Tarak Nath Ghosh

Vs

State of Bihar & Ors.

Civil Appeal No. 2432 of 1966

(V. Bhargava JJ)

22.02.1968

JUDGMENT

BHARGAVA, J.

The appellant, Tarak Nath Ghosh, was appointed by the Secretary of State for India to the Secretary of State's Service known as the Indian Police on 25th January, 1937. When agreement took place with the British Government for independence of India, the Central Government, on 21st October, 1946, in agreement with a number of Provincial Governments including the Government of Bihar, constituted another Service known as the Indian Police Service. Recruitment to this Indian Police Service began on 15th August, 1947, after India attained Dominion status. Subsequently, on 23rd January, 1950, the Government-General, in consultation with the Provincial Governments, promulgated rules for forming a cadre for the Police Officers. The Rules, known as the Indian Police (Cadre) Rules, 1950, came into force on 23rd January, 1950, and laid down that a number of posts mentioned in the Schedule would be treated as cadre posts and no cadre post shall be filled otherwise than by a cadre officer. Amongst the cadre officers defined in the Rules were included members of the Indian Police and of the Indian Police Service. On 26th January, 1950, the Constitution of India come into force and provision was made in Art. 312(1) empowering Parliament by law to provide for the creation of one or more all-India services common to the Union and the States, and to regulate the recruitment and conditions of service of persons appointed to any such service. Article 312(2) laid down that the services known at the commencement of the Constitution as the Indian Administrative Service and the Indian Police Service shall be deemed to be services created by Parliament under this article. In pursuance of the power given to Parliament under this Article, Parliament passed an Act for constituting all-India services. That Act is the All-India Services Act, 1951 (No. 61 of 1951) (hereinafter refereed to as "the Act"). The Act recognised the existence of the two All-India Services mentioned in Art. 312(2) of the Constitution and, by section 3, empowered the Central Government, after consultation with the Governments of the States concerned, to make rules for the regulation of recruitment, and the conditions of service of persons appointed to an All-India Service. Section 4 laid down that all rules in force immediately before the commencement of the Act and applicable to an All-India Service shall continue to be in force and shall be deemed to be rules made under this Act. In exercise of the powers granted by s. 3 of the Act, the Central Government promulgated the Indian Police Service (Recruitment) Rules, 1954. Under these Rules, it was laid down that the Indian Police Service was to consist of the following persons, viz.:-

(a) members of the Indian Police;

(b) members recruited to the Service before the commencement of these rules; and

(c) persons recruited to the Service in accordance with the provisions of these rules.

The Rules defined "member of the Indian Police" to mean a person who, having been appointed to the police service under the Crown in India, known as the Indian Police, continues on and after the commencement of these rules, to serve under the Government of India, or a State. Thus, under these Rules, persons appointed to the Indian Police, who had been appointed by the Secretary of State and had continued to serve the Government of India, became members of the Indian Police, and under clause 3 of the Rules, the Indian Police Service included these members of the Indian Police. Subsequently, in exercise of the powers conferred by s. 3(1) of the Act, the Central Government, after consultation with the Governments of the States concerned, made rules for regulating the discipline in the Indian Police Service. These Rules, which were enforced with effect from 1st September, 1955, came to be known as the All-India Services (Discipline and Appeal) Rules, 1955 (hereinafter referred to as "the Rules of 1955"). Rule 4 of these Rules was amended subsequently on 23rd July, 1960.

On 29th June, 1965, while the appellant was working as the Deputy Inspector-General of Police in Bihar, an order was made by the State Government placing the appellant under suspension pending an enquiry. This order was partially amended by the Central Government by passing an order of suspension of the appellant in view of the enquiry instituted by the State Government. On 13th July, 1965, the appellant filed a writ petition under Article 226 of the Constitution in the High Court at Patna challenging these orders passed against him. The order for institution of enquiry made by the State Government, which had been directed in pursuance of Rules 4 and 5 of the Rules of 1955, was challenged on two grounds. One ground was that the appellant had never become a member of the Indian Police Service and these Rules did not, therefore, apply to him, so that no enquiry could be instituted against him under these Rules. The second ground was that, in any case, in view of Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930 (hereinafter referred to as "the Rules of 1930") read with Article 314 of the Constitution, the Government of the State of Bihar had no power to order institution of an enquiry against the appellant, even if it be held that he had become a member of the Indian Police Service. The order of suspension was challenged on the sole ground that, if the enquiry itself had been invalidly instituted, the order of suspension automatically became invalid. The High Court dismissed the writ petition holding on both against the appellant and consequently, the appellant has come up to this Court under certificate granted by the High Court.

