

(1968) 03 MP CK 0025

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 339 of 1967

K. Dhruva Rao

APPELLANT

Vs

Madhya Pradesh Electricity Board, Jabalpur

RESPONDENT

Date of Decision : 20-03-1968

Acts Referred:

Civil Services (Classification, Control and Appeal) Rules — Rule 55
Constitution of India, 1950 — Article 311

Citation : AIR 1969 MP 216 : (1969) JLJ 1071 : (1969) 14 MPLJ 339 : (1969) MPLJ 339

Hon'ble Judges : T.C. Shrivastava, J;G.P. Singh, J

Bench : Division Bench

Advocate : J.V. Jakatdar, for the Appellant; B.L. Seth, for the Respondent

Final Decision : Dismissed

Judgement

Singh, J.

The petitioner K. Dhruva Rao first entered service in 1948 as an Assistant Engineer in the Electricity Department of the State of Madhya Pradesh. After the formation of the Madhya Pradesh Electricity Board under the Electricity (Supply) Act, 1948, the services of the petitioner were transferred to the Board from 1st April, 1952. In 1955 the petitioner was promoted substantively to the post of Divisional Engineer and in December, 1963 he was appointed temporarily to the post of Additional Superintending Engineer. In October 1965, the petitioner was reverted to the post of Divisional Engineer and in June 1967 he was dismissed from service. By this petition under Articles 226 and 227 of the Constitution the petitioner challenges the orders of reversion and dismissal.

It must be stated at the outset that the Electricity Board being a statutory corporation the employees of the Board do not qualify for protection under Article 311 of the Constitution. Indeed, that position has not been disputed by the learned counsel for the petitioner. The Board, however, has framed Regulations u/s 79(c) of the Electricity (Supply) Act providing for the conditions of service of its

employees. In respect of Government servants appointed under the Board from 1st April 1952, to which category the petitioner belonged. Clause 7 of Regulation 6 makes applicable the Fundamental Rules, Supplementary Rules and other Rules as applicable to Government servants of the State. On the basis of this Regulation it is contended that the reversion of the petitioner and his subsequent dismissal were in contravention of Rule 55 of the Civil Service (Classification, Control and Appeal) Rules, 1930 and, therefore, invalid and void. The legal position that an employee of a corporation like the respondent Board though not entitled to protection under Article 311 of the Constitution can invoke in his aid the statutory Regulations governing his conditions of service is well settled; *Life Insurance Corporation of India Vs. Sunil Kumar Mukherjee and Others*, ; *Mafatlal Naraindas Barot Vs. Divisional Controller, State Transport Corporation and Another*, . The main question, therefore, in this petition is whether the petitioner's reversion and subsequent dismissal were really in violation of Rule 55 of the Civil Service (Classification Control and Appeal) Rules, the applicability of which to the petitioner has not been contested during the course of arguments. Rule 55 reads as follows:

"Without prejudice to the provisions of the Public Servants Inquiries Act, 1850, no order of dismissal, removal or reduction shall be passed on a member of a Service (other than an order based on facts which have led to his conviction in a criminal Court or by a Court Martial) unless he has been informed in writing of the grounds on which it is proposed to take action, and has been afforded an adequate opportunity of defending himself. The grounds on which it is proposed to take action shall be reduced to the form of a definite charge or charges, which shall be communicated to the person charged together with a statement of the allegations on which each charge is based and of any other circumstances which it is proposed to take into consideration in passing orders on the case. He shall be required, within a reasonable time to put in a written statement of his defence and to state whether he desires to be heard in person. If he so desires or if the authority concerned so directs, an oral inquiry shall be held. At that inquiry oral evidence shall be heard as to such of the allegations as are not admitted and the person charged shall be entitled to cross-examine the witnesses, to give evidence in person and to have such witnesses called as he may wish, provided that the officer conducting the inquiry may, for special and sufficient reason to be recorded in writing, refuse to call a witness. The proceedings shall contain a sufficient record of the evidence and a statement of the findings and the grounds thereof.

This rule shall not apply where the person concerned has absconded, or where it is for other reasons impracticable to communicate with him. All or any of provisions of the rule may, in exceptional cases, for special and sufficient reasons to be recorded in writing, be waived, where there is a difficulty in observing exactly the requirements of the rule and those requirements can be waived without injustice to the person charged."

