

(1958) 09 GAU CK 0002
In the Gauhati High Court
Case No : Civil Rule No. 28 of 1957

Jagadindra Nath Gupta

APPELLANT

Vs

Inspector General of Assam Rifles and Others

RESPONDENT

Date of Decision : 02-09-1958

Acts Referred:

Constitution of India, 1950 — Article 311, 311(2)

Citation : AIR 1959 Guw 134

Hon'ble Judges : Sarjoo Prasad, C.J;G. Mehrotra, J

Bench : Division Bench

Advocate : N.M. Lahiri, for the Appellant; R.K. Goswami, Junior Govt. Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Sarjoo Prasad, C.J.—The petitioner Jagadindra Nath Gupta has moved for an appropriate writ for setting aside or quashing an order of discharge dated 12-3-55 passed against him by the Inspector General of Assam Rifles, Shillong, who is the first respondent to the application and also for a writ of Mandamus or any direction of the like nature enjoining upon the respondents to forbear from giving effect to that order.

2. The petitioner was appointed temporarily on 1-2-51 as a Lower Division Assistant in the office of the Inspector General of Assam Rifles on a scale of pay mentioned in the order of appointment in addition to certain allowances. It appears that he had been serving previously as an Upper Division Assistant in the office of the Controller of Emigrant Labour as Commissioner of Workmen's Compensation, Shillong, from where he was retrenched. The petitioner has referred to certain other appointments which he appears to have held ever since 1942 in semi-Government departments.

It is not necessary to refer to those details. It is however important to mention that before his appointment in semi-Government departments the petitioner was

convicted for an offence u/s 408, Indian Penal Code for misappropriation of a sum of Rs. 1,461/- and sentenced to six months rigorous imprisonment with a fine of Rs. 500/-and in default to suffer further rigorous imprisonment for three months. The order of conviction was passed on 22-9-1941 and the petitioner underwent the term of imprisonment imposed upon him.

The petitioner says that he was appointed in those semi-Government departments with full knowledge of the fact that he had this previous conviction and yet he continued to serve in those offices to the satisfaction, of his superior officers, until he came to serve in the office of the Controller of Emigrant Labour as Commissioner of Workmen's Compensation, from which he was retrenched before his appointment to the post of an assistant in the office of the Inspector General of Assam Rifles. There appears to have been also a departmental proceeding initiated against the petitioner under the orders of the Inspector General on 2-9-1954 when the petitioner was reduced to the rank of a Lower Division Assistant for a period of six months.

He appealed against the order and he alleges that the appeal is still pending disposal. Be that as it may, on the expiry of the period of six months the petitioner appears to have been reinstated in the post of Upper Division Assistant with effect from the forenoon of 2-3-1955. Later it appears that on 12-3-1955 the petitioner was informed by the Inspector General, the respondent No. 1, that he had been discharged from service with effect from 14-3-1955. The petitioner contends that there is no reason assigned in the order discharging him and it was passed without giving him an opportunity of showing cause or being heard in the matter.

He preferred an appeal against the order to the Governor which also failed on 9-4-1955. In that order dismissing his appeal it was observed for the first time, as he says, that the petitioner had been convicted in a criminal case in 1941 and sentenced to a term of imprisonment. The petitioner submits that the order of discharge by the authorities without giving him an opportunity of being heard was in violation of Article 311 of the Constitution of India and was also in infringement of the Central Service (Temporary Service) Rules 1949. It is stated by the petitioner that the fact of his conviction was already known to the respondents and therefore this order should not have been passed by them and the matter was utilised apparently as a sort of excuse for making the order which was otherwise quite unjustified.

3. The affidavit in opposition filed on behalf of the respondent indicates that the fact of the conviction of the petitioner of a criminal offence involving moral turpitude was suppressed at the time of his appointment in the office of the Inspector General of Assam Rifles. It is stated that the matter was brought to the notice of the authorities by some anonymous information conveyed to them when they made inquiries and came to ascertain the real position. It is urged on behalf of the respondent that these facts were deliberately suppressed by the petitioner and had not come to the knowledge of the authorities earlier. The jail

administration report to which reference was made by the petitioner did not specifically mention that the petitioner was the person who was the convict referred to in the report.

