
(1987) 03 DEL CK 0008
In the Delhi High Court
Case No : CW. P. No. 209 of 1986

Shri H.L. Sonar

APPELLANT

Vs

Kendriya Vidyalaya Sangathan and Others

RESPONDENT

Date of Decision : 30-03-1987

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 14, 14(11), 14(20), 14(8)

Citation : (1987) ILR Delhi 55

Hon'ble Judges : B.N. Kirpal, J

Bench : Single Bench

Advocate : Party-in-Person, for the Appellant; L.M. Singhvi Arun Kumar and Atul Kumar, for the Respondent

Final Decision : Allowed

Judgement

B.N. Kirpal, J.—The challenge in this writ petition is to the order of the respondents whereby, after a disciplinary enquiry had been held, the petitioner was ordered to be removed from service.

2. Briefly stated, the facts are that the petitioner was employed as PGT (History) under respondent No. 1. According to the petitioner he was elected as the General Secretary of All , India Kendriya Vidyalaya Teachers" Association in the year 1981. On his said election he was transferred and posted at Kendriya Vidyalaya, R. K. Puram, New Delhi. It has been alleged by the petitioner that de-facto recognition had been granted to the said Association. The said recognition was sought to be withdrawn but a writ petition was filed and the recognition restored. The case of the petitioner is that ever since he took the office of the General Secretary of the Teachers" Association, he had been spear-heading a movement for the acceptance of various demands of the teachers. It is alleged that it is as a result of this that he earned the wrath and hostility of the respondents and of the then Commissioner, Commodore Sat Bir and respondent No. 3 Shri J. N. Sharma, Deputy Commissioner (Admn.) in particular. As a part of

this movement, on 9th August, 1984 an agitation had been launched for acceptance of the teachers' demands. Pursuant thereto, it was decided by the respondents to deduct one day's salary of the teachers for 18th August, 1984. The respondents are stated to have written to the Police Commissioner that the teachers were likely to become violent and Therefore, appropriate action should be taken. These are instances which are stated by the petitioner in the petition to show the hostile atmosphere against him. In this connection it is also alleged that the petitioner had applied for permission to do his LL.B. Course in the evening but this permission was denied to him.

3. On 27th December, 1984 an order was issued by respondent No. 3 banning the entry of the petitioner to the office of respondent No. 1. This order was in the following terms :

"It has been revealed that Shri H.L. Sonar, PGT. Kendriya Vidyalaya, Janakpuri, New Delhi has been visiting Kendriya Vidyalaya Sangathan Headquarters specially in the evening and going around indifferent sections meetings some of his contact men in the Organisation. This is highly objectionable and subversive to official decorum and discipline. The entry of Shri H.L. Sonar to Headquarters Office is hereby banned with immediate effect. In case he is to meet someone on some official work, he can meet only to the Commissioner, Deputy Commissioner with prior appointments. Shri Sonar is, Therefore, asked to follow these instructions scrupulously failing which disciplinary action will be taken against him."

On 10th January, 1985 the petitioner went to the office of respondent No. 1 and, contrary to the terms of the order dated 27th December, 1984, entered the said office after entering his name in the register. On 21st January, 1985 the petitioner was placed under suspension. This order was passed under Rule 10(1) of the C.C.S.(C.C.A.) Rules, 1965 as it was stated that disciplinary proceedings against him were contemplated. The petitioner was then served with a memorandum dated 29th January, 1985 along with which articles of charge were sent to him. It was stated in the memorandum that it was proposed to hold disciplinary proceedings against him. The charges against the petitioner were 3 and they were as follows :

"ARTICLE I

That the said Shri H. L. Sonar while functioning as P.G.T. (History) in Kendriya Vidyalaya, Janakpuri obstructed Shri Brajesh Kumar, Peon of the Headquarters Office of the Sangathan who was posted at the reception counter of the H. Qs. Office in performing his official duties on 10-1-85 at about 4.30 p.m. and gained entry in H. Qs. Office of the Sangathan forcibly and un-authorisedly. He thus committed misconduct under Rule 3(1)(iii) of the C.C.S.(Conduct) Rules 1984 as extended to the employees of the Sangathan.

