

**(1954) 01 CAL CK 0050**  
**In the Calcutta High Court**  
**Case No : Civil Rule No. 192 of 1953**

Balai Chand Basak

APPELLANT

Vs

N. Roy Choudhury, Additional Refugee Rehabilitation  
Commissioner, West Bengal and Others

RESPONDENT

**Date of Decision :** 12-01-1954

**Acts Referred:**

Constitution of India, 1950 — Article 311

**Citation :** AIR 1954 Cal 495

**Hon'ble Judges :** Deep Narayan Sinha, J

**Bench :** Single Bench

**Advocate :** R. Choudhury and S.N. Ghorai and Radhikalal Tarafdar, for the Appellant; Hemendra Kumar Das and Smriti Kumar Rai Chaudhury, for the Respondent

## Judgement

Deep Narayan Sinha, J.—This is a Rule calling upon the respondents to show cause why they should not forbear from giving effect to the order of dismissal dated 9-1-53, complained of in the petition, and/or why they should not rescind or withdraw the said order and/or why such other or further order or orders should not be made as to the Court seems fit and proper.

2. The facts of this case are shortly as follows:

On 29-4-1950, the petitioner was appointed an Additional Rehabilitation Officer under the Relief and Rehabilitation Commissioner, West Bengal, with effect from the date he joined his duty. The appointment letter which is annexure "A" to the petition, provides as follows:

"The appointment is purely on temporary basis and liable to be terminated without any notice."

3. The petitioner was posted at Kalna in the district of Burdwan, and one of his duties was to disburse loans to refugees. It is alleged that in course of an inspection of the loan account it was discovered that there were instances of

gross negligence and corruption. The Deputy Financial Adviser Refugee Rehabilitation Department Who made the discovery, drew up an interim report in which he made serious charges against the petitioner e.g. that he had granted loans against lands which did not exist or were under water, that a number of spurious Amalnamas had been used and the unfortunate refugees misled into parting with money without securing any benefits whatsoever. (Annexure "B" to the petition). He recommended that the petitioner should be suspended forthwith and proceedings should be drawn up against him.

4. The matter was thereupon referred to the District Magistrate, Burdwan (O. P. No. 2) and also to the Anti-corruption Department. So far as the latter department is concerned, an investigation was made but it ended in a recommendation that Departmental action may be taken up.

5. The District Magistrate, Burdwan frame charges against the petitioner and wrote to him a letter dated the 8th August, 1951 as follows:

"Charges of proceedings against Sri Balai Chan(sic) Basak, Additional Rehabilitation Officer, Kaln(sic)

Sub Divisional Relief Office.

#### SPECIFIC CHARGES

Whereas it appears from the inspection note Of loan accounts of Kalna Sub Divisional Re-lief Office for the year 1949-50 and 1950-51 by the Deputy Financial Adviser to the Government of West Bengal that you are alleged to be guilty of glaring acts of corruption involving loss of Government money, I do hereby suspend you forthwith under order of the Commissioner, Refugee-Rehabilitation -- 10A, Auckland Road, Calcutta..... you are also directed to show cause in writing by 27-8-51 why you should not be dismissed from Government Service or other- wise suitably punished for carelessness, corruption and loss of Government money....."

Although the headings of the charges have been specified, this letter by itself does not give the particulars. It is stated however that the report of the Deputy Financial Adviser was made available to the petitioner and no complaint is made on that behalf. The petitioner in due course forwarded his explanation, described as his written statement (annexure "D"1 to the petition) to the District Magistrate, Burdwan through the Sub-Divisional Officer, Kalna. The Refugee Rehabilitation Officer requested the District Magistrate to enquire into the charges, who in his turn asked the Sub-Divisional Officer to make a confidential enquiry into the charges. The Sub Divisional Officer made such an enquiry. In the counter-affidavit filed by Jagat Kishore Roy Choudhury it is stated as follows:

"Thereupon the Sub Divisional Officer (opposite party No. 3) made a confidential enquiry on the allegations by taking evidence from the persons who purported to have issued the "Amalnamas" upon which the loans were recommended and from other eligible persons who could throw light on the allegations and losses of

Government money. He found the petitioner guilty and recommended dismissal. He submitted his report to the District Magistrate on 21-12-1952. The said report of the Sub Divisional Officer is annexed herewith and made annexure "X".

6. It thus appears that the enquiry was made confidentially. The witnesses examined were not examined in the presence of the petitioner, nor was the report made available to him. The District Magistrate upon receiving the report agreed with the findings and sent his opinion to the Refugee Rehabilitation Commissioner along with the report and requested him to take appropriate action. In the meanwhile, the petitioner was pressing the Refugee Rehabilitation Commissioner to reinstate him but was told that no action could be taken until the departmental proceedings had concluded. On 9-1-1953, the Additional Refugee Rehabilitation Commissioner, West Bengal passed an order which is as follows:

#### ORDER

"Sri Balai Chand Basak, Additional Rehabilitation Officer now under suspension, is hereby dismissed from Government service from the date of issue of this order, on being found guilty of carelessness, corruption and loss of Government money in course of departmental enquiry".

