

A

STATE OF U.P.

v.

VIJAY KUMAR TRIPATHI AND ANR.

DECEMBER 7, 1994

B

[B. P. JEEVAN REDDY AND SUJATA V. MANOHAR, JJ.]

Service Law : U. P. Civil Service (Classification, Control and Appeal) Rules, 1930 :

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Sections 49, 55-B (a)—Penalty of censure or stop-page of increment at efficiency bar—Providing that framing of charges or calling for an explanation not necessary—Held: Ordinarily opportunity to show cause to be afforded—Principles of Natural Justice to be read into the Rules—Giving of post-decisional opportunity instead of pre-decisional hearing—Open to the competent authority though normal, Rule is prior opportunity.

D

Constitution of India, 1950 : Art. 136— New plea—Not to be permitted at the special leave proceedings.

E

Respondent, a member of the U. P. Civil Services (Executive Branch) was awarded a censure entry for pressurising the carpet traders in his area to render financial assistance to students who were agitating against the reservation policy of the Government. He challenged the same before the Tribunal on the ground that Rule 55-B (a) of the U. P. Civil Service (Classification, Control and Appeal) Rules, 1930 which provided for censure without framing formal charges or calling for the explanation, as being violative of the principles of natural justice. The Tribunal allowed the claim. State preferred an appeal before the High Court which held that while the Tribunal was not right in holding that it was necessary to hold a regular inquiry before awarding censure, the order of the Tribunal was liable to be sustained on the ground of violation of principles of natural justice. Hence the present appeal by the State.

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Dismissing the appeal, this Court

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HELD : 1.1 Rule 55-B (a) of the U. P. Civil Service (Classification Control and Appeal) Rules, 1930 does not exclude or prohibit the observance of the principles of natural justice. It only says that it is not obligatory to either frame formal charges or to call for the explanation

of the concerned employee before imposing the penalty of censure. The normal rule enunciated by this Court is that wherever it is necessary to ensure against the failure of justice, principles of natural justice must be read into a provision. Such a course, of course, is not permissible where the rule excludes, either expressly or by necessary intendment, the application of the principles of natural justice but in that event validity of the Rule may fall for consideration. Consistent with the above rule, ordinarily speaking, an opportunity to show cause against the proposed imposition of penalty of censure should be given to the employee concerned before its imposition. Censure is a penalty. It cannot also be said that it has no adverse consequences; it has. Hence the necessity to read the said principles. It would certainly be open to the competent authority in a given case to provide a post decisional opportunity instead of a pre-decisional hearing. (There may indeed be exceptional situations where the principles of natural justice may have to be dispensed with, but they are an exception.) Normal rule, of course, is prior opportunity. [353 D to G]

1.2. In the instant case, admittedly prior opportunity of hearing or to show cause against the action proposed was not given to the respondent. It was also not brought to the notice of the Tribunal or the High Court that a post-decisional hearing was given to respondent. In the absence of any such plea being taken either before the Tribunal or before the High Court, it cannot be permitted to be raised at this stage. [353 H, 354 A, B]

State of U. P. v. Rajendra Kumar Srivastava, [1989] S.C.D.137, approved.

J. P. Aggarwal, Regional Transport Officer, Dehradun v. State of U. P., through the Secretary, Transport Department, Lucknow and Others., [1973] 1 S. L. R. 194, disapproved.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 8918 of 1994.

From the Judgment and Order dated 3.9.93 of the Allahabad High Court in W. P. No. 7528 (SS) of 1993.

Gorab Banerjee and R. B. Misra for the Appellant.

K. B. Sinha, S. K. Srivastava and Mohan Pandey for the Respondents.

The Judgment of the Court was delivered by

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A B. P. JEEVAN REDDY, J. Leave Granted.

B Rule 49 of the U. P. Civil Service (Classification Control And Appeal) Rules, 1930 provides that for good and sufficient reasons and in accordance with the procedure prescribed by those Rules, penalties specified therein may be imposed upon members of the service. The punishments specified in Rule 49 include (i) Censure and (ii) Withholding of increments including stoppage at an efficiency bar.

