

(1963) 05 P&H CK 0043
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1667 of 1981

M.L. Kandhari

APPELLANT

Vs

The Union Government

RESPONDENT

Date of Decision : 07-05-1963

Acts Referred:

Central Civil Services (Conduct) Rules, 1955 — Rule 3, 4A, 9
Constitution of India, 1950 — Article 19, 226

Citation : AIR 1964 P&H 148 : (1963) 65 PLR 997

Hon'ble Judges : Shamsher Bahadur, J

Bench : Single Bench

Advocate : S.C. Goyal, for the Appellant; Tejinder Singh and H.S. Doabia, A.A.G., for the Respondent

Judgement

Shamsher Bahadur, J.—These proceedings under Article 226 of the Constitution are an aftermath of the demonstrations which took place on 11th of July, 1960, outside the office of the Accountant-General, Punjab, Simla, in connection with the impending Central Government employees' strike which was scheduled to commence on the midnight of 11th and 12th of July, 1960. The Petitioner, M.L. Kandhari who was amongst the demonstrators was an Upper Division Clerk in the Accountant General's office of about nine years' standing when he was removed from service by the impugned order of the Accountant General, Punjab, Simla, passed on 1st of October, 1960, with immediate effect. The appeal preferred to the Comptroller and Auditor-General, who is the appellate authority, was dismissed on 24th of August, 1961. It is asserted on behalf of the Petitioner in the writ petition which was filed on 19th of December, 1961, that he has Won singled out from amongst 1200 participants in the strike for this exacting penalty.

2. The Accountant General, Punjab, Simla, was informed at about 3:30 P.M. on 11th of July, 1960, that two Sub-Inspectors of police were on their way to his office to arrest certain persons who were suspected to taking active part in furtherance of the strike which was scheduled to commence at midnight. These

police officers interrogated seven officials, two of these being P.L. jhingan, General Secretary, Punjab Civil Accounts Association, and K.K. Verma, Superintendent. The persons who were interrogate were assembled in the room of the Accountant General at about 4 P.M. In order to effect the release of these per-sons, there was a big demonstration outside the office and slogans were shouted for the long lives of jningan and other persons inside the room of the Accountant-General it was demanded that the seven persons should be release forthwith. After consultation with the District authorities it was decided at about 5-45 P.M. to let go the persons who were being interrogated. They were, however, instructed to appear at the police station at 7:30 P.M. It is in connection with the demonstration which took place outside the office of the Accountant-General that M.L. Kandhari was charge-sheeted on 22nd of July, 1960 in the first stance, only two charges were framed against him, these being by participating in a demonstration and raising Slogans and participating in a meeting convened to ask the staff to go on strike and himself participating in the strike M.L. Kandhari violated the provisions of Rule 4-A of the Central Civil Services (Conduct) Rules, 1955 Charge No. 2.

That the said Shri M.L. Kandhari by associating him-self with the raising of funds for the furtherance of the threatened strike contravened the provisions of Rule 9 or the Cenral Civil Services (Conduct) Rules, 1955.

Subsequently, by a memorandum of 19th of August, 1960, three more charges were added, it was alleged that on 11th of July, 1960, during office working hours, Kandhari went from room to room and carried on propaganda in favour of the Impending strike; further, that between 4-00 to 4:30 PM. on 11th of July, 1960, the Petitioner went about from room to room in the Railway Board Building to ask the members of staff to assemble before the Accountant-General's room to stage a demonstration against the alleged arrests of Sarvshri P.L. Jhingan and K.K. Verma, and lastly, that at about 9:00 P.M. he took part in a secret meeting held at the house of Shri R.K. Chaona to chalk out plans and to allot duties to the various persons for obstructing men from attending office and for making the strike a success. Shri A.K. Mathur, Deputy Accountant-General, was appointed an Enquiry officer by the Accountant-General.

3. The immediate reaction, of the Petitioner when he received the memorandum of the Deputy Accountant General along with charge-sheet on 22nd of July, 1960, was to express an unqualified regret in paragraph 3 of the reply, Which is marked Annexure "B", the Petitioner stated thus:

...yet I beg to be excused; and I further assume you, sir, that I shall endeavour very hard not to give any opportunity or suspicion, in future, about my conduct.

I mention this particularly because the Accountant-General as the punishing authority had been actuated in reaching the tentative conclusion that the Petitioner deserves to be removed from service by a consideration expressed in paragraph 7 of his order that the whole evidence led by him leads to the

conclusion that he has no regret for his misbehaviour. The continuance of such a person in service is a potential danger to the discipline and efficiency of the office.

4. Before I deal with the contentions canvassed on behalf of the Petitioner and the Respondent, I would like to mention that on the conclusion of the strike the Union Government declared a general amnesty for the strikers and announced that they would be dealt with leniently and nobody would be victimised. It is the case of the Petitioner that the avowed policy of clemency, announced by the Government has been departed from in his case and out of the twelve hundred strikers he alone has been punished. These assertions which have been made in Clauses (c) and (g) of paragraph 15 of the petition are not specifically traversed and all that is submitted on behalf of the Respondent is "that the punishment meted out to the Petitioner is in accord with the gravity of his offence and no kind of discrimination has been practiced, it is not denied that the Union Government had announced amnesty and other demonstrators have been let off altogether or awarded lighter, or normal punishments.

