
(1964) 03 AP CK 0009
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 4 of 1963

Collector of Central Excise, Hyderabad	APPELLANT
Vs	
N. Venkata Rao	RESPONDENT

Date of Decision : 31-03-1964

Acts Referred:

Central Civil Services (Classification, Control and Appeal) Rules, 1965 — Rule 13
Constitution of India, 1950 — Article 311, 311(2)

Citation : AIR 1966 AP 116 : (1965) 10 FLR 16

Hon'ble Judges : P. Chandra Reddy, C.J.;Kumarayya, J

Bench : Division Bench

Advocate : P. Ramachandra Reddy, 3rd Govt. Pleader, for the Appellant; K. Ramachandra Rao, for the Respondent

Final Decision : Allowed

Judgement

Chanora Reddy, C.J.—This is an ap-peal against the judgment of our learned brother Justice Jaganmohath Reddy quashing an order of reversion dated 9th February 1960, made by the Collector of Central Excise.

2. The facts which are not in dispute lie in a narrow compass and may be stated thus: The petitioner, who was an Inspector of the Central Excise, along with nine others, was promoted by an order dated the 21st April 1939 by the Collector of Central Excise to officiate as Deputy Superintendent of Central Excise (Executive) in the Central Excise Department in the scale of 260-15-350 until further orders. Formal posting orders were to be issued separately. These ten persons were selected out of a list of 266 Inspectors tormina the field of choice for promotion and that the respondent's rank in the list was at 262. We are told by the counsel for the respondent that these 260 did not exhaust all the Inspectors. This list was prepared out of the then existing 800 Inspectors. On the 9th of February 1960, the impugned order was made by the same Collector. Having regard to the part this order plays in the context of this enquiry, it is profitable to set it out in extenso.

"The following officers promoted to officiate as Deputy Superintendents (Executive) un-til further orders in this office C. No. II/3/50/59-E dated 21-4-1959 are reverted as Inspectors of Central Excise with effect from the date of relief. Their posting orders as Inspectors of Central Excise are issued separately."

3. It is pertinent to note here that it was the petitioner and the four others who ranked as Nos. 1 to 5 in the earlier order that were reverted. But temporary promotion of officers Nos. 6 to 10 shown in the original order was allowed to stand for the reason that in the list which was framed as the basis of the field of choice, they were within the first 7 ranks. It is to remove on certiorari the latter order that writ petition No. 506/1960 was filed.

4. The chief ground urged in the petition was that the order impeached did not contain any reasons for the reversion and that the order was vitiated for non-disclosure of reasons and that secondly, the reversion amounted to a reduction in rank, so as to fall within the protection of Article 311(2) of the Constitution and that the requirements of this article were not fulfilled. These two grounds found favour with our learned brother, with the result that the impugned order was quashed. Dissatisfied with that judgment the Collector of Central Excise has brought this appeal.

5. It is contended by the learned Government Pleader in support of this appeal that as the respondent was promoted to officiate until further orders, the reversion without assignment of reasons was not invalid or illegal and that this reversion did not attract Article 311(2) or any of the relevant statutory rules, as it was not by way of punishment that the respondent was reverted.

6. On the other hand, it is argued by Shri Ramachandra Rao, learned counsel for the respondent, that the Collector was under an obligation to give reasons for reversion and that since the reversion has certain consequences flowing therefrom, it should be regarded as a punishment so as to fall within the contemplation of Rule 13 of the Central Civil Services (Classification, Control and Appeal) Rules, 1957.

A point also was raised for the first time that in any event the order of the Collector has to be struck down as he did not exercise his judgment and that he merely gave effect to the behests of the Central Board of Revenue. We shall deal with these contentions seriatim.

7. We must observe that the first branch of the contentions is devoid of substance. At the outset it must be remembered that the respondent was to officiate as Deputy Superintendent of Central Excise until further orders. Therefore, this is not a case where he was holding a substantive post. The office he held was of a transitory character and he did not acquire any right thereto. That being the real position, we are inclined to think that the Collector was under no duty to assign reasons for reversion.

8. It is in this context that the judgment of the Supreme Court in *Sukhbans Singh Vs. State of Punjab*, called in aid by our learned brother becomes relevant.

