

(1986) 08 PAT CK 0006

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 473 of 1981 (R)

Mohini Mohan Dey

APPELLANT

Vs

The Union of India and others

RESPONDENT

Date of Decision : 13-08-1986

Acts Referred:

Constitution of India, 1950 — Article 14, 16(1), 311(2)

Citation : (1987) PLJR 458

Hon'ble Judges : U.P. Singh, J

Bench : Single Bench

Advocate : P.K. Sinha and Mrs. M.M. Pal, for the Appellant; Debi Prasad, Miss I. Choudhury and Mr. A. Sahay, for the Respondent

Final Decision : Allowed

Judgement

U.P. Singh, J.—The order of removal of the petitioner from service dated 27th September, 1978, contained in Annexure-22 and the order passed by Respondent No. 1 dated 28th August, 1980 (Annexure-25) rejecting the appeal of the petitioner have been challenged in this writ application. The petitioner entered into the service and joined the post as Building Supervisor under the Divisional Engineer of Telegraph in July, 1947. In January, 1971, he was promoted as an Assistant Engineer and in March, 1971 his promotion as an Assistant Engineer was confirmed. In the year 1974, he was transferred to Patna as Assistant Engineer, Minor Civil Works under the Post Master General, Bihar. Certain works of maintenance such as, cleaning of septic tank, water pipes, sanitary fittings and its repair etc. of the Post & Telegraph Colony at Kidwaipuri was entrusted to the petitioner to be carried out departmentally. The entire work was completed before the end of March, 1975 and the entire amount had been settled.

2. In October, 1975, the Posts & Telegraph's Board initiated a proceeding against the petitioner under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965. The substance of the imputation of misconduct or misbehaviour in respect of which the enquiry was proposed to be held was set

out in the statement of Articles of Charges. A statement of imputation of misconduct or misbehaviour in support of each Articles of charges was enclosed. A list of documents by which and a list of witnesses by whom, the Articles of Charges were proposed to be sustained was also enclosed. The petitioner was directed to submit written statement of his defence within ten days of the receipt of the said memorandum. He was requested to state whether he desires to be heard in person. The petitioner submitted his written statement of defence denying the allegations and charges. One Shri K.P. Chakravarty, Commissioner for Departmental Enquiry was appointed as Enquiry Officer to enquire into the charges. Shri R.R. Prasad Sinha, Inspector of Police, Special Police Establishment, Patna, was appointed as Presenting Officer. The Commissioner for Departmental Enquiry intimated the petitioner that preliminary hearing of the case will be held at New Delhi on 11th February, 1977 and if he fails to appear, the enquiry will be held ex-parte. Under Rule 8 (a) of the Rules, the Enquiry Officer permitted the petitioner to be assisted by one Sri C.P. Verma, a head clerk, in the office of the Post Master General, Bihar, Circle, Patna, as his defence Counsel. The Post Master General was directed to allow Shri Verma to attend the hearing at New Delhi to defend the petitioner in course of the enquiry. On 12th and 13th April, 1977, a preliminary enquiry was held by the Enquiry officer in regard to the relevance and admissibility of the documents produced by the department in support of the charges and the petitioner on 13th April, 1977, submitted an application before the Enquiry Officer requesting him not to rely on certain documents, such as Measurement Books: and the related vouchers which were completely damaged and it was difficult to decipher the entries. The petitioner urged that the documents mentioned in the application relating to Annexure 3 and 4 could not be examined by him as they were not with the Presenting Officer. The hearing at Delhi was adjourned to 14.6.1977. Since the petitions was undergoing a medical treatment at Patna, he prayed for an adjournment. On account of continued illness he could not be present on 6th August, 1977, the date fixed for preliminary hearing at New Delhi. On this date, the Enquiry Officer passed the following order:

The petitioner was offered the final opportunity for submitting a list of additional documents and list of defence witnesses. He had not inspected the listed documents till then which he must do so., immediately.

The original Presenting Officer, Shri R. R. Prasad Sinha was dead; Shri R. Lal, Inspector, immediately after his appointment shall ensure that the inspection of the listed documents are completed by the petitioner without any further loss of time. Enquiry deferred to 9th September, 1977.

3. On the 2nd September, 1977, the petitioner sent a letter to the Enquiry officer stating that formal notice for holding enquiry on 9th September, 1977 was neither received by his defence Counsel, Shri C.P. Verma nor by the Post Master General nor was it received by the petitioner himself. The listed documents were not shown to him by the Presenting Officer till then. No Presenting Officer had

been appointed after the death of Shri R.R. Prasad Sinha and requisition for additional documents could be possible and desirable only after inspecting the documents listed by the Department.

