

(2000) 05 AHC CK 0101
In the Allahabad High Court
Case No : Writ Petition No. 5731 of 1998 (S/S)

Krishna Dutt Pandey

APPELLANT

Vs

Mandaliya Sahayak Shiksha Nideshak Basic VI
Mandal, Lucknow

RESPONDENT

Date of Decision : 01-05-2000

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14, 27

Citation : (2000) 05 AHC CK 0101

Hon'ble Judges : Bhanwar Singh, J

Final Decision : Allowed

Judgement

Bhamvar Singh, J.—This writ petition has been filed under Article 226 of the Constitution of India by a teacher who was dismissed from service on the ground of his having contested a Parliamentary election without requisite permission.

2. The factual matrix of the case is that Krishna Dutt Pandey was employed as an Assistant Teacher in Primary Palhshala, Agauna, Tiloi, District Rae Bareli. He did not report for during the last week of April, 1991. Enquiry in this context revealed that he had filed his nomination to contest the election for Parliamentary membership as an independent candidate. The Deputy Inspector of Schools, Rae Bareli sent a letter to the Returning Officer soliciting verification about the petitioner ^>eing a candidate in the Parliamentary election from Constituency No. 25. The Returning Officer vide his reply confirmed on 1351991 that Krishna Dutt Pandey was contesting Parliamentary election as an independent candidate. On the receipt of this information, the District Basic Shiksha Adhikari dismissed the petitioner from service on that ground alone vide letter dated 1751991. The petitioner filed an appeal and challenged the allegation that he was contesting Parliamentary election. The appeal was summarily dismissed by the Regional Assistant Educational Director (Basic) by virtue of order dated 2671996. The petitioner was then compelled to file a writ petition before this Court bearing No. 26 (S/S) of 1997 and on having heard both

the parties, this Court vide its order dated 741997 issued a mandamus directing the appellate authority to hear the appeal again and record a finding by speaking order as to whether the petitioner was a candidate from Amethi Parliamentary Constituency or not. In compliance of the said order the appellate authority, namely the Regional Assistant Educational Director (Basic) U.P. took the appeal again the arrived at a finding vide judgment dated 2581998 (Annexure 2) that Krishna Dutt Pandey had contested the Parliamentary election against the rules and, therefore, he was rightly dismissed vide impugned order of May, 17, 1991. The petitioner has now filed this writ petition challenging again the validity of the order Annexure 2 and dismissal order Annexure 6 on the grounds that he was not given proper opportunity of being heard and neither any enquiry was conducted by the Regional Assistant Educational Director in accordance with the rules nor the petitioner was informed about the date, time and place of the enquiry or the mode thereof. The documents relied upon by the aforesaid authority were also not supplied to him so as to enable him to prepare his defence case. It has also been alleged that the petitioner was meted out by the opposite party No. 1 with a shabby behaviour so much so that he was turned out of his office on 1381998 by making an observation that he was a tout. On 2081998 she arrived at village Agauna and conversed with the petitioner's arch rivals but she could not record statement of any villager. Then she concluded the enquiry on surmises and conjectures and passed the impugned order Annexure 2. In these circumstances, the petitioner was obliged to file this petition praying for quashing of the impugned orders Annexures 2 and 6. He has also prayed for an appropriate relief regarding his reinstatement and payment of his salary as also the adequate compensation.

3. The opposite party District Shiksha Adhikari Sri Brij Bhushan Maurya filed his counteraffidavit stating the petitioner's allegations to be as absolutely wrong, incorrect and misconceived. As a matter of fact the Regional Assistant Educational Director (Basic) VI Region, Lucknow passed the impugned order Annexure 2 with detailed reasons therein and confirmed the petitioner's dismissal order. The petitioner was duly informed about the proceedings by means of a notice and he was also asked to submit his reply but he did not. There was sufficient proof before the authority to come to a conclusion that the petitioner had contested the Parliamentary election. In support of the said averments, Sri Maurya filed copies of the list Annexure C1 containing the names of all the candidates who were in the election fray, receipt regarding deposit of security Annexure C2, the Superintendent of police's letter Annexure C3 and letter dated 2951989 Annexure C4 issued by the Director Education regarding instructions for the teachers who proposed to contest the elections.

4.1 have gone through the record and heard the learned Counsel for the parties.

5. The crucial question to be determined by this Court is as to whether the petitioner's dismissal was or was not in accordance with the rules. Before I proceed to discuss the merits of the respective contentions of the parties on the

issue as formulated above, it is relevant to mention that the petitioner Krishna Dutt Pandey appeared in person before this Court and argued his case. On the other hand Sri S.B. Pandey. Learned Counsel representing the opposite party No. 2 made his submissions on his behalf. It is further significant to note that Sri S.B. Pandey representing the District Basic Shiksha Adhikari fairly conceded that the Classification Control and Appeal Rules, 1965 (to be hereinafter referred as CCA Rules) apply in the case of teachers including the petitioner. Rule 14 of the CCA Rules provides the procedure for imposing major penalties which reads as follows:

"14 (1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 11 shall be made except after an inquiry held, as far as may be, in the manner provided on this rule and Rule 15, or in the manner provided by the Public Servants (Inquiries) Act, 1850 (37 of 1850), where such inquiry is held under that Act."

