

(1982) 08 SHI CK 0005

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 60 of 1976

H.L. Sethi

APPELLANT

Vs

The Municipal Corporation and Others

RESPONDENT

Date of Decision : 02-08-1982

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14(11),
14(15), 14(3), 14(4)
Constitution of India, 1950 — Article 226, 227

Citation : (1982) 11 ILR HP 573

Hon'ble Judges : V.P. Gupta, J

Bench : Single Bench

Advocate : A.K. Goel, for the Appellant; Chander Sheikher, for the Respondent

Final Decision : Allowed

Judgement

V.P. Gupta, J.—This petition under Articles 226 and 227 of the Constitution of India has been filed by the Petitioner with, a prayer to quash the order of his dismissal passed by Respondent No. 1 on August 10, 1973.

2. The Petitioner was serving as a Sanitary Inspector in the Municipal Corporation, Simla, in the year, 1970. He was placed under suspension with effect from June 17, 1970 (F.N.) by the Executive Officer, Municipal Corporation, Simla, (Annexure A). He was charge-sheeted by the Administrator, Municipal Corporation, vide memorandum, dated September 3, 1970, (Annexure B). Alongwith the memorandum he was served with the statement of articles of charges, statement of articles of allegations in support of the charges, list of witnesses and list of documents (Annexures B-1 and B-2). The Petitioner was required to file a reply to the charge-sheet and the Petitioner requested that the documents may be made available to him for inspection vide application, dated October 12, 1970, (Annexure E). The Petitioner was informed on November 26, 1970, that relevant records had already been inspected by him and that he should submit his reply to the charge-sheet within seven days from the receipt of

the memorandum. The Petitioner again submitted an application on December 2, 1970, requesting that he may be allowed to inspect more records before filing the reply and to re-consider their earlier letter, dated November 26, 1970. It appears that enquiry proceedings started against the Petitioner although the Petitioner had been complaining that he was not allowed to inspect the various records. During the enquiry proceedings, the Petitioner was allowed to inspect some of the records as are mentioned in enquiry proceedings, dated May 27, 1971, of the Inquiry Officer (Annexure I).

3. The enquiry against the Petitioner was entrusted to Shri D.S. Kutleharia, Tehsildar, Municipal Corporation, Simla, vide order of the Administrator, dated August 13, 1972, (Annexure P). The Inquiry Officer submitted his report, dated December 30, 1972, (Annexure R-3) and found that charges Nos. 1, 2, 4 and 5 were proved against the Petitioner. After a show cause notice the Petitioner was dismissed from service vide order, dated August 10, 1973, (Annexure X). The Petitioner appealed but his appeal was also rejected on December 4, 1975, (Annexure-Z) In these circumstances the Petitioner has filed this writ petition.

4. Shri A.K. Goel, learned Counsel for the Petitioner contended that the Petitioner had not been given ample opportunity to present himself before the Inquiry Officer during the enquiry proceedings and that ex parte proceedings were ordered against him. The contention of the learned Counsel was that no notice of the date of the enquiry was ever served upon the Petitioner and that no ex parte order could be passed. The second contention was that the Petitioner was not supplied with the various documents relied upon by the Inquiry Officer and that the Inquiry Officer could not rely upon these documents as the same were not mentioned in the list of documents supplied to the Petitioner along with the charge-sheet. The third contention was that the charge-sheet, dated September 3, 1970, was without jurisdiction in so much so that Shri Anang Pal was Administrator till September 1, 1970, only. The fourth contention was that Shri Kutleharia (Inquiry Officer) had a bias against the Petitioner because the Petitioner had filed a complaint against him. The fifth contention was that the orders of dismissal are not speaking orders.

5. Shri Chander Sheikher learned, counsel for the Respondents contended that the Petitioner had been duly served and the order of ex parte proceedings against the Petitioner was justified, that the orders of dismissal are legal and valid and that Shri Kutleharia had no bias against the Petitioner. Shri Anang Pal being Administrator had the jurisdiction to issue the charge-sheet.

