

(1974) 03 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 61 of 1971

Hans Raj Dhir

APPELLANT

Vs

State of Himachal Pradesh etc.

RESPONDENT

Date of Decision : 15-03-1974

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14(15)
Constitution of India, 1950 — Article 226, 227
Punjab Consolidation of Holdings Act, 1936 — Section 42

Citation : (1974) 3 ILR HP 296

Hon'ble Judges : C.R. Thakur, J

Bench : Single Bench

Advocate : S. Malhotra, for the Appellant; B. Sita Ram, General and Hari Krishan, for the Respondent

Judgement

Chet Ram Thakur, J.—By this writ petition under Articles 226 and 227 of the Constitution of India, the Petitioner has prayed for quashing of the impugned order, Annexure P, whereby his services as Clerk in the Consolidation Department were terminated on 3-2-1971.

2. The Petitioner was a clerk in the Consolidation Department in the erstwhile State of Punjab and was posted at Hamirpur. Consequent to the re-organisation of the State of Punjab, the Petitioner was allocated to the Union Territory of Himachal Pradesh. After the transfer of District Kangra of which Hamirpur was a tehsil, to the Union territory of Himachal Pradesh, Shri I.D. Kaushesh was appointed as Consolidation Officer at Hamirpur. The Consolidation Officer, according to the averments of the Petitioner was not having good relations with him and, therefore, in order to get rid of him he wrote to the Director on 3-8-1968. The Consolidation Officer also entered adverse remarks in his character roll. On a report received from the Consolidation Officer, Hamirpur, the Petitioner was charge-sheeted and was placed under suspension, vide order dated 28-4-1969. The charges served upon the Petitioner were--that the Petitioner lost seven files of appeal u/s 42 of the Punjab Consolidation of

Holdings Act, that no substantial work had been done by them in the office since 1-11-1966 upto date despite repeated directions issued from his superiors from time to time, and that on 3-2-1969 he fought with and beat Shri Virender Kumar, Sub-Inspector, Consolidation of Holdings, in the office. According to the Petitioner the charges were baseless and had been got manipulated by Respondent No. 3, who was intimate friend of Respondent No. 4, who bore a grudge against him. The Petitioner represented to the Respondent No. 2 that the statement of charges and the statement showing the allegations and the list of documents and witnesses were incomplete. On 14-5-1969 he submitted a representation to the Director of Consolidation, Himachal Pradesh, that since his relations with Respondent No. 4 were strained, therefore, the officers were biased against him and that Respondent No. 4 was wholly responsible for getting the enquiry set in motion. He also made a request that he should be supplied copies of the statements of the witnesses, whose statements were recorded behind his back and further in respect of charge No. 2 he should be shown the directions issued by the superiors from time to time. In respect of charge No. 1, he also maintained that he should be permitted to see the receipt register to ascertain as to whether any of the files u/s 42 of the Punjab Consolidation of Holdings Act was received by him or not and also asked for the particulars of the seven allegedly lost files. This was essential because he could not give an effective reply without the essential documents. He had also by this letter, dated 15-5-1969, prayed for supply of the statements of Sarvshri Kuldip Narain, Amar Singh and Bhag Singh and copy of report of the Consolidation Officer, Hamirpur, but he was given no reply despite several reminders issued thereafter. Out of the 14 documents, copies of which were demanded by the Petitioner, only 7 were allowed to be inspected by him. So on 15-9-1969 the Petitioner lodged a protest in writing that complete record had not been shown to him. On 29-8-1969 he was informed to submit the explanation and accordingly he submitted his explanation in September, 1969. On 5-11-1969 the Director of Consolidation ordered enquiry through Respondent No. 3, who had by then succeeded Respondent No. 4 at Hamirpur as Consolidation Officer. According to the Petitioner during the enquiry Respondent No. 3, examined some witnesses whose names were not mentioned in the list supplied to him along with] the charge-sheet. The Petitioner made a claim for the grant of time also but this was not heeded to. He also prayed for supply of croppies of some documents but the same were also not supplied. The Inquiry Officer concluded the recording of the statements of the prosecution on 3-8-1970 and the Petitioner was asked to give the list of defence witnesses and documents. However, no statement of the Petitioner was recorded by the Inquiry Officer after the close of the evidence nor the Petitioner was given any opportunity to controvert the allegations appearing against him. The Petitioner was ordered to summon his defence for 7-8-1970 but on his request that the time was inadequate he was allowed time till 19-8-1970, on which date the Petitioner gave a list of documents which he wanted to summon. On receipt of this list the Respondent No. 3 got flared up and stated that he would communicate the decision to the Petitioner in due course and also

