

**(1963) 07 CAL CK 0015**  
**In the Calcutta High Court**  
**Case No : Matter No. 7 of 1963**

Sripati Ranjan Biswas

APPELLANT

Vs

Collector of Customs and Others

RESPONDENT

**Date of Decision :** 15-07-1963

**Acts Referred:**

Central Civil Services (Conduct) Rules, 1955 — Rule 15(1), 3  
Constitution of India, 1950 — Article 14, 19, 226

**Citation :** AIR 1964 Cal 415 : (1966) 1 LLJ 111

**Hon'ble Judges :** B.N. Banerjee, J

**Bench :** Single Bench

**Advocate :** S. Roy and K.B. Roy, for the Appellant; A.K. Banerji, for the Respondent

## **Judgement**

B.N. Banerjee, J.—In exercise of the powers conferred by the proviso to Article 309 and Clause (5) of Article 148 of the Constitution and after consultation with the Controller and Auditor-General in relation to persons serving in the Indian Audit and Accounts Department, the President was pleased to make a set of rules known as the Central Civil Service (Conduct) Rules, 1955, providing, inter alia, for a code of conduct for certain classes of civil servants.

2. It is undisputed that the rules were made on 7th March 1955 and were published in the Gazette of India on 12th March 1955. According to the affidavit-in-opposition, the rules were circulated by the Central Board of Revenue to different offices subordinate to it, on 22nd April 1955, and by the Customs Office in Calcutta to its officers on 11th June 1955.

3. The petitioner alleges that he came to know of the rules on 27th August, 1956 but I would much rather proceed on the basis that the rules were brought to the notice of the petitioner either on 11th June 1955 or shortly thereafter or that the petitioner had ample opportunity of knowing of the rules after 11th June 1955.

4. The circumstances under which the petitioner was said to have come within

the mischief of the rules are hereinafter stated in brief. The petitioner was at first appointed as a preventive officer, at the Calcutta Customs House on 18th September 1950. He was, thereafter, promoted as an Appraiser and was confirmed in that post on 22nd October 1956. While serving as a Preventive Officer, the petitioner alleges, he entered into a contract with one Dr. Durgadas Chakravarty for purchase of a plot of land, measuring about 3 cottahs, at No. 32/22 Chandi Ghosh Road, Tollygunge, for Rs. 2700 and did purchase the land on 15th March 1955. The petitioner further alleges that at that time he did not know of the promulgation of the rules and therefore there was no occasion for him to inform the authorities about the transaction. The petitioner also alleges that as soon as he came to know of the rules, he informed the Collector of Customs about the purchase of the land by a letter, dated 27th August 1956. and therein stated that the major portion of the purchase price of Rs. 2700 came out of his ancestral funds. The petitioner says that thereafter he began submitting his yearly statement of assets and before starting construction he took the necessary permission of the authorities by an application, dated 28th January 1958. According to the petitioner, he started construction on the above-mentioned land in April, 1959 and completed the construction at a cost of Rs. 21,000/-. About two years thereafter the petitioner was suspended, on December 4, 1961, in view of a contemplated disciplinary action against him and was put on subsistence allowance. Thereafter, on January 22, 1962, the petitioner was charged with three charges of misconduct as stated hereinbelow :

#### Charge I.

That Shri Sripati Ranjan Biswas, alias S. R. Biswas while functioning as an Appraiser in the Calcutta Customs, during the period 1959 and 1960 committed gross misconduct in the discharge of his duties as a Public Servant, in that he, by abusing his position as a Public Servant demanded and accepted a sum of Rs, 50/- on 27-5-59. Rs. 500/- on or about 25-11-59 and Rs. 500/- on or about 1-12-59 as illegal gratification from Shri K. Kutty Nair, Managing Director of M/s. K. Kutty Nair and Co. (P) Ltd., as consideration for passing his shipping bills on three occasions for the export of lac products.

#### Charge II.

That the said Shri Sripati Ranjan Biswas alias S. R. Biswas, while functioning as a Preventive Officer Grade II, and an Appraiser, under Calcutta Customs, during the period 18-9 50 to 30 9-60, had failed to maintain absolute integrity and devotion to duty inasmuch as he was in possession of assets which were found to be disproportionate to the extent of about Rs. 59,661/- for which he could not Tender any satisfactory explanation, thereby leading to the presumption that he acquired those assets by corrupt and illegal means in the discharge of his duties.

