

Lekh Raj Khurana

Vs

Union of India

Civil Appeal No. 1719 of 1967

(CJI S. M. Sikri, P. Jagmohan Reddy, G. K. Mitter, A. N. Grover, K. S. Hegde, JJ)

03.03.1971

JUDGMENT

GROVER, J. -

1. This is an appeal by certificate from a judgment and decree of the Punjab High Court (Circuit Bench, Delhi) by which the suit filed by the appellant for a declaration that the order, dated May 26, 1951, directing his removal from service was wrongful, illegal and void and that he still continued to be in the service of the respondent as Supervisor, Army Ordnance Corps.

2. According to the allegation in the plaint the appellant was appointed by the Governor-General in July, 1942, as Supervisor, Army Ordnance Corps which, according to him, was a civil post under the Crown in India. In the months of September and October, 1950, the appellant was served with charge-sheets by the Ordnance Officer, Administration, Shakurbasti, Delhi State, where he was posted at that time calling upon him to submit his defence to the charges of making serious false allegations against his superior officer Maj. H. S. Dhillon. The appellant asked for grant of time for submitting his defence and he also demanded copies of certain documents etc., to prove his case. On May 26, 1951, while this inquiry was pending he was served with an order by the Ordnance Officer, Administration, Shakurbasti, Delhi, which was as follows :

"Under instructions received from Army Headquarters you are hereby given one month's notice of discharge with immediate effect, services being no longer required. Your services will be terminated on 25th June, 1951."

The appellant challenged the legality of the above order principally on the ground that it had been passed by an officer who was subordinate to the authority who appointed him and that no inquiry "as required by Fundamental Rules and under the provisions of the Constitution of India" had been held in the matter of allegations against him and that no adequate opportunity had been afforded to him of defending himself or of showing cause against the action proposed to be taken. He also raised the question of the order being vitiated by mala fides. In the written statement filed by the Union of India it was stated that the appellant had been appointed as a Labour Supervisor in the Extra Temporary Establishment by COO/Ordnance Officer Incharge, Ammunition Depot, Kasubegu under the authority of Financial Regulations, India, Part I, Volume 25 and not by the Governor-General. It was pleaded, inter alia, that it was decided by the Government of India vide Army Headquarters's letter, dated May 25, 1951, to terminate the services by serving one month's notice. Consequently a notice of discharge from the service was given to him by the Ordnance Officer, Administration, who was competent to serve the notice on him under the authority of the Army Order No. 1202/1943, read in conjunction with Financial Regulations referred to before.

3. The sole material issue which was framed was whether the order, dated May 26, 1951, removing the appellant from service was illegal, wrong, void, ultra vires and inoperative. The trial Judge held that Article 311 of the Constitution was applicable to the case of the appellant and that his removal had not been ordered by the appointing authority. The suit was decreed. The respondent preferred an appeal which was decided by the Additional District Judge, Delhi. It was held by him that Article 311 was not applicable to the appellant as he held a post connected with defence. According to the learned Judge the appellant's services were terminated under Rule 5 of the Civilians in Defence Service (Temporary Service) Rules, 1949, hereinafter called the 'Rule'. It was found that the order terminating the services had been passed by the proper authority. The appeal was allowed and the suit was dismissed. The appellant appealed to the High Court which was dismissed. His appeal was heard along with certain other appeals in which similar points were involved. It was found that the salary of the appellant was paid out of the estimates of the Ministry of Defence and he was intimately connected with the defence of the country not as a combatant but as a person holding a post the object of which was exclusively to serve the Military Department. In the opinion of the High Court Articles 309 and 310 were applicable to the case of the appellant but Article 311 was inapplicable. On the question whether the services of the appellant were terminated without complying with the rules the High Court expressed the view that the breach of such rules did not give the aggrieved party a right to go to the Court. Reliance in that connection was placed on the decision of the Privy Council in *R. Venkatarao v. Secretary of State*, (AIR 1937 PC 31.) and certain other cases in which that decision was followed. In the case of the appellant the only other point which appears to have been argued on his behalf and which was decided by the High Court related to the allegation of mala fides. The decision went against him on that point.