directed him to appear on 22-8-1970. On that date the Inquiry Officer returned the list. Under such circumstances, he had to send the list of documents under registered cover but the same was returned with the remark that addressee had refused to received the same. The envelope is Annexure M. Thereafter he was called upon to give in writing his note by way of argument and he was granted 15 days" time for that purpose on 1-9-1970. The Petitioner applied for 15 days" leave but during that period he was taken ill and as such he sent written application for leave for three weeks and further prayed for three weeks" time for submission of note by way of argument. The Respondent No. 3 without intimating the Petitioner either about the rejection of leave or rejection about his request for extension of time recorded ex-parte proceedings against him. The Inquiry Officer on 22-9-1970 completed his report and submitted it to the Director. The Inquiry Officer had held him guilty of two charges, i.e. (i) he was found guilty of having lost files and (ii) for having given beating to Shri Virender Kumar. On a show cause notice being issued, the Petitioner represented that he had not been afforded adequate and real opportunity to defend himself and that the enquiry deserved to re-opened. On this the Petitioner was ordered to appear before the Respondent No. 2 on 16-1-1971 at Hamirpur. During this meeting the Respondent No. 2 used harsh words against the Petitioner and further asked him to apologies. A statement to that effect was prepared by the Respondent No. 2 but since it did not represent the true state of affairs the Petitioner refused to sign the same. This further infuriated the Respondent No. 2, who on 3-2-1971 passed the impugned order, Annexure P. It is in these circumstances that the Petitioner maintained that the order is not in conformity with the Central Civil Services (C.C.A.) Rules as also in violation of the principles of natural justice, and as such liable to be quashed.

3. The Respondents 1 and 2 denied these allegations of breach of principles of natural justice as also the violation of the Central Civil Services (C.C.A.) Rules. Consequently, the following two points emerge for consideration:

(1) Whether the enquiry conducted is in violation of the principles of natural justice and Central Civil Service (C.C.A.) Rules; and

(2) Whether the Respondents 2 to 4 were biased against him or not.

4. Learned Counsel for the Petitioner has invited my attention to Annexures C, D-1, D-2, D-3, D-4, E and F. Annexure C is an order placing the Petitioner under suspension consequent to a report received from the Settlement Officer, Consolidation of Holdings, Hamirpur. Annexure D-I is a memorandum whereby the Petitioner was informed that it was proposed to hold an enquiry against him for the charges mentioned in Annexure D-III and that he was required to give his explanation to the charges within 10 days. Annexure D-IV is a list of documents and witnesses which is to the following effect:

