CALCUTTA HIGH COURT

Jatindra Nath Biswas

Vs

R. Gupta

(Deep Narayan Sinha, J.)

10.08.1953

ORDER

Deep Narayan Sinha, J.

1. This is a Rule issued upon the opposite parties, the Superintendent of Police in the district of Burdwan, the Deputy Inspector General of Police, district Hooghly and the State of West Bengal, to show cause why a Writ in the nature of Certiorari should not be Issued quashing the order of the first respondent, dated 27-6-1952 and the order in appeal therefrom passed by the second respondent dated 5-11-1952 and why a Writ in the nature of Mandamus should not issue directing the opposite parties to forbear from giving effect to the said orders and/or findings and why such other order or orders should not be made as to this Court may seem fit and proper.

2. The facts are shortly as follows:-- The petitioner has been serving in the Bengal Police for the last 15 years. He was last serving as an officiating Sub-Inspector of Police at Kalna in the district of Burdwan, to which he was promoted in 1946 from the rank of an Assistant Inspector of Police.On or about 31-12-1950 one Durlav Roy, a Zemindar of Burdwan, submitted a petition to the Inspector General of Police making several charges against the petitioner, e.g., that the petitioner had falsely implicated the complainant in the Sadar Ghat dacoity case. It was said that the petitioner had interpolated certain entries in the General Diary No. 993 dated 19-12-1949 and the seizure list of search in connection with the investigation of Burdwan P. C. Case No. 28(12)49 under Section 458, I. P. C. The matter arose in the following way. The petitioner was investigating into the Sadar Ghat dacoity case which took place on 17-12-1949. Next day, there was a burglary in the house of one Bibhuti Choudhury at Syamsayer. The burglars escaped, leaving behind an empty revolver holster.According to the petitioner, he had reasonable grounds for suspicion that this holster belonged to Durlav Roy; he approached Durlav Roy for the production of his holster and as it could not he produced, his house was searched. The case of Durlav Roy on the other hand is that the holster was not found at the house of Eibhuti Choudhury at all. The holster was missing and was picked up by two constables in front of his house and

deposited in the Police Station on the morning of 19-12-1949. His case was that on the basis of this holster, the petitioner framed a false case against him in order to implicate him in the dacoity and the burglary. Further allegation is that the General Diary entry and the seizure list were tampered with to support this false case.Upon this complaint being made, there were certain investigations and on 17-5-1951 the Inspector General, Respondent No. 2, ordered that the Superintendent of Police, Burdwan, should draw up proceedings against the petitioner (and other persons with whom we are not concerned in this case). On 31-7-1951 charges were framed against the petitioner by the respondent No. 1 and he was directed to show cause why he should not be dismissed, discharged or degraded or otherwise dealt with for interpolation in the general diary entry No. 993 dated 19-12-1949 and the seizure list of search in connection with investigation of Burdwan P. S. Case No. 28(12)49, under Section 458 of the Indian Penal Code, and also for implicating the owner of a revolver holster in that case. The petitioner was asked to show cause by 13-8-1951.The petitioner states that he was not given a copy of the petition of Durlav Roy or of the report of the preliminary enquiries.

The matter seems to have dragged on and several witnesses were examined, until 27-6-1952 when the first respondent made his report. In that report, the first respondent, after discussing the evidence, came to the conclusion that the holster was not found at the house of Bibhuti Choudhury and therefore the whole case of the petitioner must fail. He thereafter proceeded to say as follows:

> "I think, therefore, that the charge that the S. I. took advantage of accidental recovery of the revolver holster of Sri Durlav Roy to fabricate evidence against this person in order to implicate him in criminal case has been proved. Further from the evidence of the Handwriting Expert it had been proved that the charges on which the proceedings were drawn up, viz., that the S. I. made certain interpolations in the seizure list, have been proved and considering the circumstances of the case I also think it can be safely assumed that these interpolations were made with motive, namely, to strengthen the evidence against Sri Durlav Roy."

"The offence of the S. I. has been serious. I have very seriously considered the question of his dismissal. He however appears to have a brilliant record in the matter of crime work. He has 58 rewards. In view of that I am inclined to show certain amount of consideration and order that he be permanently reverted to his substantive rank of A. S. I. from the date of this order being communicated."

