

(1962) 09 P&H CK 0009
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 6D of 1962

K.G. Pillai

APPELLANT

Vs

Comptroller and Auditor General of India and Another

RESPONDENT

Date of Decision : 26-09-1962

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 15(10)
Central Civil Services (Conduct) Rules, 1955 — Rule 4A
Constitution of India, 1950 — Article 19(1), 226, 309, 311(2)

Citation : AIR 1963 P&H 390 : (1962) 2 LLJ 595

Hon'ble Judges : P.D. Sharma, J

Bench : Single Bench

Advocate : M.K. Ramamurthi, Pushpa Kapila and Anil Kumar, for the Appellant;
S.N. Shankar, for the Respondent

Final Decision : Allowed

Judgement

P.D. Sharma, J.—This writ petition under Article 226 of the Constitution of India has arisen out of the following facts:

2. K.G. Pillai petitioner started his career as an Upper Division Clerk in the office of the Comptroller, Vindhya Pradesh, Rewa, on 1st September, 1953. As a result of the re-organisation of the States in India, he was transferred to the office of the Accountant General, Madhya Pradesh, Gwalior, in the same capacity in the year 1957. He continued to discharge his duties as such to the satisfaction of all concerned till November, 1959, when he was allowed to cross his efficiency bar. Thereafter the Deputy Accountant General, Madhya Pradesh, Gwalior, on the 5th March, 1960, wrote him a letter that the Department intended initiating disciplinary proceedings against him under the Central Civil Services (Classification, Control and Appeal) Rules, 1957. The charges on which he was to be tried with the statement of allegations were duly served on him. These form annexurs "1" to the petition. The charges were to the effect that he did not comply with the posting orders issued to him by the competent authority and

that he absented himself from duty without leave from the 11th of February, 1960, forenoon.

He filed his replies to the charges as required by the Rules and also attending the proceedings before Shri V. S. Bhardwaj, Deputy Accountant General, Madhya Pradesh, who had been appointed as the Inquiring Authority by the Accountant General, who was the Disciplinary Authority in the case. The Inquiring Authority in due course submitted his report and sometime later informed the petitioner that the Accountant General had come to the conclusion that the penalty of removal from service as specified in Rule 13 (vi) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, should be imposed on him, and asked him to show cause against the proposed order. The petitioner along with the notice was also furnished with a copy of the report and findings of the Inquiring Authority in the matter for his information. He was, however, not supplied any copy of the observations made by the Accountant General on the report of the Inquiring Authority. He filed his replies to the said notice and was also granted a personal hearing by the Accountant General.

He was subsequently informed of an order pasted by the Accountant General on 2nd November, 1960, terminating his services from that date. This order has been impugned in the present proceedings on the grounds that the Inquiring Authority by reason of Rule 15 (7) was required to give findings on all the charges which he omitted to do as nothing was said about charge No. 2 relating to the petitioner's alleged absence from duty without leave, and further that the findings of the Disciplinary Authority on the report of the Inquiring Authority, if any, had not been communicated to him which was obligatory under Rule 15 (10). He also made a grievance of the fact that the final order removing him from service was not communicated by the Disciplinary Authority himself as required under Rule 15(10) and so also the action taken against him was bad in law as it offended the provisions of Article 311 of the Constitution of India.

3. During the pendency of the first enquiry the Deputy Accountant General, Madhya Pradesh, Gwalior, served letter dated 22nd July, 1960, on the Petitioner intimating that it was proposed to hold another enquiry against him under Rule 15 of the Rules. He was charged with grave misconduct for violating the provisions of Rule 4-A of the Central Civil Services (Conduct) Rules, 1955, for having participated in the strike and instigating other Government servants to resort to strike and abstain from office. The enquiry in due course was held by Shri K. Lalit, Deputy Accountant General, who had been appointed as the inquiring Authority by the Disciplinary Authority. The Inquiring Authority after completing the enquiry sent his report to the Accountant General who was the Disciplinary Authority in the case. The petitioner received a notice on 27th October, 1960, from the Accountant General that he proposed to inflict the punishment of dismissal from service on him and that he should show cause as to why it should not be done.

The petitioner asked for extension of time for filing a reply thereto but was not

given the accommodation to the extent sought for, Finally the Deputy Accountant General informed him in writing that he had been removed from service with effect from 6th December, 1960. According to the petitioner this order of removal from service was bad in law inasmuch as Rule 4-A prohibited participation in strikes only and not instigation of a strike and that as he was under suspension from service and not attending the office on the day he is alleged to have participated in the strike, his participation in the strike was out of question.