The petitioner's appointment to the post of Additional Superintending Engineer was made by Order No. G. II dated the 27th December, 1963 (Annexure A-1) which is worded as follows:

"On relief Shri K. Dhruva Rao Divisional Engineer is appointed temporarily to officiate until further orders as Additional Superintending "Engineer" (Civil) Construction.....".

The words "temporarily to officiate until further orders" make it plain that the appointment was merely an interim arrangement and it did not confer on the petitioner any right to the post of Additional Superintending Engineer. It will appear from Order No. G. II, dated the 14th January 1964 (Annexure A-2) which lays down scope of work for the Additional Superintending Engineer (Civil) Construction that this post itself was created from 27th December, 1963, the date on which the petitioner was appointed to it. The order of reversion (Annexure A-4) which is challenged by the petitioner was passed on 8th October 1965. By this order the post of Additional Superintending Engineer was abolished and the petitioner was reverted to his substantive post of Divisional Engineer. The order reads as follows:

"No. P. D. I/. The Board is pleased to abolish the post of Additional Superintending Engineer (Civil) M. P. Elec. Board, Korba created vide order No. G. 11/4873, dated" 27-12-1963 with effect from 8-10-1965.

No. P. D. I Consequent on abolition of that post of Additional Superintending Engineer (Civil), Shri K. Dhruva Rao Officiating Additional Superintending Engineer (Civil) is reverted to his substantive post of Divisional Engineer (Civil) and posted as Divisional Engineer (Civil) in charge of Civil Division No. 1 at Korba."

The petitioner who was officiating on the post of Additional Superintending Engineer temporarily until further orders had prima facie no right to complain about the abolition of the post or his reversion. It is, however, contended that the order of abolition of the post resulting in the petitioner's reversion was merely a cloak or device to inflict on the petitioner the punishment of reduction in rank without complying with Rule 55. The entire basis of this argument is a confidential report made by the Chief Engineer (Generation) on 6th October, 1965 and it is submitted that the order of 8th October 1965 was passed on this report. The report contained serious allegations against one A. S. Jha, Divisional Engineer, Korba (Civil Division No. 1) and recommended that he be suspended and departmental enquiry started against him. The last portion of the report that related to the petitioner reads as follows:

"The charge of the Civil Division I will have to be given to Shri Dhruva Rao. His record has also not been clean, but it is not advisable to remove Shri Jha and Dhruva Rao at the same time in the interest of work. Shri Dhruva Rao has not shown any ability to exercise S. E's powers and the extent of work at Korba has also reduced considerably. The Addl. S.E's post may therefore, be abolished and

Shri Dhruva Rao reverted as D. E. (Civil) Division I, He should be put under the administrative control of Shri Goel, P. S. S., 200 MW Power Station. The charge-sheet arising out of all the serious audit objections previously raised may also be issued to put him out of further mischief. The above action against the two Heads of the Civil Organisation at Korba would be sufficient to check further deterioration. The work of audit at Korba is still in progress and action against other subordinates will be taken if any of them are directly found to be responsible for any gross irregularities."

Though disputed by the respondent, we shall assume in favour of the petitioner that the confidential report quoted above led to the abolition of the post and reversion of the petitioner. Even then for reasons indicated below, we are not satisfied that the order as it read was a mere cloak or device and that in reality it amounted to the infliction of punishment of reduction in rank and necessitated an inquiry under Rule 55.

It will be seen that the report of the Chief Engineer quoted above stated that the work at Korba had reduced considerably and that was the reason that he gave for abolition of the post. The petitioner has failed to produce any material to show that the work at the time when the post was abolished had not considerably diminished and that the report of the Chief Engineer in that respect was false. After abolition, the post has so far not been re-created. Moreover, as the petitioner, who was officiating temporarily until further orders could have been reverted to his substantive post even without abolishing the post, it is difficult to understand the suggestion that the post was abolished merely to revert the petitioner. The abolition of the post was an administrative act within the authority of the Board and we are not satisfied that the action was taken with any ulterior object of punishing the petitioner. Then it is argued that the adverse allegations contained in the report of the Chief Engineer made the order of reversion an order of punishment. There is no substance in this argument. The order of reversion (Annexure 4) did not contain any stigma against the petitioner who was not visited with any evil consequence by virtue of the reversion. He no doubt lost the higher emoluments of the officiating post but that was a natural consequence and not an evil consequence of the order of reversion. Reliance on behalf of the petitioner has been placed on *The State of Bihar Vs. Gopi Kishore Prasad*, *Shri Madhav Laxman Vaikunthe Vs. The State of Mysore*, and *P.C. Wadhwa Vs. Union of India (UOI)* and *Another*. In *The State of Bihar Vs. Gopi Kishore Prasad*, the order of discharge of a probationer itself referred to considerations which showed why the Government treated him as corrupt and unsuitable for the post and it was for this reason that the order was held to be an order of punishment and this is how this case is explained in *Jagdish Mitter Vs. The Union of India (UOI)*, at p. 454. In *Shri Madhav Laxman Vaikunthe Vs. The State of Mysore*, an order of reversion for a period of three years was held to be in the nature of punishment as chances of promotion were barred by the order for a period of three years. *P.C. Wadhwa Vs. Union of India (UOI)* and *Another*, is basically distinguishable as it related to the case of an officer belonging to the

