

(1968) 11 GAU CK 0004
In the Gauhati High Court
Case No : Civil Rule No. 41 of 1968

Anil Kumar Das

APPELLANT

Vs

Senior Superintendent of Post Offices, Kamrup Division and
Others

RESPONDENT

Date of Decision : 19-11-1968

Acts Referred:

Central Civil Services (Conduct) Rules, 1964 — Rule 11, 14, 14(1), 14(11), 14(20)
Constitution of India, 1950 — Article 226

Citation : AIR 1969 Guw 99

Hon'ble Judges : P.K. Goswami, J; M.C. Pathak, J

Bench : Division Bench

Advocate : J.P. Bhattacharjee and S.N. Medhi, for the Appellant; G.K. Talukdar, Sr. Govt. Advocate, for the Respondent

Final Decision : Allowed

Judgement

P.K. Goswami, J.—This application under Article 226 of the Constitution of India is directed against an order dated 17th April 1967, passed by the Senior Superintendent of Post Offices, Kamrup Division, imposing on the Petitioner the penalty of compulsory retirement from service and also against an order dated 23rd October, 1967, passed by the Director of Postal Services, Assam Circle, rejecting his appeal and confirming the aforesaid punishment.

2. The Petitioner was appointed as a clerk in the Postal Department, Assam Circle," in the year 1948. At the material time, he was officiating as Assistant Post-master of the Gauhati Post Office. He was placed under suspension by an order dated 18th October 1966 with immediate effect, He received on 1st November 1966 a memorandum dated 31st October 1966 enclosing a statement of articles of charge, a statement of the imputations of misconduct and misbehaviour of each article of charge and a list of documents by which, and a list of witnesses by whom, the articles of charge were proposed to be sustained. The charge against the Petitioner was that he made a false claim of

reimbursement amounting to Rs. 126, being the expenditure incurred by him in the treatment of his mother. The allegation was that the Petitioner's contention that his ailing mother was treated at Gauhati under Dr. A. B. Mahmood, Assistant Surgeon I incharge of West Gauhati State Dispensary from 23rd April 1966 to 1st May 1966, was false and that the patient was not at all treated at Gauhati and that she died on 1st May 1966 at her village home at Kshudra Chenikuchi. It was further alleged that the Petitioner made false claim for reimbursement of the medical expenses in respect of his ailing mother in violation of Rule 3 of the Service (Conduct) Rules, 1964. The Petitioner submitted his written statement of defence on 9th November 1966 denying the allegations.

The Petitioner contended that the physician in the "Essential Certificate granted by him in respect of the treatment of his mother wrongly dropped the date 28th April, 1966 and included 2nd May 1966 as one of the dates of administering injection to the patient due to oversight and hurry. The Petitioner further contended that at the time when he was asked to take payment in respect of the above medical expenses, he could detect the aforesaid mistakes and pointed out the same to the authority and that he did not receive the payment due to the said mistakes. The Petitioner submitted that there was no dishonesty in making the claim. The Petitioner also contended that the written statement alleged to be made before Shri M. N. Sarma, Officiating Assistant Superintendent of Post Offices at Gauhati on 1st October 1966, was not at all voluntary and that the said statement was made by the Petitioner under threat and coercion of Shri Sarma. The Petitioner also received the second show cause notice together with a copy of the enquiry report and he submitted his representation dated 8th April 1967 before the Senior Superintendent of Post Offices against the proposed punishment. Thereafter he received on 1st May 1967 the impugned order dated 17th April 1967 imposing the penalty of Compulsory retirement from service with immediate effect. The Petitioner filed an appeal before the Director of Postal Services, Assam Circle, who rejected the same by his order dated 23rd October, 1967.

3. The main argument of the Petitioner is that there was a violation of the principles of natural justice in the course of the departmental enquiry and, in particular, a clear violation of Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The material provisions, which are relied upon in this connection by either side, are the following:

14. Procedure for imposing major penalties. (1) No order imposing any of the penalties specified in Clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be in the manner provided in this rule and Rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act.

(2) ****

(3) Where it is proposed to hold an inquiry against a Government servant under

this Rule and Rule 15, the disciplinary authority shall draw up or cause to be drawn up.

(i) the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain.