3. Prom this order the petitioner preferred an appeal before the second respondent, which appeal has been rejected.The grievance of the petitioner is based on the principle which has been enunciated by the Judicial Committee in the case of -- 'High *Commissioner of India and Paidstan*

v. L. M. Lall[1], In that case, Mr. Lall was a member of the Indian Civil Service. It was proposed to hold a judicial enquiry under Section 55 of the Civil Services (Classification, Control and Appeal) Rules, into the conduct of Mr. Lall while stationed at Multan during 1935-36. Eight charges were formulated and he was asked to show cause why he should not be dismissed or removed or reduced or subjected to such other disciplinary action as the competent authority may think fit to enforce for breach, of Government Rules End conduct unbecoming to the Indian Civil Service.Mr. Lall put in his written statement and Mr. Anderson, the Commissioner of Rawalpindi, held a departmental enquiry. He was unable to finish the enquiry and it was completed by Mr. Brayne. Mr. Lall was not given any copy of these reports and on the strength of these reports Mr. Lall was sought to be removed from the Indian Civil Service. The Judicial Committee upheld the decision of the Federal Court and quoted a portion of the decision of the Chief Justice of the Federal Court which ran as follows: "It does however seem to us that the sub-section requires that as and when an authority is definitely proposing to dismiss or reduce in rank a member of the Civil Service he shall be so told and he shall be given an opportunity of putting his case against the proposed action and as that opportunity has to be a reasonable opportunity. It seems to us that the section requires not only notification of the action proposed but of the grounds on which the authority is proposing that the action should be taken, and that the person concerned must then be given a reasonable time to make his representations against the proposed action and the grounds on which it is proposed to be taken.....In our judgment each case will have to turn on its own facts, but the real point of the subsection is in our judgment that the person who is to be dismissed or reduced must know that that punishment is proposed as the punishment for certain acts or omissions on his part and must be told the grounds on which it is proposed to take such action and must be given a reasonable opportunity of showing cause why such punishment should not be imposed."The Judicial Committee then proceeds to say as follows:

> "In the opinion of their Lordships, no action is proposed within the meaning of the sub-section until a definite conclusion has been come to on the charges, and the actual punishment to follow is provisionally determined on. Before that stage, the charges are unproved and the suggested punishments are merely hypothetical. It is on that stage being reached that the statute gives the civil servant the opportunity for which Sub-section 3 makes provision. Their Lordships would only add that they see no difficulty in the statutory opportunity being reasonably afforded at more than one stage. If the civil servant has been through an enquiry under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules, it would not be reasonable that he should ask for a repetition of that stage, if duly carried out, but that would not exhaust his statutory right, and he would still be entitled to represent against the punishment proposed as the result of the findings of the inquiry."

4. The principle laid down in the decision above-mentioned has been correctly summed up by Ayyar, J., in -- *'Sambandam v. The General Manager, S. I. Railway'*[2], in the following words:

> "In other words in a case governed by Section 240(3) there will be two stages: firstly an enquiry after notice into the charges against the civil servant and this is the rule of natural justice that no person should be condemned without a hearing and secondly after the enquiry is over and a punishment decided on, a further notice in terms of Sub-section (3) informing the civil servant of the action proposed to be taken and giving him an opportunity to show cause against that action and this is a statutory requirement." Although Mr. Lall's case was under the Government of India Act, 1935, the same principles apply under Article 311 of the Constitution.

5. That this is the accepted principle, well-known to Government, appears from a memorandum issued by the Secretary, Government of Bengal, No. 2187 dated 10-7-1943, EX. "C" to the petition, which states as follows: "The undersigned is directed to invite a reference to Sub-section (3) of Section 240, Government of India Act, 1935, which requires that no Government servant shall be dismissed or reduced in rank until he has been given an opportunity of showing cause against the action proposed to be taken in regard to him. It has been held that the provisions of the above section are mandatory and contemplate that after the enquiry against an accused officer has been completed, he should be given a further opportunity of showing cause against the particular penalty proposed to be inflicted when such penalty is dismissal, removal or reduction in rank.In supersession of the orders contained in the Finance Department Memorandum No. 1897-P dated 15-9-1944, Government are therefore pleased to direct that after enquiry against a Government servant has been completed and after the punishing authority has arrived at provisional conclusions in regard to the penalty to be imposed, the accused officer should if the penalty proposed is dismissal, removal or reduction, be supplied with a copy of the report of the enquiring authority and be called upon to show cause, within a reasonable time not ordinarily exceeding one month, against the particular penalty proposed to be inflicted. Any representation in this behalf should be duly taken into consideration before final orders are passed." (6) Mr. Basu appearing on behalf of the respondents does not deny that these directions have not been complied with. He however takes two points. Firstly, he says that the petitioner held an officiating appointment. In other words, his substantive rank was that of an Assistant Inspector of Police but he had been officiating in a higher rank. He therefore argues that the reversion to his original and substantive rank does not come within the category of the expression 'reduction in rank' and therefore Article 311 does not apply.The answer to this is that "Reduction in rank" under Article 311, must be in the nature of a punishment or penalty. In the case of a person officiating in a higher post, if he is reverted to his original post in the normal course, (for example for inefficiency) there is no question of a punishment or penalty being imposed. But it is

quite a different thing if he is degraded or reverted to his original rank as a punishment for having committed some offence, or for indiscipline, in sub-ordination or misconduct. Such a reversion would act as a bar to future promotion, and must be treated as a 'Reduction in rank'. This view is supported by a decision of the Nagpur High Court in the case of--'M.V. Vichoray v. State of Madhya Pradesh', AIR 1952 Nag 288 (C).