There, the appellant who was directly recruited as Tahsildar and who was appointed temporarily as an Extra Assistant Commissioner on probation, was reverted some years after this appointment. After an unsuccessful attempt made by him to have this order revised by the departmental authorities, he sought the aid of the High Court of Punjab under Article 226 of the Constitution, contending that the order was mala fide and that he was reverted by way of punishment, without giving him a reasonable opportunity within the connotation of Article 311 of the Constitution. The High Court dismissed it being of the opinion that the relevant statutory provisions did not require the proper authorities to disclose reasons for the reversion and that it did not operate as a punishment contemplated by Article 311 and as such it was not necessary to afford him a reasonable opportunity to show cause against the proposed action.

9. On an appeal by the aggrieved officer, the Supreme Court reversed the order of the High Court having come to the conclusion that though the phraseology in the order was innocuous and did not show that the officer was being punished, the attending circumstances established that the action of the Government was mala fide and the reversion is by way of punishment without complying with the provisions of Article 311(2).

The sequence of events there was that there was a departmental enquiry against him and although he was exonerated, he was transferred to another place and he was also deprived of the authority of collecting donations for a college. Their Lordships further took into account the fact that the appellant stood first in the Division in relation to the land revenue collection and that he had collected large sum of money for Red Cross "which was an outstanding performance" and for which he received the "Government of Punjab commendation certificate". Moreover the appellant there had received the "President of India's Sanad and Silver Medal" for his excellent work in the census of 1951. Shortly after this he was reverted and that though no reasons were stated at the time, a year and a half later after the reversion, he received a warning from the Government. It is in these circumstances that the inference was drawn that the reversion was by way of punishment.

10. We are not satisfied that this case has any analogy here.

11. That apart, in this very judgment their Lordships said:

"But the very fact that a person is a probationary implies that he has to prove his worth, his suitability for the higher post in which he is officiating. If his work is not found to be satisfactory he will be liable to be reverted to his original post even without assigning any reason. It would, therefore, not be correct to say that a probationer has any right to the higher post in which he is officiating or a right to be confirmed. A probationer being merely made eligible for being absorbed in a permanent post is in a better position."

12. There are oilier decisions of the Supreme Court which vonch the proposition that in re verting a person officiating in higher service no reasons need be recorded. In The State of Bombay Vs. F.A. Abraham, the Supreme Court made observations to the same effect.

"The High Court seems to us to have been in error in thinking that the Government's refusal to supply the respondent with the reasons why action was taken against him proved that the reversion was a reduction in rank by way of punishment the refusal cannot prove that."

13. In view of these decisions and in view of the absence of any provision which calls upon the appointing authority to assign reasons for reversion of a promotee on a temporary basis of his substantive office, this contention was not persisted in.

14. However, it was strenuously contend-ed that this reversion has all the characteristics of a punishment falling within the purview of Rule 13 mentioned above and Article 311 of the Constitution. In support of this contention, the learned compel has drawn our attention to the oft quoted case of Parshotam Lal Dhingra Vs. Union of India (UOI), , Sukhbans Singh Vs. State of Punjab, and P.C. Wadhwa Vs. Union of India (UOI) and Another, .

15. Before we deal with this contention and refer to the rulings, we will do well to extract Rule 13 which framed the corner-stone of the contention of the learned counsel for the respondent. Rule 13 in so far as it is relevant is in these words:

"13 The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Government servant, namely

(i) to (iii) *****

(iv) reduction to a lower service, grade or post, or to a lower time-scale, or to a lower stage in a time-scale;

16. We are not concerned with (he other penalties in this case. This rule has an explanation which may be extracted here, omitting the unnecessary portions thereof:

Explanation:-- The following shall not amount to a penalty within the meaning of this

rule:

(iv) reversion to a lower service, grade or post of government servant officiating in a higher service, grade or post on the ground that he is considered after trial, to be unsuitable for such higher service, grade or post or on administrative grounds unconnected with his conduct;"

17. It is seen that this rule enumerates the penalties that can be imposed on a

delinquent officer and the rule which is material for our enquiry is Sub-rule (iv) which speaks of reduction to lower service. It is not disputed that this does not cover a reversion of an officiating officer to a substantive post, since it refers only to a person holding a substantive post and does not extend to an officiating post. It is for this reason that the learned counsel invites us to read Clause (iv) of the Explanation along with this and hold that the reversion in this case constituted a reduction to a lower service. According to him, this is the effect of the combined reading of these two provisions, since the reversion in this case does not fall within the ambit of Clause (iv) of the explanation.

