

(1993) 11 AHC CK 0033
In the Allahabad High Court
Case No : Writ Petition No. 9083 (S/S) of 1993

State of U.P.and others

APPELLANT

Vs

Rishi Pal Singh and another

RESPONDENT

Date of Decision : 22-11-1993

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Financial Handbook, Volume III (Travelling Allowance Rules) — Rule 59A

Citation : (1993) 11 AHC CK 0033

Hon'ble Judges : K.C.Bhargava, J

Final Decision : Dismissed

Judgement

K.C. Bhargava, J.—This writ petition has been filed by the State of U.P. and two others, challenging the judgment and order dated 21121992 passed by the U.P. Public Services Tribunal No. V, Lucknow.

2. Learned counsel for the petitioners has been heard. Learned counsel for the petitioner has argued that the order delivered by the U.P. Public Service Tribunal is against the law. According to him the U.P. Public Services Tribunal wrongly held that reasonable opportunity of defence was not given to opposite party No. 1, Rishi Pal Singh. The finding, according to him, is based on the fact that the subsistence allowance for the month of December, 1986 was not paid to the delinquent and the advance travelling allowance was also not given to the delinquent when he was called for by the inquiry officer at different places to cross examine the witnesses. He has further argued that the petitioner cannot be said to have been denied a reasonable opportunity if no advance travelling allowance was paid to the delinquent. The delinquent should have participated in the inquiry at different places where he was called and should have thereafter claimed the travelling allowance for the journey for which he was permitted. According to the learned counsel for the petitioner, it was not necessary for the inquiry officer to have sent the advance travelling allowance to the delinquent and as such the judgment of the U.P. Public Services Tribunal is vitiated.

3. The judgment of the Tribunal has been gone into and it contains reasons for allowing the claim petition which was filed by the delinquent. The Tribunal in its judgment in para9 at page18 of the paper book has mentioned that the subsistence allowance for the month of December, 1986 was not paid to the delinquent and the delinquent was also not paid the travelling allowance, inspite of his specific request that he had no money to proceed to the places where he was ordered to go to cross examine the witnesses during the inquiry proceedings. It is also apparent from the judgment that the delinquent was also required to submit a list of defence witnesses even before he was allowed to cross examine the witnesses produced by the department. On these grounds the petition has been allowed. It has not been denied by the State that the subsistence allowance has not been paid for the month of December, 1986 and that the advance travelling allowance was also not paid to the delinquent before he was asked to proceed to cross examine the witnesses.

4. From the judgment itself it is clear that the delinquent was required to cross examine the witnesses at village Rayasi, Police Station Laxur, Distt. Saharanpur, Jahangirabad Distt. Bulandshahr and at Police Station Baghpat, District Meerut. A perusal of para10 of the claim petition filed by the delinquent before the Tribunal, a copy of which is annexed to 7 this petition, also shows that the petitioner has mentioned the places where he was required to reach in connection with the inquiry. In para11 of the same it has been alleged by the delinquent that by a written objection he had shown his inability to reach those places for paucity of money and it was practically impossible for him to reach village Rayasi, Police Station Laxur District Saharanpur, Jahangirabad District Bulandshahr and Baghpat, District Meerut. In spite of specific averment by the delinquent the inquiry officer did not consider it necessary to pay subsistence allowance for one month as mentioned above and the advance travelling allowance to the delinquent.

5. Now the Court has to see as to what is meant by the "reasonable opportunity". Article 311 (2) states about the "reasonable opportunity" which has to be given to a Government servant for showing the cause against the action which has been proposed to be taken against him. In this connection it is useful to refer to the case of Khemchand v. Union of India (AIR 1958 SC 300). In this case it was held that the delinquent must be entitled to be given the opportunity but such opportunity must be reasonable one. If the purpose of the provision is to give the Government Servant an opportunity to exonerate himself from the charge and if this opportunity is to be a reasonable one, he must be told that what the charges are levelled against him and on what allegations those charges are based.

6 In the case of R.C. Verma v. R.D. Verma (AIR 1958 All 532), it has been said that what is "reasonable opportunity" has not been defined in the Constitution or in the General Clauses Act. The word has a legal meaning. It cannot be left to the vagaries of each individual since that would introduce a thousands shades of

reasonableness which cannot be permitted. It must, therefore, mean reasonable, according to the rules of natural justice which are rules of law.

7. In the case of *R.C. Sharma v Union of India* (AIR 1976 SC 2037), the Hon'ble Supreme Court had an occasion to consider this question and had opined that the question whether a public servant proceeded against, was given a reasonable opportunity to lead evidence and to be heard or not, is largely a question of fact. It is only when an opportunity denied is of such a nature that the denial contravenes a mandatory provision of law or a rule of natural justice then it could vitiate the whole departmental trial. Prejudice to the Government Servant resulting from an alleged violation of a rule must be there. From these authorities it comes out that what Article 311 (2) in relation to the inquiry proceedings against a Government Servant is that a reasonable opportunity to lead evidence must be given. This opportunity should not be merely an eye wash but such opportunity must be real and reasonable one considering the facts of the case. The purpose of this provision is to give the Government Servant an opportunity to show that the charges framed against him are false and he should be able to place material on record after cross examining the witnesses. It is not enough that the Government Servant should be given a list of charges which have been framed against him and a list of the witnesses and the document which are relied upon in support of the charges. He must be given an opportunity which should be reasonable to controvert all the allegations and to show that he has not committed any lapse on account of which charges have been levelled against him in the inquiries. He should be able to show that the offence against him is not worthy of credence which can only be done by him if he has been given an opportunity of cross examining the witnesses. In the light of these principles we have now to see as to whether the inquiry officer in the present case has afforded "reasonable opportunity" to the delinquent.