4. Two points have been urged in support of the petition. It is urged that the petitioner had a right to be heard under Article 311 of the Constitution and in the absence of any procedure adopted under that Article for the discharge of the petitioner, the order discharging him was illegal and ultra vires. For the respondent reliance is placed on proviso (a) to Clause (2) of that Article, wherein it says that Clause (2) of the Article will not apply where a person is dismissed or removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge.

It is not disputed now, though there was some doubt entertained at first, that the petitioner holds a civil post under the Union of India which was not a military post and Article 311 will apply to his case. The contention of the petitioner is that the above proviso will not come into play because it has no application to the facts of this case. He contends that after his employment in the office of the Inspector General of Assam Rifles, Shillong in February 1951 there was no ground of conduct leading to his conviction on any criminal charge; and according to the learned counsel for the petitioner, the fact that he had been so convicted in 1941 could not be taken into account for the purpose of seeking the aid of the proviso in order to dispense with the procedure laid down in Article 311 of the Constitution.

In our opinion such a limited construction could not be put upon proviso (a) to Article 311(2) of the Constitution. The plain grammatical meaning of the provision does not admit of such a construction. The "ground of conduct" mentioned therein would refer to a conviction on a criminal charge both before and after the appointment. If the authorities have knowledge of the conviction earlier they might as well refuse to appoint the person concerned; but if for some reason they cannot get the information earlier until after the appointment, they may take action and discharge him on that basis even without the elaborate procedure of Article 311 of the Constitution, as the proviso will be attracted to the case.

The whole object of the proviso is to avoid duplication of enquiry in the matter where already there has been a regular trial by a competent court and the person has had ample chance of defending himself. If the contention of the petitioner is accepted, it would follow that the person, who has actually been convicted of a serious criminal charge involving moral turpitude, if he successfully conceals the fact from the knowledge of the authorities and gets an employment, he would be entitled to claim that he cannot be discharged on that account or that he is at least entitled to the protection of Article 311 of the Constitution. In either event the assumption would be both unfair and unreasonable.

In this case it is not denied that the petitioner had been convicted of a serious criminal charge of embezzlement and that according to the case of the respondent this fact was never brought to the notice of the authorities when he sought appointment in the office of the Inspector General of Assam Rifles and was appointed as an assistant in February, 1951. In these circumstances, it was open to the authorities to dispense with the Procedure under Article 311. It was not necessary for them to call upon the petitioner to show cause as to why he should not be dismissed or discharged from service on the same grounds on which he was tried by a court of law and convicted for misappropriation of money on a criminal charge.

5. The second contention of the petitioner is in regard to the infringement of the Central Service (Temporary Service) Rules 1949. He contends that his employment was of a quasi-permanent character and as such he was entitled to all the benefits allowed under that rule. The expression "quasi-permanent service" has been defined under Rule 3 of these rules. A Government servant shall be deemed to be in "quasi-permanent Service" (i) if he has been in continuous Government service for more than three years and (ii) if the appointing authority being satisfied, as to his suitability in respect of age, qualifications, work and character for employment in a quasi-permanent capacity, has issued a declaration to that effect, in accordance with such instructions as the Governor-General may issue from time to time.

The contention in this case is based upon the assertion that there was condonation of the period of break in the service of the petitioner from the date of his retrenchment in the office of the Controller of Emigrant Labour as Commissioner for Workmen's Compensation, prior to the date of his joining the office of the Inspector General of Assam Rifles, Shillong. Even assuming that the petitioner fulfils the requirement of Clause (i) of Rule 3, he does not fulfil the requirement of Clause (ii) of this rule. There is no such declaration made by the appointing authority as contemplated by that clause. The order of appointment shows that he had been appointed temporarily to the post of a Lower Division Assistant. We are not therefore satisfied on the facts disclosed in the petition that the Central Service (Temporary Service) Rules 1949 have been in any manner violated in the circumstances of this case.

6. We accordingly do not see any reason to interfere with the order of discharge passed by the respondent by issuing a writ as claimed. The application is accordingly dismissed and the rule is discharged. In the circumstances of this case we think that no order for costs should be passed against the petitioner.

G. Mehrotra, J.

7. I agree.