The first contention put forward by learned counsel for the appellant that the appellant never became a member of the Indian Police Service as deemed to have been created by virtue of Art. 312(2) of the Constitution has no force. It is true that the appellant was originally appointed on 25th January, 1937 to the Secretary of State's Service known as the Indian Police and when the Indian Police Service was first constituted on 21st October, 1946, person, who were members of the Secretary of State's Service known as the Indian Police, did not become member of this newly constituted Indian Police Service. The Indian Police (Cadre) Rules, 1950 also did not bring about any merger of the two Services. All that those Rules did was to constitute cadre posts which were to be filled by Officers belonging to either the Indian Police or the Indian Police Service as it existed at that time. Article 312(2) of the Constitution simply provided that the existing Indian Police Service constituted on 21st October, 1946 shall be deemed to be created by Parliament under that Article. Thereafter, Parliament passed the All-India Services Act, 1951 and under section 3 of the Act the Indian Police Service (Recruitment) Rules, 1954 were promulgated laying down that persons, who had been appointed to the Secretary of State's Service - Indian Police, were to be included in the Indian Police Service. Consequently, from the time that these Recruitment Rules of 1954 came into

force, all persons, who had been appointed to the Secretary of State's Service-Indian Police, became members of the Indian Police Service, so that, thereafter, they were governed by the provisions of the Act and the Rules framed thereunder. The submission of learned counsel for the appellant was that the provisions in the Recruitment Rules of 1954 that the Indian Police Service shall consist, inter alia, of members of the Indian Police, could not make them members of the Indian Police Service, because, under the Act, the only power that was conferred on the Central Government was to make Rules regulating recruitment to the Services, and conditions of service of persons appointed to the Service, and did not empower the Government to include within the Service persons who were already members of another Service. The argument has to be rejected, because, in our opinion, the provision laying down that the Indian Police Service shall consist, inter alia of members of the Indian Police, amounts to a rule recruiting the members of the Indian Police to this Indian Police Service. It may be mentioned that those persons, who were appointed to the Indian Police under the Crown before Independence, ceased to be members of any regularly constituted Service when the Indian Independence Act came into force in the year 1947. When independence was achieved by India, the Secretary of State and the Crown ceased to have any authority in India, so that no Service of the Secretary of State or the Crown could continue thereafter. Under the agreement that was entered into by the new Indian Government with the British Government, provision was made that members of the previous Secretary of State's Service could continue to serve the Government of India or a Provincial Government and certain rights were preserved to them if they continued to do so. There was, however, no provision that the old Secretary of State's Service would continue, so that with the passing of the Indian Independence Act, Secretary of State's Services like the Indian Civil Service and the Indian Police ceased to exist.

The effect of the Indian Independence Act on the Secretary of State's Services was considered in detail by this Court in State of Madras and Another v. K. M. Rajagopalan [[1955] 2 S.C.R. 541, 662.] and it was held :

> "Thus, the essential structure of the Secretary of State Services was altered and the basic foundation of the contractual-cum-statutory tenure of the service disappeared. It follows that the contracts as well as the statutory protection attached thereto came to an automatic and legal termination....."

The effect of the decision in that case was also noticed by this Court in the case of R. P. Kapur v. Union of India and Another [[1964] 5 S.C.R. 431.] where this Court held that in the case of K. M. Rajagopalan [[1955] 2 S.C.R. 541, 662.] it had been decided that :

> "the conferral of Independence on India brought about an automatic and legal termination of service on the date of Independence. But all persons previously holding civil posts in India are deemed to have been appointed and hence to continue in service, except those governed by 'general or special orders or arrangements' affecting their respective cases. The guarantee about prior conditions of service and the previous statutory safeguards relating to disciplinary action continue to apply to those who are thus deemed to continue in service but not to others."