4. On 9.9.1977 the petitioner presented himself before the Enquiry Officer and participated in the preliminary hearing when the following orders were passed by the Enquiry Officer:

(i) Documents at serial nos. 1 and 12 of Annexure IV to the charge were not available with the representative of the Presenting Officer, Shri R. Lal. These should be quickly collected from P.M. G., Bihar and got inspected by the petitioner at Patna at the earliest.

(ii) P.M.G. be requested to relieve Mr. C. P. Verma, a Head Clerk of his office, who had been nominated as defence assistant of the petitioner.

(iii) Petitioner would not be given any more time for submission of his requisition for additional documents. He should submit requisition for additional document and list of defence witnesses in course of a fortnight.

(iv) Next date of hearing fixed for 3rd November, 1977.

5. In course of time, Sri R. Lal, Inspector of Police was appointed as Presenting Officer in place of late R.R. Prasad Sinha. In his application dated 24.9.1977 the petitioner raised his grievance that in respect of all the charges, he was not given copies of the listed documents except Item Nos. 1 and 12 of Annexure 4 appended to the charge-sheet. In respect of documents mentioned in Annexure-3 to the charges, copies of serial nos. 1 and 15 were not given and in respect of Annexure-4 to the charges out of 25 items mentioned therein, as many as 14 items had not been shown to him for his inspection. He reiterated that the prayer made by him in his application dated 13th April, 1977 was yet to be decided and that the list of additional documents required for his defence could be submitted immediately after the listed documents are shown to him. Placing reliance on Rule 14 (II) (i) (ii) and (iii) of the Rules, he prayed for supply of the copies of the statements of the witnesses, viz. serial nos. 1 and 14 of annexure-3. He sought permission to be allowed to inspect the remaining 14 items of documents mentioned in Annexure-4 which had not been produced for inspection. He again emphasised that he be permitted to submit a list of additional documents for his defence only after the listed documents of the department are made available to him for inspection. The Enquiry Officer passed the order on 28th September, 1977 stating that since the petitioner had put in his signature on the order-sheet dated 9th September, 1977 it would be presumed that he had inspected the documents. He had failed to submit the list of additional documents and of defence witnesses therefore it would be presumed that he had no such list to file. The case was fixed for regular hearing in the middle of November, 1977.

6. On 11th October, 1977, the petitioner sent a letter to the Enquiry Officer and

stated that on 9th September, 1977 he put his signature in the order-sheet simply to denote that he had appeared at the enquiry on that date. It is nowhere stated in the order-sheet of that date that all listed documents had either been shown to him or inspected by him. In any case, by that time the documents could not have been shown to him by Shri R. Lal, the Inspector of Police, who had not yet been appointed as Presenting Officer. It was strenuously urged by him in his letter that there was no material to show that relevant documents as detailed in his application dated 13th April, 1977, had ever been shown to him and, therefore, the presumption of the Enquiry Officer, that on account of his signature put on the order-sheet he must be deemed to have inspected the listed document was unjustified. It was equally unjustified to "presume that since he had not submitted requisition for additional documents or list of defence witnesses, he had none to requisition and no defence witnesses to be summoned. On the representation dated 11th October, 1977, the Enquiry Officer communicated the order passed on 22nd October, 1977 and directed that regular enquiry would be held at New Delhi on the 29th and 30th November, 1977 and 1st December, 1977. The Presenting Officer would produce witnesses on 29th and 30th November, 1977 and close his case. Immediately, after the closure of the prosecution case the petitioner would be asked to submit his defence statement and open his defence case on 1.12.1977. The copy of the order-sheet dated 22nd October, 1977 revealed that the application of the petitioner regarding inspection of listed and additional documents was not entertainable and the Presenting Officer should ensure that all opportunities for inspection of documents had been offered to the petitioner.

7. On 4th November, 1977, the petitioner was shown the listed documents by the Presenting Officer for his inspection. On 8th November, 1977, the petitioner requested the Presenting Officer in writing under intimation to the Enquiry Officer to supply to him the copies of the statements of the witnesses viz. Sri Raghunath Ram, and the documents relating to the reports of Shri H.S. Pravakaran, the Executive Engineer, Shri N.R. Hirendango, D.M.T., Patna; Dr. Uma Shankar Sahi, Shri Ram Sewak Prasad, T.S. Clerk, D.M.T. Patna and Sri Lakhnan Ram, Care-taker, D.M.T., Office Patna, as contemplated under clause (ii) of sub-rule (II) of Rule 14 of the Central Civil Service (Classification Appeal and Control) Rules, 1965. These were, however, never supplied to the petitioner. After inspecting the original documents filed on behalf of the prosecution on 14th November, 1977, the petitioner submitted a list of nine additional documents in respect of charge No. 1 and 27 additional documents in respect of charge nos. 2, 3, and 4 on which he intended to rely in course of his defence and he, accordingly prayed for production of those documents which were in possession of Respondents 1 to 3. Simultaneously, he gave out the names of nine persons citing them as his defence witnesses to whom summons were required to be issued. He, therefore, requested for production of the additional documents, before commencement of the regular hearing. These are contained in his application dated 19th November, 1977 (Annexure 14).