1. Statement of Shri Kuldip Narain, Inspector, Consolidation of Holdings.

2. Statement of Shri Amar Singh, Camp Clerk.

3. Statement of Shri Bhag Singh, Peon.

4. Report of Settlement Officer, Consolidation of Holdings, Hamirpur.

By Annexure E, the Petitioner made a request for supply of as many as 13 documents to enable him to submit his explanation to the charges served upon him. Annexure F is a reply, dated 22nd August, 1969 from the Settlement Officer, whereby the Petitioner was informed that he was allowed to see the documents mentioned therein in his office on any working day. The documents are seven in number. It is admitted by the Respondents 1 and 2 in their reply to para 9 that the Petitioner was supplied only the documents as mentioned in Annexure D-IV. It would, therefore, appear from this admission of the Respondents that the names of Sarvshri Amar Chand, I.D. Kaushesh, Bihari Lal were not disclosed nor any mention of the Dak Behi was made in the list, nor the copies of the statements of these witnesses, recorded at the preliminary hearing were made available to the Petitioner at his request although their statements have been made use of by the Inquiry Officer, as is evident from Annexure O in respect of the charge of having lost seven files u/s 42 of the Punjab Consolidation of Holdings Act. In respect of charge No. 3 for having administered beating to Shri Virender Kumar, it would appear from Annexure D-4 that the name of Shri Virender Kumar was not mentioned in the list of witnesses nor the statement recorded at the preliminary enquiry was made available to the Petitioner. Under Rule 14(3)(iii)(b) where it is proposed to hold an enquiry against the Government servant the disciplinary authority shall draw a list of documents by which and a list of witnesses by whom the articles of charges are proposed to be sustained. But according to the own admission of the Respondents, as already stated above, the names of the witnesses who were examined at the enquiry were not mentioned in the list supplied to the Petitioner along with the statement of charges served upon him. It would also appear from the perusal of the enquiry file-E-38/69 CH-Integ. Sr. No. Part-III that the Petitioner had objected at the time of recording of the statement of Shri Amar Chand that he had made a reference and also based the statement on some record and which could not be relied upon, in the absence of any copy being supplied to him but this submission of his was also repelled.

5. Again from page 27 of this file it is evident that the Petitioner submitted his objections before the Inquiry Officer on 20-6-1970 to the effect that the name of Shri Amar Chand had not been included in the list of witnesses issued by the disciplinary authority with the charge-sheet and, if at all, his examination was considered necessary the copy of the original statement relied upon by the disciplinary authority may be given to him before the examination. He had also prayed that he may be given three clear days after the receipt of the copy of his statement to cross-examine the witness. This submission was also rejected.

6. Again, on the same day a similar objection was raised by the Petitioner about the examination of Shri Bihari Lal, whose name was also not mentioned in the list. Similar objection was raised with regard to the examination of Shri I.D.

Kaushesh. The Petitioner also asserted in para 13 of his petition that during the course of enquiry the Inquiry Officer examined as many as seven witnesses, namely Sarvshri Amar Singh, Kuidip Narain, Bhag Singh, Virender Kumar, Amar Chand, Bihari Lal and I.D. Kaushesh. The Petitioner protested that Sarvshri Virender Kumar, Amar Chand, Bihari Lal and I.D. Kaushesh could not be examined by the Inquiry Officer as their names did not find mention in the list of witnesses supplied to the Petitioner. The Inquiry Officer did not pay any heed to the protest of the Petitioner and proceeded with the enquiry. The Petitioner could not effectively cross-examine Sarvshri Virender Kumar, Amar Chand, Bihari Lal and I.D. Kaushesh for, at no stage, he was aware of this that the aforesaid persons will be examined as witnesses by the Inquiry Officer. The Respondents in sub-para (c) of para 19 of their reply denied this fact of having not included the names of these witnesses in the list of witnesses and they placed reliance on Annexure RD, which is a copy of application, dated 5-12-1969 made by the Petitioner wherein he had complained that he had not been communicated the order regarding the appointment of an Inquiry Officer and that he may be issued a copy of the said order to enable him to appear before the Inquiry Officer. An order is made on this by Shri P.B. Sharma on the same date that a copy of the same may be supplied to him. Therefore, this is not the correct reply to the assertion of the Petitioner that the names of the witnesses were not given in the list supplied to him along with the charge sheet.

7. Learned Counsel for the Petitioner has also invited my attention to pages 37, 39 and 41 of the enquiry report wherein the Petitioner had taken objection to the introduction of the evidence of the peon and the Dak Behi as the same were not relied upon in the list of witnesses. I have perused the same and I am satisfied that the Petitioner did take objection to the introduction of the evidence of peon and the Dak Behi on the ground of their not being mentioned in the list accompanying the charges.

