(1966) 11 PAT CK 0016

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 94 of 1965

Bharat Ram APPELLANT

Vs

The Union of India (UOI) and Others RESPONDENT

Date of Decision : 01-11-1966

Acts Referred:

Central Civil Services (Conduct) Rules, 1955 — Rule 15, 3
Constitution of India, 1950 — Article 226, 309, 311(2)

Citation : AIR 1967 Patna 347 : (1967) 2 LLJ 668

Hon'ble Judges : R.L. Narasimham, C.J;R.J. Bahadur, J

Bench : Division Bench

Advocate : Basudeva Prasad and Md. Khaleel, for the Appellant; Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Bahadur, J.—This is a petition under Article 226 of the Constitution by the petitioner to quash the order dated the 24th October, 1963, passed by the Senior Superintendent of R.M.S. U.-Division, Muzaffarpur, dismissing him from service. Appeal against the order of dismissal was rejected by the Director of Postal Services Bihar Circle.

2. The petitioner was appointed as R. M. S. Porter on the 1st September, 1960, at Katihar. The Senior Superintendent. R M S. U.-Division, Muzaffarpur, sent a charge sheet dated the 14th March 1963, to the petitioner on the ground that he had violated Rules 3 and 15 of the Central Civil Services (Conduct) Rules, 1955, (hereinafter referred to as the Rules) He was asked to show cause by the 15th April, 1963. The allegation against him was that he had violated Rule 3, in that he had given wrong parentage, as also wrong description of his caste. He had also violated Rule 15, as, even though certain properties stood in his name, vet he had not brought the transactions to the notice of the competent authority or obtained his previous sanction for the same.

3. The two charges framed against the petitioner are given below:

"Charge No. I.

That the said Shri Bharat Ram while functioning as porter during the period of his service infringed Rule 15 and Rule 3 of the C. C. S. (Conduct) Rules. 1955 by virtue of his acquiring movable and Immovable properties without previous knowledge or without obtaining previous sanction of the competent authority and thereby he also failed to maintain absolute integrity and devotion to duty to the Government.

Charge No. II.

That the said Shri Bharat Ram white functioning as porter during the period of his service concealed the description of his real caste and parentage in his service book and displayed gross misconduct. He also gave contradictory statement before the A. S. P. (Inv) P. and f Directorate on 29-3-62."

4. The statement of the allegations OB which the charges were framed may be usefully reproduced:

"(1) Shri Bharat Ram had purchased two Rickshaws bearing registration numbers 158 and 159 of Katihar Municipality for the year 1962-63 for Rs. 1100 in September, 1961 and was plying the same at Katihar in the name of his two sons namely Shri Jagdish Ram and Satrughan Ram.

(2) He purchased a Radio set for Rs. 370 on 8-6-61

(3) He purchased two plots of land valued at about Rs. 1900 at his native village Manglupur Rajpur P.S. Gobindganj (Motihari one in fee name of his son Jagdish Ram and the other to the name of his three brothers including himself from Shri Sukhdeo Mishra son of Sheo Gobind Mishra and from Mostt. Kaushala Kuar wife of late Shri Chandrika Singh of that village.

(4) He constructed a house in the year 1958, at Katihar the place of his service, spending over it a sum of Rs. 1700 to Rs. 1800."

(Annexures A and D).

5. The petitioner submitted a written statement on the 30th May, 1963, and denied all the charges. One Shri D. P. Singh. Complaint Inspector of the Office of the Post-master General. Bihar Circle, was appointed as Inquiry Officer He submitted his report of finding on the 28th August, 1963, in which he held both the charges fully proved against the petitioner.

(Annexure B).

6. After the report had been submitted by the Inquiry Officer the petitioner was given a notice to show cause as to why he should not be dismissed and he submitted a written representation on the 5th October, 1963. (Annexure C). The substance of his pleas was that (i) be belonged to a joint undivided Hindu family and that all the purchases made and the properties acquired were done out of the common and joint funds of the family; (ii) that he was not aware of the

contents of the rules, inasmuch as the same had never been shown to him; and (iii) that while he was still infant, his natural father had died and his mother had eloped with one Tapeshwar Ram/Rai and both of them lived like husband and wife. As Tapeshwar had brought him up for all intents and purposes, he had become his father and as such his name and caste had been mentioned by the petitioner in his service book. He could not give out the name of his real father for the sake of his family prestige, as also to avoid the shameful conduct of his mother and that there was no other motive for concealing the name of his real father or the caste.

7. In support of this application, Mr. Basudeva Prasad has raised the following main contentions; (i) the acquisitions, alleged to have been made by the petitioner, were the acquisitions of the joint family and Rule 15 was not applicable to them: (ii) the parentage given by the petitioner could not come within the mischief of Rule 3 (iii) the acquisitions were too small to attract the provisions of Rule 15 and as such the punishment was unduly severe; and (iv) the Rules are illegal and unconstitutional as they were not promulgated in accordance with the provisions made in this regard.