(a) a statement of all relevant facts including any admission or confession made by the Government servant;

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which each article of charges is proposed to be sustained and shall require the Government servant to submit, within such time as may be specified, a written statement of his defence and to state whether he desires to be heard in person". under Sub-rule (2), the disciplinary authority in this case appointed an enquiry officer to conduct the enquiry and also it had drawn up the imputations etc., as required under Sub-rule (3). The Petitioner also submitted his written statement under Sub -rule (4). under Sub-rule 5 (b), even if no Written" statement of defence is submitted, file disciplinary authority may itself inquire into the articles of charge or may appoint, under Sub-rule (2), an inquiring authority for the purpose. under Sub-rule 5 (c), the disciplinary authority may appoint a Government at or a legal practitioner to be known the Presenting Officer" to present on its behalf the case in support of the articles of charge. The following Sub-rules may be and.

(7) The Government servant shall appear person before the inquiring authority on day and at such time within ten workdays from the date of receipt by him articles of charge and the statement of the imputations of misconduct or misbehavior, as the inquiring authority may, by a notice in writing, specify in this behalf, or within such further time, not exceeding ten days, as the inquiring authority may allow.

(9) If the Government servant who has not admitted any of the articles of charge in his written statement of defence or has not submitted any written statement of defence, appears before the inquiring authority, such authority shall ask him whether he is guilty or has any defence to make and if he pleads guilty to any of the articles of charge, the inquiring authority shall record the plea, sign the record-and obtain the signature of the Government servant there on.

(10) The inquiring authority shall return a finding of guilt in respect of those articles of charge to which the Government servant pleads guilty.

(11) The inquiring authority shall, if the Government servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government servant may, for the purpose of preparing his defence-

(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in Sub-rule (3);

(ii) submit a list of witnesses to be examined on his behalf;

Note. ****

(iii) give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow, for the discovery or production of any documents which are in the possession of Government but not mentioned in the list referred to in Sub-rule (3).

(14) On the date fixed for the inquiry, the oral and documentary evidence by which the articles of charge are proposed to be proved shall be produced by or on behalf of the disciplinary authority. The witnesses shall be examined by or on behalf of the Presenting Officer, and may be cross-examined by or on behalf of the Government servant. The Presenting Officer shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without the leave of inquiring authority. The inquiring authority may also put such questions to the witnesses as it thinks fit.

(16) When the case for the disciplinary authority is closed, the Government servant shall be required to state his defence, orally or in writing, as he may prefer. If the defence is made orally, it shall be recorded and the Government servant shall be required to sign the record. In either case, a copy of the statement of defence shall be given to the Presenting Officer, if any, appointee.

(17) The evidence on behalf of the Government produced in the course of the inquiry;

(18) The inquiring authority may, after the Government servant closes his case, and shall, if the Government servant has not examined himself, generally question him on the circumstances appearing against him in the evidence for the purpose of enabling the Government servant to explain any circumstances appearing in the evidence against him.

(19) The inquiring authority may, after the completion of the production of evidence hear the Presenting Officer, if any, appointed, and the Government servant, or permit them to file written briefs of their respective case, if they so desire.

(20) If the Government servant to whom a copy of the articles of charge has

been delivered, does not submit the written statement of defence on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply with the provisions" of this rule, the inquiring authority may hold the inquiry ex parte.

(23) (i) After the conclusion of the inquiry, a report shall be prepared and it shall contain-

(a) the articles of charge and the statement of the imputations of misconduct or misbehavior;

(b) the findings on each article of charge It is seen in this case that there had been the defence of the Government servant in respect of each article of charge;

(c) an assessment of the evidence in respect of each article of charge;

the findings on each article of charge and the reasons" there for,

Explanation. If in the opinion a prior enquiry before the charges were if in the opinion of the framed against the Petitioner. There were inquiry "establish any Cerent from the original articles of the charge, it may record its finding on such article of charge:

Provided that the findings on such article of charge shall not be recorded unless the Government servant has either admitted the facts on which such article of charge is M. N. Sarma, which were utilised during the enquiry. Both oral and documentary evidence were produced before the enquiring officer. Sub-rule (11), therefore, is immediately attracted and the enquiring officer ought to have adjourned the case on the date the Petitioner appeared and refused to which such article or charge and ought to Harge and ought to have based or has had a reasonable opportunity him a right of inspection of the defending himself against such article documents which were sought to be used or charge.

