courtkutchehry.com

Company : Sol Infotech Pvt. Ltd.

Website : www.courtkutchehry.com

Printed For :

Date : 24/08/2025

Deep Chand Saxena Vs State of Uttar Pradesh and Others

Court: Allahabad High Court

Date of Decision: Aug. 28, 1958

Acts Referred: Constitution of India, 1950 â€" Article 311
Penal Code, 1860 (IPC) â€" Section 409, 420

Citation: (1959) 1 LLJ 357

Hon'ble Judges: Jagdish Sahai, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Jagdish Sahai, J.
The petitioner was appointed on 11 October 1935 as a rural development organizer. On 30 September 1943 he was

appointed as an agriculture supervisor. On 30 July 1948, he was working as incharge supervisor, Central Seed Store, Budaun, when he was

suspended. On 23 October 1948, a chargesheet was served on him to which the petitioner submitted an explanation. On 25 November 1948 he

was called by the Circle Accounts Officer at Bareilly and some enquiries were made from him on 29 and 30 November and 1 December 1948.

The Circle Accounts Officer reported the proceedings to the Deputy Director of Agriculture, Bareilly, who recommended to the Joint Director of

Agriculture, Lucknow, that a bad entry be made in the character roll of the petitioner and the proceedings initiated by the chargesheet be

withdrawn. The Joint Director of Agriculture ordered that the matter be referred to the District Magistrate, Budaun, for prosecution of the

petitioner in a criminal Court. A case was registered against the petitioner u/s 409/420, Indian Penal Code and investigation was made by the

police. The police submitted a final report. The petitioner, however, received a notice, dated 8 February 1950, calling upon him to show cause

why he should not be removed from service, to which he submitted an explanation on 10 February 1950. Thereafter, he received orders

terminating his services. The petitioner made an application for review of the order of termination of service which was rejected on 4 May 1950.

Thereafter, he submitted an appeal to the Secretary to Government, Uttar Pradesh, Agriculture Department. In the meantime the petitioner was

appointed in the Land Reforms Department on 19 July. 1952 as zamindari abolition clerk in tehsil Sisauli. On 9 May 1953 the District Agriculture

Officer again reported for police investigation against the petitioner and the police issued a warrant of arrest against the petitioner. The petitioner, in

compliance with the warrant, surrendered in Court. The polios again submitted a final report. On 17 December 1954 the petitioner sought an

interview with the Secretary to Government, Agriculture Department, Uttar Pradesh, and submitted an application saying that he had not received

any orders for the last four years regarding his appeal. On 27 April 1955 the petitioner received an order, dated 22 April 1955, by which he was

reinstated with effect from the date of termination, i.e., 1 March 1950. The petitioner was formally reinstated but was again put under suspension.

A fresh chargesheet was served on the petitioner to which he submitted an explanation on 31 January 1956. On 9 August 1956, the petitioner was

called for personal hearing but no evidence was recorded in his presence and he was not allowed to cross-examine any witness. In the third week

of November 1956, the petitioner received a letter dated 7 November 1956, calling upon him to show cause why he may not be removed from

service to which he submitted an explanation on 31 December 1958. By an order dated 21 January 1957 the petitioner was removed from service

by the Director Sri R.S. Singh with effect from the date of his suspension, i.e., 15 April 1958: Thereafter, the present writ petition was filed in this

Court.

2. The submission of the learned Counsel for the petitioner is that he was not given a reasonable opportunity of showing cause against the action

proposed. The argument is that Article 311(2) of the Constitution of India envisages two stages at which the petitioner can show his innocence.

The first stage is the enquiry stage and after the enquiry is completed, the second stage arrives after the authority who can take disciplinary

proceedings against the petitioner, has tentatively made up his mind to inflict a punishment and issues a notice to show cause why that punishment

should not be inflicted. The view that I am taking with regard to the opportunity contemplated by Article 311(2) of the Constitution of India is fully

borne out by the observations of their lordships of the Supreme Court in the case of Khem Chand Vs. The Union of India (UOI)and Others, .