#### Charge III.

That Shri Sripati Ranjan Biswas alias S. R. Biswas, while functioning as an Appraiser under Calcutta Customs during the years 1955 to 1960, committed

gross misconduct as a Public Servant in that he acquired on 15-3-55 a plot of land measuring 3 kattahs at 32/22, Chandi Ghosh Road, in his own name "without the previous knowledge and sanction of the prescribed authority and had thereby contravened rule 15 (1) of the Central Civil Services (Conduct) Rules, 1955.

5. The petitioner put his written defence to the charges denying each one of them. The respondent No. 1, Collector of Customs, thereupon appointed respondent No. 2, an Assistant Collector, to conduct the enquiry against the petitioner. Witnesses were examined before the Enquiry Officer, the petitioner was heard in person and ultimately the Enquiring Officer found the petitioner guilty of charges Nos. II and III and not guilty of charge No. I. The reasons that weighed with the Enquiring Officer in finding the petitioner guilty of Charge No. II are hereinafter stated.

6. According to the statement of allegations, served along with the charge sheet, the petitioner's total income during September 18, 1950 to September 15, 1960 was Rs. 46,616 . 68 nP. consisting of :

(i) Pay and allowances ... Rs. 41,449.11 nP.

(ii) Overtime allowances ... Rs. 2,167.55 nP.

(iii) Reward ... Rs. 30.00

(iv) House rent allowance ... Rs. 2,000.00

(v) Insurance policy matured ... Rs. 970.00

Total ... Rs. 46,616.66 nP.

According to the petitioner over and above the aforesaid amounts, his income during the same period amounted to Rs. 9,178/-, more as per details hereinbelow :

(i)

Overtime duty income during Sept. 18, 1950 to June, 1954

?

Rs. 8,000/-

(ii)

Other rewards and allowances like uniform allowances and posting allowances

?

Rs. 450/-

(iii)

Interest on bank account

?

Rs. 728/-

Total

?

Rs. 9,178/-

In the absence of evidence the Enquiring Officer proceeded on the basis of some sort of average and found that in place of Rs. 8000/- the petitioner's overtime allowance, during September 1950 to June 1964, amounted to an additional sum of Rs. 5,992 . 75 nP. As regards rewards the Enquiring Officer took an Additional sum of Rs. 25/. only as proved. The Enquiring Officer did not accept the theory of increased income on account of uniform allowances and posting allowances, because, according to him, the aforesaid sums must have been spent by the petitioner on uniform and in journeys. The total income of the petitioner during the aforesaid period was ultimately found to be Rs. 52,634 . 41 nP. consisting of :

(i)

Pay and allowances

...

Rs. 41,449.11 nP.

(ii)

Overtime allowances

...

Rs. 8,180.30 nP.

(iii)

Rewards

...

Rs. 55.00

(iv)

House rent allowances

...

Rs. 2,000.00

(v)

Insurance Policy matured ...

...

Rs. 970.00

Total :

...

Rs. 52,634.41 nP.

7. As to expenditure incurred by the petitioner during the period the Enquiring Officer found that the petitioner spent on-

(i)

Food and clothing

...

Rs. 30,700/-

(ii)

Education ...

...

Rs. 2,050/-

(iii)

Electric charges ...

...

Rs. 720/-

(iv)

House rent ...

...

Rs. 6,880/-

(v)

Insurance premium

...

Rs. 4,765/-

Total :

...

Rs. 45,115/-

8. According to the Enquiring Officer the petitioner was left with a surplus income of Rs. 7,519.41 nP. (Rs. 52,534. 41 nP. Rs. 44,115) only. As against that, the assets acquired by the petitioner during the period amounted to Rs. 59,242.72 nP. as per details given below :

(i)

Land

...

Rs. 2,700.00

(ii)

Building ...

...

Rs. 43,000.00

(iii)

Bank balance

...

Rs. 11,647.72 nP.

(iv)

Postal bond...

...

Rs. 170.00

(v)

Radio

...

Rs. 300.00

(vi)

Gold ornaments

...

Rs. 700.00

(vii)

Sofa Settee ...

...

Rs. 425.00

Total :

...

Rs. 59,242.72 nP.

Thus according to the Enquiring Officer, the assets of the petitioner exceeded his income by Rs. 51,723.51 nP. The Enquiring Officer, therefore, found that the petitioner must have acquired the excess by illegal means to the detriment of integrity in public service and was guilty of Charge No. II.

