MADHYA PRADESH HIGH COURT

Ramratan Baichand

Vs.

State of M.P.

Misc. Petn. No. 186 of 1962
(P.V. Dixit, C.J. and K.L. Pandey, J.

12.11.1962

JUDGMENT

Pandey, J.

1. This petition under Article 226 of the Constitution is directed against the dismissal of the petitioner from service as a result of a departmental enquiry which was held against him.

2. Before 1st November 1956, the petitioner was a Sub-inspector of Police serving at Sironj in the State of Rajasthan. As a consequence of Reorganisation of States, the Sironj region became a part of the new State of Madhya Pradesh and the services of the petitioner were another to that state. In the year 1960, a departmental enquiry was held against the petitioner on the following charges :

> "That the petitioner had accepted Rs. 20/- each as illegal gratification from Ganpat son of Doongaji, Rupe, son of Bhairao and Nathu son of Kesar, all residents of village Nlowdia, Police Station Agar, on 10-5-1960 under the Pretext that all these three persons nave stolen Batasas. The departmental enquiry was conducted by Shri Baimukuna Halrwal, Deputy Superintendent of police, who submitted his report dated nth September 1950 to the effect that the charge was fully proved. Thereupon, a notice to show cause was duly served on the petitioner on 28th January 1951 and, after he submitted his reply, Shri. I.J. Johar Deputy Inspector-General of Police, who had been appointed to be in charge of the current duties of the office or the Inspector-General of Police in addition to his own, passed an order dated 13th April 1961 by which he as missed the petitioner. Being aggrieved by this order, the petitioner filed an

appeal to the State Government, but that appeal was dismissed on 2nd March 1952.

3. The petitioner has challenged the departmental enquiry and the two orders dated 13th April 1951 and 2nd March 1952 inter alia on the following grounds :

(i) contrary to the instructions issued by the Deputy inspector-General of Police, the enquiry officer allowed Shri Karansingh, Station Officer, Agar, to remain preset in the enquiry with the consequence that he exerted unique pressure on the witnesses to the prejudice of the petitioner.

(ii) Copies of statements of witnesses recorded during the preliminary enquiry and other papers, which were applied for, were not supplied to the petitioner until after the conclusion of the enquiry on 10th September 1960.

(iii) Even after the conclusion of the enquiry, one witness was examined to support the case against the petitioner, but he was thereafter denied an opportunity to lead further evidence.

(iv) The punishing authority denied to the petitioner an opportunity to present his case personally.

(v) The appellate authority passed its order mechanically and dismissed the appeal without giving any reasons or applying its mind to the matter.

(vi) As required by Note IV below Regulation 239 of the Madhya Bharat Police Regulations and the instructions issued in relation thereto, no authority inferior to that of District Superintendent of Police was competent to hold a departmental enquiry against a Sub-Inspector of once, the enquiry held in this case by the Deputy superintendent of Police was, therefore, bad in law.

(vii) The power to dismiss voting in the inspector-General of Police was unconstitutionally delegated to a Deputy Inspector-General of police.

(viii) The petitioner was not finally allotted to the new state of Madhya Pradesh and he could not be punished by any authority in this State.

4. The contention that the enquiry officer allowed Sub-Inspector Karansingh to remain present during the enquiry and thus to influence the witness was not accepted by the punishing authority. It has also been, controverted in the return. Even so, the fact remains that two of the witnesses, on whom reliance was placed by the punishing authority, sent to the Deputy Inspector-General of police, Western Range, sworn affidavits to say that the staterooms they made in the departmental enquiry were false. No doubt, in their further affidavits they affirmed the correctness of what they had stated in the enquiry, but they again sent fresh affidavits re-affirming the falsity of

their departmental enquiry statements and compelling that sub-Inspector Karansingh was harassing and threatening them. The Deputy Inspector-General, to whom these affidavits were sent, was impelled to observe as follows :

> "It is absolutely clear from these statements that certain Police Officers have been playing a dubious game ill this D.E. which requires a thorough and detailed enquiry." All that we need say is that it is not for us to assess the value of the statements of these witnesses, though, if we were required so to do, we would have found it difficult to accept or act upon those statements.

5. The next contention that the petitioner was defined a reasonable opportunity to defend himself in that copies of certain statements, which he had applied for, were supplied to him only after the conclusion of the evidence does not appear to be well founded. It appears that the first application was made on 23rd August 1960 when nearly all the witnesses tendered against the petitioner had been examined. This indicates that he did not want those statements for cross-examination of witnesses. In any case, after the petitioner obtained the copies on 22nd September 1960, he did not want the witnesses to be recalled for cross-examination and, in his detailed reply to the notice to show cause, he did not make such a grievance. We are, therefore, of opinion that, on this ground, it cannot be found that he was denied a reasonable opportunity of defending himself.

