
(1997) 10 AHC CK 0094
In the Allahabad High Court
Case No : C.M.W.P. No. 17104 of 1996

Narendra Pal Singh Teotia

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-10-1997

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Uttar Pradesh Civil Services (Classification, Control and Appeal) Rules, 1930 — Rule 55

Citation : (1999) 3 LLJ 536 : (1998) 2 UPLBEC 853

Hon'ble Judges : R.A. Sharma, J;Kundan Singh, J

Bench : Division Bench

Advocate : Dinesh Dwivedi, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

R.A. Sharma, J.—The petitioner, who is a Government servant, belonging to the Provincial Civil Service, was served with a charge sheet dated December 10, 1992, in response to which he submitted his reply denying the charges. The Commissioner, Bareilly Division, Bareilly was appointed as Inquiry Officer, who submitted his report dated March 3, 1994, holding the petitioner guilty of charges. Acting on the report of the Inquiry Officer the Government passed an order dated April 24, 1996, dismissing the petitioner from service. Being aggrieved by the said order he has filed this writ petition.

2. Counter affidavits have been filed on behalf of the Government as well as the Commissioner, Bareilly Division, Bareilly, who was appointed as Inquiry Officer. The petitioner has filed rejoinder affidavit in reply thereto. We have heard the learned counsel for the petitioner and the learned Standing counsel.

3. Learned counsel for the petitioner has made two submissions in support of the writ petition, namely, (i) no inquiry was held by the Inquiry Officer before submitting his report to the Government, (ii) no reasonable opportunity of being heard was given to the petitioner. In his support the learned counsel for the

petitioner has placed reliance on Article 311(2) of the Constitution of India as well as on Rule 55 of the U. P. Civil Services (Classification, Control and Appeal) Rules, 1930 (hereinafter referred to as the Rules).

4. Article 311(2) of the Constitution has laid down that no person, who is a member of the civil service of the State or holds a post under the State, shall be dismissed, removed or reduced in rank "except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges." This clause requires that before a Government servant is dismissed from service an inquiry has to be held in which a reasonable opportunity of being heard in respect of the charges levelled against him has to be given to him. Rule 55 of the Rules has also laid down that order of major punishment of dismissal, removal or reduction in rank shall not be passed against a Government servant unless he has been served with the grounds on which action is proposed to be taken against him and has been given a reasonable opportunity of being heard in connection therewith. The rule further requires that if the charged officer so desires or the authority so directs an oral inquiry has to be held "in respect of such of the allegations as are not admitted." It is also the mandate of the same rule that at the inquiry it is open to the officer charged to produce evidence in his support and also to cross-examine the witnesses produced against him. Rule 55 is a mandatory provision. Reference in this connection may be made to *State of Bombay (Now Maharashtra) Vs. Narul Latif Khan*, , and *State of U.P. and Another Vs. C.S. Sharma*, . Therefore, before dismissing a Government servant it is mandatory to hold an inquiry in accordance with the principles of natural justice.

5. In the present case the admitted factual position is that the petitioner submitted his reply on April 24, 1993 denying the charges levelled against him in the charge sheet. No inquiry was held by the Commissioner, Bareilly Division, Bareilly, who was appointed as Inquiry Officer till July, 1993. On July 29, 1993 the Inquiry Officer sent a telegram to the petitioner for his personal appearance before him at 11 A.M. on August 4, 1993 at Bareilly. In paragraphs 17 and 18 of the writ petition the petitioner has stated that when he was working at Moradabad as Additional Commissioner he received the said telegram on August 4, 1993 for his appearance and personal hearing before the Inquiry officer at Bareilly. The petitioner accordingly sent a telegram on August 4, 1993 to the Inquiry Officer stating therein that he has received the aforesaid telegram on August 4, 1993 and requested for fixing another date for his personal hearing. It has also been stated in paragraph 19 of the writ petition that the said telegram was received by the Inquiry Officer. A counter affidavit has been filed by Sri Rifaqat Ali on behalf of the Inquiry Officer; but the aforesaid allegations have not been denied although it has been stated that inquiry was held. But when such an inquiry was held and how the petitioner was given an opportunity of being heard has not been mentioned in the counter affidavit. In fact paragraphs 18 and 19 of the writ petition have not been denied by the respondents. From the perusal of the pleadings of the parties it is apparent that August 4, 1993 was fixed by the

Inquiry Officer for inquiry regarding which the telegram dated July 29, 1993 was sent by the Inquiry Officer to the petitioner for his appearance and personal hearing; but it was received by the petitioner at Moradabad on August 4, 1993. It was, therefore, impossible for the petitioner to appear before the Inquiry Officer at Bareilly at 11 A.M. on August 4, 1993. He was, therefore, justified to request the Inquiry Officer to fix another date for his personal hearing, and the telegram containing that request was also received by the Inquiry Officer but no other date was fixed. Without holding an inquiry and without fixing any other date the Inquiry Officer submitted his report on August 3, 1994, holding the petitioner guilty of the charges. The petitioner was thereafter furnished with the inquiry report and he submitted his representation against the said report in which it was specifically mentioned that the Inquiry Officer has submitted his report without holding any inquiry and without giving him any opportunity of being heard. The Government by the impugned order accepted the inquiry report holding the petitioner guilty of the charges and dismissed him from service but has not dealt with the objection raised by the petitioner regarding non-holding of inquiry and not giving him an opportunity of being heard.

6. From the perusal of the pleadings of the parties it is quite apparent that the petitioner has been dismissed from service without holding any inquiry and without giving him a reasonable opportunity of being heard. The impugned order has thus been passed in violation of Rule 55 of the Service Rules (sic.) and Article 311(2) of the Constitution and, therefore, it cannot be sustained.

7. The writ petition is accordingly allowed with costs. The impugned order dated April 24, 1996 (Annexure 8 to the writ petition) is quashed. The petitioner will be reinstated in service forthwith with full service benefits including the arrears of salary. It will be open to the Government to hold a fresh inquiry, if it is so advised.