8. Rule 59A of the Financial Handbook, volume III (Travelling Allowance Rules) provides for payment of travel allowance during suspension. The said Rule is reproduced below :

"Rule 59A : A government servant under suspension who is required to perform a journey to attend the departmental enquiry (other than a police enquiry) may be allowed travelling allowance as for a journey on tour from his headquarters to the place where the departmental enquiry is held, or from the place at which he has been permitted to reside during suspension to the place of enquiry, whichever is less. No travelling allowance will, however be admissible if the enquiry is held at the outstation at his own request.

9. Thus from the perusal of this Rule, whenever a Government Servant who is under suspension and is required to give evidence or participate in the inquiry at a different place, then there is an allowance which is to be paid to him which is known as travelling allowance. The spirit of this Rule is that the Travelling allowance has to be paid to the delinquent employee so that he may be able to go to the place where he is called for cross examining the witnesses. Denial of

advance payment of travelling allowance will prevent the employee from going to that place thus preventing him to take part in disciplinary proceedings. In the present case the employee was prevented from participating in the inquiry proceedings due to paucity of funds, especially when he has brought this fact to the notice of the inquiry officer.

10. In the case of Ghanshyom Das Shrivastava v. State of Madhya Pradesh (AIR 1973 SC 1183) the delinquent was employed as Forest Ranger by the State of Madhya Pradesh. He was put under suspension and was directed to remain present in Jagdalpur during the period of suspension. Certain charges were framed against him and an inquiry was initiated. The delinquent did not participate in the inquiry. The inquiry proceeded ex parte and he was dismissed. Before the Hon''ble Supreme Court a contention was raised that the place of inquiry was Jagdalpur which was about 500 Kilometers away from Rewa where he was residing during his suspension. It was also contended that no subsistence allowance was paid to him and he had no money to go to Jagdalpur and face the Inquiry. This point was raised before the Hon''ble Supreme Court but the case was remanded to the High Court as this point was not raised before the High Court. The High Court decided the matter against the delinquent employee. In that case the evidence on behalf of the Government was recorded on February 10, 11 and March 13, 1965. The appellant received the subsistence allowance for three months on 20/3/1965. Thereafter further evidence was recorded on April 3, 6 and 15, 1965 and second portion of subsistence allowance was paid to the appellant on 13/5/1965. The High Court subsequently held that as the appellant did not complain specifically in the writ petition that he could not attend the Inquiry as he had not been paid subsistence allowance, therefore the appellant had no case. It was further held by the High Court that no statement about the sources of income and the estimate of expenses which were incurred by him was made and he did not explain that he was unable to meet the expenses. It was also held by the High Court that only a small amount was involved in staying at Jagdalpur. The High Court took into consideration the fact that after his dismissal from the service he filed a writ petition in the High Court. After his writ petition was dismissed by the High Court he came in appeal to the Supreme Court. This shows that he had sufficient money to appear in the inquiry proceedings. In that case also the appellant had sent a telegram to the inquiry officer informing him that unless he was paid subsistence allowance he would not be able to face the inquiry proceedings. It was further mentioned that the appellant had no capacity to do so because of the acute shortage of funds. Considering these facts the Hon''ble Supreme Court held as under:

"This is obviously specific pleading on the point that for nonpayment of subsistence allowance he was short of funds and could not attend the inquiry. It is true that his affidavit does not give any particulars about his sources of income and the estimate of expenses to be incurred in the enquiry. But it would prima facie suggest that he had no other sources of income except his pay. If he had no other sources of income, he could not invent them for the purpose of mentioning

them in the affidavit. More significantly, the Government affidavit does not allege that he had any other source of income except pay. The fact that he had been drawing a monthly pay of Rs. 300/ till October 1964 would not necessarily show that he had sufficient money to enable him to go to Jagdalpur to attend the enquiry in February, 1965."

11. It was further held by the apex court as under :

"The fact that he has filed a writ petition immediately on the passing of the order of dismissal and thereafter came in appeal to this Court, would not establish that he had enough resources to enable him to attend the enquiry. It seems to us that on the whole the High Court has gone by conjectures and surmises."

12. It was also observed that accordingly, the order of the Government dismissing the services of the petitioner/appellant cannot stand as the same was passed in violation of the provisions of Article 311 (2) of the Constitution of India for the appellant was not given a reasonable opportunity of defending himself in the enquiry proceedings. In view of the principles laid down in this case it is clear that if a delinquent is not provided the subsistence allowance when he has specifically prayed that he has no fund with him to participate in the inquiry then it is the duty of the Government to pay him subsistence allowance.

13. In the present case there is a specific allegation of the delinquent and there is a finding of the U.P. Public Service Tribunal that the delinquent was asked to come to different places to cross examine the witnesses produced by the department. The delinquent had also intimated the inquiry officer that he had no funds and due to paucity of funds he cannot participate in the inquiry proceedings. Therefore, it was the duty of the enquiry officer to have remitted travelling allowance in advance to the delinquent, opposite party No. 2, so that he could have reached those places where the enquiry proceedings were to be conducted and the delinquent was asked to cross examine the witnesses. Non payment of advance travelling allowance to the delinquent would mean denial of a reasonable opportunity to him before the enquiry officer. Therefore, this order of dismissal which was passed by the enquiry officer was against the principle of natural justice and it violates the provisions of Article 311(2) of the constitution of India.

14. Therefore, this writ petition, in view of what has been said above has no force and is dismissed summarily.