

Union of India and Another

Vs

V. K. Singh

Civil Appeal No. 2463 of 1984

(R. S. Pathak, R. B. Misra JJ)

15.05.1986

ORDER

PATHAK, J. –

1. This appeal raises some serious questions of law of profound importance to the seniormost administrative service of the country. A probationer of the Indian Administrative Service was alleged to have committed grave acts of misconduct during a training programme and was discharged from service. The opinion, on the basis of which the order of discharge was made, stated that the misconduct was so grave that it could be described as of a criminal nature and could merit dismissal under Rule 11(2) of the Indian Administrative Service (Probation) Rules, 1954 on the ground that the probationer was guilty of conduct unbecoming a member of the Service. It was stated, however, that as the probationer had a wife and a child an order of dismissal should not be passed, but instead he should be discharged under Rule 12 of those Rules on the ground that he was unsuitable for being a member of the Service and was found lacking in qualities of mind and character needed for the Service. It was apparently for that reason that the order of discharge was made. The probationer filed a writ petition in the Allahabad High Court, and the High Court has allowed the writ petition and directed reinstatement of the probationer on the ground that there was violation of Article 311(2) of the Constitution and Rule 8 of the All Indian Services (Discipline and Appeal) Rules, 1969 inasmuch as the appropriate procedure was not followed before passing the impugned order.

2. The central question in this appeal is whether the order of discharged purporting to be under Rule 12 should in law be treated as an order of dismissal under Rule 11(2). One of the points to be considered is whether the same material on which a probationer is found guilty of conduct unbecoming a member of the Service can alternatively be utilised for determining whether the probationer is unsuitable for being a member of the Service or is found lacking in qualities of mind and character needed for the Service. In other words, whether the material which can form the basis of an order under Rule 11(2) can alternatively be pressed into service for passing an order under Rule 12. The important consideration in this appeal is that although the opinion, on the basis of which the impugned order was made, has found that the probationer was guilty of conduct unbecoming a member of the Service and was, therefore, liable to be dismissed, yet after a conscious and deliberate application of the mind it recommends that instead of passing an order of dismissal the case should, on the same material, be treated as one for discharge under Rule 12. Some of the cases pertaining to this branch of the law were before us, but we have been unable to find any close parallel to the situation which arises in this appeal. It is a case where the intention was plainly to discharge the probationer and not to punish him. It does not appear to be a case where under the cloak of discharging him he has been punished instead. These are some of the questions which arise

in this appeal. As we are of opinion that the questions by virtue of their public importance should be considered by a larger Bench, we refer this appeal for hearing and disposal to a larger Bench.

3. The papers of the case will be laid before the Hon'ble Chief Justice of India for constituting a Bench to hear and dispose of this case.

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