Further clause (3) of the said Rule authorises the disciplinary authority to draw the substance of the imputations of misconduct or misbehaviour into definite and distinct articles of charge and such a charge shall contain a statement of all relevant facts, a list of documents and a list of witnesses proposed to be examined in support of the charge. A copy of the charge has to be delivered to the delinquent official under clause (4) of the said Rule and the latter is required to submit his written statement in defence. If the charged official does not admit the charge, the inquiring authority shall proceed further and inform the charged employee about the date, time and place of the evidence to be recorded. Copies of the documents to be relied upon have also to be delivered to the delinquent official. Then the evidence in support of the charge may be recorded in presence of the delinquent official who shall have a right to cross-examine the witnesses and later lead his own evidence. After the evidence is closed, both the presenting officer supporting the charge and the charged official will have opportunity to make their respective submissions either orally or by way of written briefs. After the conclusion of the enquiry the inquiring authority shall prepare a report containing the articles of charge, the statement of the imputations, the defence of the Government servant, an assessment of the evidence and the findings with reasons therefor. In the end, the inquiring authority shall submit its report to the disciplinary authority. If the disciplinary authority itself conducts the enquiry, even then the aforesaid procedure has to be followed.

6. In the case in hand the District Basic Shiksha Adhikari Rae Barcli who was the disciplinary authority intended to impose major penalty of dismissal upon the petitioner. He passed the order dated 1751991 (Annexure 6). It is simple order which reads as follows :

"KARYALAYA ZILA BASIC ADHIKARI RAE BARELI.

AADESII SIIANKIIYA PATRANK : 678790/9192 DINANK17591.

SEWA SAMPATIAADESII

SHRI KRISHNA DUTT PANDEY AATMAJ SRI SHEODUTT PANDEY SAHAYK
ADHYAPAK PRATHMIK VIDYALAYA AGAUNA VIKAS KSHETRA TILOI NIVASI GRAM,
AGAUNA KI SEWAYEN 25 AMETHI SAKSADIYA NIRVACHAN KSHETRA KE
PRATYASHI HONE KE KARAN NAMANKAN PATRA DAKHIL KARNE KI TITHI SE
SAMAPT KI JATI HAIN.

HA/APATHNIYA

17591

"ZILABASIC SHIKSHA ADHIKARI RAEBARELI."

7. What is significant to note is that the disciplinary authority did not follow the procedure prescribed for conducting an enquiry as reproduced above. The District Basic Shiksha Adhikari was provoked by the allegation of the petitioner having mustered courage to contest the election. He approached the Returning Officer concerned and on having received information that one Krishna Dutt had contested the election, he straightway passed the dismissal order as quoted above. Obviously thus the District Basic Shiksha Adhikari did not follow the procedure prescribed for conducting an enquiry and this tact has been fairly conceded by the learned Counsel appearing on his behalf. It was probably in this background that this Court vide its order dated 741997 (Annexure 1) directed the appellate authority to hear the appeal again and record a finding by a speaking order. It may be recalled that the appellate authority also committed the same mistake by rejecting earlier the appeal of the petitioner by a nonspeaking order and that too after a lapse of four years. This Court had, therefore, to interfere and issue a mandate to the appellate authority to hear the appeal again the record a finding. In compliance of this Court's order the appellate authority recorded a finding and passed order Annexure 2 thereby rejecting again the petitioner's appeal against his dismissal order. In this context, it is noteworthy that even if the appellate authority was directed by this Court to hear the appeal again. It was not open to the appellate authority to bypass the CCA rules and record a finding on the basis of a procedure evolved by itself. Rule 27 (2)(a) of the CCA Rules postulates that the appellate authority shall consider as to whether the procedure laid down in these rules has been complied with and if not whether such noncompliance has resulted in the violation of any provisions of the Constitution of India or in the failure of justice. The appellate authority has also to consider as to whether the findings of the disciplinary authority are warranted by the evidence on record or not. In the present case before this Court, the appellate authority was under an obligation to follow the aforesaid rules and scrutinise as to whether the procedure as prescribed by Rule 14 referred to above was followed or not. If the appellate authority had applied its mind, it would have very well noticed that the disciplinary authority neither formulated a charge against the petitioner nor recorded any evidence in support of the charge and also that the petitioner was not given an opportunity of submitting his explanation. Even an opportunity of being heard was not afforded to him. The appellate authority should have

