

NAGPUR HIGH COURT

Gopalrao Damodarji Food Procurement Inspector

Vs

State Govt. of M.P

Misc. Petn. No. 64 of 1953

(Sinha, C.J. and Bhutt, J.)

07.08.1953

JUDGMENT

Sinha, C.J.

1. This is an application under Article 226 of the Constitution against the orders of the respondents terminating the petitioner's service.
2. The petitioner is Shri G.D. Dalal who was employed as Food Procurement Inspector in the Food Department of the State Government. On the 10th March 1946 he was posted at Adyar in Bhandara District. While serving at that place he was prosecuted on a charge of receiving illegal gratification from one Chindhu Kuntai but was discharged on the 12th July 1947 on the ground that no 'prima facie' case was made out against him. Sanction for the prosecution was accorded by respondent 2 Shri P.S. Lawale who was then Deputy Commissioner, Bhandara.
3. Further facts of the case are given in the order of respondent 2, dated the 30th June 1952, which is the subject of the present proceedings. On termination of the criminal case, the Food Officer, Bhandara, wrote to the Deputy Commissioner that it would be no use starting a departmental enquiry against the petitioner as the evidence would be the same as was tendered in the criminal case. On the 20th August 1947, however, the Deputy Commissioner wrote to the Commissioner, Chhattisgarh Division, informing him that he was holding a departmental enquiry against the petitioner to find out whether he was negligent in not prosecuting Chindhu Kunbi. In reply the Commissioner, Chhattisgarh Division, wrote to the Deputy Commissioner that an acquittal or discharge in a criminal case was not necessarily a bar to a departmental enquiry, and asked for the record of the criminal case and the district office file on the subject to find out whether there was sufficient material to hold a departmental enquiry on a charge of bribery. At the same time he directed the Deputy Commissioner to expedite the departmental enquiry that he had referred to.
4. On enquiry by the Food Officer, Bhandara, it was found that there was no negligence on the part of the petitioner in not prosecuting Chindhu Kunbi. The only fault that he discovered was that he had not sent his diaries during that period to his superior officers. He made a report

accordingly on the 16th December 1947. The Deputy Commissioner accepted the report and recommended to the Commissioner, Chhattisgarh Division, on the 26th January 1948 that the petitioner should be reinstated in service. He also enclosed with his communication the record of the criminal case.

5. By this time Bhandara District was transferred to Nagpur Division. In his Memorandum dated the 20th February 1948, the Commissioner, Nagpur Division, wrote to the Deputy Commissioner that the conduct of the petitioner was held not to be free from suspicion by the Magistrate as observed in paragraph 5 of his judgment and accordingly directed him to hold a departmental enquiry. The Deputy Commissioner thereon framed the following charges, viz.,

- "(1) That you were negligent in not prosecuting one Chindhu of Maloda who attempted to smuggle rice without permit into Nagpur district in May 1946; and
- (2) That you failed to maintain your diaries for the work done by you and to submit the same to me on due dates."

The enquiry was made by the Food Officer who submitted his report on the 31st March 1948 reiterating his former findings. The papers were then submitted to the Commissioner, Nagpur Division. In his forwarding note the Deputy Commissioner accepted the findings of the Food Officer and also referred to certain orders regarding the termination of the petitioner's service as a measure of retrenchment. The Commissioner, Nagpur Division, passed an order on the 8th September 1948 accepting the findings of the enquiring officer and awarding the following punishment :

"Suspension for the period during which Shri Dalai has already remained under suspension, i.e., from 1-4-1947 to the date of termination of his services."

The orders regarding retrenchment, it appears, were ultimately not given effect to, and are, therefore, no longer pertinent to these proceedings.

6. The petitioner appealed to the State Government which, on the 11th October 1951, passed the following order :

"The notice dated the 24th February 1948, served by the Deputy Commissioner, Bhandara, on Shri G.D. Dalai, Food Procurement Inspector, terminating his services after one month from the date of service thereof and the order of the Commissioner, Nagpur Division, dated the 8th September 1948, in the departmental enquiry against Shri Dalai are set aside as bad in law and the case is remanded to the Director of Food Supplies, for fresh decision on merits after complying with Article 311(2) of the Constitution."

This order was passed on the advice of the Legal Department of the State Government that the punishment not being awarded by the appointing authority was bad in law. By the time the above order was passed respondent 2 who was the Deputy Commissioner of Bhandara when the petitioner was prosecuted on the charge of bribery, had become the Director of Food Supplies and took up the enquiry. Under his directions the Deputy Director of Food Supplies sent to the

petitioner a show cause notice dated the (nil) December 1951, enclosing therewith a copy of the report of the Food Officer, Bhandara, dated the 31st March 1948. The relevant part of the notice is reproduced below :

"A copy of the report of the enquiring officer in the departmental enquiry held against you in Bhandara district is enclosed. Please show cause within 15 days from the date of receipt of this notice as to why your services should not be dispensed with."