Indian Police Service where promotion is a matter of right. Shri Madhav Laxman Vaikunthe Vs. The State of Mysore, and P.C. Wadhwa Vs. Union of India (UOI) and Another, were referred and explained on these grounds in Divisional Personnel Officer, Southern Railway Vs. S. Raghavendrachar, at pp. 1533, 1535. When adverse allegations against an officating employee are contained in confidential reports and do not appear on the face of the order of reversion, it cannot be held that the order amounts to punishment; The State of Bombay Vs. F.A. Abraham, ; Divisional Personnel Officer, Southern Railway Vs. S. Raghavendrachar, and Jasbir Singh Bedi v. Union of India, C. A. No. 1272 of 1966, D/-12-1-1968 = 1968 SCN 47. As observed by Wanchoo, J., in I.N. Saksena Vs. State of Madhya Pradesh, "where there are no express words in the order itself which would throw any stigma on the Government servants we cannot delve into Secretariat files to discover whether some kind of stigma can be inferred on such research"; (I.N. Saksena Vs. State of Madhya Pradesh, at p. 1266). The principle of this case applies to the present case. The order against the petitioner on the face of it is regular and contains no stigma against him and we cannot look into confidential reports to find that the petitioner was in some manner stigmatised and thus punished. In our opinion, the order, Annexure 4, did not amount to reduction in rank and was not defective for want of inquiry under Rule 55.

The next question then is whether the order of dismissal passed against the petitioner was violative of Rule 55 of the Civil Service (Classification. Control and Appeal) Rules. To appreciate the contentions raised in this behalf a few further facts may here be stated. The petitioner by the order of reversion, Annexure 4, was posted as Divisional Engineer In-charge of Civil Division No. 1 at Korba. It seems, however, that the petitioner did not resume duty at Korba, After some correspondence which need not be referred, a departmental inquiry was proposed against the petitioner in June, 1966 on the following charge:

"Shri K. Dhruva Rao. during the period from October 1965 onwards deliberately disobeyed the Board"s orders conveyed to him on several occasions to resume duty at Korba. As his absence from duty was unauthorised and he has thereby acted in a manner unbecoming of an officer of the Board, and committed an act prejudicial to good conduct and subversive of discipline, Shri K. Dhruva Rao has, therefore, rendered himself liable for disciplinary action."

The enquiry officer by his letter dated 27th June, 1966 (Annexure 21) communicated to the petitioner the charge and the statement of allegations on which the charge was based and required the petitioner to submit a written statement of his defence, to state whether he desired to be heard in person, and to furnish the names and addresses of his witnesses and a list of documents which he wished to produce. The petitioner sent a written statement (Annexure A-22) in which he denied the charge but he did not state whether he desired that he should be heard in person. He also did not mention any names of witnesses or furnish any list of documents. After denial of the charge his contention in the

whole of his written statement was that his reversion from the post of Additional Superintending Engineer was illegal. The petitioner was asked again by letter dated 5-11-1966 (Annexure R. 32) to state whether he desired to be heard in person and to furnish the names of witnesses and list of documents on which he wanted to rely in support of his defence. It was also intimated that on failure of the petitioner to reply inquiry proceedings will start ex parte. In reply to this letter the petitioner instead of replying that he wanted to be heard in person and to take part in the inquiry, wrote on 17th November 1966 (Annexure R. 33) that the allegations were baseless and the inquiry should be withdrawn. He was again asked by the Enquiry Officer by letter dated 2nd December, 1966 (Annexure R. 34) to intimate whether he desired to be heard in person. No reply to this letter was sent by the petitioner. The Enquiry Officer, who in the absence of petitioner, proceeded ex parte, did not examine any witnesses as according to him the charge of unauthorised absence from duty was a matter which could be amply substantiated by documents. On the basis of documents produced in the inquiry he came to the conclusion that the charge was proved. The Board then issued a show cause notice to the petitioner (Annexure A. 23) concurring with the findings of the Enquiry Officer and proposing the punishment of dismissal. Finally, the Board passed the order dated 12th June, 1967 (Annexure A-5) dismissing the petitioner from the post of Divisional Engineer.

