
(1979) 03 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 5 of 1975

Krishan Gopal Sharma

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 21-03-1979

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 11, 14, 14(8), 15(5), 29

Citation : (1979) 8 ILR HP 129

Hon'ble Judges : T.U. Mehta, C.J

Bench : Single Bench

Advocate : Inder Singh, for the Appellant; Kamlesh Sharma, for the Respondent

Final Decision : Dismissed

Judgement

T.U. Mehta, C.J.—The Petitioner, who was recruited in the Postal Department as a Clerk in the year 1964 and who has been dismissed from his service in the year 1973, has preferred this writ petition challenging the relevant orders passed by the concerned authorities.

2. Short facts giving rise to this petition are that on 25-2-1964 the Petitioner was temporarily appointed as a clerk in the Kangra Postal Division and was thereafter made quasi-permanent from 4-9-1967 by order Annexure "B" which is dated 30-10-1967. When the Petitioner was recruited, he made a representation that in his Matriculation examination he had obtained 586 marks out of the total of 700 and that his Roll Number was 28206 of the Punjab University. He also produced a certified copy of a certificate showing that his Roll Number was as above and the marks which he had obtained were 586.

3. In the year 1971 it was revealed that the Petitioner had obtained his service in the Postal Department on altogether false statements because in fact he had obtained 286 marks and his Roll Number was 172013. It is an admitted position that the Petitioner appeared in the Matriculation Examination conducted by the

Punjab University in March, 1960, from Government High School Rakkar.

4. On 15-2-1971, the Petitioner was charge-sheeted and was served with the articles of charges found at Annexure D-1 and D-2. The Petitioner denied these charges with the result that a regular departmental enquiry was held. The report of the enquiring officer was against the Petitioner because he found that the Petitioner had obtained service in the Postal Department on altogether false representation as regards the number of marks he obtained and even as regards his Roll Number. This enquiry report was accepted by the then Superintendent of Postal Services, Dharamsala, one Shri S.S. Midha. Second notice was given to the Petitioner to show cause why he should not be dismissed. This notice was dated 19-7-1972. However, on 23-7-1972 the disciplinary authority awarded the punishment of reduction of the pay of the Petitioner to the minimum of the time scale in the clerical cadre for three years without having the effect of postponing his future increments. This order is found at Annexure "J". It is one of the impugned orders.

5. Thereafter the Director of Postal Services, finding that the punishment awarded to the Petitioner was not adequate, took up review proceedings contemplated by Rule 29 of the, Central Civil Services (Classification, Control and Appeal) Rules, 1965, and give notice to the Petitioner as found at Annexure K-1., dated 29-12-1972 to show cause why the punishment awarded to him should not be enhanced. The Petitioner showed cause, but ultimately the said Director passed the final order on 14-3-1973 as found at Annexure K-5. Thereafter the Petitioner was relieved from service on 21-3-1973.

6. The Petitioner, however, preferred an appeal before the Chairman Post and Telegraph Board, as found at Annexure "L", but the said appeal was dismissed on 5-12-1974 with the result that the Petitioner has preferred this writ petition.

7. The first point which is raised in this writ petition is that the Petitioner asked for permission to engage a legal practitioner to defend him during the departmental proceedings, but this permission was not granted by the concerned authorities.

8. At Annexure E-1, is found the application made by the Petitioner to the Superintendent of Post Offices on 16-4-1971 in this connection. At Annexure E-3 is found the order of the Superintendent of Post Offices dated 24-5-1971 saying that the Assistance of a legal practitioner would not be allowed during the course of the departmental enquiry. It is, however, found that the Petitioner was allowed to avail of the services of one of his colleagues to defend him during the course of the enquiry. Rule 14 (8) of the Central Civil Services (Classification, Control and Appeal) Rules 1965 provides that a Government servant may take the assistance of another Government servant to present the case on his behalf, but may not engage a legal practitioner for the purpose unless the presenting officer appointed by the disciplinary authority is a legal practitioner or the disciplinary authority, having regard to the circumstances of the case, so permits.

This rule, therefore, shows that the delinquent official cannot, as of right, avail the services of a legal practitioner for the purpose of his defence during the course of a departmental enquiry, though, he has a right to take assistance of another government servant to present his defence before the enquiry officer. In fact, the Petitioner has availed of the assistance of one of his colleagues to defend himself during the course of the departmental enquiry.

9. It was pointed out on behalf of the Petitioner that in *C.L. Subramaniam v. Collector of Customs, Cochin* reported in 1972 Labour IC 1049, the Supreme Court has observed that according to Rule 15 (5) of the Central Civil Services (Classification, Control and Appeal) Rules, 1967 the representation of a government servant by another government servant, or, in appropriate cases, by a legal practitioner, is mandatory. In my opinion, this decision is of no help to the Petitioner in this case because the Petitioner has availed, such a representation through the assistance of one of his colleagues. Since he had no right to be represented, by a legal practitioner, no provision of the rules can be said to have been infringed on account of the department's refusal to allow him to avail of the services of the legal practitioner.

10. Relying upon the decision of the Calcutta High Court in *Director General of Post and Telegraphs v. N.G. Mazumdar* reported in 1974 Labour IC 1484, the learned Advocate of the Petitioner contended that even when there is no legal practitioner nominated on behalf of the disciplinary authority, the disciplinary authority is bound to consider the facts and circumstances of the case before it can refuse permission to engage legal practitioner to assist the government servant in enquiry proceedings. It was contended that before refusing permission to the Petitioner to engage a legal practitioner, the disciplinary authority has not considered the facts and circumstances of the case and, therefore, a serious prejudice is caused to the petitioner. I find no substance in this contention because there is nothing to show that the disciplinary authority has refused the permission sought for without considering the facts and circumstances of the case.