"ARTICLE II

That the said Shri H. L. Sonar while functioning as P.G.T.(History) in Kendriya Vidyalaya, Janakpuri violated the written instructions given to him vide O.O.No. 4-38 64-KVS(OHW) dated 27th/28th December, 1984 as he went to R.P.S. Section of the H.Qs. Office of the Sangathan on 10-1-85 at about 4.40 P.M. and demand 50 Application Forms from Sh. V.K. Gupta, S.O. of R.P.S. Section. He thus committed misconduct under Rule 3(1)(iii) of the CCS (Conduct) Rules 1964 as extended to the employees of the Sangathan.

"ARTICLE III

That Shri H. L. Sonar while functioning as PGT (History) in Kendriya Vidyalaya, Janakpuri misbehaved with. Shri J. N. Verma, Deputy Commissioner (Admn.) on 10-1-85 in letters office, Chamber. The said Shri H. L. Sonar thus committed misconduct under Rule (1)(2)(iii) of the CCS (Conduct) Rules, 1964, as extended to the employees of the Sangathan."

Along with the Articles of charge was statement of imputations, list of documents relied upon and list of witnesses which were proposed to be examined by the respondents.

4. The petitioner did not submit any written statement by way of his defense on the receipt of the aforesaid charges Thereafter Mrs. , I,. John, Principal, Kendriya Vidyalaya, R.K. Puram, New Delhi (Respondent No. 2) was appointed as the Enquiry Officer to enquire into the aforesaid allegations of misconduct. A notice 12th March,. 1985 was sent by respondent No. 2 to the petitioner. In the said notice the names of the 5 witnesses proposed to be examined by the respondents were indicated. It was also stated that the enquiry will be held in the office, of respondent No. 1 from 25th March, 1985 to 27th March, 1985. The petitioner did not attend the said proceedings. Another order dated 26th March, 1985 was then issued fixing the next date of hearing on 8th April, 1985. The petitioner again did not appear on that date though the witnesses were present. A fresh notice dated 9th April, 1985 was then issued by the Enquiry Officer fixing the next date of hearing on 15th April, 1985. It was specifically stated in this notice that if the petitioner failed to appear on that day, an ex parte decision shall be taken. It was in response to this notice that on 15th April, 1985 at 11 A.M. the petitioner wrote a letter to the Enquiry Officer. In this, reference was made to the order dated 27th December, 1984 whereby the petitioner's entry to the Head Office of respondent No. 1 had been banned. The petitioner stated in this letter that the enquiry proceedings should not be held at the office of respondent No. 1. He also purported to explain his earlier absence and he said he was out of Delhi. He expressed his inability to attend the enquiry proceedings and he also informed that he would be going out of Delhi on 15th April, 1985 for about a week and thereafter he will be leaving again for Jaipur on 25th April, 1985.

5. On 16th April, 1985 the Enquiry Officer passed another order wherein what all had transpired earlier was mentioned Next date of bearing was fixed on 24th

April, 1985 and it was stated that if the petitioner did not appear an ex parte decision shall be taken, it was also mentioned in this order that adequate arrangements had been made to see that the petitioner was able to attend the proceedings. This office order was followed by another office order dated 17th April, 1985 in which it was stated that the petitioner should be present on all days i.e. with effect from 24th April, 1985 till the enquiry is completed and all the witnesses have been examined and cross-examined. The petitioner wrote back on 18th April, 1985 asking for a change in the date of enquiry. He stated that it will not be possible for him to attend the proceedings on the date fixed.

6. It appears that on 24th April, 1985 the Enquiry Officer recorded the evidence of the witnesses on behalf of the respondents and thereafter concluded the hearing. Enquiry report dated 30th April, 1985 was submitted according to which the charges framed against the petitioner were proved. Thereafter Office Circular dated 8th May, 1985 was issued by the disciplinary authority in which it was stated that the disciplinary authority had imposed major penalty of removing the petitioner from service with immediate effect. A copy of this order along with the Report of the Enquiry Officer was served on the petitioner. The petitioner then filed an appeal against the imposition of the said penalty but the same was rejected on 9th December, 1985.

7. In this writ petition the challenge of the petitioner is to the order of removal as upheld by the appellate authority.

