
(1970) 11 MP CK 0013
In the Madhya Pradesh High Court
Case No : M.P. No. 137 of 1969

Chandrika Prasad

APPELLANT

Vs

Union of India and others

RESPONDENT

Date of Decision : 13-11-1970

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1971) J LJ 155 : (1971) MPLJ 116

Hon'ble Judges : Bishambhar Dayal, C.J; S.B. Sen, J

Bench : Division Bench

Advocate : J.S. Verma, for the Appellant; K.K. Dube, Govt. Advocate and M.V. Tamaskar, Dy. Govt. Advocate, for Respondents Nos. 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sen, J.

Chandrika Prasad Tiwari, the Petitioner, a postal employee was posted at Sidhi from April, 1964 to March, 1968. By an order dated 26th May, 1966 the Superintendent of Post Offices, V. P. Division, Rewa placed him under suspension with immediate effect on the ground that a disciplinary proceeding was contemplated against him. Two charge sheets respectively dated 11th July, 1966 and 6th February, 1967 were framed and issued to him proposing to hold an enquiry against him under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The Petitioner denied the allegations in the charge sheets and said that they were false. He also submitted a written statement. N. D. Vaishnav, the then Superintendent of Post Offices, V. P. Division, Rewa, was appointed Enquiry Officer. He submitted his reports to the Superintendent of Post Offices, after holding an enquiry. On receipt of the reports the Superintendent of Post Offices issued Show cause notices to the Petitioner in the usual course. The Petitioner was drawing a salary of Rs. 150 per month at the time of the show cause notices and the penalty suggested in the notices was reduction to the lower stage at Rs. 146 p. m. in the time scale of pay for a period

of one year. Ultimately after getting the reply, the penalties that remained after appeal were:

(1) The next increment at the stage of Rs. 155 falling on the date as may be due has been withheld for six months.

(2) Reduction in pay of Rs. 146 p. m. for a period of six months.

The period of Petitioner's suspension from 25-5-1966 to 25-3-1968 shall be treated as spent on duty only for the purpose of leave and pension and the pay etc., allowed for that period are only equal to the subsistence allowance already drawn. The last part of the order was made under Fundamental Rule 54.

The Petitioner has filed this petition under Article 226 of the Constitution praying that the charges framed not being proved, no penalty could be imposed on the basis of certain irregularities found during the enquiry. It was further contended that the punishment given is in violation of the principles of natural justice and Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. No opportunity was given to show cause against the order relating to the period of suspension.

As regards the contention that the Petitioner has not been found guilty of the charges, it cannot be accepted. In order to understand what were the charges and to see whether he was found not guilty of those charges, we may just quote, in short, the statement of articles of charge against the Petitioner:

(1) While functioning as a clerk, Sidhi C.D. from 4-4-1963 to 25-5-1966 the said C. P. Tiwari indulged in serious malpractices in irregularly earning late fee thus failing to maintain absolute integrity and devotion to duty required to a Government servant under Rule 3 (1) of the Central Services (Conduct) Rules, 1964.

(2) That the said C. P. Tiwari while functioning as Signaller, combined sub-post office, Sidhi during March and April, 1966 committed gross misconduct and failed to maintain absolute integrity inasmuch as he charged late fee on State telegrams No. SC- 2 coded 12.00 hours dated 13-4-1966, State telegram No. SC-2 coded 11.50 hours dated 22-3-1966 and State telegram No. SC-4 coded 11.50 hours dated 24-3-1966 which he received during the working hours by ante-timing the telegrams with a view to obtain pecuniary advantage for himself and did obtain for himself pecuniary advantage of Rs. 2 by claiming from the Department the late fee amounts in respect of the aforesaid telegrams Nos. SC-2 dated 22-3-1966 and SC-4 dated 24-3-1966 and he thereby contravened Rule 3 of the Central Services (Conduct) Rules, 1964.

