
(1967) 05 AHC CK 0016
In the Allahabad High Court

Muhammad Akhtar

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-05-1967

Acts Referred:

COMPANIES ACT, 1956 — Section 237

Constitution of India, 1950 — Article 154, 166, 309, 310, 311

Citation : (1967) 2 LLJ 767

Hon'ble Judges : Satish Chandra, J

Bench : Single Bench

Judgement

Satish Chandra, J.—The petitioner wants that the order passed by the President of India on 5 November 1966 removing the petitioner from service be quashed.

2. The petitioner was confirmed In the post of clerk, grade II, in the Accounts Department of the Northeastern Railway, Gorakhpur in 1957. He was posted in the office of the Financial Adviser and Chief Accounts Officer, Gorakhpur when he was served with the impugned order stating that he is being removed from service with effect from 22 November 1966. The impugned order reads as follows:

The President is satisfied that the retention of Muhammad Akhtar, clerk, grade II, Traffic Accounts Branch, Financial Adviser and Chief Accounts Officer's office, Northeastern Hallway, Gorakhpur in service is prejudicial to national security and that the said Muhammad Akhtar ought to be removed from service.

2. The President is further satisfied under Sub-clause (c) of the proviso to Clause (2) of Article 311 of the Constitution that in the Interest of the security of the State, It is not expedient to bold an enquiry in the case of the said Muhammad Akhtar.

3. Accordingly, the President hereby removes the and Muhammad Akhtar from service with effect from 22 November 1966.

This order has been challenged on the ground that it levels a charge against the

petitioner, namely, that the retention of his service is prejudicial to national security. The Railway Services (Safeguarding of National Security) Rules, 1954, framed under Article 309 of the Constitution provide that on such a charge an opportunity of explanation shall be given. The petitioner has not been given any such opportunity. The order hence is on that account Illegal. Learned Counsel has urged that the rules framed under Article 309 of the Constitution control the pleasure conferred on the President by Article 310. The pleasure can be exercised only in accordance with the rules framed under Article 309. He has placed reliance upon a Full Bench decision of Jammu and Kashmir High Court in D. N. Dhar v. State of Jammu and Kashmir AIR 1964 J. & K. 92, This decision does lend support to the submission of learned Counsel. But with respect it does not seem to lay down the correct law. In State of Uttar Pradesh v. Babu Ram Upadhyaya AIR 1961 B.C. 751, the Supreme Court laid down the following propositions (vide Para. 22):

The discussion yields the following results:

- (1) In India every person who is a member of a public service described in Article 310 of the Constitution holds office during the pleasure of the President or the Governor, as the case may be, subject to the express provisions therein.
- (2) The power to dismiss a public servant at pleasure is outside the scope of Article 154 and, therefore, cannot be delegated by the Governor to a subordinate officer, and can be exercised by him, only in the manner prescribed by the Constitution,
- (3) This tenure is subject to the limitations or qualifications mentioned in Article 311 of the Constitution.
- (4) The Parliament or the Legislatures of States cannot make a law abrogating or modifying this tenure so as to impinge upon the overriding power conferred upon the President or the Governor under Article 310 as qualified by Article 311.
- (5) The Parliament or the Legislatures of States can make a law regulating the conditions of service of such a member which includes proceedings by way of disciplinary action, without affecting the powers of the President or the Governor under Article 310 of the Constitution read with Article 310 thereof.
- (6) The Parliament and the Legislatures also can make a law laying down and regulating the scope and content of the doctrine of "reasonable opportunity" embodied in Article 311 of the Constitution but the said law would be subject to Judicial review.

The pleasure conferred on the President by Article 310 is subject to only Article 311, It cannot be abrogated or modified by law made by the Parliament. The law made by Parliament cannot affect the pleasure of the President under Article 310. The rules framed under Article 309 also cannot impinge upon the overriding power conferred upon the President by Article 310. In Para. 20 the Supreme Court specifically dealt with rules framed under Article 309 and held that a law

made by the appropriate legislature or the rules made by the President or the Governor, as the case may be, under the said article may confer a power upon a particular authority to remove a public servant from service but the conferment of such a power does not amount to a delegation of the Governor's pleasure. There cannot be conflict between the exercise of the Governor's pleasure under Article 310 and that of an authority under the statute, for the statutory power would be always subject to the overriding pleasure of the Governor. The rules under Article 309, therefore, cannot touch or affect the President's pleasure under Article 310. In this context the Supreme Court said that the pleasure of the President under Article 310 can be, exercised by him personally and that it cannot be delegated.