6. It is true that Nainsingh P.W. 19 was called alter the close of the enquiry and he produced a document, but the contention that the petitioner was not given an opportunity to meet that evidence is not correct, in his application dated 3rd September 1950, he wanted only to recall Nainsingh P.W. 19 with certain documents, his request Was allowed and the witness was further examined on 10th September 1960.

7. Since the rules of natural justice do not include an opportunity for a personal hearing, the enquiry in this case is not vitiated by the consideration that the petitioner was denied an opportunity to present his case personally. As pointed out by the Supreme Court in *Sardar Kapur Singh v. The union of India,* [1] an opportunity of making oral representation is not a necessary postulate of an opportunity of snowing cause within, the meaning of Article 311(2) ct the Constitution. The further contention that the dismissal of the petitioner's appeal is bad because the Appellate Authority am not give any reasons for its order is equally untenable, it should be remembered that

the dismissal of a civil servant, is an administrative matter, though Article 311(2) commands that the civil servant proceeded against must be afforded a fair opportunity to correct or contradict any relevant and prejudicial material produced against him : *Pradyat Kumar Bose v. Hon'ble the Chief Justice of Calcutta High Court*[2] That being so, the order dismissing the petitioner's appeal, which is administrative in character, cannot be assailed on the ground that it does not disclose in detail the reasons for making it.

8. The sixth ground is based oh an erroneous assumption that the Madhya Bharat Ponce Regulations apply to this case. Having regard to the provisions of Section us of the States Reorganisation Act, 1956, this case is governed by the Rajasthan Police Regulations, 1948. Regulation 89(1) of those Regulations does provide that, when there is a serious charge of corruption against a Sub-Inspector or any officer of lower rank, the Superintendent of police will himself take action in the matter. We do not view that, in this case, the petty charge of corruption against the petitioner is a serious charge within the meaning of that Regulation. Even apart from this, these regulations, which have not been made under any statute, do not ways the force and effect of statutory rules. That being so, a disregard of Regulation 89(1), which in the circumstances can only be regarded as directory, does not vitiate the enquiry. This is what the Supreme Court stated in Pradyat Kumar Base's case, (1955) 2 SCR 1331 : AIR 1956 Supreme Court 285 (supra) :

> "But the exercise of the power to appoint or dismiss an Officer is the exercise not of a judicial power but of an administrative power. It is nonetheless so, by reason of the tact that an opportunity to snow cause and an enquiry simulating judicial standards have to precede the exercise thereof. It is well recognised that a statutory functionary exercising such a power cannot be said to have delegated his functions merely by deputing a responsible and competent official to enquire and report. That is the ordinary mode of exercise of any administrative powers, what cannot be delegated except where the law specifically so provides is the ultimate responsibility for the exercise of such power. As pointed out by the House of Lords in *Board of Education v. Rice,* [3] a functionary who has to decide an administrative matter, of the nature involved in this case, can obtain the material on which he is to act in such manner as may be feasible and convenient provided only the affected party has a fair opportunity to correct or contradict any relevant and prejudicial material."

9. It is, however, urged that there was, in this case, a contravention of Article 311(1) of the Constitutes in that the power to dismiss the petitioner, which vested in the Inspector-General of Police, was delegated to Shri I.J. Johar, Deputy Inspector-General of Police, special Armed Forces, Having heard the counsel, we nave formed the opinion that this contention is well founded and must be accepted.

10. In view of Article 311(1) of the Constitution, a civil servant cannot be lawfully dismissed by any authority subordinate to that by which he was appointed, for purposes of this Clause, the appointing authority is the authority who in fact appointed the civil servant, even though tie may be superior to the authority entitled under the departmental rules to appoint that person : *Somasunaaram v. State of Madras,* [4] The Clause does not, however, require that the dismissal must be ordered by the same authority, who made the appointment, or his direct superior, there is sufficient compliance with me requirements of this Clause if the dismisses authority is of the same rank or grade : *Mahesh Prasad v. State or Uttar Pradesh,* [5]

11. The petitioner averred in paragraph 17 of the petition as follows :

> "the power of dismissal is not capable of delegation and is required to be exercised by the authority to whom it is given by the duties (Vide *R.T. Rangachari v. Secy. of State,).*[6] Contrary to this, the former power has been exercised by the Dy. I.G. of Special Armed Forces, Shri Johar, while the appointing authority was the I.G. the order of dismissal is therefore without jurisdiction."