In the latter case of R. P. Kapur [[1964] 5 S.C.R. 431.], the Court proceeded further to take notice of s. 10 of the Indian Independence Act under which every person appointed by the Secretary of State to a civil service of the Crown in India, who continued on and after the appointed day to serve under the Government of either of the new Dominions or of any Province or part thereof, was entitled to receive the same conditions of service as respects remuneration, leave and pension and the same

rights as respects disciplinary matters or, as the case may be, as respects the tenure of his office, or rights as similar thereto as changed circumstances may permit as that person was entitled to immediately before the appointed day, i.e., August 15, 1947. This, it was clearly recognised by this Court that the Services constituted by the Secretary of State earlier disappeared with the passing of the Indian Independence Act, though persons, who continued to serve thereafter under the Indian Dominion or any Province, were entitled to certain rights in regard to remuneration, leave, pension and disciplinary matters. In view of this decision, it has to be held that, on the passing of the Indian Independence Act, the appellant ceased to be a member of the Service constituted by the Secretary of State but he continued to serve the Government of India and the Province of Bihar, as a result of which certain rights relating to conditions of service and disciplinary matters, which were earlier applicable to him, were preserved. At the time when the Indian Police (Cadre) Rules were framed, the appellant was not a member of any regularly constituted Service and his position remained the same until, under the Recruitment Rules of 1954, he was included in the Indian Police Service. With effect from the date of enforcement of these Rules, he again became a member of a regularly constituted service and he could he competently included in that service, because on that date he was only holding a cadre post, but was not a member of any other regular service. While he was simply holding a cadre post, there was no bar to the Central Government making a Rule under s. 3 of the Act so as to include him in the Indian Police Service. Consequently, the first ground of attack on behalf of the appellant that the Rules of 1955 did not apply to him must be rejected, because, when those Rules came into force, the appellant was already a member of the Indian Police Service which service was governed by those Rules.

The second ground of attack on behalf of the appellant is based on the contention that under Art. 314 of the Constitution the appellant was entitled to the same right as respects disciplinary matter, or rights as similar thereto as changed circumstances permitted as the appellant was entitled to immediately before the commencement of the Constitution. According to the appellant immediately before the commencement of the Constitution, he was governed in the matter of discipline by the Rules of 1930, so that the rights which he was entitled to under those Rules were preserved to him under Art. 314. This proposition is not disputed on behalf of the respondents. What is, however, disputed is the interpretation sought to be put on behalf of the appellant on r. 55 of the Rules of 1930. The appellant urged that, under r. 55 of those Rules, an enquiry against a member of the Indian Police could only be instituted at the instance of the authority entitled to pass an order of dismissal, removal or reduction and by no other authority. On this ground, it was urged that until the Indian Independence Act came into force, an enquiry could only be ordered by the Secretary of State, whereas, thereafter, until the enforcement of the Constitution, the enquiry could be ordered by the Central Government only, because, during these two periods, the Secretary of State and the Central Government were the appropriate authorities entitled to pass orders of dismissal or removal. We are unable to accept this interpretation of r. 55 urged on behalf of the appellant. Rule 55 of the Rules of 1930 is as follows :-

> "Without prejudice to the provisions of the Public Servants Inquiries Act, 1850, no order of dismissal, removal or reduction shall be passed on a member of a Service (other than an order based on facts which have led to his conviction in a criminal court or by a Court Martial) 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 to the form of a definite charge or charges, which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into

> consideration in passing orders on the case. 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 direct, an oral inquiry shall be held. At that inquiry oral evidence shall be heard as to such of the allegations as are not admitted, and 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 special and sufficient reason to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof."