4. The question whether the case of the appellant was governed by Article 311 of the Constitution stands concluded by two decisions of this Court. In *Jugatrai Mahinchand Ajwani v. Union of India*, (CA 1185 of 1965, decided on 6-2-1967.) it was held that an Engineer in the Military Service who was drawing his salary from the Defence Estimates could not claim the protection of Article 311(2) of the Constitution. In that case also the appellant was found to have held a post connected with Defence as in the present case. This decision was followed in *S. P. Behl v. Union of India*. (CA 1918 of 1966, decided on 8-3-1968.) Both these decisions fully cover the case of the appellant so far as the applicability of Article 311 is concerned.

5. Learned counsel for the appellant sought to argue that since the appellant was admittedly governed by the rules which were framed under Section 241(2) of the Government of India Act, 1935, he was entitled to the protection of Section 240 of that Act. Chapter I of Part 10 of that Act related to the Defence Services. According to Section 238, Sections 235, 236 and 237 were applicable to persons who not being members of His Majesty's Forces held or had held posts in India connected with the equipment or administration of those force or otherwise connected with Defence as they applied in relation to persons who were or had been members of those forces. Section 240, to the extent it is material, was in the following terms :

"Section 240. - (1) Except as expressly provided by this Act, every person who is a member of a civil service of the Crown in India, or holds any civil post under the Crown in India, holds officer during his Majesty's pleasure.

(2) No such person as aforesaid shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed.

(3) No such person as aforesaid shall be dismissed or reduced in rank until he has

been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him :

Provided. . . . ."

Section 241 provided for recruitment and conditions of service.

6. On behalf of the appellant it was contended that since his conditions of service were governed by the rules which were framed under the above section, Section 240 was clearly applicable and his services could not have been terminated in terms of sub-section (2) of that section by any authority subordinate to that by which he was appointed nor could he be dismissed or reduced in rank until he had been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. At no stage of the proceedings in the Courts below the appellant relied on Section 240 of the Government of India Act and rightly so because the order of his discharge or termination of service was made after the Constitution had come into force. It was apparently for that reason that protection was sought from Article 311 and not Section 240 of the Government of India Act, 1935. We see no reason or justification in the present case for determining whether a person holding a civilian post which is connected with the defence and for which he is paid salary and emoluments from the Defence Estimates would be governed by the provisions of Section 240 of the Government of India Act if the provisions of that Act were not applicable to the case of such a servant.

7. The next question is whether Rule 5 of the Rules was applicable and whether the appellant could claim the benefit of that rule. It provided, inter alia, that the service of a temporary government servant who is not in quasi-permanent service shall be liable to termination at any time by notice in writing given either by the government servant to the appointing authority or by the appointing authority to the government servant. The view of the High Court that the rules were not justiciable cannot be sustained as the decision of the Privy Council in Venkatarao's case (supra) and the other cases following that view have not been accepted as laying down the law correctly by this Court. It has been held that the breach of a statutory rule in relation to the conditions of service would entitle the aggrieved government servant to have recourse to the Court for redress; vide *The State of Uttar Pradesh and Other v. Ajodhya Prasad* ((1961) 2 SCR 671.) and *State of Mysore v. M. H. Bellary*. ((1964) 7 SCR 471.) Now Exhibit P. 3 which is a letter, dated May 26, 1951 and which was produced by the appellant himself shows that one month's notice of discharge was given by the Ordnance Officer, Administration, under instructions received from the Army Headquarters. A copy of another letter Exh. P-2, dated May 27, 1951, was produced according to which it had been decided by the Government of India that the services of the appellant be terminated by giving him one month's notice. It is true that the original of that letter was not produced although it had been summoned by the appellant. It is at least clear that the Ordnance Officer, Administration, had served the notice of discharge under instructions from the Army Headquarters. In this view of the matter there is no substance in the contention raised on behalf of the appellant that the order of discharge had not been made by the appointing authority. At any rate before the High Court there was no challenge to the finding of the learned District Judge on the point and a question of fact cannot be allowed to be reopened at this stage. The learned counsel for the appellant attempted to reopen the finding on the question of mala fides and also invoked the rule of natural justice in so far as the appellant had not been afforded any opportunity of showing cause against his discharge or termination of services. In the appeal before this Court the finding on the point of mala fides must be accepted as final and the appellant cannot be allowed to reargue that matter. As regard the applicability of the rule of natural justice it has not been shown to us how under the general law of master and servant, in the absence of any protection conferred by Article 311 of the Constitution

such a rule can be invoked.

8. The appeal fails and it is dismissed but in view of the circumstances we leave the parties to bear their own costs in this Court.

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