
(1974) 09 SHI CK 0008
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 142 of 1970

Mangal Singh

APPELLANT

Vs

The Commissioner, Himachal Government Transport etc.

RESPONDENT

Date of Decision : 09-09-1974

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14(4)

Citation : (1974) 3 ILR HP 870

Hon'ble Judges : R.S. Pathak, C.J

Bench : Single Bench

Advocate : Inder Singh, for the Appellant; R.K. Punshi, for the Respondent

Final Decision : Allowed

Judgement

R.S. Pathak, C.J.—The Petitioner prays for certiorari against an order removing him from the post of Conductor in the Transport Department of the Himachal Pradesh Government.

2. The Petitioner entered service in the Himachal Government Transport, Bilaspur Region, as a Conductor. In February 1966 two charges were framed against him and in May 1966 a third charge was framed. The charges were framed by the Regional Manager. The Petitioner was charged with having realised the fare, without issuing tickets from a number of passengers travelling in the vehicle of which he was Conductor, and of misappropriating the money realised. The Regional Manager was appointed by the General Manager, Himachal Government Transport, by an order dated August 20, 1966, to enquire into the charges framed against the Petitioner. The Regional Manager conducted the enquiry and submitted his report to the General Manager. He found that one of the two charges framed in February 1966 and the charge framed in May 1966 had not been proved, and that the remaining charge framed in February 1966 alone stood proved. When the report was examined by the General Manager, he took the view that all the three charges stood proved. Proceeding on the basis that the Petitioner was a habitual offender involved in successive corruption cases, he

expressed the prima facie opinion that the Petitioner should be removed from service. Accordingly, he directed notice to issue to the Petitioner to show cause against such penalty. The notice was issued on October 25, 1968, and it required the Petitioner, while showing cause, to confine himself to the evidence already adduced during the enquiry. Ultimately, on July 21, 1970, the General Manager made an order removing the Petitioner from service. The Petitioner challenges the validity of the proceedings taken against him culminating in the order dated July 21, 1970.

3. A number of points have been raised by learned Counsel for the Petitioner. In the first place, he contends that the list of documents and witnesses was not supplied to the Petitioner along with the articles of charge. Reference has been made to Rule 14(4) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The law contemplates that when disciplinary proceedings are taken against a Government servant he should be given adequate opportunity to defend himself against the charge framed against him. While the scope of such opportunity will vary from one class of cases to another, there can be little doubt that in order to know what is the case against him the Petitioner is entitled not merely to notice of the charge framed against him but also to notice of the material on the basis of which the charge is sought to be supported. To ensure that, the rules provided that the Government servant should be informed of the list of documents and the list of witnesses proposed to be produced in support of the articles of charge. But it may happen that the Government servant may already be aware of the material intended to be produced against him, and since the opportunity in this regard is intended only for the purpose of giving him notice of such material, it will be pure technicality to insist upon formal notice to him. Whether he is aware of the material may be considered from the conduct of the Petitioner and the facts and circumstances of the case. In the present case, it appears that he was aware of the material. He raised no objection at any stage to the omission to supply him with the list of documents and the list of witnesses proposed to be adduced in support of the articles of charge. It is not open to him to make that omission a basis for vitiating the proceeding.

4. The next contention on behalf of the Petitioner is that the Regional Manager framed the articles of charge at a time when he was not authorised to conduct the enquiry. There is no dispute that the Regional Manager was appointed subsequently to conduct the enquiry against the Petitioner. There is no denying that it was open to the Regional Manager to frame the charges afresh. If he proceeded on the basis of the charges already framed it must be taken that he was satisfied that those articles of charge were proper. By implication it should be inferred that he adopted those charges. Therefore, merely because the articles of charge were framed by the Regional Manager at a time when he had no authority to conduct the enquiry will not vitiate the proceeding.

5. The third point raised on behalf of the Petitioner is that while the Regional Manager, as the enquiring officer, found two of the three charges not proved on

the ground that material witness, the Deputy Superintendent of Police, had not been produced during the enquiry, the General Manager disagreeing with him held that notwithstanding the absence of the Deputy Superintendent of Police the report of that officer would be taken into consideration and it should be presumed that the report was correct. From the facts of the case before me it is apparent that the Deputy Superintendent of Police was an important witness so far as the two charges under consideration are concerned. It was he who submitted report that he had found that the Petitioner had allowed passengers to board the vehicle and travel in it without tickets being issued to them, and that apparently the Petitioner had realised the fare from such passengers and had misappropriated the money. When the Deputy Superintendent of Police was not produced in evidence and was not available for cross-examination by the Petitioner it is apparent that the report submitted by him cannot be relied on as material against the Petitioner. In my opinion, the General Manager was wholly wrong in holding that the two charges stood proved notwithstanding the absence of the Deputy Superintendent of Police as a witness. Consequently, the very basis on which the show cause notice against removal was issued stands vitiated. It is important to note that in assessing whether the Petitioner should be visited with the penalty of removal the General Manager took into consideration that the Petitioner had been guilty of all the three charges framed against him.

6. Another aspect of the matter is that in the show cause notice the Petitioner was required to confine himself to the evidence adduced in the disciplinary enquiry. Circumscribing the Petitioner to that material was erroneous in law. The record shows that the General Manager took into consideration the past record of the Petitioner also. That was material outside the disciplinary proceeding. There is no reason why the Petitioner should not have been allowed an opportunity to adduce whatever material he considered necessary for showing that the grave penalty of removal should not be imposed on him and that a lesser penalty would do. On this ground alone the order removing the Petitioner from service is invalid.

7. The writ petition is allowed. The order dated July 21, 1970, terminating the services of the Petitioner is quashed. The Petitioner is entitled to his costs, which I assess at Rs. 100.