7. Mr. Basu has drawn my attention to the Police Regulations, and it appears that Assistant Sub-Inspectors are in some cases permitted to act as Sub-Inspectors in an officiating capacity. They are then permitted to act as probationers and are finally confirmed in the superior rank. In Chapter 12, Rule 758 (p. 759) of the Police Regulation, Bengal, such a step is described as "promotion" If that is so, then to send a Government servant back to his original rank as a punishment for an offence is certainly the reversed process of promotion and I do not see that it can be characterised as anything excepting a reduction in rank. The second point of Mr. Basu was that the Police Regulation, by which the petitioner is governed, is saved by Article 313 and therefore Article 311 has no application. There is no substance in this argument. Rules and Regulations which are saved by Article 313 are not necessarily exempt from the provisions of Article 311 until the provisions of any pan of the Constitution expressly make it so. I hold therefore that under Article 311(2) of the Constitution read with Rule 55 of the C. S. (C. G. A.) Rules, the petitioner is entitled to have a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.Under these provisions of law, the procedure followed should be as follows: A civil servant must be told about the charges against him and the punishment or punishments which are proposed to be inflicted in case the charges are proved. Where there is an enquiry, not only must he have an opportunity of contesting his case before the enquiry but, before the punishment is imposed upon him, he must be told about the result of the enquiry and the exact punishment which is proposed to be inflicted for a particular charge which has been proved.This however is not a procedure which is immutable. There may be such a case where the facts are such and the punishment proposed is such that it would be unnecessary to give the civil servant two chances instead of one. For example, if there was a single charge and the proposed punishment was a single punishment and the civil servant had the amplest opportunity at the enquiry stage to meet the whole case, a second opportunity may not be necessary. That this is so has been expressly recognised by both the Federal Court and the Judicial Committee in Lall's case.In a case however where a number of charges have been made and/or a number of punishments are proposed to be inflicted it is essential that the civil servant must know what charge or charges have been brought home to him and what particular punishment was being sought to be inflicted therefor. Without knowing it, he cannot be said to have had a reasonable opportunity of defending his case.

8. Let me now come to the facts of this case. There were several charges framed against the

petitioner, e.g. interpolating a G. D. entry, interpolating a seizure list and implicating the owner of the holster. He was asked to show cause why he should not be dismissed, discharged or degraded or otherwise dealt with. The first respondent carried on his enquiry for nearly a year. On 27-6-1952, he found the petitioner guilty of an attempt to implicate Durlav Rai in a criminal case by fabricating evidence. He has come to the conclusion that the seizure list was interpolated but there is no distinct finding as to whether the G. D. entry was interpolated. The punishment which he imposed was as follows:

> "He be permanently reverted to his substantive rank of A. S. I. from the date of this order being communicated."

Thus, no opportunity was given to the petitioner to make any representation against the order of his punishment.Against this order, the petitioner preferred an appeal to the second respondent. The second respondent rejected the appeal. He then proceeded to consider whether the punishments were adequate. On 5-11-1952 he stated as follows:

> "In the exercise of my revisionary powers, direct ..... J. N. Biswas (now reverted as A. S. I.) .....to show cause within 14 days why they should not be dismissed from the force....."

9. This order does not set the matter right. The second respondent proceeded upon the footing that the petitioner was rightly reverted and proposed to inflict a further punishment. But, as I have mentioned above, the reverting to the original post, itself required a further opportunity to be given to the petitioner to show cause against it. In fact, Mr. Bose appearing for the respondents admitted that in this respect a second hearing had not been afforded at any stage. I do not express any opinion as to whether the second respondent is entitled to enhance the penalty or to inflict a more drastic punishment like dismissal or not. The point for my determination is whether before the order dated 27-6-1952 can be upheld, the petitioner should have an opportunity to show cause why the punishment inflicted by that order should not be passed. Clearly he should have that opportunity. It is only when he has been afforded that opportunity that a valid order! can be passed against him.

10. The Rule must therefore be made absolute and the orders complained of as mentioned above must be quashed and/or set aside. The order dated 27-6-1952 will however be quashed and/or set aside only to the extent of the punishment portion. The petitioner must now be given a further opportunity of considering the result of the enquiry and the punishment which is proposed to be inflicted upon him, and to show cause against it. There will be a Writ in the nature of Mandamus directing the respondents to give the petitioner such an opportunity in the light of the observations made above and not to give effect to the same without hearing the petitioner. I must

make it clear that there will be nothing to prevent the respondents from asking the petitioner to show cause why any of the punishments originally mentioned in the 'show-cause' notice (dated 31-7-1951) should not be imposed, including dismissal.

11. There will be no order as to costs.

Cases Referred.

1AIR 1948 PC 121 (A)
2AIR 1933 Mad 54 at p. 56 (B)