Under charge No. 1 there has been admissions on behalf of the Petitioner that there was non-writing of the log books, non-writing of reasons for delay on the back of messages and non-writing of time of booking and late fee indication. He, however, gave an explanation which was not accepted because it was not convincing. We are, however, not concerned whether they were justified in

accepting or not accepting. Admittedly Rule 175 of the Post and Telegraph Manual, Vol. XI read with Rule 37 require noting of time and reasons for the delay. If they are not done in the manner directed in the regulations, it is definitely a case of non-devotion to duty. This we are mentioning as the learned Counsel for the Petitioner was contending that there was no charge regarding the devotion to duty. This is clearly mentioned in the charge we have already quoted.

As regards the second charge the items admitted by him were that he failed to write the class in the receipt, failed to write reasons for the delay and failed to transmit telegrams as per class precedence. These are clearly in breach of para. 180 of the Post and Telegraph Manual, Vol. XI. We may also mention here that the contention of the Petitioner that Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 was not strictly adhered to is also of no substance in view of the fact that all the details on which he has been punished were mentioned in the statement of charges. It may be that the charges have not been mentioned serially, yet the details have been distinctly given. There is no case of confusion and the Petitioner has understood what the charges were and has replied to them categorically. Therefore, the contention cannot be accepted.

The order disallowing his full pay during the period of suspension has been challenged. It has been contended that it is against Rule 54 of the Fundamental Rules. In order to appreciate the argument the said rule may be quoted below:

(1) When a Government servant who has been dismissed, removed or suspended is reinstated; the authority competent to order the reinstatement shall consider and make a specific order-

(a) Regarding the pay and allowance to be paid to the Government servant for the period of his absence from duty; and

(b) Whether or not the said period shall be treated as a period spent on duty.

(2) Where the authority mentioned in Sub-rule (1) is of opinion that the Government servant has been fully exonerated or in the case of suspension, that it was wholly unjustified, the Government servant shall be given the full pay and allowances to which he would have been entitled, had he not been dismissed, removed or suspended, as the case may be.

(3) In other cases, the Government servant shall be given such proportion of such pay and allowances as such competent allowances are admissible:

Provided that the payment of allowances under Clause (2) or Clause (3) shall be subject to all other conditions under which such allowances are admissible.

Provided further that such proportion of such pay and allowances shall not be less than the subsistence and other allowances admissible under Rule 53.

(4) In a case falling under Clause (2), the period of absence from duty shall be treated as period spent on duty for all purposes.

(5) In a case falling under Clause (3), the period of absence from duty shall not be treated as a period spent on duty, unless such competent authority specifically directs that it shall be so treated for any specified purpose:

Provided that if the Government servant so desired, such authority may direct that the period of absence from duty shall be converted into leave of any kind due and admissible to the Government servant.

It has been submitted that the Petitioner was entitled to show cause notice in respect of the order of not giving him full pay during the suspension period. He relies on the decision of the Supreme Court in *M. Gopalkrishna Naidu v. The State of Madhya Pradesh* 1968 M P L J 49 : A I R 1968 8 C 240 in this connection. In particular he bases his argument on the following observations:

In our view Fundamental Rule 54 contemplates a duty to act in accordance with the basic concept of justice and fairplay. The authority therefore had to afford a reasonable opportunity to the Appellant to show cause why Clauses (3) and (5) should not be applied and that having not been done the order must be held to be invalid.

In the above mentioned Supreme Court decision the Government servant was exonerated of all charges and Clause (2) could be applicable but in the present case he has been found guilty of some charges and was not exonerated. Therefore, there was no question of suspension order being wholly unjustified. In this case there was no choice but to apply Clauses (3) and (5). It is clearly distinguishable from the case decided by their Lordships of the Supreme Court.

We, therefore, feel that the order of the authority is not against the principles of natural justice or in any way illegal and we see no reason to interfere. The petition is, therefore, dismissed. There will be no order as to costs. The outstanding amount of the security deposit shall be refunded to the Petitioner.