8. Apart from contending that the petitioner had not been given full and effective opportunity of being heard, the two main arguments which have been raised by the petitioner are firstly that the provisions of Rule 14(11) of the CCS(CCA) Rules have not been complied with in this case and, secondly, it has been contended that the punishment which has been imposed upon the petitioner is wholly disproportionate to the alleged offence. The petitioner has also, it might be mentioned, challenged the office order dated 27th December, 1984 whereby his entry into the Headquarters of respondent No. 1 was banned and has then sought to contend that on merits the petitioner was not guilty of any misconduct.

9. The respondents, on the other hand, have submitted that there has been substantial compliance with the provisions of Rule 14 of the C.C.S. Rules and the order dated 27th December, 1984 was valid. Allegations of victimisation are denied and it has been submitted by the learned counsel for the respondents I that what is the punishment to be awarded is a factor to be considered by the respondents and not by this Court. In the alternative, it is submitted that on the facts and circumstances of this case the punishment awarded was justified.

10. Coming first to the challenge to the order dated 27th December, 1984, I see no legal or other infirmity in the same. It is no doubt true that the petitioner was acting as General Secretary of an Association and by virtue of the said office it was necessary for him to meet the officers of the Kendriya Vidyalaya. This would obviously necessitate his going to the Head Office. By the impugned order, there

is no total ban to his entry to the said Office. His entry has only been regulated by the said order. The direction which has now been issued is that he can attend the office after getting prior appointment and, further, the only two officers whom he can meet are the Commissioner or the Deputy Commissioner. Members of the public, and even at times the employees, have no absolute right of free excess to every office. It is always open to the Head of the Office to regulate or restrict the entry to the office, provided such order is passed for bonafide reasons. This is the right which has been exercised in the present case and, as already mentioned, the entry of the petitioner to the Headquarters of the Vidyalaya has now been sought to be regulated. The petitioner has not been able to satisfy me that this office order dated 27th December, 1984 has been issued in violation of any rule, regulation or other provision of law. The validity of the said office order is, Therefore, upheld.

11. Coming now to the more substantial question with regard to the validity of the procedure which has been followed in the present case, it will be seen that under Rule 14(1), no order imposing penalties specified in clauses (v) to (ix) of Rule 11 can be imposed except after an enquiry is held. Sub-rule (3) provides that where it is proposed to hold such an enquiry, the disciplinary authority shall draw up or cause to be drawn up substance of imputations of misconduct or misbehavior into definite and distinct articles of charges. Statement of imputations of all relevant facts and list of documents and witnesses on which reliance is placed has also been prepared. Rule 14(4) requires the charges along with statement of imputations and the list of documents and witnesses to be served on the delinquent officer who is then required to submit his written statement in defense within the prescribed period. If no written statement or defense is submitted, as has happened in the present case, then an Enquiry Officer has to be appointed by the disciplinary authority. Under Sub-rule (7) of Rule 14, the Government servant has to appear before the inquiring authority within the time prescribed. When the Government servant appears before the inquiring authority, and if he has not admitted the articles of charges or has not submitted any written statement, then under Rule 14(9) the Enquiry Officer is to ask the Government servant whether he is guilty or has any defense to make. If he pleads guilty then under Rule 14(10) the inquiring authority is to return a finding of guilt. Sub-rule (11) of Rule 14 provides what is to happen in case a Government servant fails to appear. The said sub-rule along with Sub-clauses (i), (ii) and (iii) reads as follows :

"(11) The inquiry 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 defense --

(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 inquiry 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).

It is not necessary to refer, in any great detail, the other Sub-rules of Rule 14 except to note that Sub-rules (12) and (13) provide for discovery of documents, on a request being received under Sub-rule 11(iii). Oral evidence is to be produced before the disciplinary authority and under Sub-rule (14) witnesses are examined on behalf of the presenting officer and cross-examined by the Government servant. After the disciplinary authority closes his case, under Sub-rule (16) the Government servant is required to state his defense and he may then produce his evidence under Sub-rule (17) of Rule 14. If the Government servant does not file the written statement and chooses not to appear, Sub-rule (20) of Rule 14 provides for the enquiry proceedings being held *ex parte*. The said sub-rule reads as follows :

"(20) If the Government servant, to whom a copy of the articles of charge has been delivered, does not submit the written statement of defense on or before the date specified for the purpose or does not appear in person before the inquiring authority or otherwise fails or refuses to comply, with the provisions of this rule, the inquiring authority may hold the inquiry *ex parte*."