8. Again, attention is invited to pages 23 and 25 of the file whereby the Petitioner had requested for an opportunity for re-cross-examination of Amar Singh and Bihari Lal. I find that the Inquiry Officer rejected the prayer of the Petitioner for re-cross-examination of Amar Singh but he passed no order on the other objection application with regard to the examination of Bihari Lal.

9. On the other hand Shri Hari Krishan Advocate for the Respondents invited my attention to the various annexures accompanying the return. Annexure R-13 is a copy of memorandum, dated 26-7-1969 from the Director, Consolidation of Holdings to the Settlement Officer (Consolidation), Himachal Pradesh whereby the former asked the latter to show to Shri Hans Raj the seven documents mentioned therein and have his explanation. It is admitted by the Respondent that out of 13 documents only 7 were shown to the Petitioner whereas 6 documents were withheld on the opinion of the Law Department as it was not in the public interest to disclose those documents at that stage. But it has not been revealed as to how those documents were privileged so as to say that their

disclosure was against the public interest. Annexure 14, however, is the receipt of Shri Hans Raj evidencing the fact of inspection of 7 documents referred to in Annexure R-13. Annexure RA is a copy of an application of Shri Hans Raj, dated 6-1-1970. By this application he had requested for supply of attested copies of the statements of Sarvshri Kuldip Narain, Inspector, Amar Singh, Camp Clerk and Bhag Singh, peon. The copies of these documents were supplied to him on 19-1-1970. Similarly on his application, dated 7-1-1970 copies of the report of Shri Mehar Singh, A.C.O. and Shri Virender Kumar, S.I. were made available to him. Vide Annexure RB on the application of Shri Hans Raj dated 31-1-1970 the Inquiry Officer supplied the report of Shri I.D. Kaushesh, Settlement Officer, dated 3-2-1969 to Shri Hans Raj on 3-2-1970. Again, on 17-7-1970 the Inquiry Officer supplied copies of the statements of the witnesses recorded on 21-4-1970 and 13-6-1970 to the Petitioner. From the perusal of all the annexure, both of the Petitioner as also of the Respondents, to which my attention has been drawn, one thing is clear that the copy of the detailed duty list of the clerk to A.C.O. which was approved by the Settlement Officer with effect from 1-11-1966 was not made available to the Petitioner nor the copy of the complaint filed by Shri Virender Kumar was made available to him. The Consolidation Officer has observed that there was hardly any question of the duty list with effect from 1-11-1966 to have been prepared and got signed from the accused. The question of preparing such a list would have arisen had there been any official provided to the office of A.C.O. But there is nothing in the written statement about having not prepared any duty list. On the contrary, it is stated that out of the 13 documents 7 were shown to the Petitioner and the other 6 documents, the copies of which were required by the Petitioner, were withheld from inspection or from furnishing copies thereof on the advice of the Law Department that their disclosure at that stage was detrimental to the public interest. Therefore, there was no such denial about the preparation of the duty list. It would, therefore, follow that a duty list had actually been prepared but the same was withheld and was not made available to the Petitioner to effectively cross-examine the Consolidation Officer, who had stated that the files were handed over or received by Shri Hans Raj. However, nothing turns out on the non-supply of the copy of the complaint because there is no mention of the same in the report of the Inquiry Officer. It cannot be denied that the names of Sarvshri Amar Singh, I.D. Kaushesh, Bihari Lal and Virender Kumar were given in the list of witnesses attached to the charge-sheet. They were, however, examined by the Inquiry Officer on 21-4-1970 under Sub-rule (15) of Rule 14 of the C.C.S. (CC and Appeal) Rules, 1965. There is no bar to the production of witnesses other than those included in the list given to the delinquent along with charge-sheet. But what the rule contemplates is that if the Inquiry Officer may in its discretion allow additional evidence or may itself call for the new evidence or recall and re-examine any witness then in such case the delinquent shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the enquiry for three clear days before the production of such new evidence, exclusive of the day of adjournment and the day to which

