

(1974) 09 SHI CK 0018
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 195 of 1971

Mast Ram

APPELLANT

Vs

The State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 30-09-1974

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14, 14(3), 14(4), 15, 33
Passengers and Goods Taxation Act, 1955 — Section 5
Penal Code, 1860 (IPC) — Section 409
Prevention of Corruption Act, 1988 — Section 5(2)
Punjab Police Rules, 1934 — Rule 16.38(1), 16.38(2)

Citation : (1974) 3 ILR HP 894

Hon'ble Judges : C.R. Thakur, J

Bench : Single Bench

Advocate : S. Malhotra, for the Appellant; B. Sita Ram, General, for the Respondent

Final Decision : Allowed

Judgement

Chet Ram Thakur, J.—The Petitioner has challenged the order Annexure C, dated 20th October, 1971, by which he has been removed from his service as a driver by Respondent No. 2, i.e. Commissioner Transport. The Petitioner, it is alleged, was incharge of truck No. HIM 4274. On 3rd February, 1966, the truck was loaded with a consignment of bags of vegetables and was bound for Peo from Simla. The driver (Petitioner) got the G.R. prepared only for 45 quintals, whereas the actual weight of the consignment was in excess by 21 quintals 28 kg. without any G.R. This was detected at Tapri Booking Office, when the consignment was weighed and the G.R. was checked. Further, it was alleged that the Petitioner had carried some passengers in violation of the provisions of the Motor Vehicles Act and without payment of the Passengers and Goods Tax and thereby also violated the provisions of Section 5 of the aforesaid Act. Thereafter he was challaned u/s 409 of the Indian Penal Code read with Section 5(2) of the Prevention of

Corruption Act, 1947. The Petitioner was suspended but later on the challan was cancelled and he was reinstated in November, 1966. Thereafter he was charge-sheeted on four counts which appear in the report of the Inquiry Officer as also in the office order, dated 20th. October, 1971, as (i) attempt to defraud the Government of its legitimate revenue; (ii) violation of the Motor Vehicles Act, 1939 and rules framed thereunder; (iii) violation of Section 5 of the Passengers and Goods Taxation Act, 1955 and (iv) negligence in the performance of duties. Shri Des Raj, Assistant Manager, Transport, was appointed Inquiry Officer, who found him guilty of all the charges and submitted his report to the disciplinary authority. Thereafter notice, Annexure B calling upon him to show cause against the proposed penalty of removal from service was issued. The Petitioner made representation in reply to the notice, but it appears that the disciplinary authority, i.e. Respondent No. 2 was not satisfied with the grounds given in the representation and, therefore, he passed the impugned order, Annexure G.

2. The Petitioner has challenged the order on the ground that the same was in violation of Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules 1965 (hereinafter shortly called the Rules of 1965). Further that the charges framed were vague in the extreme and he was prejudiced in his defence. The disciplinary authority while dismissing the representation made cryptic remark that the Petitioner had submitted representation which fails to make out any attenuating circumstance justifying any alteration in the proposed penalty. Since the charges were vague, therefore, the Petitioner could not make a proper representation. Further, he had contended that a person who had once been challaned by the police and had been acquitted then in that case it was not fair to initiate any departmental enquiry on the same-allegations,

3. The Respondents denied that there was any violation of the rules in any way. Further, it was contended that the Petitioner was charge-sheeted on account of the allegations as under:

(i) Alleged attempt to defraud the Govt. of its revenue by carrying 2178 kg. load without any G.R. in truck No. HIM 4274 on 4-2-1966 for which G.R. No. 4117/18 for Rs. 480-15 P. was issued at Tapri after checking the Truck at Wangtu;

(ii) Alleged violation of the Motor Vehicles Act, 1939, and Rules framed thereunder;

(iii) Alleged violation of Section 5 of the Passengers and Goods Taxation Act, 1955; and

(iv) Alleged negligence in the performance of duties.

It was further averred that the Petitioner had not exhausted other channels before approaching this Court. Further that there was no bar for taking departmental proceedings after the challan had been cancelled by the Court. Further, it had been averred that Schedules to the Rules of 1965 were not printed by that date. Mast Ram was charge-sheeted and old proforma [of Central

Civil Services (Classification, Control and Appeal) Rules, 1957] was used which was permissible under Rule 33 of the rules. Under the old proforma no list of witnesses or documents used to be supplied.