followed the procedure as there was a mandate from this Court and after formulating a charge and asking the presenting officer and the petitioner to lead their evidence and then hearing them in support of their respective contentions, could have recorded a finding but not at all the said procedure was followed. The appellate authority was also well within its competence to have remanded the matter to the disciplinary authority with a direction to conduct an enquiry as prescribed by rules and record a finding. Learned Counsel appearing for the opposite party No. 2 contended that the appellate authority decided the appeal as this Court issued a direction in this regard. The contention is not tenable because the direction was to hear the appeal and record a finding on the basis of the evidence and in doing so, the appellate authority had again to take recourse to the CCA Rules. On the strength of this Court's order (Annexure 1) the appellate authority could not have violated the CCA Rules or the principles of natural justice because neither a High Court is empowered under the Constitution of India to issue a mandate against the rules and say that the enquiry can be conducted without following the procedure prescribed therefor nor would be such an intention of the Court while passing the order dated 741998 (Annexure 1). Rather it was made clear by this Court that the appellate authority shall fix a date and inform the petitioner about the date on which the appeal will be disposed of. Not only this but it was added further that the concerned record shall also be scrutinised by the appellate authority. It was imperative in all these observations of this Court that the appellate authority was under an obligation to follow the principles of natural justice and also to see in compliance of Rule 27 (1)(a) of CCA Rules as to whether, the procedure laid down in these rules has been followed or not. Instead of complying with this Court's directions and the provisions of Rule 27, the appellate authority, namely opposite party No. 1 went to the petitioner's village and conversed with some villagers who, according to the petitioners, were his arch rivals and informed the petitioner's son standing somewhere in the crowd to convey to his father that the enquiry would be completed very shortly. The appellate authority had not recorded the statement of any villager, nor the name of any witness villager finds place in the order Annexure 2," The appellate authority as is evident from a perusal of its order (Annexure :2), relied upon the information conveyed to her by the crowd of the villagers. According to the assessment of Smt. Maya Niranjana, the appellate authority she met a crowd of some 4050 villagers and they all confirmed that the petitioner had contested the Parliamentary election. Strangely enough their names were not recorded and the petitioner was not given an opportunity of cross-examining such witnesses. The appellate authority misconducted itself by making an on spot inspection of the village which was uncalled for and not warranted by the procedure. Obviously the petitioner was deprived of his valuable right to cross-examine the witnesses who might have deposed against him. In this way, the procedure prescribed by the CCA Rules has blatantly been flouted and the principles of natural justice have also been ignored, The petitioner was not given even an intimation of the date on which the appellate authority proposed to visit the village.

8. The other evidence relied upon by the appellate authority was a receipt regarding deposit of Rs. 500 as security. A copy of such receipt is Annexure C2 to the counteraffidavit filed by opposite party No. 2. A perusal of this receipt shows that the depositor of the security money was one Krishna Putt Tripathi son of Sri Sheo Dutt Tripaihi. The initials of the petitioners are Krishna Dutt Pandey son of Sri Sheo Dutt Pandey. Even the disciplinary authority has referred to him as Krishna Dutt Pandey and not as Sri Krishna Dutt Tripaihi. Obviously thus the distinction between the initials of the petitioner and that of the depositor of the security including parentage are indicating of the proof that it was not the petitioner who contested the election. In the list of candidates Annexure CI who contested the election, the name of one Krishna Dutt at SI. No. 10 has been shown but his father's name is not there. In the letter of the Superintendent of Police also, Krishna Dutt Pandey son of Sri Sheo Dutt Pandey has not been mentioned. From the above, it appears that there were three names in picture, one Krishna Dutt, second Krishna Dutt Tripathi and third Krishna Dutt Pandey, The appellate authority should have recorded a categorical finding on the basis of cogent piece of evidence that it was the petitioner and petitioner alone who had contested the election by utilising all the three names. The aforesaid factual variations and inconsistencies in the nomenclature of the petitioner including his parentage create a long shadow of doubt upon the finding of the appellate authority,

9. Having regard to all what has been discussed above, I am inclined to hold that the findings of the appellate authority are against the prescribed procedure as referred to above and laid in CCA Rules and the novel procedure evolved by the appellate authority by going to the petitioner's village and talking to some of the villagers and then giving findings without recording their statements and denying the petitioner an opportunity to cross-examine such witnesses is absolutely perverse, illegal, arbitrary and against the principles of natural justice.

10. In the result, this petition succeeds and accordingly it is hereby allowed, the dismissal order dated 17/5/1991 (Annexure 6) and the order dated 25/8/1998 passed by the Regional Assistant Educational Director (Basic) VI Region, Lucknow (Annexure 2) are hereby quashed and a writ of certiorari is issued to this effect.

11. Further 3 writs of mandamus are issued concerning the opposite parties to reinstate with immediate effect the petitioner on the post of Assistant Teacher he was previously holding with all consequential benefits.

12. There would be no order as to costs,