
(1976) 03 OHC CK 0001
In the Orissa High Court
Case No : O.J.C. No. 531 of 1974

Gokulananda Das

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-03-1976

Acts Referred:

Constitution of India, 1950 — Article 226, 311, 311(2)
Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 — Rule 2, 8

Citation : (1976) 42 CLT 445

Hon'ble Judges : S.N. Shankar, C.J; P.K. Mohanti, J

Bench : Division Bench

Advocate : P.V. Ramdas, for the Appellant; H.G. Panda, Standing Counsel (Central), for the Respondent

Judgement

S.N. Shankar, C.J.—On May 19, 1956 the Petitioner was appointed as an extra-departmental branch postmaster by the Senior Superintendent of Post Offices, Cuttack South Division. On December 12, 1971 he was put off duty pending enquiry into certain allegations of misconduct. On June 17, 1972 charges were communicated to him in reply to which he submitted his representation. On October 19, 1972 the enquiry officer held that the charges were not made out and directed his immediate reinstatement. This order of reinstatement was, however, not given effect to in spite of several representations by the Petitioner. He was at first asked to furnish documentary evidence in support of his unencumbered income which he did, but then he was requested to furnish a solvency" certificate which also he did, but with no result. On December 7, 1973 he was again served with charges (If misconduct. The Petitioner filed his representation against these charges. On April 24, 1974 without any enquiry of second show-cause notice he was removed from service. In this petition under Article 226 of the Constitution the Petitioner has assailed this order of removal.

2. The main ground can passed in support of the petition is that the Petitioner held a civil post and could not therefore be removed from service without

employing with the provisions of Article 311 of the Constitution. The position is controverted by the learned Counsel for the opposite parties.

3. The question whether the Petitioner held a civil post or not is no longer res integra and stands concluded by the Bench decision of this Court in Nabaghan Sahu v. Election Officer, Mukundapur G.P. 37 (1971) C.L.T. 221. This case related to the nature of post held by an extra departmental agent in a branch post office. It was held that the post was an office of profit under the Central Government. "Extra Departmental Agent" according to Rule 2(b) of the Posts and Telegraphs Extra Departmental Agents (Conduct and Service) Rules, 1964 (hereafter called the Rules) includes an extra departmental branch postmaster also. The Petitioner's case is thus squarely covered by this decision. In arriving at this conclusion this Court followed the decision of the Supreme Court in State of Assam and Others Vs. Shri Kanak Chandra Dutta, . The Bench decision was followed in this Court in Natabar Hati v. Block Development Officer, Balikuda and Ors. O.J.C. No. 1334 of 1975, as also in Purushottam Das v. Superintendent of Post Offices, Berhampur Division and Ors. O.J.C. No. 625 of 1971. In the latter case the Petitioner was an extra departmental branch postmaster and the order impugned by him was the order removing him from service as in the case in hand. The view taken by this Court in the aforesaid cases is binding on us and we respectfully agree with the same.

4. The learned Counsel for the opposite parties strongly urged that the view needs reconsideration. He referred us to V. Subbarayalu Vs. Superintendent of Post Offices, Tanjore Division, Nagapattinam and Another, , where the Petitioner, an extra departmental branch postmaster, was held not to be holding a civil post. This decision was made prior to the law settled by the Supreme Court in State of Assam and Others Vs. Shri Kanak Chandra Dutta, followed by this Court in the Bench decision of Nabaghan Sahu (aforesaid). This decision of the Madras High Court was also cited before the Kerala High Court in Inspector of Post Offices v. Subhas Chandra Das 1971 K.L.J. 815, (where the order terminating the services of an extra departmental delivery agent (a postman) had been assailed) in support of the plea that the post was not a civil post, but the learned Judges of the Court found it difficult to accept the conclusion in the Madras judgment in view of the decision of the Supreme Court in State of Assam and Others Vs. Shri Kanak Chandra Dutta, . Our attention was also drawn to an earlier decision of this Court in Ch. Venkata Swamy Vs. Superintendent, Post Offices and Another, , where a contrary view had been taken. But this decision was explicitly dissented from in the Bench decision in Nabaghan Sahu v. Election Officer, Mukundapur G.P. 37 (1971) C.L.T. 221. We do not think that the matter needs to be reopened.

5. There is therefore no escape from the conclusion that Article 311 of the Constitution was clearly attracted to this case and the Petitioner's services could not be terminated without complying with the provisions of this Article. This admittedly was not done. The impugned order therefore is clearly unsustainable.

6. The order in this case was passed in accordance with the procedure prescribed

by Rule 8 of the Rules which reads hereunder:

8. Procedure for imposing a penalty. - (1) No order imposing a penalty shall be passed except after the employee is informed in writing of the proposal to take action against, him and of the allegation on which it is proposed to be taken and given an opportunity to make any representation he may wish to make.

(2) The record of proceedings shall include:

(i) a copy of the intimation to the employee of the proposal to take action against him;

(ii) a copy of statement of allegations communicated to him;

(iii) his representation, if any;

(iv) the orders on the case together with the reasons therefor.

The rule is clearly in violation of Clause (2) of Article 311 of the Constitution which provides that in case of persons holding a civil post the order of dismissal or removal or reduction in rank shall not be passed except after service of the second show-cause notice and until a reasonable opportunity of making representation on the penalty proposed is furnished to him. We have therefore no hesitation in accepting the submission of the Petitioner that the rule is ultra vires in so far as it contravenes the mandatory provisions of Article 311 of the Constitution.

7. The learned Counsel for the opposite parties then contended that in any case the Petitioner was not entitled to rein statement because the charge, in respect of which he had been dismissed were not the same as those in the previous enquiry as a result of which he had been exonerated, so that the order of December 12, 1971 putting him off duty still subsisted and all that the Petitioner was entitled was to have a second show-cause notice and to make a representation in regard to the punishment. This submission also is without merit. It was as far back as 1955 that in *Om Prakash Gupta Vs. The State of Uttar Pradesh*, the Supreme Court held that where an order of suspension is made against a Government servant pending an enquiry and as the result of enquiry an order of dismissal by way of penalty has been passed the order of suspension lapses with that order. The order dated December 12, 1971 putting the Petitioner off duty thus lapsed after the passing of the impugned order removing him from service.

8. For the reasons aforesaid, we accept the petition, quash the order dated April 24, 1974 and declare Rule 8 of the Rules to be ultra vires in so far as it contravenes the mandatory provision of Article 311(2) of the Constitution. The Petitioner will be entitled to all consequential benefits. We, however, make no order as to costs in the circumstances of the case.

P.K. Mohanti, J.

9. I agree.