6. The enquiry file was also produced in the Court by the learned Counsel for the Respondents.

7. I have considered the contentions of the learned Counsel for the parties and have also gone through the records of the case.

8. Originally Shri H.R. Malhotra was appointed as an Inquiry Officer by order, dated February 4, 1971, and Shri Chaman Lal, Chief Sanitary Inspector, was

appointed as a Presenting Officer.

9. The Petitioner was reinstated in service vide office order, dated June 12, 1972, but it was made clear that the departmental enquiry regarding charges/allegations framed against him as mentioned in the charge-sheet would be continued and completed early.

10. Vide office order, dated August 19, 1972, the enquiry was entrusted to Shri D.S. Kutleharía, Tehsildar, Municipal Corporation, and he was appointed to act as an Inquiry Officer.

11. Shri D.S. Kutleharía proceeded with the enquiry proceedings. On August 28, 1972, when Shri Chaman Lal Presenting Officer was present the next date for the enquiry was fixed as September 8, 1972.

12. On September 8, 1972, the enquiry proceedings were postponed to October 26, 1972, and the Presenting Officer as well as the Petitioner were to be informed of this date. There are two copies of notices on the enquiry file which were issued by the Inquiry Officer informing the parties that the enquiry in terms of the charge-sheet would be conducted on October 26, 1972, at 11.00 A.M. in the Municipal Corporation Office. The Petitioner was required to attend the enquiry on the appointed date and time, and it was further mentioned that if he failed to attend without sufficient and reasonable cause the case would proceed ex-parte. Copy of the notice was sent to Shri Chaman Lal, Presenting Officer who was further directed to attend the enquiry duly prepared with all material documents relied upon on the appointed date and time alongwith witnesses to charges No. 1 and 2 of the charge-sheet.

13. At page 255 of the enquiry file is the copy of the notice sent to Shri Chaman Lal and it was duly received by him on October 11, 1972. On page 126 of the enquiry file there is another notice but this was not received by any person.

14. The Petitioner's grievance is that he was not served with any notice. The original notice was addressed to Petitioner and the copy was sent to Shri Chaman Lal, Presenting Officer. Only two notices are on record of the enquiry file and there is nothing to show that the Petitioner was ever served with any notice and any intimation was given to him regarding the enquiry proceedings to be held on October 26, 1972. The learned Counsel for the Respondents took time to search, the notices served upon the Petitioner and to place them on record. The learned Counsel for the Respondents, however, frankly conceded that no other notice was available on the enquiry proceedings file or in the office of the Respondents proving that the Petitioner had been duly served. An affidavit, dated April 29, 1982, of Shri D.S. Kutleharía, Tehsildar (Inquiry Officer) was filed by the Respondents' counsel. In this affidavit Shri Kutleharía has only stated that he passed, the orders regarding ex-parte proceedings after personal satisfaction that Shri H.L. Sethi had been duly served. The relevant paras of his affidavit are as follows:

3. That thereafter I had issued letter to Shri H.L. Sethi as well as to Shri Chaman Lal, Presenting Officer intimating that the enquiry against Shri H.L. Sethi will be conducted by me on 26-10-1972. These letters are at page No. 126 and page No. 255 of the enquiry file. These letters were sent C/o M.O.H. Simla i.e. Corporation Medical Officer.

4. That thereafter the enquiry was conducted by me on 26-10-1972 and I had passed order which is at page No. 250 on the enquiry file. In that order I had written it is 11.00 A.M. already. Shri Chaman Lal, Presenting Officer is present. Shri H.L. Sethi not present in spite of service of notice. Await for some time. Thereafter the same day at 1.35 P.M. I had passed the following order:

"26-10-1972, 1.35 P.M. Shri Sethi has not turned up. Proceedings be commenced. Shri Sita Ram, Ashok Kumar Chandok witnesses present, their statement recorded, the Presenting Officer wants to produce more witnesses, to come up on 31-10-1972. He will bring witnesses alongwith him".

