

(1955) 05 CAL CK 0026
In the Calcutta High Court

Case No : Civil Revision Case No. 3578 of 1954

Amiya Prosad Das Gupta

APPELLANT

Vs

Director of Procurement and Supply and Another

RESPONDENT

Date of Decision : 18-05-1955

Acts Referred:

Civil Services (Classification, Control and Appeal) Rules — Rule 55
Constitution of India, 1950 — Article 311(2)

Citation : AIR 1956 Cal 114 : 59 CWN 959 : 59 CWN 929

Hon'ble Judges : Sinha, J

Bench : Single Bench

Advocate : Anil Kumar Das Gupta, for the Appellant; Jagneswar Mazumdar and D.N. Basu, for the Respondent

Judgement

Sinha, J.—The facts in this case are shortly as follows:

2. The petitioner was appointed as Inspector-Assessor on 1-7-1951 by the Director of Procurement and Supply. On 25-8-1952 he was served with a charge-sheet. In that charge-sheet, there were six charges, one of which was that he had refused to make over charge of the Procurement godown to another officer, although he was tender orders of transfer.

It was said that he had refused to make over charge on the plea that the relevant order of the authorities concerned had not, been received by him, or shown to him. The next charge was that he left station without prior permission of the higher authorities. There were other charges, for example, that he had not properly exerted himself in the discharge of his duties that he left for Calcutta without taking leave and that he was in the habit of leaving station frequently without prior permission.

He was directed to explain why he should not be dismissed, discharged or removed from service or otherwise suitably punished. The charge-sheet was signed by the Regional Controller of Procurement and Supply, Region III,

Calcutta, and the petitioner was called upon to submit his explanation to the Deputy A. R. C. P. Murshidabad. He was also asked to intimate to the said officer as to whether he would like to be heard in person.

The petitioner gave his explanation and asked that he should have an opportunity of being heard in person. Thereafter, a rather extraordinary course was adopted by the authorities concerned. The Deputy A. R. C. P., Murshidabad held an enquiry ex parte, and gave a report on 17-10-1952 finding the petitioner guilty of the charges and recommending that he should not be retained in Government service. The report was then forwarded to the R. C. P.

It is said that the R. C. P. thereupon "found the delinquent guilty of all the charges". It is not quite clear whether he gave notice to the delinquent before he arrived at this decision. He however appears to have directed the A. R. C. P. to intimate to the delinquent that he should appear before the R. C. P., but this notice was never served upon the delinquent.

The report of the A. R. C. P., with the note of the R. C. P., was then forwarded to the D. P. S. On 13-12-1952 a notice was issued to the petitioner by the Assistant Director (Personnel) stating that an enquiry had been held against the petitioner and that it had been completed.

A copy of the report of enquiry was enclosed with the notice, together with the intimation that the Director of Procurement and Supply had provisionally decided that a penalty of removal from service be imposed upon the petitioner. The petitioner was called upon to show cause against the imposition of the proposed penalty, within 7 days of the receipt of the notice.

The petitioner gave an explanation and it appears that the D. P. S., directed the Deputy A. R. C. P., Murshidabad, to examine certain persons. The Deputy A. R. C. P., examined a peon and then gave a further report. In order to appreciate this action on the part of the D. P. S., it is necessary to consider the nature of the report, which was given by the Deputy A. R. C. P., on 17-10-1952.

In this report, which was the result of an enquiry held behind the back of the petitioner, reference is made to the fact that the C. I. found three letters lying unattended to at Khoera Procurement godown, which he had visited on 21-7-52 and that one of these letters contained the transfer order, in the absence of which the petitioner had refused to make over charge.

The petitioner had said in his explanation that he left station with the permission of the C. I., given verbally. In the report it was said that the C. I., had not supported this version. No formal evidence of the C. I., was ever taken, nor was the petitioner allowed to cross-examine him. The most striking fact however is contained in the concluding portion of the report, which runs as follows:

"Regarding para 6.

His explanation is not to the point. That he is in the habit of leaving station

frequently without permission is evident from the above two specific cases. Apart from the above, the statement of the peon attached to Khorla P. G. at that time is enclosed herewith in original, which will speak for itself.

On enquiry the statement made by the P. G. peon was found to be correct. But in view of the present proceeding no action was taken separately for leaving station by the I/A on the occasion referred to in the statement.

In my opinion, such indisciplined, irresponsible, careless and lazy officer should not be retained in Government service."

3. It is admitted that the peon was not called to give evidence at the enquiry, nor did the petitioner have any opportunity of cross-examining him. The D. P. S., himself must have found some difficulty in accepting the report, for he gave a direction as follows:

"The evidence of this peon is most material. The peon should be examined in his presence and the officer allowed to cross-examine him. If possible, some of the daily passengers through whom he used to carry on communication should be examined. Evidence on this point should be taken to substantiate charge No. 6. R. C. P. III will submit further report by the end of this month."

4. Thereafter, the Deputy A. R. C. P., Murshidabad called the peon in the presence of the petitioner and took his evidence. The petitioner, however, refused to cross-examine him on the ground that the whole proceeding was irregular. The further evidence was forwarded to the D. P. S.

5. Finally, the Director of Procurement and Supply passed his order dated 1-4-1953 and directed that as the petitioner had been found guilty of leaving station without leave, he was removed from Government service, with effect from the date on which the order was served upon him.