The contention of the learned counsel for the petitioner is that as the Enquiry Officer did not examine any oral evidence the proceedings were violative of Rule 55. Reliance for this contention is placed on *Anand Narain Vs. State of M.P.*, ; *State of Bombay (Now Maharashtra) Vs. Narul Latif Khan*, and *Jai Shanker Vs. State of Rajasthan*, . In *Anand Narain Vs. State of M.P.*, where the Officer concerned had participated in the inquiry no oral evidence was recorded though the charges were such which could be proved only by oral evidence and there was a misconception that the officer did not desire any oral inquiry and wanted the case to be decided on the basis of the record. In these circumstances it was held by a Bench of this Court that the inquiry was not in conformity with the protection contained in Article 311 of the Constitution. In *State of Bombay (Now Maharashtra) Vs. Narul Latif Khan*, the charge-sheeted officer claimed an oral Inquiry and wanted to examine oral evidence to show that his failure to resume duties was not deliberate but was due to his ill-health, but the Enquiry Officer did not hold any oral inquiry and it was held that the inquiry was not in accordance with Rule 55 of Civil Service (Classification, Control and Appeal) Rules. In *Jai Shanker Vs. State of Rajasthan*, the officer concerned who over-stayed his leave was discharged from service without any inquiry and without issue of any show cause notice in terms of a regulation and it was held that the termination of service amounted to punishment and was invalid for want of compliance of Article 311(2) of the Constitution. In the instant case, as already pointed out, the petitioner who was noticed of the charge was thrice asked to state whether he wanted an oral inquiry and to produce witnesses and documents and the petitioner avoided to give any answer. The Enquiry Officer in ex parte

proceedings thought that the charge of unauthorised absence from duty was amply substantiated by the documentary evidence produced on behalf of the Board and no oral evidence from the side of the Board was necessary. It has not been contended that the charge in the present case was such which would not have been proved merely by documentary evidence. The question then is whether oral inquiry was essential according to Rule 55. The rule has been construed by the Supreme Court in State of Bombay (Now Maharashtra) Vs. Narul Latif Khan, where it is observed:

"This clause (clause dealing with enquiry in Rule 55.) lays down that if he, that is to say, the charge-sheeted officer, so desires or if the authority concerned so directs an oral enquiry shall be held. In our opinion It is plain that the requirement that an oral inquiry shall be held if the authority concerned so directs or if the charge-sheeted officer so desires is mandatory. State of Bombay (Now Maharashtra) Vs. Narul Latif Khan, at p. 274).

Oral inquiry according to Rule 55 is necessary when it is either desired by the charge-sheeted officer or directed by the authority concerned. Further, oral inquiry may also be necessary where the charge is such which in itself requires oral evidence for its proof. Having regard to the facts of this case, which have already been stated, none of these conditions existed. It, therefore, cannot be said that the departmental enquiry held against the petitioner was violative of Rule 55.

Lastly it has been urged that the charge of absence from duty had already been condoned by the Board and, therefore, the petitioner was wrongly punished on that charge. Reference in this connection is made to a letter of the Board, dated 18th March, 1966 (Annexure A-17) which reads as follows:

"In continuation of this office endt. No, PD-I/993, dated 16-3-1966, this is to inform you that you are permitted to resume duty without prejudice to any action, the Board may take against you for absconding from duty etc."

It is difficult to understand how the aforesaid letter amounted to condonation. In that letter itself the Board reserved its right to take disciplinary action against the petitioner. The petitioner did not act upon the letter and resume his duties, This letter had no effect at all on the subsequent disciplinary proceedings. Moreover, if the petitioner wanted to show that the charge levelled against him had been condoned and, therefore, he cannot be punished he should have participated in the inquiry and proved this defence. The petitioner's attitude is amply borne out by his letter dated 28-11-1965 (Annexure A-12) where he complained about his reversion and expressed his inability to serve on the lower post of Divisional Engineer.

This petition fails and is dismissed with costs. The outstanding amount of security, if any, will be refunded to the petitioner. Counsel's fee Rs. 150, if certified.