4. The first question that I will take is about the vagueness of the charges. The submission of the Petitioner is that since the charge-sheet was vague, he was prejudiced in the defence of his case nor he could make a proper representation. It would be apparent that the Petitioner had not filed the copy of the charge-sheet that was served on him so as to say with certainty as to whether the charge-sheet served on him was really vague, as pleaded, or it was a precise charge whereby no prejudice could be caused to the Petitioner to know as to what were the allegations against him. From the report of the Inquiry Officer as also from the show cause, notice and the order of removal, admittedly, it cannot be said that the charges were definite and precise. They really do appear to be defective and vague. But on the record being summoned I find that the charges were quite complete and definite. The list of charges, as it appears at page 92 of the file No. G.M. 61-8/64 (Secret), the subject of which is "Complaints" is to the following effect:

Charge No. 1: On 4-2-1966 when detailed with HIM 4274 Truck was detected carrying 21 quintal and 78 kg. goods without G.R. by the Kinnaur District Police at a distance of A.E. Wangtu Mile/Kilometer from...Thus Shri Mast Ram III Driver by doing so is alleged to have made an attempt to defraud the Govt. of its legitimate Revenues.

Charge No. 2: By carrying illegal ticketless passengers/ Goods in the Vehicle of which Shri Mast Ram was catering from Simla to Peo, he (Shri Mast Ram III Driver) is alleged to have violated the provision of Motor Vehicle Act, 1939 and rules framed thereunder.

Charge No. 3: As no ticket/G.R's were issued to the passengers/Goods hence the passengers/Goods tax deemed to be charged in accordance with the provision of Section 5 of the Passengers and Goods Tax Act, 1955 is not said to have been charged keeping that split in view. Thus Shri Mast Ram III Driver is alleged to have violated the provision of Passengers and Goods Tax Act, 1955.

Charge Mo. 4: As the passengers/Goods were being carried without ticket/G.R. with the sole motive of defrauding the Government of legitimate revenues for selfish ends, Shri Mast Ram III Driver has failed to perform his duties.

Sd/- Regional Manager, Himachal Government Transport, Dhalli.

Therefore, after having perused the record which was summoned, I am fully satisfied that the list of charges which was served on the Petitioner did not suffer from any infirmity so as to say that it was quite vague, rather the allegations contained therein are quite detailed and as such it is wrong on the part of the Petitioner to contend that the charge were quite vague and that he was prejudiced in his defence.

5. The second point was that once the criminal case had been dismissed or cancelled no departmental proceedings could be initiated against the Petitioner on the same allegations. This point has not been pressed by the learned Counsel for the Petitioner and, therefore, it does not require any findings.

6. The third point which is argued by the learned Counsel for the Petitioner is that there has been violation of Rule 14(3) and (4) of the Rules of 1965 inasmuch as the Petitioner had not been supplied the list of witnesses as also the copies of the statements of the witnesses recorded by the Inquiry Officer before the initiation of the enquiry and this had prejudiced or hindered him in exercising effective right of defence. Rule 14 lays down the procedure for imposing major penalties. Under Sub-rule (3) where it is proposed to hold an enquiry against a Government servant under this rule and Rule 15, the disciplinary authority shall draw or cause to be drawn up-

(i) the substance of the imputations 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 articles 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.

Sub-rule (4) reads as under:

The disciplinary authority shall deliver or cause to be delivered to the Government servant a copy of the articles of charge, the statement of the imputations of misconduct or misbehavior and a list of documents and witnesses by which each article of charges 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.

7. A perusal of the list of charges, as given above, would reveal that the same does not show if the list of documents and witnesses by which each article of charges were proposed to be sustained was delivered or caused to be delivered to the Petitioner. There is a memorandum at page 91 of the file, referred to above, which shows that the Petitioner was informed that it was proposed to hold an enquiry against him under Rule 15 of the Rules of 1965 and the allegations on which the enquiry was proposed to be held were set out in the enclosed statement of allegations and the charges framed on the basis of the said allegations are specified in the enclosed statement of charges. The Petitioner was further informed that if he desired he could inspect and take extracts from the documents mentioned in the enclosed list at any time during the office hours. He was further asked that if he desired to be given access to any other official records other than those specified in the list referred to above he should submit

a list of all such documents within five days. He will be permitted to take extracts from such of the additional documents as he was permitted to inspect. At the bottom of this memorandum are given the enclosures, i.e. list of charges and memorandum of allegations. The list of charges and memorandum of allegations are the same as have already been set out above from page 92 of the file of the department. From this it would appear that the Petitioner had not at all been furnished the list of witnesses as also the list of documents by which each article of charges was proposed to be sustained. The reply of the Respondents in this behalf is that the Schedule to the Rules of 1965 had not been printed by that date. The Petitioner was charge sheeted and old proforma under the Rules of 1957 was used which was permissible under Rule 33 of the rules and under the old proforma No. list of documents or witnesses used to be supplied. Therefore, from this it would be quite apparent that no list of witnesses or documents had been supplied to the Petitioner by which the charges were proposed to be sustained. The enquiry in the cash had been initiated after November, 1966, when the challan put up in the criminal court had been cancelled. On that date, admittedly the Rules of 1965 were applicable and there was no question of following the old Rules of 1957. This reply that since the Schedule to the Rules of 1965 had not been printed, and, therefore, in framing the charge-sheet they followed the old proforma, does not appear to be correct inasmuch as Rule 33 which is invoked does not apply to the standard form. It applies only to the Schedules, and it reads as below:

33. Transitory provisions. On and from the commencement of these rules and until the publication of the Schedules under these rules, the Schedules to the Central Civil Services (Classification, Control and Appeal) Rules, 1952, as amended from time to time, shall be deemed to be the Schedules relating to the respective categories of Government servants to whom they are, immediately before the commencement of these rules, applicable, and such Schedules shall be deemed, to be the Schedules referred to in the corresponding rules of these rules.

It means that on and from the date of the commencement of the Rules of 1965 and until the publication of the Schedules under these rules, the Schedules to the Rules of 1952, as amended from time to time, shall be deemed to be the Schedules relating to the respective categories of Government servants to whom they are, immediately before the commencement of these rules, applicable. But in so far as the old proforma about the charge-sheet is concerned the same is not covered by this rule. Therefore, it is futile on the part of the Respondents to contend that since the Schedule had not been printed, they followed the old proforma which was permissible under Rule 33. Therefore, if there has been non-compliance of the Rule 14(3) and (4) of the Rules of 1965, then the enquiry must be held to be vitiated, inasmuch, as, the Petitioner was denied an effective opportunity to defend himself by not making available the list of witnesses and documents and. the statements of the witnesses who had been examined at the preliminary enquiry. He did not know as to who were the persons who were to

come forward and to depose against him and what they had stated during the preliminary enquiry. Therefore, he was definitely prejudiced. The submission of the learned Counsel for the Respondents that he did not make any demand at any stage for supply of the copies is. also not of any avail as the rules enjoin upon the disciplinary authority to deliver a list of documents by which and a. list of witnesses by whom each article of charge is pro-posed to be sustained.

8. Assuming that the Respondents did not have the proforma, as prescribed under the Rules of 1965 and the Rules of 1957 did not provide for the delivery of the list of witnesses and; the documents by which the charges were to be sustained against the delinquent, yet the rules of natural justice required that in order to afford an effective right of defending himself by cross-examining the witnesses, confronting them with their previous statements, etc. the Respondents should have made sub-stantial compliance with Rule 14(3) and (4) of the Rules of 1965, and that having not been done, the Petitioner has definitely been prejudiced..

9. In *Union of India v. Shri Ravi Dutt* 1973(1) S.L.R. Del 1222, where a police official who was governed under the Punjab Police Rules and against whom a departmental enquiry had been instituted and one of the points raised by the Respondent was that there has been non-compliance with Rule 16.38(1) and (2) of the Punjab Police Rules which had resulted in vitiating the order of dismissal, the Court found that the delinquent officer not having been given the copies of the statements of the witnesses recorded in the preliminary enquiry was definitely denied the right to exercise effective right of cross-examination and that he had a constitutional right for the delivery of the same as the statements of those witnesses were denied to the Respondent-Plaintiff there was no escape from the conclusion that the Plaintiff was denied reasonable opportunity and the order was liable to be struck down on that ground. Here in the instant case the position is also the same because the Petitioner had been denied the constitutional right for delivery of the list of witnesses. It was incumbent upon the disciplinary authority to have supplied him the copies especially when the rules provide for it, and supposing the rules did not provide for the same yet the rules of natural justice require that the Petitioner should have been afforded an adequate and ample opportunity by delivery of the statements of the witnesses and other documents so that he could exercise an effective cross-examination of the witnesses in his defence and he could know what the witnesses had stated earlier and that having not been done so, his right to defend himself had been denied to him.

10. In *State of Madhya Pradesh v. Chintaman Sadashiva Waishampayan* AIR 1961 S.C. 1623 it had been laid down by their Lordships of the Supreme Court:

Stating it broadly and without intending it to be exhaustive it may be observed that rules of natural justice require that a party should have the opportunity of adducing all relevant evidence on which he relies, that the evidence of the opponent should be taken in his presence, and that he should be given the

opportunity of cross-examining the witnesses examined by that party, and that no material should be relied on against him without his being given an opportunity of explaining them. The right to cross-examine the witnesses who give evidence against him is a very valuable right, and if it appears that effective exercise of this right has been prevented by the enquiry officer by not giving to the officer relevant documents to which he is entitled, that inevitably would mean that the enquiry had not been held in accordance with rules of natural justice.

11. In the light of above, I hold that the petition deserves to be accepted and the result, therefore, is that the petition is allowed and the Annexure "C" whereby the Petitioner has been removed from service is hereby quashed and he shall be deemed to have continued in service with all consequential benefits accruing from the striking down of this order. Parties to bear their own costs.