This was answered in the return in this way :

> "The contents of this paragraph are deligation it is submitted that Shri Johar, Dy. I.G. was officiating as I.G. of Police when he passed the order of dismissal Annexure R-5. The contentions raised therefore are misconceived."

Although the petitioner did not disclose in his petition the name of the authority which appointed him, he produced before us a copy of the order of the Inspector-General of Police of Rajasthan by which he was appointee a sub-Inspector of Police with effect

from 15 July 1948. In view of that fact and the further fact that, in consequence of reorganisation of States, he was allotted to tm new State of Madhya Pradesh, he could be dismissed of the corresponding authority of that State, this was all conceded when it was submitted that the petitioner was actuary dismissed by the officiating Inspector-General of Police. Although we accept the submission that a person appointed to a higher post in an officiating capacity holds the rank of that post, the question is whether Shri I.J. Johar was appointed to officiate as Inspector-General a Police.

12. The relevant Government Notification reads :

> "Shri I.J. Johar I.P.S., Deputy Inspector-General of Police, S.A.F., Bhopal, is appointed to hold charge of to current duties of the Inspector-General of police, Madhya Pradesh, from 21st March 1961 (afternoon) in addition to his own duties."

There is a difference between a person who is to officiate on a higher post and a person who is appointed to be in charge of the current duties or that post in addition to his own. This is well recognised for fiscal purposes, as indicated by Civil Service Regulations 162 and 165, which are reproduced below :

> "162. A Local Government may, without the sanction of the Government of India, appoint one officer to hold substantively as a temporary measure, or to officiate in, two or more independent appointments at one time, in such cases, the emoluments are regulated as follows :
> (i) He draws the highest salary to which he would be entitled if he held, or as the case may be, officiated in, any one of the appointments alone.
> (ii) for the other appointment or appointments he draws such allowances as the Local Government may fix, not exceeding for each appointment half the salary which he would draw it he held, or, as the case may be, officiated in, it alone.
> (iii) Provided that this aggregate salary snail not exceed the pay which he would draw in the most highly paid of the appointments, if he held it substantively arid alone."
> "165. An officer appointed to be in charge in the current duties of an office in addition to his own duties may, if the charge in the opinion, of the Local Government entails a substantial increase of responsibility and some additional work, be granted a charge allowance to be fixed by the Local Government, not exceeding one-tenth of the pay of the office; provided that if the office is open

> to, and may in practice be held by, a member of the Indian Civil Service or a Military Officer, the allowance shall not be less than Rs. 100."

In their Instructions under Fundamental Rule 43 (corresponding to C.S.R. 162), Government of India stated that the Rule does not apply if the person holding one post is not formally appointed to another in addition and it is merely placed in charge of the current duties of that other post in addition (G.I.F.D. No. F. 15(11) R. 1/31, dated 2 June 1931). Even apart from the fiscal aspect, the fact of the matter is that Shri Johar was not appointed to officiate as the inspector-General of Police and that explains why it became necessary for the State Government to specify in the notification the duties of which he was placed in charge. As we read this notification, Shri Johar was appointed merely to be in charge of the current duties of the Inspector-General of Police and he was not appointed to officiate ort that post.

13. The crucial question is whether a subordinate authority, who is not formally appointed to the post of the appointing authority either permanently or managing capacity, can be validly appointed to exercise power of dismissal in view of the inhibition contained in Article 311(1) of the Constitution. In 64 Ind App 40 : (AIR 1937 PC 27) Lord Roche stated :

> "The purported dismissal of the appellant on February 28, 1928, emanated from an official lower in rank man the Inspector-General who appointed the appellant to his office. The Courts below held that the power of dismissal was in fact delegated, and was lawfully delegated, to the person who purported to exercise it. Counsel for the respondent candidly expressed a doubt as to the possibility or maintaining this view, and indeed it is manifest that it power to delegate this power could be taken under rules, it would wipe out a proviso and destroy a protection contained not in rules but in the section itself, their Lordships are clearly of opinion that the dismissal purporting to be thus ordered in February was by reason of its origin bad and inoperative." (at p. 53 (of Ind App) : (at p. 30 of AIR)).

In *Suraj Narain Anand v. The North-West Frontier Province,* [7] Varadachariar, J. stated :

> "In the Act of 1935, Sub-Section (2) of section has been enacted in unqualified terms, and there is may no scope for the contention that this provision can be

> qualified or taken away by statutory rules. Unless the plaintiff is for any reason precluded from relying on this declaration, his dismissal by the Deputy inspector-General of Police must, on the authority of the decision in Rangachari's case, 64 Ind App 40 : (AIR 1937 PC 27) be held to be inoperative as one made by an official who is prohibited by statute from making it'."