8. Under his memorandum dated 19th November, 1977, the Enquiry Officer sent a copy of his order dated 18th November, 1977 along with nine summonses signed by him for the defence witnesses. He, however, did not order the Presenting Officer to supply copies of statements of witnesses nor did direct him to produce the documents which had been listed as additional documents for the defence of the petitioner. It was urged that action of the Enquiry Officer was in contravention of the provisions of Rule 14 (12) and (13) of the Rules. Meanwhile, since the marriage of the son of defence assistant of the petitioner was settled, the petitioner in a registered letter dated 21.11.1977 requested the Enquiry Officer to adjourn the enquiry to any other date till 30th November, 1977 since the marriage was to be performed on 26th November, 1977. A printed invitation card was also sent along with that. The petitioner again reiterated his request for the production of additional documents. In reply to the said letter, the Enquiry Officer by means of a telegram dated 26th November 1977, refused to adjourn the case and asked the petitioner to attend the hearing. The telegram was delivered to the petitioner in the afternoon of 28th November, 1977, He, therefore, sent an immediate telegram to the Enquiry Officer requesting him for at least a week's adjournment stating that the telegram of the Enquiry Officer was delivered to him only in the after-noon of 28th November, 1977 and that his defence assistant, on account of the performance of the marriage ceremony of his eldest son at Dhanbad would not be made available to him and the time was so inadequate that he cannot reach Delhi covering such a long distance.

9. The Enquiry Officer started the hearing ex-parte on 29th November, 1977 and examined Shri H.S. Pravakaran, the Executive Engineer and exhibited certain documents and again on 30th November, 1977, Shri B.K. Mahanti, Officer on Special duty, who had never been cited before as a witness, Shri Parmanand Singh, Building Officer, Sri R.C. Agarwala, Divisional Engineer (Phones), Patna and Shri B.N. Jha Inspector of Police, Central Bureau of Investigation and, thereafter, closed the case of the prosecution. The petitioner urged that although he had requested for adjournment in his letter dated 21st November, 1977, followed by telegram dated 28th November, 1977 but still the Enquiry Officer in the order-sheet dated 29th November, 1977, erroneously recorded that the petitioner did not send any information till that date. This, it is pointed out, is an error apparent on the face of the record of the case and this again goes to show the bias and prejudice, that were inherently present in the mind of the Enquiry Officer.

10. On 1st December, 1977, the Enquiry Officer submitted his report to respondent No. 1 holding that all the charges were found proved against the petitioner. Respondent No. 1 under its memorandum dated 13th February 1978, while sending a copy of the enquiry report of the Enquiry Officer and expressing the view of the Post & Telegraphs Board agreeing therewith, proposed to impose the penalty of dismissal upon the petitioner and asked him to submit a representation in regard to the same. On 21st March, 1978, the petitioner submitted his representation against the proposed punishment of dismissal

before the Chairman of the Posts & Telegraphs Board and urged that the entire proceeding was vitiated because he was not provided reasonable opportunity to defend himself in course of the enquiry. The principles of natural justice were violated at every stage and the provisions of the Rules were not followed. The Chairman of the Post & Telegraphs Board imposed punishment of removal from service with immediate effect which was served upon the petitioner on 29th December, 1978. The petitioner then preferred application under Rule 23 of the Rules which was ultimately rejected.

11. The order of removal has been challenged by the petitioner's counsel as illegal, arbitrary and contrary to the provisions of Articles 14 and 16 (1) read with Articles 311 (2) of the Constitution of India. Elaborating his argument, the petitioner's counsel contended that the petitioner had not been provided reasonable opportunity to defend himself inasmuch as he was not provided with the additional documents which were essential for his defence and, further, that the copies of the statement of the witnesses had not been supplied to him as required under rule 14 (II) (ii) and sub-rule (12) of the Rules. Not adjourning the hearing of the case although a very legitimate ground existed prevented the Defence assistant of the petitioner from appearing at the hearing. It frustrated the very object and purpose behind allowing a defence assistant to assist the petitioner at the enquiry.

