

(1960) 03 AHC CK 0009
In the Allahabad High Court
Case No : Special Appeal No. 584 of 1958

State of Uttar Pradesh and Others

APPELLANT

Vs

Salig Ram Sharma

RESPONDENT

Date of Decision : 08-03-1960

Acts Referred:

Constitution of India, 1950 — Article 311(2)

Citation : AIR 1960 All 543

Hon'ble Judges : S.S. Dhavan, J;O.H. Mootham, J

Bench : Division Bench

Advocate : Lakshmi Saran, Addl. Junior Standing, for the Appellant; S.C. Khare, for the Respondent

Final Decision : Dismissed

Judgement

Dhavan, J.—This is an appeal against an order of Mr. Justice S. K. Verma allowing a petition under Article 226 of the Constitution and quashing the order of the Inspector General of Prisons, Uttar Pradesh dismissing the respondent Salig Ram Sharma from service. The respondent was employed as an Assistant Jailor in the Central Prison, Fatehgarh when the incident leading to his dismissal occurred. On 8-3-1952 he received an indent from the Jailor in charge for a certain quantity of iron sheet"s. He entered the amount of one maund and seventeen seers in his issue register. Subsequently this entry was altered by the respondent to four maunds and seventeen seers.

Action was taken against him and he was charge-sheeted. It was stated in the charge that he had made the alteration "with ulterior motives". Salig Ram Sharma admitted that he had made the change in the entry but explained that he had done this because the indent issued by the jailor was for four maunds and seventeen seers and he entered the figure one maund and seventeen seers by mistake. According to him, he merely corrected the entry in accordance with the indent. It appears that there was an enquiry against him which was conducted by the Superintendent of the jail.

This official sent his report together with his conclusions to the Inspector General who then passed an order dated 4th of June 1953, agreeing with the, finding of the Superintendent that Salig Ram Sharma was "responsible for the loss of three maunds of iron sheets and that he deliberately tried to cover it up by tampering with the entries in the register....". Holding him guilty of the charge framed against him, he called upon Salig Ram Sharma to show cause why the punishment of dismissal should not be inflicted upon him. The respondent's explanation was rejected and on 30th January 1955 he was dismissed from service by the Inspector General. He then came to this Court for relief under Article 226 of the Constitution.

2. Two grounds pressed before the learned Judge were, first, that the petitioner was at no time informed of the material upon which the Inspector General formed his conclusion that Salig Ram Sharma was guilty of the charge against him, and secondly that the finding that he was guilty was based on no evidence whatsoever. The learned Judge was of the opinion that the findings of the Superintendent who held the enquiry were not supplied to the petitioner nor was he informed of the evidence on which the Inspector General based his conclusions. But he preferred not to consider the legal effect of this omission as he thought that the petition had, to be allowed on the second ground.

3. Examining the evidence against the petitioner, the learned Judge was of the opinion that the essence of the case against him was that he had made certain interpolations in the issue register "with ulterior motives". He took the view that the petitioner was virtually accused of having mis-appropriated three maunds of iron sheets which made it necessary for him to make an interpolation to cover up his crime. He thought that there was no evidence of misappropriation and rejected the contention that the evidence of the change in entry was in itself proof of any ulterior motive. Accordingly he held that the conclusions of the enquiry officer were vitiated by a total absence of evidence, and quashed the order of the Inspector General dismissing Salig Ram Sharma from service. Against this decision the State of Uttar Pradesh has filed this appeal.

4. Mr. K. B. Asthana, learned Junior Standing Counsel, had to concede, during his arguments, that neither the finding of the enquiry officer nor the record of the proceedings was supplied to the respondent Salig Ram Sharma when he was called upon to show cause against the proposed punishment. In our view this omission in itself is fatal to the decision to dismiss him. A government servant is entitled, under Article 311, to be given a reasonable opportunity of showing cause against the action proposed to be taken against him. If the proposed punishment is dismissal, he cannot make an effective representation against it in ignorance of the findings of the enquiry officer and the material on which it was based.

Unless he knows what case, or how strong a case, has been made out against him he would not be in a position to give any effective reasons for submitting that the Enquiry Officer's recommendations should not be given effect to or, at

any rate, that they do not justify the infliction of the extreme penalty of dismissal. Such an officer can legitimately complain that he was deprived of a reasonable opportunity to show cause against the punishment proposed against him. There has thus been in this case, a violation of the provisions of Article 311(2) and this alone is sufficient to vitiate the order of dismissal.

5. There is another vital defect in the proceeding taken against the respondent. The charge against him was not that he had altered the entry (he admitted this) but that he had done it "with ulterior motives". This is much too vague. In our view, it is not enough to charge a government servant with having done an act "with ulterior motives"; he must be told what precisely is the motive attributed to him, otherwise he would not be in a position to rebut the accusation. Thus the charge in this case is vitiated by vagueness and this defect, too, renders the punishment imposed on him illegal.

6. In view of these facts this appeal must fail. It is therefore not necessary for us to consider the question whether there was or was not sufficient evidence to justify the finding of the enquiry officer, though we would like to observe, with respect, without giving any definite finding on this point, that there is considerable force in the observation of the learned Judge that the real charge against the respondent was not the alteration of the entry but that he had done it with ulterior motives a charge for which there was little evidence. The appeal fails and is rejected with costs.