4. The petitioner filed appeals against the above two orders removing him from service to the Comptroller and Auditor General of India, the appellate authority, but without success. He, therefore, prays that a writ or direction or order quashing the decision of the appellate authority, which was communicated to him by letter dated 18th September, 1961, be issued and the appellate authority directed to decide his appeal according to law.

5. The teamed counsel for the petitioner challenged the correctness of the first order of removal from service dated 2nd November, 1960, mainly on the ground that the Disciplinary Authority, with the notice to show cause as to why the petitioner should not be removed from service omitted to furnish him a statement of its findings as required by Sub-rule (10) of Rule 15 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, the relevant part of which runs as :

"15. (10) (i) If the disciplinary authority, having regard to its findings on the charges, is of the opinion that any of the penalties specified in Clauses (iv) to (vii) of Rule 13 should be imposed, it shall-

(a) furnish to the Government servant a copy of the report of the inquiring authority and, where the disciplinary authority is not the inquiring authority, a statement of its findings together with brief reasons for disagreement, It any, with the findings of the inquiring authority."

6. The respondents conceded that findings of the Disciplinary Authority were not furnished to the petitioner along with the show-cause notice served on him under Rule 15 (10). The notice simply contained, "After carefully considering the report of the Inquiring Authority the Accountant General, Madhya Pradesh, has come to the conclusion that the penalty of removal from service as specified in Rule 13 (iv) of the Central Civil Services (Classification, Control and Appeal) Rules, 1957, should be imposed upon Shri K.G. Pillai. He is, therefore, directed to show cause as to why the above-mentioned penalty should not be imposed upon him." It nowhere mentioned that the Accountant General had agreed with the report of the inquiring Authority "in toto" or part; if in part, on what grounds. The whole affair was left in the dart or at least was left to wild conjeetures, and thus confounded the petitioner. According to the learned counsel for the petitioner the emission was fatal to the proceedings as thereby the Disciplinary Authority failed to give effect to the mandatory provisions as incorporated in Sub-rule (10) of Rule 15 and further the petitioner could not be said to have been given a

reasonable opportunity of showing cause against the action proposed to be taken in regard to him which was obligatory in terms of Article 311(2) of the Constitution of India.

There is considerable force in what he contended. The Sub-rule provides that the Disciplinary Authority shall furnish amongst other documents also its findings. The use of word, "shall" indicates mandatory nature of the provisions. Besides, in the absence of such findings the Government servant also is not fully in a position to urge that some lenient punishment may be imposed on him and thus can legitimately claim that he has not been given reasonable opportunity of showing cause against the action proposed to be taken in regard to him as envisaged in Article 311(2) of the Constitution of India. In the case, *Bimal Charan Mitra v. State of Orissa*, (S) AIR 1957 Orissa 184, it was laid down:

"The public servant against whom proceedings are pending is entitled to know the conclusion arrived at by the punishing authority for proposing such a punishment in order that he may be able to be in position to defend his case. A mere service of notice of the proposed punishment cannot be deemed to be giving a reasonable opportunity to the public servant for showing cause against the action proposed to be taken in regard to him. The service of the copy of the findings of the punishing authority on the public servant is mandatory and the service of the report of the enquiry officer who is not the punishing authority, when there is no indication at all in the notice that the authority competent to punish agrees with those findings, cannot constitute substantial compliance with the requirements of Article 311(2)."

Similarly in the case, *Bimal Kumar Pandit v. State of Assam*, AIR 1962 Assam 88, it was held:

"The question as to whether reasonable opportunity was afforded to a civil servant to show cause against the proposed punishment will depend upon the circumstances of each case. The right to show cause against the proposed punishment includes the right to show the correctness or otherwise of the finding of the enquiry officer and is not confined to show cause against the proposed punishment alone. Further, before a notice is issued to the civil servant to show cause against the proposed punishment, the dismissing authority must have examined the finding of the enquiry officer for itself and have come to its own conclusion that the charges have been established. The notice to show cause should indicate the reasons on which the dismissing authority has tentatively come to the conclusion that the proposed punishment should be awarded to the civil servant. After the dismissing authority has come to the conclusion that the charges have been proved against the civil servant, the notice to show cause against the proposed punishment is to be issued and the reasons for coming to that conclusion are to be indicated in the notice to enable the delinquent servant to show cause against the proposed punishment.