Announced.

The above orders have been passed by me after my personal satisfaction that Shri H.L. Sethi had been duly served.

The aforesaid affidavit does not at all prove that Shri Kutleharia had any personal knowledge about the service of the notice upon the Petitioner. He only gathers this on the basis of two orders passed on October 26, 1972. The Petitioner has filed a counter affidavit to the effect that he was never served with any notices for October 26, 1972. The Petitioner also mentioned in paras 12 and 19(i) of the petition that he was not served with the notices. These paras have not been specifically denied in the return filed by the Respondents.

15. In these circumstances it appears that the inquiry Officer presumed that the notices which had been served upon Shri Chaman Lal on October 11, 1972, (on which only the initials of Shri Chaman Lal appear) was received by the Petitioner. Under this mistake of fact the Inquiry Officer seems to have passed the first order at 11.00 A.M. on October 26, 1972, and the second order at 1.30 P.M. on October 26, 1972, by which the ex-parte proceedings were started against the Petitioner.

16. The Inquiry Officer recorded ex-parte evidence on October 26, 1972, and thereafter fixed the enquiry proceedings for October 31, 1972, but it appears that on October 31, 1972, no proceedings were taken and the case was taken up on November 21, 1972, when the same was adjourned to November 25, 1972, for the remaining evidence of the prosecution. On November 25, 1972, the prosecution evidence was recorded and the Inquiry Officer submitted his report, dated December 30, 1972.

17. The Petitioner did not appear on October 26, 1972, or any subsequent date and he was not present at the time when the ex-parte evidence was recorded on October 26, 1972, and November 25, 1972. As discussed above, the Petitioner

had not been duly served for October 26, 1972, therefore, order regarding ex-parte proceedings against him is bad. Thus the evidence recorded against the Petitioner on or after October 26, 1972, could not be used by the Inquiry Officer against the Petitioner. The procedure adopted by the Inquiry Officer is against the principles of natural justice and cannot be allowed to stand.

18. The enquiry report further shows that the Inquiry Officer relied upon the documents, Exhibits PW 1/43 (a report by M.O.H., dated 9-6-1970), PW 3/1 (handing over of charge by Petitioner on 17-6-1970), PW 3/2 (receipt of the charge of cash on 18-6-1970) and PW 4/1 (a statement by six witnesses stating that they had done their life insurance through the Petitioner).

19. The list of documents (Annexure B-2) supplied to the Petitioner along with charge-sheet does not mention these documents. A list of all the documents and witnesses by which each article of charges is proposed to be sustained is to be given to the Petitioner under Rule 14(4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965, (hereinafter called the Rules of 1965), which reads as follows:

(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.

20. It has been held in *Tirlok Nath v. Union of India and Ors.* 1967 S.L.R. 759:

Again the copies of the documents been furnished to the Appellant he might, after perusing them, will have exercised his right under the rule and asked for an oral inquiry to be held. Therefore, in our view the failure of the Inquiry Officer to furnish the Appellant with copies of the documents such as the first information report and the statements recorded at the Shidipura house and during the investigation must be held to have caused prejudice to the Appellant in making his defence at the inquiry. The inquiry held, must, in these circumstances, be regarded as one in violation not only of Rule 55 but also of Article 311(2). Accordingly we quash the order of removal of the Appellant from service passed by the Chief Commissioner of Delhi.

Thus the enquiry against the Petitioner is liable to be quashed on the grounds of non-compliance of Rule 14(4) of the Rules of 1965.

21. Rule 14(11) of the rules of 1965 reads as follows:

"(II) 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.-If the Government servant applies orally or in writing for the supply of copies of the statements of witnesses mentioned in the list referred to in Sub-rule (3), the inquiring authority shall furnish him with such copies as early as possible and in any case not later than three days before the commencement of the examination of the witnesses on behalf of the disciplinary authority.