the inquiry is adjourned. The inquiring authority shall give the Government servant an opportunity of inspecting such documents before they are taken on record. In the instant case there can be no denial that the Petitioner did obtain the copies of the statements of those witnesses whose names were not included in the list and who were examined as additional evidence by the presenting Officer before the Inquiry Officer and this is clear from Annexures RA and RB. But the breach is only in the sense that the Inquiry Officer did not grant the requisite time to the delinquent. He had made written requests, as already stated, and which requests of his appear at pages 27, 19 and 31 of the enquiry file. The Inquiry Officer turned down the requests of the delinquent on the ground that Sarvshri Amar Chand, Bihari Lal and I.D. Kaushesh were not produced as additional witnesses but were produced to prove the documents accompanying the charge-sheet, which is totally wrong. The Petitioner was denied a reasonable opportunity to effectively cross-examine the witnesses who appeared against him and, therefore, he was handicapped in his defence. In *State of Madhya Pradesh v. Chintaman Sadashiva Waishampayan* AIR 1961 S.C. 1623 in such a situation it had been held by their Lordship that the departmental enquiries should observe rules of natural justice and that if they are fairly and properly conducted the decisions reached by the enquiry officers on the merits are not open to be challenged on the ground that the procedure followed was not exactly in accordance with that which is observed in Courts of Law. Rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the opportunity of cross-examining the witness examined by that party, and that no materials should be relied on against him without his being given an opportunity of explaining them. The right of cross-examining the witnesses who give evidence is a very valuable right and if it appears that effective exercise of this right has been prevented by the enquiry officer by not giving to the officer relevant documents to which he is entitled that inevitably would be that the enquiry had not been held in accordance with rules of natural justice. In the instant already pointed out above, the Petitioner was not afforded adequate and reasonable opportunity to effectively cross-examine the witnesses which was his legitimate right and, therefore, he was handicapped in his defence by not allowing opportunity to the Petitioner as required under Sub-rule (15) of Rule 14. The enquiry was vitiated for non-compliance of the rules as also the principles of natural justice which require that nobody should be condemned unheard or without affording a reasonable and adequate opportunity for his defence or for cross-examining the witnesses. In the instant case not only there has been non-compliance with the principles of natural justice but there has been a clear breach of the rules, as stated above. Therefore, this enquiry which is vitiated cannot be upheld.

10. Further the Petitioner had prayed for 15 days" time for his defence but during this period he was taken ill and had further prayed for three weeks" more time, but the Inquiry Officer repelled that prayer. The Inquiry Officer, it appears,

did not proceed in a dispassionate and impartial manner but he was influenced by some extraneous considerations. Therefore, it can safely be concluded that the enquiry was not fair and impartial and the Inquiry Officer was biased. He did not grant any opportunity for a further period of three weeks for his defence despite a genuine request on the ground of illness, and he elected to proceed ex-parte against the delinquent, and this enquiry, in my opinion, is nothing short than a farce and the termination of services of the Petitioner on the basis of this enquiry cannot, therefore, be upheld. The director of Consolidation, as is evident from the assertion of the Petitioner, had expressed his adverse opinion against the Petitioner more than once prior to his passing the impugned order and that was also sufficient to show that the Director was also biased against the Petitioner and this order was not a result of an impartial and dispassionate enquiry. There had been infraction of rules and principles of natural justice and, therefore, the impugned order must be quashed. Consequently, I allow this petition, quash the order, Annexure P, and the Petitioner shall be deemed to have continued in service right from the date the impugned order was passed. He shall also be entitled to all consequential benefits arising as a result of the quashing of the order. The Respondents shall also bear the costs, assessed at Rs. 100/-.