This view was affirmed by the Privy Council in frontier *Province v. Suraj Naram Anand,* [8] in the *State of Bihar v. About* [9] the Supreme stated :

The respondent here was dismissed by the Deputy Inspector-General of Police, though he was appointed by the Inspector-General of Police. This was clearly contrary to the provisions of Section 240(3) of the Government or India Act, 1935, which provides that no person snail be dismissed from the service of His Majesty by an authority subordinate to that by which he was appointed," (at Pp. 789-90 (of SCR) : (at p. 247 of AIR).

It will be noticed that, in each of these cases, a Sub-Inspector of police, who was appointed by the inspector-General of Police, was dismissed by a Deputy Inspector-General of Police. These authorities clearly lay flown that a protection like the one given by Article 311(1) cannot be taken away even by rules framed either under Article 309 or under any relevant statute. The reason is that, by such rules, We subordinate authority is entrusted with the functions of the appointing authority without giving to him the rank of that authority. In Clause (1) of Article 311, the word "subordinate" has reference to the rank and not to functions : *Ramchandra Gopalrao v. D.I.G. or Police,* [10] and *Mrs. Priti George Veanayagam v. State of Madhya Pra* [11] The same view has been taken in *M.R. Roy v. S.N. Chatterjee,* [12] *I.K. Krishna Murthy v. State of Andhra (Now Andh Pra),* [13] and *Anukul Chandra v. Commr. of the income-tax,* [14] In the Patna case, ILR 33 Patna 148 : (AIR 1954 Patna 285) (supra), the subordinate Officer, who passed the order of dismissal, had been subsequently authorised by the State Government to exercise all the powers of appointment, suspension and dismissal ever certain members of the staff which used to be exercised by the appointing authority. Ramaswami, J. (as he then was) stated :

> "The argument of the Government Advocate is that the Deputy Superintendent has been completely vested will powers of appointment and dismissal of the staff. It was contended that the Deputy Superintendent was not subordinate to the Superintendent but his authority was co-extensive with that of the superintendent. It was argued that the designation of a particular officer was,

immaterial but, on the contrary, we must look to the powers and duties conferred on a particular officer. The question at issue turns therefore upon the proper interpretation of Article 311 of the Constitution; in other words, what is the meaning of the word 'subordinate' used in this Article ? In my opinion, the word 'subordinate' must to properly construed to mean subordination in rank and not subordination' of function; otherwise the protection referred to in Article 311 would be illusory". (at pp. 152-3 (of ILR Pat) : (at p. 286 of AIR)).

In the instant case, Shri I.J. Johar was appointed and authorises to perform the current duties of the Inspector-General of Police without being clothed with in rank. That being so, the impugned order of dismissal, which he purported to pass in disregard of Article 311(2), is bad and inoperative.

14. The only other point which survives is whether the petitioner was not finally allotted to the new State of Madhya Pradesh and cannot, therefore, be punished by any authority in this State. We are reluctant to accept that final orders regarding the petitioner's allotment nave nor yet been passed by the Central Government. The order of absorption Annexure-R-6 indicates that the petitioner must have been allotted to this State under Section 115(3) or the States Reorganisation Act, 1956. Since this point was faintly argued, we do not wish to pursue the matter, we may add that, if this contention is well founded, it will hereafter be duly taken into account.

15. In the view we have taken about the origin of the order of dismissal, this petition succeeds and is allowed. The orders dated 13th April 19th and 2nd March 1962 are quashed. The respondents snail bear their own costs and pay those incurred by the petitioner, to whom the security amount shall also be refunded Hearing fee Rs. 100/-.

Petition allowed.

Cases Referred.

1. (law) 2 SCR 569 : AIR 1960 SC 493
2. (1955) 2 SCR 1331 : (18) AIR 1955 SC 285
3. 1911 AC 179 at p. 182
4. AIR 1956 Mad 419
5. (1955) 1 SCR 965 : ((5) AIR 1955 SC 70)

6. AIR 1937 PC 21
7. 1941 F.C.R. 37 : (AIR 1942 FC 3)
8. 75 Ind App (AIR 1949 PC 112)
9. 1954 SCR 786 : AIR 1954 SC 245
10. AIR 1957 Mad Prad 126
11. Misc. Petn. No. 193 of 1959, D/-8-4-1960 (Marth Pra)
12. ILR 33 Patna 148 : (AIR 1954 Pat 285
13. AIR 1960 And Prad 29
14. AIR 1962 Cal 3