7. It is against this order that this rule is Directed.

8. The learned Government Pleader appearing on behalf of the respondents argues that the petitioner was a temporary hand whose services could be terminated without notice and therefore enquiry was necessary and the order was lawful. If an enquiry was necessary, he has not taken up the position that the procedure adopted was in accordance with law.

9. In my opinion, the respondents entirely misconceived the position. Under Article 311 of the Constitution, a person who is a member of the Civil Service of the Union or an All India Service or a Civil Service of a State or holds a Civil Post under the Union or a State, cannot be dismissed or removed or reduced in rank until he has been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. In this respect, it makes no difference whether he is in permanent employ or his employment is of a temporary nature. In construing the analogous provisions of Section 240(1) Of the Government of India Act 1935, a division, bench of this Court, presided over by Das J. has held that the section applied to all holders of a civil office whether permanent or not. -- Ramesh Chandra Vs. State of West Bengal, (A). In -- "Ishar Das Mehta v. State of Pepsu" AIR 1952 Pepsu 143 (B), it was held that every civil servant of the Union or the State, whether he holds a permanent or a temporary post is entitled to the protection afforded by Article 311. This view is also supported by a bench decision of the Allahabad High Court, --

" Jayanti Prasad Vs. The State of Uttar Pradesh, (C).

Referring now to the terms of his appointment, it is quite clear that the petitioner

was a temporary hand and his services could be terminated without notice. If the respondents acted in terms of the letter of appointment and simply terminated his services, that would be unexceptionable. In such a case, no question of charge, enquiry, suspension or dismissal could arise. Where there is a contract of service, and the Government acts in terms thereof the provisions of Article 311 are not attracted. -- " Satish Chandra Anand Vs. The Union of India (UOI), (D). In that case it was pointed out that dismissal, removal or reduction in rank were in the nature of penalties. Where the contract of service contains provisions for serving notice of dismissal and such a notice has been served, no question of penalty or punishment is involved and the provisions of Article 311 are not attracted. (Also see -- "Jayanti Prosad v. State of Uttar Pradesh (C) supra").

The present case illustrates the converse proposition. If the Government does not choose to proceed under the terms of the contract but elects to punish or penalise the employee by dismissal, as it has done in this case, the provisions of Article 311 are instantly attracted. Mr. Chou-dhury has rightly pointed out that if his client's services were simply terminated. Government would be perfectly within its rights, and the petitioner would have nothing to say. But if he is arraigned on a number of serious charges and found guilty and dismissed, he can never hope to get service again under the Government since rule 49 (7) of the C. S. (C. C. A.) rules would be an absolute bar. If he must bear the stigma of having been found guilty on a charge, he must be given the protection afforded by Article 311 of the Constitution to defend himself. That being the position, the question is whether the petitioner was afforded such protection. The learned Government Pleader has not argued that the proceedings actually followed satisfied the Constitutional safeguards. I shall however state briefly how that is so. Under Article 311 of the Constitution as also under the Civil Service Classification Control and Appeal Rules, the petitioner would be entitled to have the charges specified and to have an opportunity of meeting such charges. I do not see how he has had such an opportunity where the actual enquiry was a "confidential" or a secret enquiry, and where witnesses are examined without any reference to him and in his absence. But quite apart from this, there is a fatal defect in the order complained of. The original charge sheet mentions a series of charges (carelessness, corruption and loss of Government money). These charges must be read with the particulars contained in the report of the Deputy Financial Adviser (Annexure B) which again contains numerous headings. The punishments proposed are diverse, e. g., why he should not be dismissed or otherwise suitably punished. The final order of dismissal finds the petitioner guilty of the main headings in the charge but does not specify which of the headings in the report (Annexure "B") had been brought home and the petitioner had no opportunity to show cause against the particular punishment imposed.

10. This has been held to be necessary in the Privy Council decision of -- AIR 1948 121 (Privy Council) . I have discussed all the relevant aspect of this question in -- Jatindra Nath Biswas Vs. R. Gupta, Superintendent of Police and Others, (F). I have pointed out there that where a number of charges have been

made and a number of punishments proposed, the enquiry must be in two stages -- firstly an enquiry into the charges and secondly as to the punishment that is proposed to be inflicted. In both the enquiries, the petitioner was entitled to show cause and defend himself. It will also be observed that the petitioner never got a copy of the report of the Sub Divisional Officer, nor was he apprised of its contents. Now of course it has been disclosed and made an exhibit. Therefore he did not get a reasonable opportunity of showing cause and defending himself.

11. For the reasons aforesaid, the order dated 9-1-1953, complained of, cannot be supported. The Rule is accordingly made absolute and the respondents are directed to rescind the same and to forbear from giving effect to it.

12. I say nothing however as to the suspension of the petitioner. He must remain suspended pending further action by the respondents in the light of the observations made above.

13. There will be no order as to costs.