Where it is not shown that the Government had come to its own independent

conclusion that the charges were established the delinquent officer is not given sufficient opportunity to show cause as contemplated under Article 311(2). An inference that the punishment authority had applied its mind to the report of the enquiry officer and had come to its own independent conclusion that the charges were established cannot be drawn from the mere fact of supplying a copy of the report of the enquiry officer along with the notice."

I am in respectful agreement with the rule of law as laid down in both the above cases. The omission on the part of the Disciplinary Authority to furnish the petitioner with a copy of its findings vitiated the order dated 2nd November, 1960, removing him from service.

7. The second order dated 6th December, 1960, removing the petitioner again from service as well is not free from infirmities. He was removed from service for violating Rule 4-A of the Central Civil Services (Conduct) Rules, 1955, which provided,

"No Government servant shall participate in any demonstration or resort to any form of strike in connection with any matter pertaining to his conditions of service."

The learned counsel for the petitioner urged that the petitioner was under suspension and so was not attending office on the date he is alleged to have participated in the strike, a fact admitted by the respondents, and as such in the nature of things he could not have participated in the strike. He further maintained that the petitioner's act in instigating other staff of this office to join the strike and abstain from office thereby was not punishable under Rule 4-A.

In his view the petitioner could not have been punished for infringing the said Rule. The Disciplinary Authority also while serving the petitioner with a show-cause notice under Sub-rule (10) of Rule 15 of the Central Civil Services (Conduct) Rules, 1955, found the following facts only established against him:

"From the record of Inquiry and the Inquiry Officer's report the facts of the case stand proved. On 11-7-1960 Shri K.G. Pillai (a suspended employee of this office) spoke in the meeting convened by the Association and urged the staff of the A. G.'s Office to maintain solidarity during the strike. He also approached on 13-7-1960, certain members of the staff to abstain from work and make the strike a success. Instigation itself constitutes grave misconduct but on the part of a suspended employee it is all the more reprehensible. Taking Rule 4-A as a provision in the Conduct Rules primarily intended to prohibit employees from taking part in a strike, the conclusion is inescapable that Shri Pillai who worked as an active member of the Action Committee has been guilty of grave misconduct."

These facts could not have brought the petitioner's act within the mischief of Rule 4-A and thus he could not have been punished for what he had not been charged by the Disciplinary Authority. The learned counsel for the respondents

urged that the petitioner's ad could be classified as participation in any demonstration and thus was punishable under Rule 4-A. Like provision occurred in Rule 4-A of the Bihar Government Servants' Conduct Rules, 1956. which the Supreme Court in the case, Kameshwar Prasad and Others Vs. The State of Bihar and Another, held as unconstitutional and while doing so observed:

"Rule 4-A of the Bihar Government Servants' Conduct Rules, 1956, in the form in which it stands, prohibiting "any form of demonstrations" for the redress of the grievances of Government servants is violative of the fundamental rights guaranteed to them under Article 19(1) (a) and (b) of the Constitution of India and should, therefore, be struck down. The rule in so far as it prohibits a strike cannot be struck down since there is no fundamental right to resort to a strike.

The provisions of the rule cannot be sustained under Clauses (2) and (3) of Article 19 of the Constitution.

No doubt, if the rule were so framed as to single out those types of demonstrations which were likely to lead to a disturbance of public tranquillity or which would fall under the other limiting criteria specified in Article 19(2) the validity of the rule could have been sustained. The vice of the rule consists in this that it lays a ban on every type of demonstration be the same however incapable of causing a breach of public tranquillity and does not confine itself to those forms of demonstrations which might lead to that result.

On the language of the rule as it stands, it is not possible to so read it as to separate the legal from the unconstitutional."

In view of what the Supreme Court laid down in the above case, the petitioner cannot be punished under Rule 4-A for participating in any demonstration, even if his action can be so classed, as this part of the Rule is violative of the fundamental rights guaranteed under Article 19(1) (a) and (b) of the Constitution of India. For this and the above, the second order dated 6th December, 1960, removing the petitioner from service is indeed bad and cannot be sustained in law.

8. For the foregoing reasons the impugned order of the appellate authority in the matter as prayed for by the petitioner is quashed. He will also get costs from the opposite side.