18. We are unable to accede to this proposition. All that the explanation postulates is that even if a person after trial was found to be unsuitable, for such higher service, grade or post, or on administrative grounds unconnected with his conduct, it should not be regarded as a penalty. It does not follow from this that reversions which are not specified within this clause automatically constitute a penalty. This clause does not seek to exhaustively set out all cases of reversions not amounting to penalty. The only purport of this clause is that even an extreme case of a person being found to be unsuitable after trial and being reverted from a higher service, grade or post does not amount to a penalty initially within the contemplation of Rule 13(iv). This clause does not carry with it the implication that all other cases of reversion from higher service, though made on a temporary basis and until further orders, as in this case would amount to penalty. We are not, therefore, disposed to share the view of the learned counsel on the interpretation of Clause (iv) of the explanation read with Sub-rule (iv) of Rule 13. If the reversion does not partake the character of a punishment, then the provisions of Article 311(2) are not attracted and therefore the procedure indicated therein need not be followed. Consequently, the impugned order of the Collector cannot be challenged on the ground of non-compliance with the provisions of Article 311(2).

19. We will next take up another limb of the argument of the learned counsel for the respondents, that since certain penal consequences flow from this reversion, viz., that the respondent's chances of promotion are jeopardised by this reversion, it should be deemed to be a punishment. We do not think that the consequences that flow from the reversion could be described as penal. The concept of penal consequences has no place in a case of reversion of an officer officiating on a temporary basis and that is appropriate only when the reversion is by way of punishment. The learned counsel urges that whatever might be the reason or the cause of this reversion, it should be regarded as a punishment, since it affects certain rights of the officer. We are unable to accede to this interpretation of the order and of the decisions cited by him.

20. Parshotam Lal Dhingra Vs. Union of India (UOI), called in aid by the learned counsel does not furnish any basis for this contention. The appellant there was appointed to the higher post on an officiating basis and was reverted for want of vacancies. He was not given an opportunity to show cause why he should not be

reverted. The question arose whether the order was bad for non-observance of the terms of Article 311(2) of the Constitution. Their Lordships of the Supreme Court answered it in the negative for these reasons:

"Applying the principles discussed above it is quite clear that the petitioner before us was appointed to the higher post on an officiating basis, that is to say, he was appointed to officiate in that post which, according to Indian Railway Code, Rule 2003(19) corresponding to Fundamental Rule 9(19) means, that he was appointed only to perform the duties of that post. HE had no right to continue in that post and under the general law the implied term of such appointment was that it was terminable at any time on reasonable notice by the Government and therefore, his reduction did not operate as a forfeiture of any right and could not be described as reduction in rank by way of punishment."

While discussing the question as to whether this reversion amounted to a reduction in rank, their Lordships laid down certain dicta which formed the foundation of the several decisions subsequently. The tests laid down by them may be usefully extracted here:

"any and every termination of service is not a dismissal, removal or reduction in rank. A termination of service brought about by the exercise of a contractual right is not per se dismissal or removal as has been held by this court in Satish Chandra Anand Vs. The Union of India (UOI), . Likewise the termination of service by compulsory retirement in terms of a specific rule regulating the conditions of service is not tantamount to the infliction of a punishment and does not attract Article 311(2) as has also been held by this Court in Shyam Lal Vs. The State of Uttar Pradesh and The Union of India (UOI), . In either of the two above mentioned cases the termination of the service did not carry with it the penal consequences of loss of pay, or allowances under Rule 52 of the Fundamental Rules, It is true that the misconduct, negligence inefficiency or other disqualification may be the motive or the inducing factor which influences the Government to take action under the terms of the contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules to terminate the service the motive operating on the mind of the Government is, as Chagla, C. J., has said in Shrinivas Ganesh Vs. Union of India, wholly irrelevant. In short, if the termination of service is founded on the right flowing from contract or the service rules. then, prima facie, the termination is not a punishment and carried with it no evil consequences and so Article 311 is not attracted. But even if the Government has, by contract or under the Rules, the right to terminate the employment without going through the procedure prescribed for inflicting the punishment of dismissal or removal or reduction in rank, the Government may, nevertheless, choose to punish the servant and if the termination of service is sought to be founded on misconduct, negligence, inefficiency or other disqualification, then it is a punishment and the requirements of Article 311 must be complied with. As already stated if the servant has got a right to continue in the post, then, unless the contract of

