

(2012) 04 CHH CK 0009
In the Chhattisgarh High Court
Case No : Writ Petition No. 2351 of 2003

Kumait Ram Shandilya

APPELLANT

Vs

State of Chhattisgarh and Others

RESPONDENT

Date of Decision : 27-04-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 309, 311

Citation : (2012) 2 CG.L.R.W. 460

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Advocate : Jagdish Singh Baraik, for the Appellant; P.K. Bhaduri, Panel Lawyer for the State, for the Respondent

Judgement

Satish K. Agnihotri, J.—Challenge in this petition is to the order dated 8th May, 2003 (Annexure P/14) whereby the State Government, in exercise of its power under the provisions of Rule 10 (8) of the M.P./C.G. Civil Services (Classification, Control & Appeal) Rules, 1966 (for short "the Rules, 1966") removed the petitioner from service, and also, the order dated 8th August, 2003 (Annexure P/15) whereby, posting of the petitioner, as incharge, Chief Executive Officer, Janpad Panchayat, Darbha, District Bastar, was also cancelled. Indisputable facts, in brief, as projected by the petitioner, are that the petitioner, while working as Block Development Officer, Balrampur, District Surguja, was placed under suspension in contemplation of enquiry on the allegation of serious financial irregularities, by order dated 29th August, 1992 (Annexure P/1) and thereafter, his headquarter was changed to the office of Deputy Commissioner, Tribal Welfare, Bilaspur. The petitioner was thereafter, served with a show cause notice on 5th October, 1992 (Annexure P/4) stating therein that he has failed to produce the progress report in respect of Indira Awas Yojna, Jawahar Rojgar Yojna and Jeevandhara Yojna for the period upto the year 1992 by 2nd September, 1992 to the Collector, Surguja. The same was since not supplied to the Collector, Surguja, the show cause notice, as aforesaid was issued as to why a punishment of withdrawal of one increment without cumulative effect be

not imposed upon the petitioner. The petitioner submitted his reply on 27th November, 1992 (Annexure P/5), stating therein that he has given the information to the Clerk, D.R.D.A. on 31st August, 1992. In the impugned order dated 8th May, 2003, it was stated that a charge sheet was served on the petitioner on 27th June, 1992, and after receiving his reply to the show cause notice, the Deputy Collector, District Surguja was appointed as Enquiry Officer and the Assistant Commissioner, Tribal Welfare, Ambikapur was appointed as Presenting Officer under Rule 14(b) and (c) of the Rules, 1966, respectively, in the order passed on 1st June, 1993.

2. It appears that the petitioner was noticed on 14th June, 1996 to appear on 18th June, 1996 (Annexure P/7) before the Enquiry Officer. The petitioner filed a letter dated 8th July, 1996 (Annexure P/8) addressed to the Departmental Enquiry Officer, requesting for supply of charge sheet, which according to the petitioner was never served on the petitioner. Enquiry was conducted and report was submitted on 24th September, 1997 (Annexure P/11), ex parte, against the petitioner holding all the six charges for which the petitioner was never informed, as proved. A second show cause notice wherein the petitioner vide letter dated 31st March, 1998/2nd April, 1998 (Annexure P/11) requested for personal hearing, stating therein also that he was not served with any charge sheet. Consequent thereupon, the impugned order was passed. Thereagainst, the petitioner preferred an appeal which was also dismissed on 23rd December, 2005 (Annexure REJ-1). Thus, this petition.

3. Shri Baraik, learned counsel appearing for the petitioner, would submit that the whole enquiry was vitiated and consequent thereupon, imposition of major penalty of removal from service was also bad and the same deserves to be quashed. Shri Baraik would further submit that non-supply of charge sheet is contrary to the constitutional provisions as well as provisions of Rule 14 of the Rules, 1966, which is mandatory. Shri Baraik would next submit that the State has not even obtained the consent of the State Public Service Commission, as it is mandatory in case of Class II officers and the petitioner was a Class II officer.

4. On the other hand, Shri Bhaduri, learned Panel Lawyer appearing for the State, would submit that the charges framed against the petitioner were of serious nature that he had taken bribe from the beneficiaries under the Indira Gandhi Awas Yojna and Jawahar Rojgar Yojna. The petitioner did not disburse the entire amount provided under the abovestated Yojna and also did not discharge his responsibility while purchasing materials. The petitioner was also engaged in interpolation of records and documents.

5. On the aspect as to whether charge sheet was served or not, the respondents had not adverted to the specific allegation. However, it was submitted that consent of the State Public Service Commission was obtained before the impugned order dated 8th May, 2003 (Annexure-P/14) imposing major penalty of removal from service under Rule 10 (viii) of the Rules, 1966 was passed.