After the conclusion of the enquiry, the report is to be submitted by the Enquiry Officer to the disciplinary authority.

12. The submission of the petitioner in the present case is that through the proceedings against him were held *ex parte* no order as contemplated by Sub-rule (11) of Rule 14 had been passed in the present case. His contention is that the provisions of Rule 14(11) are mandatory and non-compliance of the same would vitiate the enquiry proceedings.

13. It is not disputed by the learned counsel for the respondents that no formal orders as contemplated by Rule 14(11) have been passed in the instant case. The contention, however, is that, as would be evident from the various notices which were issued to the petitioner in the present case, sufficient opportunity was granted to him to appear before the Enquiry Officer but for some reason or the other he chose not to appear. It is contended, while relying upon *Shri Bhag Singh Bedi v. Union of India and Ors.*, 1974 (2) S.L.R. 687 and *J.P. Srivastava v. Union of India and Ors.*, 1978 (2) S.L.R. 450 that there has been substantial compliance of the provisions of Rule 14, in the present case and, Therefore, the decision of the disciplinary authority is not liable to be set-aside on the ground of violation of Rule 14(11).

14. Rule 14(11) comes into play before any evidence is recorded. The point of time with which Rule 14(11) is concerned is when the Government Servant is first required to appear before the Enquiry Officer but he fails to enter appearance or refuses or omits to plead before him. Sub-rule (11) then makes it obligatory on the Enquiry Officer to adjourn the hearing to a date not exceeding thirty days but after recording an order as contemplated by the said rule. This order is required to be made for the purpose of assisting the Government servant in the preparation of his defense. By this order, inspection is to be allowed and the documents specified in the list along with the articles of charges and the Government servant is also required to submit a list of witnesses who are to be examined on his behalf. The Government servant is also to be apprised of the fact that he can ask for discovery or production of documents which are in the possession of the Government. This provision came up for construction before the Assam High Court in the case of *Anil Kumar Das v. Senior Superintendent of Post Offices*, AIR 1969 Guw 99. The Division Bench of the Assam High Court held that if an order under Sub-rule (11) is not passed then it cannot be said that the Government servant had a reasonable opportunity as envisaged by the Rule 14. It was further observed that the provisions of Sub-rule (11) were mandatory and its violation in not offering the right of inspection to the Government servant was a serious infirmity which was fatal to the entire proceedings. It was also held that Sub-rule (11) also applies in cases where *ex parte* enquiry is held under Sub-rule (20). Reliance was then placed on a decision of a Single Bench of this Court in the case of *Surat Singh and Others Vs. S.R. Bakshi and Others*, . In this case the Government servant had asked for inspection of some documents which was not allowed. The Government servant thereafter did not take part in the disciplinary proceedings and ultimately an order was passed against him. It was held that because of the non-compliance of Sub-rule (11) of Rule 14 the enquiry proceedings stood vitiated. To the same effect is a decision of a Bench of the Himachal Pradesh High Court reported as *S.P. Bhardwaj v. Union of India and Ors.*, 1982 (2) S.L.J. 515. It was observed in this case that the compliance of procedure as laid down in Rule 14(1) was not a mere formality and non-compliance of 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 if no order as contemplated by Rule 14(11) is passed. To the same effect is another decision, again of the Himachal Pradesh High Court, reported as *H.L. Sethi v. Municipal Corporation, Simla and Ors.*, 1982 (2) S.L.J. 694.

15. The weight of the Judicial Authority, Therefore, seems to be for the view that the provisions of Rule 14(11) are mandatory and non-compliance with the same would be fatal to the enquiry proceedings. It has been held by the Supreme Court in the case of *S.L. Kapoor v. Jagmohan and others*, AIR 1981 S.C. 138 as follows :

"In our view the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had

been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary. It will come from a person who has denied justice that the person who has been denied justice is not prejudiced."

