

(1982) 07 SHI CK 0008

In the High Court Of Himachal Pradesh

Case No : Letters Patent Appeal No. 23 of 1973

S.D. Bhardwaj

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 15-07-1982

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14, 14(11), 14(14), 14(15), 14(16)
Constitution of India, 1950 — Article 226, 227

Citation : (1982) 11 ILR HP 431

Hon'ble Judges : V.P. Gupta, J; T.R. Handa, J

Bench : Division Bench

Advocate : Pratima Malhotra, for the Appellant; P.A. Sharma, for the Respondent

Judgement

V.P. Gupta, J.—The Appellant joined service as an Investigator in the Department of National Sample Survey, Government of India, on 19th January, 1965, and was serving the said department till his removal from service on 31st August, 1967. There were some allegations against the Appellant in the year, 1966 and a preliminary enquiry was held. After the preliminary enquiry, it was proposed to hold an enquiry against the Appellant under Rule 14 of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 (hereinafter called the Rules of 1965), with the result that the Appellant was informed vide memorandum, dated 28th October, 1966, (Annexure B-1) that an enquiry would be held in respect of the charges levelled against him. With this memorandum, the Appellant was supplied the statement of article of charge (Annexure B-2), statement of imputations of misconduct in support of the articles of charge (Annexure B-3), list of documents (Annexure B-4) and list of witnesses (Annexure B-5). The Appellant was asked to admit or deny the charges and submit within 10 days of the receipt of the memorandum a written statement of his defence and also to state whether he desired to be heard in person.

2. The charge against the Appellant was as follows:

That the said Shri S.D. Bhardwaj while functioning as Investigator, Punjab Block, fudged his diary for 24-1-1966 and 25-1-1966, 21-3-1966 and 8-4-1966 and 9-4-1966 respectively and did fictitious land Utilization Survey work on 25-1-1966 in Sample Village Doh, Tehsil Sarkaghat, District Mandi.

Thus Shri Bhardwaj is charged with fudging of diary on the above dates and doing fictitious work on 25-1-1966.

3. Enquiry was held, and the Inquiry Officer submitted his report (Annexure-F) with the finding that charge No. 1 was proved except that entries in diary for 21-3-1966, 8-4-1966 and 9-4-1966 about journeys to/from village Doh on the said dates could not be proved wrong beyond doubt.

4. The disciplinary authority agreed with the findings of the Inquiry Officer and held that the charge of fudging the diary for 24-1-1966 and 25-1-1966 and doing fictitious work on 25-1-1966 was proved. On this basis the disciplinary authority provisionally came to the conclusion that the Appellant was not a fit person to be retained in service and proposed to impose the penalty of dismissal from service. The Appellant was given a show cause notice giving him opportunity of making representation on the proposed penalty, but only on the basis of the evidence adduced during the enquiry. The copy of the show cause notice dated 14-6-1967 is Annexure-G. A representation (Annexure-H) was submitted by the Appellant. The disciplinary authority on 18-8-1967 ordered that the Appellant be removed from service (Annexure-J).

5. The Appellant challenged this order by filing a writ petition under Articles 226 and 227 of the Constitution of India and raised various objections. This writ petition was dismissed on 11th July, 1973, and the order of removal of the Appellant from service, dated 18th August, 1967, was upheld.

6. Aggrieved from the judgment of the learned single Judge the Appellant has now filed the present appeal.

7. Mrs. Pratima Malhotra, the learned Counsel for the Appellant, contended that the enquiry was not held in accordance with the Rules of 1965 and the principles of natural justice. She contended that the procedure as prescribed in rules 14(11), 14(14), 14(15) and 14(16) of the Rules of 1965 was not followed and the case of the Appellant was prejudiced. The Appellant was not given full opportunity by the Inquiry Officer and the enquiry proceedings are vitiated.

8. Mrs. Malhotra further contended that the Appellant filed an appeal against the order, dated 18th August, 1967, but his appeal was dismissed by the Chief Director on 13th November, 1967. According to the learned Counsel the disciplinary authority had exonerated the Appellant with respect to charge of fudging of the diary on 25-1-1966, but the appellate authority took into consideration this charge of 25-1-1966. According to the learned Counsel the Appellant received no new show cause notice for his conduct of 25-1-1966 and, therefore, the orders of removal were bad.

9. Shri P.A. Sharma, the learned Counsel for the Respondent (Union of India), produced the records of the enquiry proceedings and contended that the enquiry had been held according to the rules and principles of natural justice and full opportunity was given to the Appellant. It was contended that the date 25-1-1966 seems to have been wrongly mentioned by the appellate authority. In any case, no prejudice was caused to the Appellant.