9. So far as Charge No. III was concerned, the Enquiring Officer observed as follows :

"It is, therefore, clear that the aforesaid Rules were promulgated on 7-3-55 and came into operation from that date i.e. prior to the date of purchase of the land by Shri Biswas. As stated earlier the Customs House issued the Notification on 11-0-55. I would have taken a lenient view of the charge if Shri Biswas had informed the Collector of Customs about the transaction already entered into by him just after the date of issue of the Notification by the Customs House. But instead, he brought the matter to the knowledge of the Collector only on 27-9-56 i.e. after a lapse of over 1 year. This does not speak of bona fides of the officer. Therefore, it has been abundantly brought out that Shri Biswas purchased the land through a channel other than reputed or regular dealer without previous knowledge and prior permission of the Collector of Customs. I, therefore, hold the charge having been proved against him."

The Collector of Customs accepted the finding made by the Enquiring Officer. He, therefore, called upon the petitioner to show cause why he should not be dismissed from service. After considering the cause shown, the respondent Collector of Customs dismissed the petitioner from service.

10. Aggrieved by the order of dismissal, the petitioner moved this Court, under Article 226 of the Constitution, praying for a writ of certiorari for the quashing of the order and for a writ of Mandamus restraining the respondents from giving effect thereto and obtained this rule.

11. Mr. S. Roy, learned advocate for the petitioner, argued two points in support of this view. He criticised R. 3 of the Central Civil Services (Conduct) Rules as vague and indefinite and as such, violative of Articles 14 and 19 of the Constitution. He further contended that the petitioner was found guilty of Charge No. II on presumption and hypothesis and not on legal evidence. He also contended that the Central Civil Services (Conduct) Rules could not be brought to the notice of the petitioner prior to 27th August, 1956 and he should not have been found guilty of violation of R. 15 of the rules in respect of purchase of the land made on 15th March, 1958.

12. Rule 3 of the Central Civil Services (Conduct) Rules is set out below :

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

Integrity is uprightness, honesty or purity. Devotion, to duty is faithful service. Modern approaches to life have changed many ideals, which used to be held sacred. Such approaches have also worked a change in our sense of the sublime. But even then the idea of right and wrong has not been forgotten and the difference between honesty and dishonesty, fidelity and faithfulness wholly lost. It is sometimes argued with sophistry that it is difficult to prescribe the outside limits of integrity in a complex system of modern administration, in which considerations of expediency occasionally outweigh other considerations. Considerations of expediency may be irresistible at times but their evils are merely to be put up with and not, to be extolled or prescribed as standards of life and work. If a public officer is required to maintain integrity and to be devoted to duty, he is merely asked to keep within the bounds of that administrative decency, which goes by the name of civilized administration. In my opinion, no vagueness or indefiniteness attaches to the language used in Rule 3 above quoted. A public officer is not at liberty to amass fortune by taking illegal gratifications, even though willingly given. In the view taken by me, Rule 3 does not offend against Article 14 or 19 of the Constitution.

13. There is, however, an edge in the other branch of the argument of Mr. Roy that the Enquiring Officer proceeded against the petitioner on the basis of presumptions and speculations. In finding out how much the construction of the house had cost, the Enquiring Officer was confronted with two contrary sets of evidence. The petitioner alleged that some old and second-hand materials were used to the construction and that considerably reduced the cost. According to the witnesses examined by the petitioner, one of them an Engineer, the costs amounted to Rs. 21,000 only. According to the witnesses examined by the respondents, the costs amounted to Rs. 43,000. The Enquiring Officer disbelieved the Engineer examined by the petitioner merely because he was interested in the petitioner, being a friend of his son. So far as the use of old materials in construction was concerned, the Enquiring Officer observed as follows :

A. "It has also been urged in defence that certain smaller size of Jhama, old brick, old brick bats had also been used. No positive evidence had been adduced. However, these materials could not be used other than for foundation and plinth of the building. Even if certain quantities of them had at all been used, I do not think the price structure would be affected to any appreciable extent."

B. ""Incidentally I would mention that at the time of inspection Shri Biswas drew my attention to 2 or 3 windows in a bed room and urged that they were of second-hand C. P. Teak wood. He also told me that the door and window frames are of Sal wood. Although the colour of these windows were slightly faded I could not make out whether they were second-hand C. P. teak wood. I have carefully seen the doors and windows of 1st floor. All of them are coloured with

green paint and as such I could not determine as to whether the frames were of C. P. or Sal wood. The veracity or otherwise of the defence contention could have been verified if certain portions of some doors and windows would have been clipped off before or at the time of my inspection. If Shri Biswas were certain of his contention he would have done so. In view of the above and in the absence of positive evidence, I am not prepared to accept his story of use of old and second-hand materials."