(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 documents which are in the possession of Government but not mentioned in the list referred to in Sub-rule (3).

Note.-The Government servant shall indicate the relevance of the documents required by him to be discovered or produced by the Government.

22. There is no order recorded by the Inquiry Officer that I the Petitioner may for purposes of preparing his defence inspect I the documents, submit a list of witnesses and give a notice within 10 days as are mentioned in Clauses (i), (ii) and (iii) of Rule 14(11). The compliance with this provision of the rule is not merely a formality but is a mandatory provision to afford sufficient opportunity to the delinquent officer to disprove the charges levelled against him. Not giving such an opportunity to the delinquent officer will amount to denial of justice to him and it is against the well established principles of natural justice.

23. The Petitioner had further asked for the inspection and the supply of the documents as is mentioned in Annexures S, T and W. There is nothing to show that the Petitioner was allowed the copies of the documents demanded by him or was allowed the inspection of these records. This again is a denial of a fair and just opportunity to the Petitioner. The enquiry file also shows that the statement of Shri Ashok Kumar Chandok (P.W. 2) was recorded on October 26, 1972. The name of this witness is not mentioned in the list of witnesses supplied to the Petitioner along with the charge-sheet. Rule 14(15) of the Rules of 1965 provides that the inquiring authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Government servant or may itself call for new evidence or re-call and re-examine any witness and in such case the Government servant 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. The inquiring authority shall also give the Government servant an opportunity of inspecting such documents before they are taken on record and the inquiring

authority may also allow the Government servant to produce new evidence, if it is of the opinion that the production of such evidence is necessary, in the interests of justice.

24. A bare reading of this rule shows that no new evidence (oral or documentary) can be taken on record by the inquiring authority without giving sufficient opportunity to the delinquent officer to meet that evidence. In the present case although the proceedings were ordered to be ex-parte still if the Inquiry Officer wanted to take additional evidence then he had to give a fresh notice to the Petitioner about this new evidence. It is just possible that the evidence, i.e. documents and witnesses which are named in the list, are not considered of any weight by the delinquent officer and he may ignore the evidence of these witnesses and the documents and be under a genuine belief that this evidence is insufficient to prove the charges levelled against him. But if new evidence is sought to be adduced whether] oral or documentary then the delinquent officer although he might have been proceeded ex-parte should be given a fresh notice of the proposed new evidence so that he may get an opportunity of meeting this new evidence against him. Not giving such an opportunity to the Petitioner even in ex-parte proceedings is a clear violation of the principles of natural justice as also Rule 14(15) of the Rules of 1965. A similar view was taken in a Division Bench judgment L.P.A. No. 38 of 1975, (Sukh Ram v. State of Himachal Pradesh and Ors.), decided on 24th May, 1982.

25. Thus the first two contentions of the learned Counsel for the Petitioner have great force and have to be accepted. The order of dismissal is liable to be set aside on these grounds alone.

26. As far as the jurisdiction point is concerned, I was not convinced by the contentions of the learned Counsel for the Petitioner that Shri Anang Pal, Administrator, had no authority to issue the charge-sheet on September 3, 1970. The Corporation was constituted, but the members of Corporation were to take oath of affirmation after September 8, 1970, as is clear from the notification, dated September 8, 1970 (Annexure R-2).

27. The fourth contention of the learned Counsel for the Petitioner is also without force because Shri D.S. Kutleharia cannot be expected to be biased against the Petitioner simply for the reason that the Petitioner made a complaint against Shri D.S. Kutleharia, on July 7, 1972, (Annexure O). Similarly, I find that the orders of dismissal are speaking and reasoned orders. Hence the fifth contention is also without force.

28. As a result of the aforesaid discussion the order of dismissal of the Petitioner is quashed and the writ petition is accepted.

29. No order as to costs.