He supported the judgment of the learned single Judge. It was also contended that the Appellant could not raise new pleas.

10. We have considered the contentions of the learned Counsel for the parties and have also gone through the enquiry file.

11. Rule 14(11) of the Rules of 1965 reads as follows:

(11) The inquiring authority shall, if the Government servant fails to appear within the specified time or refuses or omits to plead, require the Presenting Officer to produce the evidence by which he proposes to prove the articles of charge, and shall adjourn the case to a later date not exceeding thirty days, after recording an order that the Government servant may, for the purpose of preparing his defence:

(i) inspect within five days of the order or within such further time not exceeding five days as the inquiring authority may allow, the documents specified in the list referred to in Sub-rule (3);

(ii) submit a list of witnesses to be examined on his behalf;

(iii) give a notice within ten days of the order or within such further time not exceeding ten days as the inquiring authority may allow, for the discovery or production of any documents which are in the possession of Government but not mentioned in the list referred to in Sub-rule (3).

12. Shri H.L. Jain, Assistant Statistician, was appointed as the Inquiry Officer, vide order, dated 5th December, 1966, (Annexure-E). According to the enquiry report (Annexure-F) the enquiry was held on the following date(s) and place(s);

Date Place Details 16-1-67 Chandigarh Evidence and cross-examination of 17-1-67 the following by Shri Bhardwaj, Presenting Officer and Inquiry Officer were recorded 1. Shri K.K. Mengi, Assistant Superintendent (S.E.). 2. S.P. Duggal, Investigator (S.E.) 3. Shri M. F. Ahuja, Superintendent- Milage Dohnt (S.E.). 20-1-67 Postponed due to sudden availing 21-1-67 of leave on ground of illness by Shri Bhardwaj.

10-2-67 Chandigarh Postponed due to availing of 13-2-67 V. Doh leave on personal ground by Shri Bhardwaj. 14-3-67 V. Doh Evidence and cross-examination of the following were recorded: 1. Shri Gurdev Singh, Inspector. 2. Shri S.K. Arti, Investigator. 3. Shri K.K Mengi, Assistant Superintendent. 4. Shri S.P. Duggal, Investigator. 5. Shri M.F. Ahuja, Superintendent. 6. Shri Sunder Ram, Old Patwari of village Doh. 7. Shri Parma Dev, son of Shvamana,

8. Wife of Shri Chamaroo. 9. Shri Bhagat Ram resident of village Doh. 10. Shri Mansi Ram, son of Piara. 11. Shri Ghail Singh, Patwari. 12. Shri Chamaroo resident of village Doh. 13. Shri Ghuni Lal, son of Shri Chamaroo. 3-4-67 Chandigarh Inquiry Officer examined Shri Bhardwaj.

The enquiry proceedings file does not show that any order as is required under Rule 14 (11) was passed by the Inquiry Officer. According to this rule an order has to be recorded to the effect that the Appellant for the purpose of preparing his defence may (a) inspect documents specified in the list referred to in Sub-rule (3), (b) submit a list of witnesses to be examined on his behalf and (c) give notice for discovery or production of any documents which are in possession of the Government but not mentioned in the list referred to in Sub-rule (3) of Rule 14. In the present case no such order was ever recorded and thus procedure as laid in Rule 14 (11) of the Rules of 1965 was not observed.

13. It appears that after receiving the defence statement, the enquiry proceedings started and evidence of the prosecution witnesses was recorded. Annexure G-I, dated 18-2-1967 shows that the Inquiry Officer intimated the Appellant about the dates of the enquiry in the following manner:

Confidential. No. AS/NSS/Conf/2 (1)/66/312 Government of India, Cabinet Secretariat, National Sample Survey, (Office of Assistant Statistician), Chandigarh, dated the 18-2-1967.

Memorandum:

Subject.--Disciplinary proceedings against Shri S.D. Bhardwaj, Investigator (SE), NSS, Punjab Block.

In pursuance to the A.D. (NR)'s order No 3 (28) AD/(NR.)/66, dated 5th December, 1966, the undersigned is to invite attention of Shri S.D Bhardwaj, Investigator (SE), NSS, Punjab Block" to his defence statement dated 18th November, 1966. It has been decided to hold the inquiry in the case as per programme below:

Date Time Place 14-3-67 11.00 to Sample village Doh, Tehsil Sarka- and 15.00. ghat, District Mandi 15-3-67.

Shri S.D. Bhardwaj should, therefore, present himself at the place noted above. He should also keep all his witnesses etc. ready on these days.