3. A counter-affidavit has been filed much beyond time. Ordinarily, I would have rejected the counter-affidavit but after having read it, I do not

think there are any allegations in it which are material for the decision of the present case and which Mr. Varma, the learned Counsel for the

petitioner, may like to controvert. I have therefore not given Mr. Varma any time for a rejoinder affidavit. The short point on which I am inclined to

allow this petition is that there has been non-compliance with the provisions of Rule 55 of the Civil Services (Classification, Control and Appeal)

Rules. The said rule runs as follows:

(1) Without prejudice to the provisions of the Public Servants Inquiries Act, 1850, no order (other than an order based on facts which had led to

his conviction. in a criminal Court or by a Court-martial) of dismissal, removal or reduction in rank (which includes reduction to a lower post or

time-scale, or to a lower stage in a time-scale but excludes the reversion to a lower post of a person who is officiating in a higher post) shall be

passed on a person who is a member of a civil service, or holds a civil post under the State unless he has been informed in writing of the grounds

on which it is proposed to take action and has been afforded an adequate opportunity of defending Himself. The grounds on which it is proposed

to take action shall be reduced in the form of a definite charge or charges which shall be communicated to the person charged and which shall be

so clear and precise as to give sufficient indication to the charged Government; servant of the facts and circumstances against him. He shall be

required, within a reasonable time, to put in a written statement of his defence and to state whether he desires to be heard in person. If he so

desires, or if the authority concerned so directs, an oral inquiry shall be held in respect of such of the allegations as are not admitted. At that inquiry

such oral evidence will be heard as the inquiring officer considers necessary. The person charged shall be entitled to cross-examine the witnesses,

to give evidence in person and to have such witnesses called as he may wish, provided that the officer conducting the inquiry may, for sufficient

reason to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and statement of the

findings and the grounds thereof. The officer conducting the inquiry may also, separately from these proceedings, make his own recommendation

regarding the punishment to be imposed on the charged Government servant.

(2) This rule shall not apply where the person concerned has absconded, or where it is for other reasons impracticable to communicate with him.

All or any of the provisions of the rule may for sufficient reasons to be recorded in writing, be waived, where there is difficulty in observing exactly

the requirements of the rule and those requirements can, in the opinion of the inquiring officer, be waived without injustice to the person charged.

(3) This rule shall also not apply where it is proposed to terminate the employment of a probationer whether during or at the end of the period of

probation, or to dismiss, remove or reduce in rank a temporary Government servant, for any specific fault or on account of his un-suitability for the

service. In such cases, the probationer or temporary Government servant concerned shall be apprised of the grounds of such proposal, given an

opportunity to show cause against the action to be taken against him, and Ms explanation in this behalf, if any, shall be duly considered before

orders are passed by the competent authority.

4. It is clear that Rule 55 envisages that if the person charged so desires or if the officer conducting the inquiry so directs that an oral inquiry should

be held, such oral evidence as the inquiring officer considers necessary shall be heard at such inquiry. It is, therefore, absolutely necessary that

some evidence must be heard and the officer charged be given an opportunity of challenging that evidence by means of cross-examination.

Annexure K to the petitioner''s affidavit, which is the chargesheet against the petitioner, gives several charges and also gives the names of witnesses

on whose testimony the prosecution wants to rely. Admittedly no enquiry was held under Rule 55 of the Civil Services (Classification, Control and

Appeal) Rules, and no witnesses were examined against the petitioner with the result that the evidence on which the authorities have acted in

removing: him went totally unchallenged. Mr. Aathana, the learned junior standing counsel, contends that it was necessary to examine witnesses

and to allow the petitioner to cross-examine them and all that Rule 55 requires was that the officer charged should be given a summary of the

evidence against him and the names of the witnesses on whose testimony the charges against him are based and it is for the officer charged to say

which of them he would like to cross-examine. In my opinion, this argument is based on a misreading of Rule 55. Though it cannot be said that the

procedure envisaged by Rule 55 is as elaborate as a criminal trial, all the same, the rule does require the examination of some witnesses and the

offer of an opportunity to the officer charged to cross-examine those witnesses. Inasmuch as that was not done in the present case, there has been

a non-compliance with the provisions of Rule 55of the Civil Services (Classification, Control and Appeal) Rules. In view of the fact that their

lordships of the Supreme Court have held that to an enquiry under Rule 55 also the expression ""reasonable opportunity of showing cause "" In

Article 311(2) of the Constitution of India applies, it must be held that there has been a non-compliance with the directive principles of that article.

In that view of the matter, the petition must be allowed. I may also note that the petitioner has been subjected to a long and protracted harassment.

The enquiry against him started in 1948 and the matter was finally concluded in December 1956. During this time twice police investigations were

ordered and both the times the report was that there was no evidence against the petitioner. He was chargesheeted and removed once before, but

his appeal was allowed. Considering all the circumstances of the case, and especially the fact that the petitioner has been deprived of the

opportunity given to him by Article 311(2) of the Constitution of India, I allow the petition with costs, quash the order removing the petitioner from

service and direct the respondents to treat the petitioner as in service.