11. Thus it is found that the authority's refusal to grant the permission to the Petitioner to engage the services of the legal practitioner during the departmental enquiry is not fatal.

12. Lastly it was contended that the punishment which was awarded to the Petitioner has been reviewed by the Director under Rule 29. But before going into this question the Director was obliged under the terms of the proviso to Rule 29 to hold a fresh and de novo enquiry under Rule 14. It was pointed out that since no such de novo enquiry has been held, the ultimate order of punishment passed by the Director, as found at Annexure K-5, is illegal.

13. Rule 29 provides that notwithstanding anything contained in the rules, the concerned authority may at any time, either on his or its own motion or otherwise call for the records of any inquiry and review any order made under

the rules, after consultation with the Commission where such consultation is necessary, and may confirm, reduce, enhance or set aside the penalty imposed by the order or impose any penalty where no such penalty has been imposed. This rule, therefore, empowers the concerned authority to enhance the penalty imposed by the order under review. The Director has in this case exercised his powers of enhancement of penalty under these rules. This rule is, however, governed by a proviso which runs as under:

Provided that no order imposing or enhancing any penalty shall be made by any reviewing authority unless the Government servant concerned has been given a reasonable opportunity of making a representation against the penalty proposed and where it is proposed to impose any of the penalties specified in Clause (v) to (ix) of Rule 11 or to enhance the penalty imposed by the order sought to be reviewed to any of the penalties specified in those clauses, no such penalty shall be imposed except after an inquiry in the manner laid down in Rule 14 and after giving a reasonable opportunity to the Government servant concerned of showing cause against the penalty proposed on the evidence adduced during the inquiry and except after consultation with the commissioner where such consultation is necessary.

The contention of the learned advocate of the Petitioner was that this proviso contemplates a fresh inquiry under Rule 14, even though one has already been made at a prior stage, in all cases in which it is proposed to enhance the penalty imposed by the order sought to be reviewed. It was pointed out that since in this case the Director had proposed to enhance the penalty imposed by the order reviewed by him, it was obligatory on him to order a de novo inquiry under Rule 14 even if the said inquiry was once made.

14. I find that the above contention of the learned Advocate of the Petitioner is not acceptable, because, in my opinion, reference to the inquiry contemplated by Rule 14, which is made by the above quoted proviso, is with regard to only those cases in which such an inquiry under Rule 14 was, for some reason, not made. In this connection it would be pertinent to note that Rule 11 contemplates two categories of penalties, namely (1) minor penalties and (2) major penalties. Minor penalties are those which are mentioned in Clauses (i) to (iv) while major penalties are those which are mentioned in Clauses (v) to (ix). It is an admitted position that so far as the cases of minor penalties are concerned, the detailed inquiry contemplated by Rule 14 is not necessary, because Rule 14 applies only to the cases wherein major penalties are imposable. Now there would be cases wherein the matter is as the one governed by the minor penalties. Obviously in such cases no procedure of inquiry contemplated by Rule 14 would be adopted. In such a case, if the concerned authority reviews the order of punishment and enhances the penalty awarded to the delinquent to one of those covered by Clause (v) to (ix) of Rule 11, the proviso which is attached to Rule 29 says that inquiry contemplated by Rule 14 should be made before any of the penalties mentioned in Clauses (v) to (ix) of Rule 11 is imposed by the reviewing authority.

It is, of course, true that the language of the proviso is not quite happy, and prima facie seeks to cover even those cases where in the original proceedings have been initiated under Rule 14 with a view to impose any of the major penalties covered by Clause (v) to (ix) of Rule 11 is find that on proper reading of the proviso a fresh a and de novo (inquiry under Rule 14 is not necessary if such an inquiry is once held by the Department. The clause "or to enhance the penalty imposed by the order sought to be reviewed to any of the penaltites specified in those clauses " prima facie covers even those cases in which inquiry under Rule 14 has been made on the basis that a major penalty is imposable and the reviewing authority acting under Rule 29 thinks that the penalty imposed is not adequate. But I find that unless it is noticed that the enquiry officer had no jurisdiction in the matter or that the inquiry conducted by him suffers from some basic and intrinsic defect which would totally vitiate the same, there would be absolutely no purpose served in ordering a denovo inquiry. The fact of the matter is that the question about the enhancement of sentence comes into consideration only in cases in which the finding as regards the merits of the case is to be confirmed. In that view of the matter, it is difficult to understand what tangible purpose would be served by a de novo and fresh inquiry which would obviously result in a colossal waste of time and money.

15. Viewed from this angle, I am of the opinion that the words "after an inquiry in the manner laid down in Rule 14" found in the proviso should be read as meaning "after an inquiry in the manner laid down in Rule 14 is made". In my opinion these words are used to suggest that if the inquiry contemplated by Rule 14 is not made in the matter and if still any of the major penalties is proposed to be imposed, then before imposing such a major penalty an inquiry contemplated by Rule 14 should be made. But if it is already made, afresh and de novo inquiry need not be made.

16. The above view which I am taking regarding the interpretation of the proviso attached to Rule 29 finds support from the decision given by the Delhi High Court in B.L. Kohli v. Union of India and others, reported in 1974 (2) SLR 679 and the decision given by the Kerala High Court in T. L. Ananthqraman v. Union of India reported in 1979 (1) SLR 196. I, therefore, find that there is no substance even in the last contention which is raised on behalf of the Petitioner regarding de novo inquiry.

17. There is no other point raised or argued on behalf of the Petitioner in this writ petition. The writ petition, therefore, fails and the same is dismissed with costs.