7. In his order dated the 30th June 1952 respondent 2 accepted the finding of the enquiring officer that there was no negligence on the part of the petitioner in not prosecuting Chindhu Kunbi. He, however, found him guilty of not submitting his diaries to his officers, holding that ignorance of the rules on the subject was no excuse. In the same order he determined the question of punishment, and taking into consideration the past record of the petitioner, passed the following order :

"I feel, therefore, that though the charge of non-maintenance of diaries by itself may not justify an order of terminating his services, there is enough material as detailed above to hold that Shri Dalai is not a fit person to be retained in this department. I order, therefore, that the services of Shri Dalai should be terminated forthwith."

8. The above order, according to the petitioner, offends against the provisions of Article 311(2) in that –

- (1) the question of his guilt and that of punishment were determined by one order; and
- (2) the quantum of punishment was assessed on extraneous considerations of which he was not given any notice.

As against this contention the learned Government pleader contended that Article 311(2) creates no right in a civil servant whereby he can claim to be heard on the question of his guilt and that as regards the punishment, the competent authority is entitled to take into consideration his previous record since he has to determine the extent of the penalty with reference to a particular person and not in the abstract.

9. It is not necessary for purposes of the instant case to determine whether under Article 311(2) of the Constitution, a civil servant is entitled to contest the finding regarding his guilt while showing cause against the punishment that is proposed. We assume that the enquiry held was proper and the finding against the petitioner regarding the non-maintenance of the diaries is well based. The question is whether despite the failure of respdt. 2 to intimate to the petitioner his past record of service, as a ground on which he proposed to assess the measure of punishment, it can be held that a "reasonable opportunity", as contemplated by Article 311(2), of showing cause against the proposed action was given to the petitioner.

10. It was not disputed that the competent authority is entitled to take into consideration the record of a civil servant's past service in order to determine the quantum of punishment. What, however, was contended was that if the civil servant is not at all apprised of the record of his past

service, nor is he informed that it will be taken into account in order to decide the question of punishment, he cannot be deemed to have been given a "reasonable opportunity" to show cause against the proposed action. Normally the question of punishment is linked up with the gravity of the charge, and the penalty that is inflicted is proportionate to the guilt. Where the charge is trivial and 'prima facie' merits only a minor penalty, a civil servant may not even care to defend himself in the belief that only such punishment as would be commensurate with his guilt will be visited on him. In such a case, even if in the show cause notice a more serious punishment is indicated than what the finding of guilt warrants, he cannot be left to guessing for himself what other possible reasons have impelled the proposed action. It is not, therefore, sufficient that other considerations on which a higher punishment is proposed are present in the mind of the competent authority or are supported by the record of service of the civil servant concerned. In a case where these factors did not form part of any specific charge and did not otherwise figure in the departmental enquiry, it is necessary that they should be intimated to the civil servant in order to enable him to put up proper defence against the proposed action.

11. In - '*High Commissioner for India v. I.M. Lall*', their Lordships of the Privy Council, while dealing with the interpretation of Section 240(2) of the Government of India Act, 1935, approved of the following observations of the Honourable the Chief Justice of the Federal Court representing the majority view of the Court, viz.,

"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 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 representation against the proposed action and the grounds on which it is proposed to be taken."

(Underlining (here in single quotation) is ours). Article 311(2) of the Constitution is in terms similar to Section 240(2) of the Government of India Act, 1935, except that it includes removal also within its ambit. The above observations, therefore, apply with equal force to a case arising under the Constitution. In order, therefore, that the requirements of Article 311(2) should be deemed to be satisfied, it is not only necessary that the proposed action is intimated to the civil servant concerned but also that he should be duly informed of the grounds on which the action is proposed to be taken.

12. Judged on this principle, it cannot be held in the instant case that the requirements

¹ AIR 1948 PC 121

of Article 311(2) were duly complied with. The petitioner was only supplied with a report of the enquiry in which the considerations that led respondent 2 to inflict a higher punishment were never adverted to and it was even proposed that he should be reinstated and posted to the new districts of the Chhattisgarh division. As the petitioner was not afforded access to the record of his service and was not given a reasonable time to show cause against the adverse remarks contained therein, the requirements of Article 311(2) were not fulfilled and consequently the orders terminating his services cannot be maintained. The application is accordingly allowed and

the orders of the respondents terminating the petitioner's services as a measure of punishment are quashed. The State Government shall be at liberty to take such action against the petitioner according to law as it may deem fit. In the circumstances of the case we make no order as to costs. The outstanding amount of the security shall be returned to the petitioner.
Order accordingly.