In fact the various sub-rules of Rule 14 contain different principles of natural justice which are required to be followed in the conduct of a proper enquiry. It is true that the petitioner has been acting as a defending officer in some cases on behalf of other Government servants. It may be that he was aware of the provisions of Rule 14(11) but this does not mean that the Enquiry Officer was absolved of his responsibility of passing an order under Rule 14(11). Under Rule 14(11) not only is the Government servant to be given an opportunity of inspecting the documents on which reliance is placed by the disciplinary authority but the Government servant is also asked to submit his list of witnesses. In the present case this opportunity was denied. Furthermore, under Rule 14(11)(iii) the Government servant can send a requisition for discovery of some documents which may be in the possession of the Government. Opportunity to this effect has, Therefore, to be provided. The effect of passing an order under Rule 14(11) is that all these opportunities as contemplated by the said sub-rule have to be afforded to the Government servant. I am in complete agreement with the observations of the Assam High Court that the provisions of Rule 14(11) are mandatory. Admittedly these mandatory provisions have not been followed in the present case. Merely because the petitioner has deliberately not attended the enquiry proceedings does not absolve the Enquiry Officer of her duties under Rule 14(11). If the Enquiry Officer had passed an order under Rule 14(11) and the petitioner had continued to stay away from the enquiry proceedings, then no fault could have been found if the enquiry proceedings had concluded in a verdict against the petitioner. The Enquiry Officer is under an obligation to see that the principles of natural justice are fully complied with and the mandatory provisions of Rule 14 are followed. The Enquiry Officer is to guard the interest of the delinquent officer who may not be represented by any person as contemplated by Rule 14(8)(b). Substantial compliance with the rule is not enough. Where the rule is mandatory it is no argument to urge that other provisions of the rule have been followed and there has been substantial compliance with the principles of natural justice. The mandatory provisions of Rule 14(11) not having been followed in the present case, the only result which must follow, Therefore, is that the entire enquiry proceedings and the consequential orders passed thereon are vitiated.

16. It is contended by the learned counsel for the respondents that when an ex parte order is passed under Sub-rule (20) of Rule 14 then Rule 14(11) has not to be complied with. I am unable to agree to this contention. Rule 14(11) comes into play at an earlier stage, namely, before any evidence on behalf of the presenting officer is even recorded. Rule 14(11) comes into play at the time when, the officer is supposed to appear before the inquiring authority for the first time after the receipt of the statements of allegations and charges. Sub-rule (20), on the

other hand, will come into play at any point of time. The scheme of the Rule 14 is such that order under Sub-rule (11) will have to be passed first before any ex parte order can be passed against the petitioner. No ex parte order under Rule 14(20) can possibly be passed at a stage when order is required to be passed under Rule 14(11). Order under Rule 14(11) is required to be passed, in a sense, at the very first hearing before the inquiring authority when the Government servant absents himself. Rule 14(11) clearly provides that in the absence of the Government servant at such a hearing, order is required to be passed in terms of the said sub-rule. It would not be proper or expected at that point of time for the Enquiry Officer to direct that the proceedings against the Government servant would be taken ex parte. This order, as contemplated by Rule 14(20), can only be passed at a later point of time, say when the stage is reached for recording of evidence, under Rule 14(14) or even at a later stage. The Assam High Court in Anil Kumar's case (supra) has clearly observed that "On the other hand, there is a particular sub-rule, namely Sub-rule (20), regard to ex-parte enquiry, and Sub-rule (11) cannot be given a go-by even in such an ex parte enquiry". I am in complete agreement with these observations and, Therefore, it will not be correct to conclude that where art ex parte order is passed under Sub-rule (20) it is not necessary to comply with the provisions of Sub-rule (11).

17. In view of the fact that mandatory provisions of Rule 14(11) have not been complied with, the petition is entitled to succeed and, Therefore, it is not necessary to decide the question whether the punishment awarded was disproportionate to the alleged guilt. I would, Therefore, issue a writ of mandamus. quashing the impugned order of removal dated 8th May, 1985 passed by the disciplinary authority and the appellate order dated 9th December, 1985. The petitioner will be entitled to costs.