central Bureau of Investigation was made mala fide. The appellant appeared before the investigation authorities. We are not concerned with the correctness and the propriety of the report. We have only to examine whether the order of suspension was warranted by the rule and also whether it was in honest exercise of powers. The order of suspension satisfied both the tests in the present case.

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In view of the fact that the criminal case is pending, it is desirable not to express any opinion on the merits and demerits of the charges as also the rival contentions of the parties because such an opinion may cause prejudice.

The appellant raised a contention as to the vires of the Delhi Special Police Establishment Act, 1946 and the validity of the investigation. In view of the fact that sanction for the trial is pending pursuant to the investigation under the First Information Report dated 17 August, 1967 the appellant did not want a decision on this point in this appeal because the appellant would raise that contention in the criminal case. We have, therefore, left open the contention as to the Delhi Special Police Establishment Act, 1946 to enable the appellant to agitate that contention, if so advised, in the criminal trial.

The appeal, therefore, fails and is dismissed. In view of the fact that there was no order as to costs in the High Court, we are of opinion that each party should bear its costs in this Court.

G.C.

Appeal dismissed.

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