6. I have heard learned counsel appearing for the parties, perused the pleadings and the documents appended thereto.

7. The allegation of the petitioner that before initiation of departmental enquiry against the petitioner or thereafter, during the course of enquiry, despite request of the petitioner for supply of charge sheet, the petitioner was not served with the charge sheet, as required under sub-rule (4) Rule 14 of the Rules, 1966, is established. There is no denial on the part of the State/respondents.

8. The Rules, 1966 were framed in exercise of the powers conferred by proviso to Article 309 of the Constitution of India. Relevant rule i.e. Rule 14 which deals with procedure for imposing penalties reads as under:

14. Procedure for imposing penalties.--(1) No order imposing any of the penalties specified in clauses (v) to (ix) of Rule 10 shall be made except after an inquiry held, as far as may be, in the manner provided in 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.

(2) Whenever the disciplinary authority is of the opinion that there are grounds for inquiring into the truth of any imputation of misconduct or misbehaviour against a Government servant, it may itself inquire into or appoint under this rule or under the provisions of the Public Servants (Inquiries) Act, 1850, as the case may be, an authority to Inquire into the truth thereof.

Explanation.--Where the disciplinary authority itself holds the inquiry, any reference in sub-rule (7) to sub-rule (20) and in sub-rule (22) to the inquiring authority shall be construed as a reference to the disciplinary authority.

(3) Where it is proposed to hold an inquiry against a Government servant under this rule and Rule 15, the disciplinary authority shall draw up or cause to be drawn up-

(i) the substance of the imputation of misconduct or misbehaviour into definite and distinct articles of charge;

(ii) a statement of the imputations of misconduct or misbehaviour in support of each article of charge, which shall contain:-

(a) a statement of all relevant facts including any admission or confession made by the Government servant;

(b) a list of documents by which, and a list of witnesses by whom, the articles of charge are proposed to be sustained.

(4) The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the article of charge, the statement of the imputations of misconduct or misbehaviour and a list of documents and witnesses by which article of charge 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.

(5) (a) On receipt of the written statement of defence, the disciplinary authority may itself inquire into such of the articles of charge as are not admitted or, if it considers it necessary so to do, appoint, under sub-rule (2), an inquiring authority for the purpose; and where all the articles of charges have been admitted by the Government servant in his written statement of the defence the disciplinary authority shall record its finding on each charge after taking such evidence as it may think fit and shall act in the manner laid down in Rule 15;

(b) If no written statement of defence is submitted by the Government servant, the disciplinary authority may itself inquire into the articles of charge or may, if it considers it necessary to do so, appoint under sub-rule (2), an inquiring authority for the purpose:

(c) Where the disciplinary authority itself inquires into any article of charge or appoints an inquiring authority for holding an inquiry into such charge, it may, by an order, appoint a Government servant or a legal practitioner, to be known as the "Presenting Officer" to present on its behalf the case in support of the articles of charge.

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9. The charges which were enquired by the enquiry officer without serving a charge sheet with a statement of imputation of misconduct or misbehaviour and a list of documents and witnesses with the article of charges, was not served on the petitioner.

10. The charges leveled against the petitioner read as under:-

11. It is a trite law that if a mandatory procedural provision has been made, no diversion from the statutory procedure is permissible.

12. The Privy Council, in AIR 1936 253 (Privy Council)), observed as under:

The rule which applies is a different and not less well recognized rule, namely, that where a power is given to do a certain thing in a certain way the thing must be done in that way or not at all. Other methods of performance are necessarily forbidden.

13. The Supreme Court, in *Hukam Chand Shyam Lal Vs. Union of India (UOI) and Others*, observed as under:

18. It is well-settled that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other modes of performance are necessarily forbidden. It is all the more

necessary to observe this rule where power is of a drastic nature and its exercise in a mode other than the one provided will be violative of the fundamental principles of natural justice.

14. A Constitution Bench of the Supreme Court, in Commissioner of Income Tax, Mumbai Vs. Anjum M.H. Ghaswala and Others, held as under:

27 ... It is a normal rule of construction that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself...

15. In Captain Sube Singh and Others Vs. Lt. Governor of Delhi and Others, the Supreme Court observed as under:

29. In Anjum M.H. Ghaswala a Constitution Bench of this Court reaffirmed the general rule that when a statute vests certain power in an authority to be exercised in a particular manner then the said authority has to exercise it only in the manner provided in the statute itself. (See also in this connection Dhanajaya Reddy v. State of Karnataka.) The statute in question requires the authority to act in accordance with the rules for variation of the conditions attached to the permit. In our view, it is not permissible to the State Government to purport to alter these conditions by issuing a notification u/s 67(1)(d) read with sub-clause (i) thereof.

16. In J and K Housing Board and Another Vs. Kunwar Sanjay Krishan Kaul and Others, the Supreme Court reiterated the settled position, as aforesaid and observed as under:

32. It is settled law that when any statutory provision provides a particular manner for doing a particular act, the said thing or act must be done in accordance with the manner prescribed therefor in the Act. Merely because the parties concerned were aware of the acquisition proceedings or served with individual notices does not make the position alter when the statute makes it very clear that all the procedures/modes have to be strictly complied with in the manner provided therein.