Rule 55 B (a) provides that "(a) whenever the punishing authority is satisfied that good and sufficient reasons exist for adopting such a course it may impose the penalty of—

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(i) censure, or

(ii) stoppage at an efficiency bar :

Provided that it shall not be necessary to frame formal charges against the Government servant concerned or to call for his explanation."

D

The Allahabad High Court has opined in the order under appeal that awarding censure without affording an opportunity to the affected employee to explain the material on the basis of which the penalty of censure is proposed to be awarded is violative of the principles of natural justice. This has been so held following a decision of that Court in *State of U. P. v. Rajendra Kumar Srivastava*, (1989) S.C.D. 137. The High Court has also observed towards the end of its judgement that the censure entry also appears to be vague and lacking in particulars.

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Shri Gaurab Banerjee, learned counsel for the appellant—State contends on the strength of another decision of the Allahabad High Court in *J. P. Aggarwal, Regional Transport Officer, Dehradun v. State of U. P., through the Secretary, Transport Department, Lucknow And Others*, (1973) 1 S.L.R. 194, that no such opportunity need be given and that the awarding of censure without such opportunity is not liable to be quashed on the ground of violation of principles of natural justice. The learned counsel submits that Rule 55- B (a) expressly provides that is not necessary either to frame formal charges or to call for the explanation of the concerned government employee where the penalty of censure is proposed to be awarded. Counsel further submitted that the validity of the Rule was not questioned by the respondent before the High Court.

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H The respondent is a member of U. P. Civil Services (Executive Branch). During the period 1989-90, he was working as the Additional

District Magistrate (Executive) at Gyanpur in District Varanasi. On the ground that he pressurised the carpet traders of that area to render financial assistance to students who were agitating against the reservation policy of the Government, he was awarded a censure entry in his character roll vide D.O. letter dated 21.3.1991. Against the said entry, the respondent filed a Claim Petition under Section 4 of the U. P. Public Services (Tribunal) Act, 1976. The Tribunal allowed the claim petition holding that awarding the censure entry without making a full oral enquiry as provided by C. C. A. Rules was violative of Article 311 of the Constitution. The State of Uttar Pradesh questioned the order of Tribunal by way of a Writ Petition in the Allahabad High Court (Lucknow Bench). A learned Single Judge of the High Court held that while the Tribunal was not right in holding that it was necessary to hold a regular enquiry before awarding the said penalty, the order of the Tribunal is liable to be sustained on the ground of violation of principles of natural justice.

Rule 55-B (a) of the U. P. C. C. A. Rules, it is obvious, does not exclude or prohibit the observance of the principles of natural justice. It only says, it is not obligatory to either frame formal charges or to call for the explanation of the concerned employee before imposing the penalty of censure. The normal rule enunciated by this Court is that wherever it is necessary to ensure against the failure of justice, principles of natural justice must be read into a provision. Such a course, of course, is not permissible where the rule excludes, either expressly or by necessary intendment, the application of the principles of natural justice but in that event validity of Rule may fall for consideration. Consistent with the above rule, we must hold that, ordinarily speaking, an opportunity to show cause against the proposed imposition of penalty of censure should be given to the concerned employee before its imposition. Censure is a penalty. It cannot also be said that it has no adverse consequences; it has. Hence, the necessity to read the said principles. It would certainly be open to the competent authority in a given case to provide a post-decisional opportunity instead of a pre-decisional hearing. (There may indeed be exceptional situations where the principles of natural justice may have to be dispensed with, but they are an exception.) It is upto the competent authority to decide whether in the given circumstances the opportunity to be provided should be a prior one or a post-decisional opportunity. Normal rule, of course, is prior opportunity.

In the case before us admittedly prior opportunity of hearing or to show cause against the action proposed was not given to the respondent. It was also not brought to the notice of the Tribunal or the High Court that a

- A post-decisional hearing was given to respondent. Mr. Gaurab Banerjee sought to contend that in this case post-decisional hearing was indeed given. But in the absence of any such plea being taken either before the Tribunal or before the High Court, we are not inclined to permit the learned counsel to put forward the said factual plea at this stage. For the above reasons, it is not possible to agree with the decision of the Allahabad High Court in *J. P. Aggarwal*.
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The Appeal is accordingly dismissed. No Costs.

G.N.

Appeal dismissed.