

NAGPUR HIGH COURT

M.V. Vichoray

Vs

State of M.P

Misc. Petn. No. 1701 of 1951

(Mangalmurti and Mudholkar, JJ.)

18.10.1951

JUDGMENT

Mudholkar, JJ.

1. This is an application under Article 226 of the Constitution.
2. The applicant is even at this date in Government service and his complaint is that he has been reduced in rank by the Settlement Commissioner without conforming to the requirements of the Constitution. At present he is a Revenue Inspector but prior to this reversion he was officiating as an Assistant Superintendent of Land Records. Complaints were made against him and as a result of that a departmental enquiry was held by a Sub-Divisional Officer. On the conclusion of the enquiry, a report was made by him to the Settlement Commissioner in which it was said that the charges made against the applicant were proved and that the applicant should be reverted to his substantive post of Revenue Inspector.
3. The applicant applied for a copy of the report but it was denied to him. He was then noticed to appear before the Settlement Commissioner and it is said that he was given inspection of the report. He was then permitted to argue his case fully before the Settlement Commissioner.
4. The first question which arises for consideration is whether reversion of a person officiating in a higher post to the substantive post held by him amounts to reduction in rank within the meaning of the expression used in Article 311, Clause (2) of the Constitution. In our opinion if a person officiating in a higher post is reverted to his original post in the normal course and not by way of penalty he cannot be said to be reduced in rank. On the other hand, we are equally clear that where reversion is ordered as penalty it amounts to reduction in rank because such a reversion is apt to stand in the way of a Government servant in securing his promotion in the normal course.
5. The next question is whether before a person is reverted by way of penalty he must be given a reasonable opportunity to show cause against the action proposed to be taken in regard to him. In '*High Commissioner For India V. I.M. Lall*', their Lordships of the

Privy Council were considering the provisions of Sub-section (3) of Section 240 of the Government of India Act, 1935, which corresponds to Clause (2) of Article 311 of the Constitution. They held that after a definite conclusion has been come to on the charges made against a Government servant, and the actual punishment to follow is provisionally determined by the authority empowered to take action against him, that person should be given an opportunity to show cause. They have said that this provision is an addition to that contained in Rule 55 of the Civil Service (Classification, Control and Appeal) Rules, Presumably, it is in view of this decision that the new Rule 55-A has been added to these Rules.

6. The question then is whether in the present case it can be said that the kind of opportunity contemplated by the Constitution (and now also by Rule 55-A) was given to the applicant. Undoubtedly, notice was issued to the applicant in which it was said that he would be heard before final orders were passed. In our opinion, this notice falls short of the requirements of the Constitution. It is not clear from the notice that the Settlement Commissioner had come to a tentative conclusion that the charges made against the applicant were established. Nor does it show that 'the particular punishment was provisionally decided upon by the Settlement Commissioner. No doubt the S.D.O., had recommended the reversion of the applicant but in the absence of anything to show that the Settlement Commissioner had accepted the recommendations of the S.D.O. we cannot regard the issue of notice as sufficient compliance with the constitutional provisions. Moreover, the copy of the report made against the applicant containing the recommendations as to the action proposed to be taken against him was not given to him. All that was done was that on the date on which the matter was heard by the Settlement Commissioner, or perhaps a day previously, the applicant was given an inspection of the report. He had hardly any time to make a representation. To be given only an opportunity to argue the matter almost immediately after that person has perused the report does not, in our opinion, constitute a reasonable opportunity to make a representation.

7. It was further argued on behalf of the applicant that before the applicant was reverted his case should have been referred to the State Public Services Commission as required by Sub-clause (c) of Clause (3) of Article 320 of the Constitution. Under the proviso to Clause (3) the Governor is empowered to make regulations specifying the matters in which the Public Services Commission need not be consulted. Such regulations were made under the corresponding provisions of the Government of India Act, 1935, (which have been continued under the present Constitution Regulation 6 (5) (b) provides that it will not be necessary for the Government to consult the Commission when the order to be passed is an order relating to the discharge or reversion of an officer otherwise than as a penalty. In the present case, the reversion is by way of penalty and therefore the Public Service Commission had to be consulted. No doubt Clause (d) of the Rule says that an order reverting to his permanent post an officer officiating in a higher post can be passed without consulting the Public Service Commissioner but, in our judgment, this relates only to a reversion in the ordinary course and not by way of penalty.

8. For these reasons we hold that the reversion of the applicant to the post of a Revenue Inspector by way of penalty is unconstitutional and direct the Settlement Commissioner to deal with his case in accordance with the provisions of law.

9. The application is accordingly allowed with costs. Counsel's fee Rs. 50/-/-.
Application allowed.

Cases Referred.

¹ AIR 1948 PC 121