This is not a very satisfactory way of bringing home a charge. The Enquiring Officer was not himself very positive in his views. If I had appellate powers, I might not have agreed with the conclusion of the Enquiring Officer. But the Enquiring Officer discussed evidence and based his conclusion on his view of credibility of witnesses. I cannot, sitting in writ jurisdiction, substitute my own appraisal of evidence, in place of the appraisal made by the Enquiring Officer.

14. The other criticism made by Mr. Roy that the Enquiring Officer was wrong in disbelieving that the petitioner had received Rs. 30,000 from his father, through his mother, for construction of the house must also fail on similar grounds. The Enquiring Officer considered the evidence on the point and came to the conclusion that the petitioner had received no more than Rs. 15,000, if he did receive any amount at all from his father or mother, for the construction of the house. Even with that money received a sum of Rs. 36,723 worth of assets remained unaccounted.

15. Faced with this difficulty, Mr. Roy argued that the onus of disproving the charge was wrongly placed on the petitioner. He invited my attention to Section 5 (3) of the Prevention of Corruption Act, 1947 which reads as follows :

"Section 5 (3) : in any trial of an offence punishable under Sub-section (2) the fact that the accused person or any other person on his behalf is in possession, for which the accused person cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income may be proved, and on such proof the Court shall presume unless the contrary is proved, that the accused person is guilty of criminal misconduct in the discharge of his official duty and his conviction therefore shall not be invalid by reason only that it is based solely on such presumption."

He contended that there was no provision, similar to the provision of Section 5 (3) of the Prevention of Corruption Act, in the Central Civil Services (Conduct) Rules and the respondents must prove the charges themselves and must not be allowed to depend upon presumptions. This criticism is not very well conceived in the facts and circumstances of this case. The respondents proved by evidence that the assets acquired by the petitioner were disproportionate to his income. The petitioner wanted to explain away the disproportionateness by leading evidence to the effect that the excess had been received as gift from his father or mother. This he failed to prove in a way acceptable to the Enquiring Officer.

The onus is not on the respondents to disprove the defence. The special defence set up by the petitioner must be proved by the petitioner himself. Therefore, although the onus is on the respondents to prove the charge, they succeeded in doing so, in the instant case, in a way satisfactory to the Enquiring Officer.

16. Regarding the third charge, Mr. Roy contended that the purchase had been effected on March 15, 1955. The Central Civil Services (Conduct) Rules were published in the Gazette of India of March 7, 1955, were circulated by the Central Board of Revenue on April 22, 1955 and were circulated by the Customs Office in Calcutta to its officers on June 11, 1955. But, he contended, the petitioner came to know of the same on August 27, 1956 and immediately thereafter informed the Collector about the purchase. I have already held that if the rules were circulated on June 11, 1955, the petitioner should have come to know of the same on that day or shortly thereafter. Now, R. 15 (1) of the Central Civil Services (Conduct) Rules is in the following language :

"15 (1). No Government servant shall, except with the previous knowledge of the prescribed authority, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise, either in his own name or in the name of any member of his family :

Provided that any such transaction conducted otherwise than through a regular or reputed dealer shall require the previous sanction of the prescribed, authority."

If the petitioner had come to know of the rules on June 11, 1955, it was not possible for him to apply for previous sanction of the prescribed authority before he purchased the land on March 15, 1955. The Enquiring Officer observed that he would have taken a lenient view of the matter, if the petitioner had informed the prescribed authority of the transaction immediately after he came to know of the rules. The Enquiring Officer forgets that after completion of the transaction, no previous sanction of the prescribed authority could be taken and no occasion arose for the petitioner to apply for sanction after the event. In my opinion the finding of the Enquiring Officer of Charge No. III is erroneous on the face of it and should not be sustained.

17. The petitioner was penalised on being found guilty of two charges, namely, Charge No. II and Charge No. III. I do not know what penalty would have been imposed upon him by the respondent No. 1, if he had been found guilty of charge No. II only.

18. In the circumstances of this case I quash the report of Enquiry so far as Charge III is concerned and direct the respondent No. 1 to consider the appropriate penalty which should be imposed upon the petitioner, on Charge No. II only.

19. Let a writ of certiorari accordingly issue quashing the report of inquiry on Charge No. III. Let a writ of Mandamus also issue on the respondent No. 1 directing him to re-consider the penalty to be imposed upon the petitioner in the

light of the observations contained in the judgment. If he does not find any reason to change his views on the penalty already imposed, he may maintain the same otherwise he may impose any other appropriate penalty on the petitioner. In the meantime, the petitioner shall continue to remain under order of dismissal.

20. There will be no order as to costs.