12. The grievance of the petitioner that reasonable opportunity to defend himself was not afforded appears to be genuine and has to be accepted. It was categorically asserted by him that copies of the listed documents except item nos. 1 to 12 of Annexure 4 were not supplied to him and he was not allowed access to those documents mentioned in Annexure 4 appended with the chargesheet. Again in respect of the documents mentioned in Annexure 3 to the chargesheet, copies of serial nos. 1 and 15 had not been given and in respect of Annexure 4 to the charges, out of a total of 25 items, 14 items were not shown to him for inspection. His prayer in this respect was made as early as on 13th April, 1977 and he reiterated the grievance on several occasions. His statement was category and unequivocal when he urged that list of additional documents required for his defence would be submitted immediately after the listed documents would be shown to him. He was crying hoarse. In his aforesaid application dated 24th September, 1977 (Annexure-9) he specifically requested and prayed for supply of copies of the statements of the witnesses, viz. serial nos. 1 to 15 of Annexure 3. He asked permission that he be allowed to have access to the remaining 14 items of the documents mentioned in Annexure 4 to the charges. These were not produced for his inspection.

13. There is no specific denial of the grievances recorded by the petitioner in paragraph 25 of the writ application. In reply, the only statement made is that since the petitioner had put his signature on the ordersheet of 9.9.1977, the Enquiry Officer correctly presumed that the petitioner had no list of additional documents to be filed and he had no defence witnesses to be examined. There is

no justification for such assumption. I see no reason how it could be assumed and presumed that the petitioner had inspected the documents and had no list to file either for the additional documents or for the examination of the defence witnesses. It is nowhere recorded by the Enquiry Officer that all the listed documents had been shown to the petitioner or had been inspected by him. As pointed out by the petitioner in paragraph 27 of the writ application, those documents could not have been shown since Shri R. Lal, Inspector of Police, had not yet been appointed as Presenting Officer till that date. The assertion made in paragraphs 25 and 27 of the writ application have not been firmly refuted in the counter affidavit and it has not even stated that the relevant documents detailed in the application dated 13.4.1977 were ever shown to the petitioner. In paragraphs 29 and 30 of the writ application it has been further demonstrated by the petitioner that the copies of the statements of the witnesses relied and referred to in the report were not given to him. The grievance of the petitioner contained in paragraph 29 of the writ application has not been controverted in the counter affidavit. Reply to paragraphs 30 and 31 of the writ application are found in paragraphs 14 and 15 of the counter affidavit and there is hardly any satisfactory reply. It is not asserted that the additional documents and the statements of witnesses were ever supplied to the petitioner.

14. Once it is held that the relevant documents categorised by the petitioner in detail and mentioned in paragraph 25 of the writ application (Annexure-9) as also mentioned in paragraphs 29 and 30 were not supplied inspection was not allowed and the petitioner was not given opportunity to examine defence witness and the copies of the statements of the witnesses relied and referred to in the report were not given to him, it has to be held that the enquiry was vitiated and the petitioner was not afforded reasonable opportunity to defend himself. This itself vitiates the impugned order of removal.

15. Then remains the last contention to be considered as to whether there was any justification in not granting even one week's adjournment to the petitioner when his defence assistant had been prevented by unavoidable circumstances to be present at their final hearing at Delhi. The facts have been fully illustrated in paragraphs 30 to 34 of the writ application enumerating the circumstances under which the petitioner was compelled to ask for one week's time. The facts alleged in paragraph 32 of the application have not been controverted in the counter affidavit. In reply to paragraph 34, the only answer given is that the petitioner was asking for postponement of the case on one pretext or the other. I see no reason how an adjournment for one week-at the final hearing would have frustrated the proceeding. The petitioner was prevented by unavoidable circumstances beyond his control. There was no valid reason for such refusal and it proved fatal to the petitioner's case.

16. In the facts and circumstances, therefore, it must be held that the petitioner was not afforded necessary facilities to have the defence assistant in defending him which assistance he was entitled to under rule 15 (5) of the Rules. The

Government servants by and large have no legal training. At any rate it is nobody's case that the petitioner had, legal training. Moreover, when a man is charged with the breach of a rule entailing serious consequences, he is not likely to be in a position to present his case as best as it should be. The accusation against the petitioner threatened his very livelihood. Any adverse verdict against him was bound to be disastrous to him, as it has proved to be. In such a situation, he cannot be expected to act calmly and with deliberation. Rule 15 (5) of the Rules has, thus, been violated. In the result, this application is allowed and the impugned order contained in Annexure 22 is quashed. There will be no order as to costs.