NAGPUR HIGH COURT

M.A. Waheed

Vs

State of M.P

Misc. Petn. No. 83 of 1953

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

23.10.1953

JUDGMENT

Sinha, C.J.

1. This is a petition under Article 226 of the Constitution, questioning the validity of the order by which the petitioner has been reduced in rank and to a lower stage in a time scale.

2. The petitioner entered Police service as a Constable in the year 1932. In 1935 lie was promoted as Head Constable and was confirmed in that post in 1936. Thereafter he was appointed as a temporary Sergeant Sub-Inspector on 16-6-3942 and was also placed in charge of Special Squad, in which capacity his work was appreciated by his superior officers. Later he was posted as Station Officer, Dabhra, and while working as such was selected to officiate as Sub-Inspector in charge Anti Corruption Branch, Bilaspur. In October 1949 he was posted as Station Officer, Rithi.

3. While in charge of Police Station, Rithi, the petitioner was served with a notice by the Deputy Inspector-General of Police on 8-4-1951 to show cause why he should not be reverted as Assistant Sub-Inspector for unsatisfactory work. Although a copy of the petitioner's explanation is not included in the paper book, we have perused his personal file with the Additional Government Pleader and find that lie had rendered the necessary explanation on 12-5-1951. Without holding a departmental enquiry, an order was passed on 23rd/25th August 19al reverting the petitioner to the post of Officiating Assistant Sub-inspector until further orders, and on 19-9-1951 his name was removed from the list of Head Constables and Assistant Sub-Inspectors fit for trial as Sub-Inspectors. His appeal to the Inspector-General of Police was rejected on 28-8-1953 during the pendency of these proceedings.

4. In his order the Inspector-General of Police has made the following observations :

> "From a perusal of the record before me, I am satisfied that during the period of officiation as S. I, he failed to acquire the prescribed special qualifications and acquit himself well in that post. I, therefore, do not see any reason to interfere with the orders

already passed."

5. The validity of the orders passed against the petitioner is challenged on the following grounds :

(1) That in the absence of a departmental enquiry as prescribed in Regulation 228(a) to (f) of the Police Regulations, the orders passed are illegal.
(2) That in view of Regulation 214 (iii) of the Police Regulations the double punishment of reduction in rank and also to a lower stage in the time scale is illegal.
(3) That the punishment actually awarded is in excess of the punishment proposed in the show cause notice and is to that extent invalid.
(4) That a show cause notice without a formal enquiry does not constitute "reasonable opportunity" as contemplated by Article 311(2) of the Constitution, and accordingly the orders passed are vitiated.

6. In Government of Madhya Pradesh, General administration Department, Memorandum No. 699-1165-11/51, dated 2-2-1952, the question of what should be deemed to be reduction in rank within the meaning of Art. 311(2) of the Constitution was considered, and it was explained that-

(i) if a person officiating in a higher post is reverted to his original post in the normal course, i.e. on account of the cessation of the vacancy or the return of the permanent incumbent, or failure to acquire prescribed special qualifications or to pass a prescribed test or departmental examinations, the reversion does not amount to reduction in rank;
(ii) on the other hand, if the officiating person is reverted for unsatisfactory work or as a disciplinary measure, then the reversion amounts to reduction in rank, because such a reversion is likely to stand in the way of future promotions of the Government servant concerned.

7. The question is whether the case falls under one or the other of the above two clauses. It is no doubt true that the Inspector-General of Police has framed his order in a manner as if he purported to act under clause (i) of the Memorandum. The ostensible grounds of his order are-(i) that the petitioner failed to acquire the prescribed special qualifications and (ii) that he failed to acquit himself well in the post. It is for the first time at this stage that one hears of the petitioner having failed to acquire the prescribed special qualifications. What these special qualifications were have not been disclosed to us, and none were mentioned in the elaborate charge sheet that was drawn up. On the other hand, the second reason is tantamount to a charge of unsatisfactory work, which was mentioned in the charge sheet. It is, therefore, futile to contend that the case is one of ordinary reversion and not of punishment. (See - *'M.V. Vichoray v. The State of Madhya Pradesh[1]',*).

8. It was however, contended that even if the action was taken by way of punishment, still as Article 311(2) was literally complied with in so far as a show cause notice was given as prescribed, the requirement of the Article was satisfied and the petitioner can, therefore, have no justifiable grievance. The argument was developed thus.

9. The contention is that under Article 310(1) of the Constitution every person who is a member of a civil service of a State or holds any civil post under a State holds office during the pleasure

of the Governor. This Article overrides Article 309 which is subject to the provisions of the Constitution and is, therefore, limited by Article 310(1). In this view it is urged that the procedure prescribed in the Police Regulations for regulating punishment, as ultimately referable to Article 309 read with Article 372(1), cannot affect the pleasure of the Governor under Article 310(1) of the constitution, and, therefore, failure to hold a departmental enquiry in accordance with the said Regulations cannot be a ground for interference under Article 226.