6. This Rule was issued on 29-11-1954 calling upon the opposite parties to show cause why a writ in the nature of certiorari should not issue and why the order dated 18-4-1953 should not be quashed and/or otherwise dealt with according to law, and/or why the opposite parties should not be directed not to give effect to the said order or why such further or other order or orders should not be made as to this court may seem fit and proper.

7. An affidavit in opposition has been filed on behalf of the opposite parties and it is stated that the proceedings taken were in accordance with law. It is not disputed that the original enquiry by the A. R. C. P. was ex parte. It is further admitted that this report was submitted to the R. C. P., who "also found the delinquent guilty of all the charges".

It is said that the petitioner was further allowed by the R. C. P. to appear in person before him on 3-11-1952, but the notice itself had never been served, although it is said that the petitioner was himself to be blamed for non-service inasmuch as he had left station again without permission. It is next said that

when the matter came up before the D. P. S. as a result of this show-cause notice, he realised that the original enquiry was not in order and directed that the peon should be called and the petitioner allowed to cross-examine him.

It was argued by the learned Advocate appearing on behalf of the opposite parties, that this order amounted to re-opening the entire proceedings "de novo". I regret to say I cannot agree. As will appear from the facts set out above, the B. P. S. did realise that the petitioner was not confronted with the peon but he never thought of re-opening the entire proceedings.

As a matter of fact, when the D. P. S. finally decided the matter, he relied not only on the reports of the Deputy R. C. P. but also of the R. C. P. This appears from the affidavit-in-opposition itself, paragraph 8. It is not disputed that the report of the R. C. P. was given at a time prior to the supplemental enquiry. The D. P. S. did not order that the entire enquiry should be made de novo. He did not direct that the C. I. should be called.

8. The position, therefore, seems to be as follows: under Rule 55 of the Civil Services Classification (Control and Appeal) Rules, the petitioner was entitled under the circumstances of this case, to an enquiry to be held in his presence and to be heard in person. At such an enquiry, evidence had to be taken, not only on behalf of the opposite parties but on behalf of the petitioner, and he was entitled to cross-examine all the witnesses, upon whose evidence the opposite parties intended to rely.

This is also the procedure which is warranted by virtue of Article 311(2) of the Constitution. In this particular case, this procedure was not at all followed. Firstly, the enquiry pursuant to the charge-sheet was ex parte, and the enquiring officer relied on evidence of persons not given at the enquiry and without confronting the petitioner with these persons and without giving him an opportunity of cross-examining them.

The show-cause notice issued by the D. P. S. is really in the nature of a second notice, that is issued in such proceedings. The notice proceeded on the footing that the charge had already been brought home and the petitioner was called upon to show cause against the infliction of the punishment. It is true, that the D. P. S. asked the enquiring officer to take further evidence in the presence of the petitioner but, that, in my opinion has not rectified the defects in the procedure followed.

I could understand the D. P. S. directing the entire proceedings to be taken de novo. In that event, the petitioner would have no further cause for complaint. But the further enquiry was only for examining the peon and any other passenger who could depose on the subject. The petitioner was not going to be confronted with all the persons upon whose evidence the enquiry report relied. For example, the C. I. was not called.

I think that the petitioner was justified in refusing to cross-examine one single

witness, on the ground that the whole proceeding was irregular. Had he acquiesced in the cross-examination of the peon, it might have been said that he had waived the irregularity in the proceedings.

Further, I have already mentioned above that admittedly the D. P. S. in passing his final order, relied not only on the reports of the Deputy A. R. C. P. but that of the R. C. P. According to the affidavit-in-opposition, the R. C. P. had looked into the original report of the Deputy A. R. C. P. and had found the delinquent guilty of all charges.

The further report was not placed before the R. C. P. and he did not reconsider his original report in view of the further proceedings. If the D. P. S. wished to regularise the proceeding, he should have rejected the report of the Deputy A. R. C. P. and the R. C. P. and directed the Deputy A. R. C. P. or some other officer to re-open the enquiry and proceed from the beginning.

Then, after the enquiring officer had completed his enquiry and made a report, a second show-cause notice about the proposed punishment should have been issued after considering the fresh report and the recommendations contained therein. What actually happened was that the D. P. S. while actually dealing with the show-cause notice as to punishment, realised some of the defects of the original enquiry and thought that if the evidence of the peon was taken in the presence of the petitioner, that would rectify all the defects and make the proceedings quite regular.

He failed to realise that the report of the Deputy A. R. C. P. and the R. C. P. were based upon a form of enquiry which was wholly illegal and not an enquiry at all. He did not jettison them altogether but allowed such reports to colour his ultimate decision. This did not regularise the matter.

9. It is clear, therefore, that the entire procedure followed is arbitrary and not in accordance with the law, and that the enquiry, the reports & the order of dismissal cannot be supported.

10. The Rule must accordingly be made absolute, and a writ in the nature of certiorari must be issued quashing the order dated 18-4-1954, removing the petitioner from service and a writ in the nature of mandamus must be issued directing the opposite parties to forbear from giving effect to it.

11. The petitioner accordingly must be restored to the position as if the said order has not been made at all. This, however, will not prevent the opposite parties, from continuing the departmental proceedings if they wish to do so, from the stage when the charge-sheet was served upon the petitioner.

12. There will be no order as to costs.