5. Though there are many allegations about the conduct of the enquiry officer and his refusal to admit evidence or to grant adjournments it is not necessary to make any reference to them for purposes of this petition. It is urged by Mr. Goyal on behalf of the Petitioner that the sum and substance of all the allegations is covered by Rule 4-A of the Central Civil Services (Conduct) Rules, which is to this effect:

No Government servant shall participate in any demonstration or resort to any form of strike in connection with any matter pertaining to his conditions of service.

It may be mentioned also that in charge 2 it is alleged that Rule 9 has been breached, this rule being;

No Government servant shall, except with the previous sanction of the Government or of such authority as may be empowered by it in this behalf, ask for or accept contributions to, or otherwise associate himself with the raising of, any fund in pursuance of any object, whatsoever.

Now, it may be useful to refer to the detailed order of the Accountant-General, who proposed for the Petitioner the tentative punishment of removal from service after consideration of the report of the Enquiry Officer whose findings were against him. In paragraph 5 of this order it is thus observed:

I have given careful thought to the quantum of punishment to be awarded to Shri M.L. Kandhari. Had he been only guilty of going on strike and collecting funds as many others did, a severe punishment would not have been called for. But Shri Kandhari grossly misbehaved in as much as he performed "siapa" and shouted abusive slogans.

Thus in the view of the punishing authority, the gravamen of the offence of the Petitioner was that he performed siapa and shouted abusive slogans. In other

words, he would have dealt lightly with the two main charges originally preferred against him, namely, resort to strike and collection of funds.

6. Looking closely at all the charges including those which were made after the 22nd of July, 1950, it appears to me that the principal charge against the Petitioner was that he was canvassing support for the impending strike, by going from room to room and office to office, in the subsequent three allegations there is no charge of the Petitioner's performing *siapa*. All that is said that he participated in the demonstration against the arrest of Jhingan and Verma and later in the evening at 9:00 P.M. attended a secret meeting to make plans for the success of the strike. I see no merit in the contention of the learned Additional Advocate-General that the punishment has been awarded to the Petitioner under Rule 3 of the Central Civil Services (Conduct) Rules; for one thing this has never been mentioned in any of the allegations preferred against the Petitioner. Besides, the language of Rule 3 which is reproduced below shows clearly that the charges against the Petitioner have not been framed to bring the attending acts under its purview:

3. Every Government servant shall at all times maintain absolute integrity and devotion to duty.

I conceive all the allegations other than those covered by the first two charges to flow from and form a part of the main aspect of the charge that the Petitioner was guilty of violating Rule 4-A by participating in a demonstration exhorting his co-participants to go on strike, their Lordships of the Supreme Court in *Kameshwar Prasad and Others Vs. The State of Bihar and Another*, have recently held that Rule 4-A of the Bihar Government Servants' Conduct Rules is *ultra vires* and should be struck down. This rule of the Bihar Government Servants' Conduct Rules is word for word the same as Rule 4-A of the Central Civil Services (Conduct) Rules, for whose breach the Petitioner is charged in the words of Mr. Justice Ayyangar, at p. 1172:

...if the rule were so framed as to single out those types of demonstration which were likely to lead to a disturbance of public tranquility or which would fall under the other limiting criteria specified in Article 19 (sic) the validity of the rule could have been sustained, *me vice* of the rule, in our opinion, consists in this that it lays a ban on every type of demonstration be the same however innocent and however incapable of causing a breach of public tranquility and does not confine itself to those forms of demonstrations which might lead to that result.

In the view of the Supreme Court the rule framed so baldly and widely cannot be sustained and has, therefore, been declared *ultra vires* the Constitution. Broadly and substantially the charges against the Petitioner are based on the breach of Rule 4-A of the Central Civil Services (Conduct) Rules whose language and content is precisely the same as that of Rule 4-A of Bihar Government Servants' Conduct Rules, 1956, which appeared to their Lordships to be insupportable. So far as I can see, it is impossible to say that the substantial allegations against

the Petitioner were any other than those which are covered by the prohibition provided in Rule 4-A. whatever the Petitioner is said to have done was in furtherance of the strike which without proof of its being a source of disturbance of public tranquility could not be made the subject-matter of a charge-sheet. Even the second charge which concerns the collection of funds the evidence of V.P. Malhotra on which reliance has been placed points out that the contributions Were taken by the Petitioner for the impending strike, the conclusion that the substantial allegation against the Petitioner relates only to his participation in the activities for the furtherance of the strike becomes inescapable.

7. The considerations which weighed with the Accountant-General in awarding to the Petitioner the extreme penalty of removal do not concern the demonstrations or the strike but the use of abusive slogans and *siapa* which in a way are inextricably connected with the strike. The observation of the Accountant-General that he would have taken a lenient view of the Petitioner's offence if it had been confined to demonstrations and collection of funds shows that the Petitioner has truly been punished only for the abusive slogans and (sic) Rule 4-A which has been found to be ultra vires and unconstitutional, and, therefore, of the opinion that the order of removal must be set aside being based primarily on the breach of Rule 4-A.

8. In this view of the matter, it is not necessary, to consider the further submission of Mr. Goyal which he very earnestly urged before me that the Enquiry Officer being a subordinate of the Accountant-General, who is said to have been abused in the slogans employed by the Petitioner and other demonstrators, was an interested person and incompetent to hold the enquiry. It is not necessary for me to decide this question and I do not wish to be understood to express any opinion on its merits.

9. This petition will be allowed and the order of the Accountant-General, affirmed by the Comptroller and Auditor-General in appeal, removing the Petitioner from service will be set aside. In the circumstances, I would leave the parties to bear their own costs.