employment or the rules provide to the contrary, his services cannot be terminated otherwise than for misconduct, negligence, in efficiency or other good and sufficient cause. A termination of the service of such a servant on such grounds must be punishment and, therefore, a dismissal or removal within Article 311, for it operates a forfeiture of his right and he is visited with the evil consequences of loss of pay and allowances. It puts an indelible stigma on the officer affecting his future career. A reduction in rank likewise may be by way of punishment or it may be in innocuous thing."

21. It is thus clear that it is only in cases where certain consequences flow, namely, the loss of pay and allowances, bar of promotion or minimising the chances of promotion, that the requirements of Article 311 should be complied with. His Lordship Chief Justice S. R. Das has emphasised in the earlier portion of the passage extracted above that termination of services per se or in accordance with the terms of a contract or the terms of a specific rule does not attract Article 311(2), since it did not carry with it the penal consequence of loss of pay or allowance under Rule 32 of the Fundamental Rules analogous to Rule 13 of the present rules. His Lordship goes further and remarks that even if inefficiency, negligence, misconduct or other disqualification were to be the motive or the inducing factor which influenced the Government to take action under the terms of the contract of employment, nonetheless, it would be irrelevant so long as the termination was founded on the right accruing on the contract or service rules.

It appears from the latter part of the judgment that the real test for determination whether, the reduction in such cases is or is not by way of punishment is to find out if the order for reduction also visits the servant with any penal consequences and if that order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank, or the stoppage or postponement of his future chances of promotion, then that circumstances would indicate that although in form the Government had purported to exercise its right to terminate the employment or to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and by way of penalty. This judgment, therefore, does not lend any support to the contention advanced on behalf of the respondent.

22. Nor does Sukhbans Singh Vs. State of Punjab, advance the case of the respondent any further. As already stated, it was there found that the reversion of the officer was by way of punishment, though in form it appeared to be one of simple reversion. It was not laid down as a broad proposition of law that in every case of reversion of an officer from an officiating post, which is transitory in character, should be viewed as a punishment.

23. Nor does P.C. Wadhwa Vs. Union of India (UOI) and Another, render any service to the respondent. It was there found that the reversion was mala fide and was by way of punishment, though the language of the order of reversion did not disclose it and appeared to be one of simple reversion. While holding that

the reversion there was in the nature of a punishment, Acting Chief Justice S.K. Das, who spoke for himself and another learned Judge, wanted to make it clear that "when a person is reverted to his substantive rank, the question of penal consequences in the matter of forfeiture of pay or loss of seniority must be considered in the context of his substantive rank and not with reference to his officiating rank from which he is reverted, for every reversion must necessarily mean that the pay will be reduced to the pay of the substantive rank." This observation furnishes an effective answer to the argument of the learned counsel for the respondent or that every reversion resulting in loss of pay or allowances and deprivation of chances of promotion should be regarded as by way of punishment and it is only in the context of the substantive rank that these considerations are relevant. So, this judgment renders a positive disservice to the respondent.

24. That every reversion from a higher post held by an officer on a temporary basis and until further orders, does not amount to a reduction in rank also appears from *The State of Bombay Vs. F.A. Abraham*, It was laid down there that a person officiating in a post has no right to hold it for all time and that there was no reduction in rank for it was the very term on which he had been given the officiating post.

25. Another judgment of the Supreme Court which is in the same trend of thought is *Union Territory of Tripura, Agartala Vs. Gopal Chander Dutta Choudhury*, . In that case, since they found that there was no ground for inferring that the Superintendent of Police was camouflaging an order of termination of employment in the exercise of the authority under the relevant rules, it could not be assumed that an order ex facie one of termination of employment of temporary employee was intended to be one of dismissal. They further held that the onus was upon the employee to show that the intention of the authority terminating the employment was to punish him in the guise of terminating the temporary employment or reverting an officiating higher post.