10. It appears to us that the pleasure of the Governor contemplated by Article 310(1) of the Constitution is restricted to the holding of a post by a civil servant. In so far as this is concerned, he can only hold the post at his pleasure, i.e. until he is dismissed, discharged, or reduced in rank. If this action is taken it is subject to the safeguard provided in Article 311(1). In other respects, the conditions of service, which are referable to Article 309 read with Article 372(1) of the Constitution, are guaranteed to the civil servant. In this view, punishment, whatever its mind, cannot fie imposed on the civil servant unless a proper departmental enquiry as may be prescribed in appropriate Rules or Regulations has been held and he has been given a reasonable opportunity to defend himself. If, therefore, due to the absence of or defect in any enquiry, prejudice has been caused to the civil servant, it will, in our opinion, become a justiciable matter.

11. In - *'Dongarsingh v. The State[2]',* it was held that discharge of the petitioner from the Police Force without a departmental enquiry was not in accordance with law and was, therefore, liable to be set aside. Similarly in - "*Tribhuwannath v. Government, Union of India[3]',* discharge of the petitioner from service was set aside on the ground that the departmental enquiry held against him was not proper. In - '*Rajeram Malik v. The State[4]',* it was held that dismissal of a Sub-Inspector of the Madhya Pradesh Police Force on the basis of the departmental enquiry made by the officials of Hyderabad State, where he was deputed for service, was not legal and was, therefore, liable to be quashed. In this case the view held in this Court in the past that its jurisdiction is not restricted only to cases where there has been an infraction of the Constitution, but extends also to cases where the Police Act or Regulations have been infringed was cited with approval. For purposes of the present case, it is not necessary to consider whether the departmental enquiry held under Regulations or by officers, other than those of this State, is ineffectual as a basis for imposing punishment. We have cited this decision only for the limited purpose of showing that a full and proper departmental enquiry has consistently been held in this Court as a primary condition for imposing punishment. If, therefore, there has been no departmental enquiry, and thereby prejudice has been caused to the civil servant concerned, the punishment imposed on him cannot be maintained. As at present advised, we are not prepared to depart from this view.

12. There is another aspect of this question which we would like to stress. In our opinion, unless a proper departmental enquiry has been held, there can be no material
on which Government can assess the guilt of the civil servant concerned and determine the action to be taken against him, notice whereof may be given under Article 311(2) of the Constitution. In - *'High Commissioner for India v. I.M. Lalr[5],* where their Lordships of the Privy Council were considering the scope of an analogous provision in Section 240(3), Government of India Act, 1935, it has been held that even where a civil servant had the benefit of a departmental enquiry, it is necessary for Government to come to a definite conclusion on the charges and determine provisionally the actual punishment to be embodied in the show cause notice. Their Lordships also approved of the following observations of the federal Court, viz.,-

" x x x

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."

The decision of their Lordships postulates that a case must first be made out against the civil servant concerned and action determined provisionally on that basis, before a show cause notice as given. This cannot evidently be done unless there is initially a proper departmental enquiry in which full opportunity has been given to the civil servant to defend himself. Article 311(2) comes into play only after this preliminary action has been taken. Another opportunity has then to be given to the civil servant to show cause against the proposed punishment, on the basis of the grounds on which Government have provisionally determined it. It would be a travesty of justice if without taking the preliminary steps, Government were to determine the punishment simply on the basis of the charges that are framed and then make a formal show of complying with Article 311(2) of the Constitution. This cannot be deemed to be a proper observance of this Article, apart from the question whether the Rules or Regulations dealing with departmental enquiries are obligatory on the Government.

In the instant case there were contradictory remarks on the petitioner's work as Station Officer, Rithi. Those of the Circle Inspector were favorable, while those of the Sub-Divisional Officer and Additional Deputy Superintendent of Police were adverse. We have perused the explanation of the petitioner to the charges which contained only the latter remarks, and we find that it required proper investigation before the charges could reasonably be held to be proved. It is surprising that without any enquiry into the correctness of the adverse remarks 'vis-a-vis' the previous state of the Police Station and the difficulties under which the petitioner worked, the remarkably successful career of the officer was suddenly given a set back, probably on the assumption that just because the said remarks were made by superior officers, they must be deemed to be correct. It is regrettable that the lapse that was committed was, at a late stage, sought to be regularized by showing that the action taken was only in the normal course of reversion and did not amount to punishment. We would like to bring to the notice of Government that such procedure is not likely to create confidence in the ranks of Police Officers in the justice of the disciplinary actions and would not, therefore, be conducive to the efficiency of the Service.

13. The Impugned orders are set aside and it is directed that if Government propose to take further action against the petitioner, it should be on the basis that the position that he held before the action was taken was not at any time affected.

14. The petition is allowed with costs. Counsel's fee Rs. 50/-. The amount of the outstanding security be refunded to the petitioner.

Petition allowed.

[1] AIR 1952 Nag 288

[2] Misc. Petn. No. 74 of 1952, D/d. 21-8-1952 (Nag)

[3] AIR 1953 Nag 138

[4] Misc. Petn. No. 312 of 1952. D/d. 12-8-1953 (Nag)

[5] AIR 1948 PC 121