It is true that the first sentence of this Rule purports to lay down the procedure where an order of dismissal, removal or reduction is sought to be passed. In the next sentence, the Rule requires that the grounds on which it is proposed to take action must be reduced to the form of a definite charge or charges and they must be communicated to the person charged, together with other necessary material. The person charged is then required to put in a written statement of his defence within a reasonable time and to state whether he desires to be heard in person. After this stage comes the mention of the authority who is to take action by laying down that, if the person charged so desires or if the authority concerned so directs, an oral inquiry shall be held. The argument is that the authority concerned referred to in this sentence must necessarily mean the authority entitled to pass the order of dismissal, removal or reduction. We are unable to accept this submission. The language used in r. 55 shows that that rule is only concerned with the holding of an enquiry and lays down the procedure for the enquiry. It does not at all deal with the question of passing an actual order of dismissal, removal or reduction. At the time when then appellant was appointed to the Indian Police, the provision which prescribed the authority who could pass an order of dismissal in respect of the appellant was contained in sub-s. (2) of section 240 of the Government of India Act, 1935, as a result of which the appellant could only be dismissed from service by the Secretary of State who had appointed him. Rule 55 of the Rules of 1930, which then applied to him, did not, however, require that the enquiry under that rule must be initiated by the Secretary of State. In fact, that rule made no mention at all of the authority who was empowered to pass the order of dismissal. On the face of it, it is clear that that rule was confined to making provision for an enquiry, whereafter, if an order of dismissal had to be made, the appropriate authority under s. 240(2) of the Government of India Act, 1935 had to take up the proceedings and pass the final order. The expression "authority concerned" in r. 55, in these circumstances, must clearly be interpreted as referring to the authority under which the officer concerned happens to be serving at the relevant time. If the officer was serving under the Government of India, the Government of India or such officer thereof as may be competent in that behalf would be the authority to take proceedings under r. 55 and, in doing so, to initiate the proceedings also. If the officer happened to be serving under a Provincial Government, that Government or such officer thereof as may be competent in that behalf would be the authority concerned for initiating and holding the enquiry. Thereafter, of course, if the officer happened to be a member of the Secretary of State's Service, neither the Government of India nor the Provincial Government could pass an order of dismissal, and, on conclusion of the enquiry, the report necessarily would have to be submitted to the Secretary of State who alone could pass the order of dismissal. At the stage, the officer was entitled to a fresh show-cause notice under s. 240(3) of the Government of India Act, 1935 as held by the Privy Council in the case of High Commissioner for India and High Commissioner for Pakistan v. I. M. Lal [75 I.A. 225.]. It is clear in these circumstances that the preliminary enquiry under r. 55 of the Rules of 1930 was not required to be initiated or to be held by the Secretary of State in the case of a member of an All-India Service, and

it was only at the subsequent stage when the order of dismissal had to be passed that the Secretary of State was required to give an opportunity of showing cause to the officer concerned under s. 240(3) of the Government of India Act. In this connection, we may take notice of the fact that the High Court has held that, as a matter of fact also, prior to the Independence of India, whenever an enquiry was initiated in the conduct of a member of one of the Secretary of State's Services, the order was made by the Government of India and not by the Secretary of State, so that even at that time the Secretary of State as well as the Government proceeded on this very interpretation of r. 55 which we are inclined to accept.

The result of the view that we have taken is that, under Art. 314 of the Constitution, the right that continued to ensure to the benefit of the appellant was that the enquiry to be held in his conduct must comply with the requirements of r. 55 of the Rules of 1930. We find that an enquiry ordered under the Rules of 1955 is in no way detrimental to the interest of the person against whom the enquiry is held as compared with an enquiry under r. 55 of the Rules of 1930. The Rules of 1955 lay down the same type of opportunity to be given as did rule 55 of the Rules of 1930. Under both sets of Rules, the enquiry could be ordered by the authority under whom the person concerned happened to be serving, so that, in the case of the appellant, the order made by the Government of Bihar for enquiry does not in any way violate the rights which the appellant possessed under r. 55 of the Rules of 1930 and which were preserved to him by Art. 314 of the Constitution. The second ground of attack also, therefore, fails.

The appeal is dismissed, but, in the circumstances of this case, we make no order as to costs.

Appeal dismissed.##

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