8. Rule 3 provides as follows:

"Every Government servant shall at all times maintain absolute integrity and devotion to duty "

9. The relevant provisions of Rule 15 are m the following terms:

"Movable immovable and valuable property-

(1) No Government servant shall, except with the previous knowledge of the prescribed authority, acquire or dispose of any immovable property by lease, mortgage, purchase, sale, gift or otherwise, either in his own name or in the name of any member of his family:

Provided that any such transaction conducted otherwise than through a regular or reputed dealer shall require the previous sanction of the prescribed authority.

Explanations:--(a) The prescribed authority for the purposes of this sub-rule shall be :--

(i) the Government, in the case of all Class I Officers except where any lower authority M specifically prescribed in respect of any categories of such officers:

(ii) Heads of Departments, in case of all Class II Officers.

(iii) Heads of offices, in the case of Class III and Class IV Officers.

(b)

(2) A Government servant who enters into any transaction concerning any movable property exceeding one thousand rupees in value, whether by way of purchase, sale, or otherwise, shall forthwith report such transaction to the

prescribed authority, referred to in Sub-rule (1).

Provided that no Government servant shall enter into any such transaction except with or through a regular or reputed dealer or agent or with the previous sanction of the said prescribed authority.

Explanation:--For the purposes of this sub-rule, the expression ''movable property'' includes inter alia, the following property namely :--

(a) jewellery, insurance policies, shares, securities and debentures:

(b) loans advanced by such Government servant, whether secured or not;

(c) motor cars, motor cycles, horses or any other means of conveyance: and

(d) refrigerators, radios and radiograms.

(3) Every member of Class I and Class II services shall, on first appointment in the Government service, and thereafter at intervals of every twelve months, submit a return in such form as the Government may prescribe in this behalf, of all immovable property owned, acquired or inherited by him or held by him on tease or mortgage, either in his own name or in the name of any member of his family or in the name of any other person.

(4) The Government or any authority empowered, by it in this behalf may, at any time, by general or special order, require a Government servant to submit, within a period specified in the order a full and complete statement of such movable or immovable property held or acquired by him or by any member of his family as may be specified in the order. Such statement shall, if so required by the Government or by the authority so empowered include details of the means by which, or the source from which, such property was acquired."

Note 1 of the Government of India''s instructions to Rule 15 is important and may be reproduced below :--

"(1) Construction of a house, undertaking of repairs or minor construction work in respect of immovable property estimated to cost more than Rs. 1,000 and acquisition or disposal of immovable property by way of dowry attract the provisions of Rule 15 (1)

10. Learned counsel, in support of the first point raised by him, has contended that fee petitioner''s case throughout has been that be belonged to a joint undivided Hindu family and that all the purchases made and the properties acquired were out of the common and joint funds of the family. It appears from the report of the inquiry officer that the petitioner had not given any material to establish his assertion. It has, therefore, been held that the transactions in question were clearly in violation of Rule 15(1) Similarly, there has also been violation of Rule 15(2) because the petitioner had not reported the transactions to the prescribed authority referred to in Sub-rule (1). Mr. Basudeva Prasad has urged that the inquiry officer, as also the Senior Superintendent, had made a

confusion in making distinction between the joint Hindu Family and an undivided Hindu family, in that, both of them appeared to have thought that these were two different legal entities.

The report of the inquiry officer and the order of the Senior Superintendent (Annexures B and D) had been shown to us and it is true that they have made this confusion. Substantially they have come to the conclusion that the petitioner has failed to establish his defence that the properties belonged to the joint Hindu family. We have also gone through the evidence on the record, as recorded by the inquiry officer, and do not find that the petitioner has shown that the properties acquired by him were that of the joint Hindu family. Mere assertion is not proof. The matter has been carefully examined by the Director of Postal Services in appeal and it appears that the petitioner had nowhere denied the acquisition of the moveable and immovable properties, which were the subject-matter of the charge. He had admitted that the two rickshaws worth about Rs. 1100/- were in fact purchased in September, 1961, in the name of his son; one radio set was purchased by him also on the 8th June. 1961, and a sum of about Rs. 7000/-had been spent by him between the period 1956-62 in purchasing a number of plots of land in Manglapur and Katihar and in constructing a house at Katihar.

According to the petitioner, all these amounts were spent out of the joint Hindu family funds. In my opinion, the appellate authority rightly rejected the petitioner''s case that he had utilised the funds of the joint family because he had given no evidence to that effect. On the other hand, the circumstance that certain property, namely, the house at Katihar, was in his own name, where he was stationed in service, is clearly against the ease set up by him and in absence of any proof in support of his claim cannot be accepted. It is true that the property standing in the name of a member of the joint Hindu family does not by itself become his sole property but may still belong to the joint family. In this case, however in absence of any evidence the finding arrived at by the appellate authority that when certain properties have been acquired by a person in his own name then it would be taken that he has full rights over such properties and he would be deemed to be the owner of the same. We have looked in vain for any evidence on the record which would support the case of the petitioner that these properties had been financed by the funds of the joint family. I am, therefore, satisfied that the petitioner should have reported the matter to the prescribed authority, as provided by the rules referred to earlier.