Sd/- H.L. JAIN, Assistant Statistician.

To

Shri S.D. Bhardwaj, Investigator (SE) N. S. S. Punjab Block, Chandigarh.

Copy to:

1. Shri M.F. Ahuja, Superin- They are requested to tendent (SE), Chandi- be present on the said garh. date at the place men- 2. Shri S.S. Banga, Asstt.

tioned above along with Superintendent (SE). necessary records. 3. The Assistant Director (NR), National Sample Survey, New Delhi, for information.

Sd/- H.L. JAIN, Assistant Statistician.

14. From the enquiry report it appears that the enquiry was held on 14th March, 1967, and the statements of thirteen witnesses were recorded. No enquiry seems to have been held on 15th March, 1967.

15. This procedure of issuing a letter, copy of which is Annexure G-I, is against Rules of 1965, and the principles of natural justice. Under Rule 14(14), the prosecution witnesses are to be examined and cross-examined first. The Inquiry Officer cannot ask the Appellant to keep his witnesses ready on these days, i.e. 14-3-1967 and 15-3-1967 as the prosecution evidence was still to be recorded and was actually recorded on 14-3-1967. After the close of the prosecution evidence the Appellant was required to state his defence orally or in writing and thereafter his evidence was to be recorded. The enquiry report (Annexure-F) reveals that the prosecution evidence was recorded on 14-3-1967 and thereafter on 3-4-1967 the statement of the Appellant was recorded. The whole procedure followed by the Inquiry Officer thus is not in accordance with Rule 14 (11) and Rule 14(16). The compliance with the procedure as laid down in Rule 14(11) of Rules of 1965 is not a mere formality. This rule gives an opportunity to a Government servant to scrutinize all the prosecution evidence which is likely to be produced against him and it further gives him an opportunity to prepare his defence after looking into the other records which are in possession of the Government. Non-compliance with the provisions of this rule is likely to cause prejudice to the case of the Government servant and it will amount to denial of proper opportunity to him to defend his case.

16. Besides the afore-mentioned facts, one Shri S.P. Duggal, Investigator, was examined on 17-1-1967 and 14-3-1967. In the list of witnesses (Annexure B-5) supplied to the Appellant, the name of Shri Duggal is not mentioned. The Inquiry Officer could not allow the examination of Shri Duggal during the enquiry proceedings except by following the procedure of Rule 14(15). Under Rule 14(15) the Inquiry Officer is expected to apply his mind to the evidence on record and thereafter record an order that in his opinion it appeared to be necessary to take additional: evidence. After such an order the Inquiry Officer should allow the Presenting Officer to produce such additional evidence. In such-a case the Government servant is entitled to an adjournment and to produce new evidence. In the present case the Inquiry Officer has not followed this procedure as prescribed in the Rules of 1965.

17. We further find from the enquiry file that there is no evidence to the effect that the Appellant did fictitious land utilization Survey work on 25-1-1966 in village Doh, Taltsil Sarkaghat. The Inquiry Officer took into consideration evidence which was never recorded during the enquiry proceeding Statement of witnesses recorded during the preliminary enquiry at the back of the Appellant

could not be read by the Inquiry officer. The witnesses Sarvshri K.K. Mengi and S.P. Duggal were not in a position to give direct evidence about this Charge as they had no personal knowledge and their statements were based on Information gathered in the course of preliminary enquiry. There was thus no evidence before the Inquiry Officer on the basis of which he could come to the conclusion that this charge was proved. Even the learned Counsel appearing for the Respondent had to admit that there was no direct evidence on the file of the enquiry proceedings about the charge levelled against the Appellant. If this is the position then it is a case of no evidence before the Inquiry Officer and the findings against the Appellant are vitiated on this account alone.

18. It was also contended by the learned Counsel for the Respondent that the Appellant could not take objections regarding not following the procedure of Rule 14 of Rules of 1965 as these objections were not raised in the writ petition and the grounds of appeal. We, however, find that this contention of the learned Counsel for the Respondent is without any foundation. In paras 19 and 26 of the writ petition as well as in paras 5 and 7 of the grounds of appeal, the Appellant has taken all the objections. Moreover, it is a writ of certiorari and the whole record is before us. Hence this contention is not accepted.

19. As a result of the above discussion, the order of removal, of the Appellant from service from 31st August, 1967, is quashed and the Appellant is held entitled to all the consequential benefits as permissible to him under law and rules. The judgment of the learned single Judge, dated 11 th July, 1973, is set aside and the present appeal is accepted with costs, assessed at Rs. 390/-