26. Thus, these rulings do not afford any assistance to the respondent, on the other hand, they stress the fact that unless the reversion from an officiating higher post temporarily was by way of punishment, it would not constitute a reduction in rank. We find there is no scope for invoking Rule 13 or Article 311, since it is not the respondent's case that the Collector wanted to punish this officer and the four others by reverting them to their substantive posts. If the termination is founded on the very terms of the original order, which has given them the right to hold the post, it does not carry with it the evil consequence and cannot be described as a punishment.

27. The complaint of the respondent that there was no justification for reverting the people who are given higher ranks in the order dated 21st April, 1959 while those holding ranks Nos. 6 to 10 were allowed to continue in their officiating positions, is not well founded. We have already stated that Nos. 6 to 10 in the original order were within the first seven ranks, whereas the respondent, as we

have already pointed out held rank No. 262 and the four others held ranks Nos. 80, 91, 102 and 148. Nor the circumstances that a seniority was fixed as among those promoted to officiate invests the appointment with a substantive character. It does not make any difference for the transitory nature of the post. The fact that the respondent and the four others were given seniority over Nos. 6 to 10 in the original appointment does not convert that order into a substantive one. We are, therefore, unable to give effect to the contention that the reversion in the instant case was by way of punishment and that since there was non-fulfilment of the provisions of Article 311(2) the order should be struck down as void.

28. There remains the argument that the order of reversion is void for the reason that the Collector of Central Excise has merely given effect to the directions of the Central Board of Revenue and did not exercise his independent judgment. This submission is founded on the observations of our learned brother in his order and also on the judgment of the Supreme Court in *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, .

29. At the inception, it must be remembered that this was not a point taken in the writ petition, nor has our learned brother struck down the order of the 9th February 1960 on the ground now urged by the learned counsel. This point does not seem to have been agitated before our learned brother. It is only incidentally that our learned brother has made this observation. It was in the context of the question whether there are any reasons for reverting the respondent from the officiating post of the Deputy Superintendent (Executive) of the Central Excise, that he made the following observations:

"In none of the records produced is there any indication that these persons are reverted on the ground that they are found unfit or that there was any administrative grounds. On the other hand, the record shows that they were reverted because the Central Board of Revenue had directed the Collector to do so. Even there it is not possible to say that what were the grounds for the Central Board of Revenue for directing the Collector to revert them. At any rate, it is not the Collector who has exercised the powers vested in him to revert. I find from the record that the petitioner was reverted to the grade of an Inspector on the basis of the directive contained in Board's letter F. No. 2/104/ 59-Ad. III A. dated 14-1-1960."

30. Even otherwise, there is no substance in this contention. The judgment of the Supreme Court in *Commissioner of Police, Bombay Vs. Gordhandas Bhanji*, clearly lays down the principle that the officer issuing the orders is not precluded from taking the views or the wishes of the higher authorities into consideration. All that is stated in that pronouncement was that he should not surrender his own judgment and carry out the behests of the higher authorities. In the case under citation, the Commissioner of Police who cancelled the licence wrote to the licensee, "I write to inform you that the permission granted to your client was cancelled under the orders of the Government who may be approached." In dealing with this order, Justice Basu, who spoke for the court, observed:

"We are clear that this round-about language would not have been used if the order of cancellation had been that of the commissioner. We do not mean to suggest that it would have been improper for him to take into consideration the views and wishes of the Government provided he did not surrender his own judgment and provided he made the order, but we hold on the material before us that the order of cancellation came from Government and that the Commissioner acted only as a transmitting agent.

31. Surely, it cannot be posited in this case that the Collector has acted as mere transmitting agent. In fact, his order does not refer to the directions or wishes of the Board of Revenue. He has referred to the facts that the earlier order of promotion was to be in effect until further orders and that he was reverting him in pursuance of those orders. It is not possible to say that the impugned order is of the same character as that held to be interpreted by the Supreme Court in the case under citation.

32. For these reasons, we hold that even if it is permissible for the respondent to raise this argument for the first time before us, this has no force.

33. In the result, the appeal is allowed and the writ petition dismissed with costs throughout. Advocate's fee Rs. 100.