11. Learned counsel has invited our attention to instruction 7, Clause (iv) issued by the Department under Rule 15 of the Rules which is as follows:--

"7(iv). Transactions of members of Hindu undivided joint family do not require Government''s prior permission. In such cases, transactions in immovable property should be included in the annual property returns and those in movable property should be reported to the prescribed authority immediately after completion or immediately after the Government servant comes to know of them

If a Government servant is unable to give on idea of his share of such property, he may give details of the full property and the names of the members who share it

[M.H.A. O.M. No. 25/18/59-Ests. (A). dated 28-8-59]

This instruction, however, does not help the petitioner in any way. The instruction was issued by the Department on the 28th August, 1959, whereas the construction of the Katihar house by the petitioner took place in 1958. The instruction cannot have retrospective effect. He ought to have obtained the prior permission of the appropriate authority before starting construction of the house. This has been made clear in instruction 2 under Rule 15, which was issued as early as the 12th December, 1957. This instruction is as follows.

"2 A Government servant proposing to build a house or to undertake repairs or minor work of the nature mentioned in Instruction No. 1 should:--

(i) before starting construction or undertaking repairs, extension, etc. seek the permission of the prescribed authority in the form of Annexure 1. Where it is not possible to furnish complete details the covered area on which the building is proposed to be erected and the estimated cost of the building should be mentioned:

and

(ii) on completion of the house/work submit a valuation report in the form at Annexure II.

[M.H.A. O.M. No. 25/21/57-Ests. (A) dated 11.6.57 and 12.12.57] "

It is not denied that this instruction was not complied with when the Kathiar house was constructed. Moreover, even under Clause (iv) of instruction 7, in the annual property statement the property acquired on behalf of the Hindu joint family was required to be included. This was not done. There has thus been a clear contravention of the rules and the instructions issued thereunder Mr. Basudeva Prasad raised a somewhat ingenious contention to the effect that Rule 15 applies only to superior Government servants and not to Class IV servants. This argument is, however, not tenable in view of Clause (iii) to Rule 15 which expressly says that in the case of Class IV officers the appropriate authority to whom intimation should be given is the head of the office.

12. As to the second point raised by learned counsel. I am of opinion that the wrong parentage and the caste given by the petitioner are not by themselves so serious as to hold him guilty of having violated the provision of Rule 3 The explanation given by the petitioner cannot be said to be unreasonable because it has been said that men give false statements of a harmless nature for so many reasons and some for no reason at all. In this case the petitioner''s explanation is that he has been brought up by his foster father and also wanted to protect the good name of his mother. There is no finding to the effect that by giving an

incorrect description of his caste the petitioner obtained any unfair advantage for himself or else that any other officer was deprived of his benefits. Consequently this charge seems to be of a very trivial nature, but this court, in exercise of its jurisdiction under Article 226, cannot examine whether the punishment passed on the petitioner could have been justified for this charge alone. Moreover, the first charge is of a somewhat serious nature, and as the punishment has been imposed for both the charges, there is no ground for us to interfere.

13. The third point raised by Mr. Basudeva Prasad can be disposed of shortly. It is not the function of this Court, in exercise of its jurisdiction under Article 226 of the Constitution, to examine whether the materials on the record would be taken as sufficient by another authority to hold the petitioner guilty of the charges and whether the punishment was too severe The petitioner''s appeal was heard by Shri V. Devarajan. Director of Postal Services, who in his order dated the 31st October, 1964, has discussed all the facts of the case carefully and has given good reasons for upholding the Senior Superintendent''s order. I am also satisfied that the petitioner was given adequate and reasonable opportunity to defend himself and to show cause against the punishment proposed against him, as required by Article 311(2) of the Constitution. As such, this point is also without merit and must be rejected

14. There is also no merit in the last point raised by Mr. Basudeva Prasad, who has faintly argued it. He has not been able to show to us how the Central Civil Services (Conduct) Rules are illegal and unconstitutional. These rules have been promulgated by the President in exercise of the powers conferred on him under Article 309 of the Constitution. The constitutional guarantee afforded to a public servant is that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed, and that he shall not 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. The reasonable opportunity contemplated has manifestly to be in accordance with the rules framed under Article 309 of the Constitution. Learned counsel has not been able to show to us any discrimination in this regard or that it has operated to the prejudice of the petitioner and as such the point taken by him is without any substance and must fail.

15. For the aforesaid reasons, I would dismiss this petition but make no order as to costs.

Narasimham, C.J.

16. I agree.