17. A Constitution Bench of the Supreme Court, in Delhi Transport Corporation Vs. D.T.C. Mazdoor Congress and Others, laid down the principle of natural justice succinctly as under:

202 ... It is now well-settled that the "audi alteram partem" rule which in essence, enforces the equality clause in Article 14 of the Constitution is applicable not only to quasi-judicial orders but to administrative orders affecting prejudicially the party-in-question unless the application of the rule has been expressly excluded by the Act or Regulation or Rule which is not the case here. Rules of natural justice do not supplant but supplement the Rules and Regulations. Moreover, the Rule of Law which permeates our Constitution demands that it has to be observed both substantially and procedurally. Considering from all aspects Regulation 9(b) is illegal and void as it is arbitrary,

discriminatory and without any guidelines for exercise of the power. Rule of law posits that the power is to be exercised in a manner which is just, fair and reasonable and not in an unreasonable, capricious or arbitrary manner leaving room for discrimination...

The same has been explained further by the Supreme Court in *Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another*, *Union of India and Another Vs. Tulsiram Patel and Others*, *D.K. Yadav Vs. J.M.A. Industries Ltd.*, *Jaswant Singh Mathurasingh and another Vs. Ahmedabad Municipal Corporation and others*, *Sahara India (Firm), Lucknow Vs. Commissioner of Income Tax, Central-I and Another*, *Dev Dutt Vs. Union of India (UOI) and Others*, *The Joint Action Committee of Airlines Pilots Associations of India and Others Vs. The Director General of Civil Aviation and Others*,

18. The Supreme Court, in *Kashinath Dikshita Vs. Union of India (UOI) and Others*, observed as under:

10... When a Government servant is facing a disciplinary proceeding, he is entitled to be afforded a reasonable opportunity to meet the charges against him in an effective manner. And no one facing a departmental enquiry can effectively meet the charges unless the copies of the relevant statements and documents to be used against him are made available to him. In the absence of such copies, how can the concerned employee prepare his defence, cross-examine the witnesses, and point out the inconsistencies with a view to show that the allegations are incredible.

19. In *Chandrama Tewari Vs. Union of India (UOI)* (through General Manager, Eastern Railways), the Supreme Court observed as under:

4. Article 311 of the Constitution requires that reasonable opportunity of defence must be afforded to a Government servant before he is awarded a major punishment of dismissal. It further contemplates that disciplinary enquiry must be held in accordance with the rules in a just and fair manner. The procedure at the enquiry must be consistent with the principles of natural justice. Principles of natural justice require that the copy of the document if any relied upon against the party charged should be given to him and he should be afforded opportunity to cross examine the witnesses and to produce his own witnesses in his defence. If findings are recorded against the Government servant placing reliance on a document which may not have been disclosed to him or the copy whereof may not have been supplied to him during the enquiry when demanded, that would contravene principles of natural justice rendering the enquiry, and the consequential order of punishment illegal and void. These principles are well-settled by a catena of decisions of this Court.

20. In *Delhi Development Authority Vs. H.C. Khurana*, the Supreme Court, while analyzing as to when the disciplinary proceedings be taken as initiated, held that framing the charge-sheet, is the first step taken for holding the enquiry into the allegations, on the decision taken to initiate disciplinary proceedings. The

charge-sheet is framed on the basis of the allegations made against the Government servant; the charge-sheet is then served on him to enable him to give his explanation."

21. Indisputably, the charge sheet was neither supplied nor served as required under Rule 14 of the Rules, 1966 along with the statement of the imputations of misconduct or misbehaviour, list of documents and witnesses. Thus, it cannot be held that the disciplinary enquiry was initiated or held for want of compliance of sub-rules (3) & (4), Rule 14 of the Rules, 1966.

22. Though the statement of learned counsel for the State that no prejudice is caused to the petitioner is not well founded, as the petitioner has been punished on the basis of allegations and the case of the petitioner through out was denial of charges. Thus, it cannot be held that no prejudice has been caused to the petitioner. The petitioner was a class II gazetted officer.

23. Though the appeal was dismissed during pendency of this petition and the same was also not challenged, however, looking to the facts and circumstances of the case and also considering the fact there was a serious, violation of constitutional provisions; the petitioner cannot be dismissed on the ground that subsequent dismissal of appeal was not challenged.

24. During pendency of this petition, it is informed, at the bar, that the petitioner has retired from service on attaining the age of superannuation. If it is so, the petitioner shall be entitled to all the service benefits including salary and thereafter, his retiral benefits shall be fixed on the basis as if the petitioner has continued in service from the date of removal from service i.e. 8th May, 2003 (Annexure-P/14), till the age of superannuation. As an upshot, the writ petition is allowed to the extent indicated above, leaving the parties to bear their own costs.