(ii) The inquiring authority, where it is not itself the disciplinary authority, shall forward to the disciplinary authority records of inquiry which shall include

(a) the report prepared by it under Clause (i);

(b) the written statement of defence, if any, submitted by the Government servant;

(c) the oral and documentary evidence (17) The evidence on behalf of the Government produced in the course of the inquiry;

(d) written briefs, if any, filed by the Presenting Officer or the Government servant or both during the course of the inquiry; and

(e) the orders, if any, made by the disciplinary authority and the inquiring authority in regard to the inquiry.

4. From a perusal of the above provisions under Rule 14, which are material for

the present purpose, it appears that an elaborate enquiry is indicated in, conformity with what is known as the rules of natural justice. If the procedure laid down under Rule 14 is complied with, there can be no complaint regarding violation of the principles of natural justice. The precise question in this case is whether Rule 14 has been complied with and if not, whether the Petitioner has been prejudiced by the non-compliance. Rule 14 (1) goes to show that the enquiry envisaged under this rule has to be made "as far as may be in the manner, provided in this rule and Rule 15". The expression "as far as may be" may admit of some variation but not if such a variation leads to the prejudice of the Government servant or results in an ineffective representation of his case before the authority. It is complained in this case that the hearing was conducted on the very day the Government servant appeared and Sub-rule (11) has been given" a complete go-by. Sub-rule (11), mentioned above, provides a right of inspection of the documents mentioned in Sub-rule (3), which at that stage only provided for furnishing a list to the Government servant.

There is an obligation under Sub-rule (11) that the enquiring authority shall adjourn the case to a later date not exceeding thirty days after recording an order that the Government servant may for the purpose of preparing his defence inspect the documents. Government servant shall then be produced.(d) written briefs, if any Tie Government servant may examine himself in his own behalf if he so prefers. The witnesses produced by the Government servant :-shall then be examined and shall be liable to cross-examination, re-examination and examination by the inquiring authority according to the provisions applicable to the witnesses for the disciplinary authority. referred to in the course of the enquiry Without this, it cannot be said that the petitioner had a reasonable opportunity as envisaged under Rule 14. The very fact that the inquiring officer cannot conclude the" enquiry on the date the Government servant does not appear and even in such a case" he has to adjourn the case as required under Sub-rule (11) clearly establishes that Sub- rule (11) is a mandatory provision and its violation in not offering the right of inspection to the Government servant is a serious infirmity, fatal to the entire proceedings.

5. Having perused the records, which are produced in this Court by the Department, we find that there is no order-sheet showing the progress of the enquiry from day to day. The procedure of enquiry, as laid down under these rules, does warrant a maintenance of an order-sheet showing the various orders passed from time to time. In absence of an order-sheet it is difficult to know whether at the various stages the inquiring officer or the disciplinary authority had followed the procedure without prejudicing any of the rights of the Government servant. The elaborate procedure, which is laid down, is a great safeguard against any arbitrariness or injustice that a Government servant may be required to complain against. An enquiry of the kind contemplated under these rules, affecting the security of a Government servant in his service, is not merely ah empty formality. These rights, envisaged under the rules, are substantial and must be recognised as such, and any violation of these rights

prejudicially affecting the defence of a Government servant, must be guarded against. We may incidentally notice in this instant case that the Government servant declined to receive? the reimbursement which he had claimed earlier owing to certain mistakes which he perhaps detected, as stated by him in paragraph 7 of his application. The same is not Controverted in the counter affidavit of the Respondent No. 1 (vide paragraph 7). It also does not appear that this aspect of the matter was considered by the disciplinary throaty.

6. Be that as it may, we are satisfied there was a violation of the principles natural justice in not complying with the requirement of Sub-rule (11) . of Rule 14, has prejudiced the Government serine his defence. We do not agree with learned Senior Government Advocate that this Sub-rule refers only to an ex parte enquiry. This Sub-rule clearly envisages two eventualities; namely (1) when the Govern-ment servant fails to appear, and secondly, "lifter appearing, he refuses or omits to plead guilty to the charge, the question of his right of inspection arises under both the situations. It cannot be interpreted to refer only a case in which the Government servant has not appeared and the inquiring authority had to conduct the enquiry in his absence. On the other hand, there is a particular Sub-rule, namely Sub-rule (20), with to ex parte enquiry, and Sub-rule (11) be given a go-by even in such an ex enquiry. We have, therefore, no hesitation in quashing the impugned orders this case.

7. The application is accordingly allow-order of compulsory retirement of the Petitioner is quashed and the Petitioner is ordered to be restored to his post. The Rule is made absolute, but we make no, order as to costs.

M.G. Pathak, J.

8. I agree.