3. In *Moti Ram Deka etc. Vs. General Manager, N.E.F. Railways, Maligaon, Pandu, etc.,*, the Supreme Court held at p. 475 that:

These rules, and indeed, the exercise of the powers conferred on the delegate must be subject to Article 310, and so, Article 309 cannot impair or affect the pleasure of the President or the Governor therein specified. There is thus no doubt that Article 309 has to be read subject to Articles 310 and 311, and Article 310 has to be read subject to Article 311. It is significant that the provisions contained in Article 311 are not subject to any other provision of the Constitution. Within the field covered by them, they are absolute and paramount.

This decision of the Supreme Court was followed in this Court in *Sri Kedar Nath Pandey Vs. State of Uttar Pradesh and Another*, .

4. For the petitioner reliance was placed upon a decision of the Patna High Court. *Tarak Nath Ghosh Vs. The Government of India, Ministry of Home Affairs and Others*, . There *Mishra, J.*, held that the pleasure of the President means that no employee can necessarily insist upon continuation in the office if the President would not like to retain such a person in Government employment. If his services are terminated against law, he should be entitled to claim any other relief but not necessarily reinstatement, in the office he was occupying before. These observations do not help the petitioner. He wants that the order of removal from service be quashed. He wants his office back. *Mishra, J.*, further observed that:

The contention that the rules are subject to Article 310 of the Constitution in the sense that they do not contain the entire provision in regard to the penalty and procedure, etc., in disciplinary matters of the members of the civil service, etc., cannot be accepted.

This opinion was not shared by *Tarkeshwar Nath, J.*, the other member of the Bench. He held that Article 310 was subject to the exception expressly provided in the Constitution. It is not subject to the Acts or the rules that may be framed under Article 309. With respect, I am not in agreement with the observations of *Mishra, J.* The rules framed under Article 309 do not deal with the subject-matter of Article 310 at all, namely, the pleasure of the President or of the Governor. They cannot affect that pleasure. They are designed to regulate the conditions of

service, which regulation is subject to the overall pleasure of the President or the Governor. The provisions in the Railway Services (Safeguarding of National Security) Rules, 1954, for an opportunity of explanation on a charge relating to national security hence cannot affect the President's pleasure under Article 310 of the Constitution.

5. In any event the impugned Order 18 not one under Article 310 simpliciter. The order has been passed in compliance with Article 311. Proviso (c) to Article 311(2) says that where the President or the Governor, as the case may be, is satisfied that in the interest of security it is not expedient to hold such an enquiry, then Clause (2) of Article 311 will not apply. The impugned order states that the President was satisfied that in the interest of security of the State it is not expedient to hold an enquiry in the case. The impugned order, therefore, fulfils the requirements of Article 311. It has not been suggested by the learned Counsel for the petitioner, and in my opinion it cannot be suggested, that the Railway Services (Safeguarding of National Security) Rules, 1954, can override the provisions of Article 311 of the Constitution. Under proviso (c) an employee is deprived of the reasonable opportunity provided by Article 311(2). The rules under Article 309 are meant and intended to work out the constitutional guarantee of reasonable opportunity conferred by Article 311(2), but, when this guarantee is itself removed by proviso (c), the rules which only prescribe the mode of giving that opportunity, can no longer govern the rights of the employee. The procedure ceases to be applicable when the substantive right does not exist. See *B. Eswaraiah v. State of Andhra Pradesh* AIR 1958 A.P. 288.

6. In *Jagdish Dajiba Vs. The Accountant-General of Bombay and Others*, it was held that a rule under Article 309 does not mean that the President has given up his powers under Article 310, and, the President having passed an order by virtue of his powers under Article 310 read with proviso (c) to Clause (2) of Article 311, the said order cannot be challenged by applying to it the provisions of Civil Services (Classification, Control and Appeal) Rules. The impugned order, therefore, cannot be held to be illegal on the ground that the Railway Services (Safeguarding of National Security) Rules, 1954, were contravened.

7. The next submission of the learned Counsel was that the President could exercise the power under Article 310 personally. This power cannot be delegated by him. Reliance has, for this proposition, been placed on the second proposition in *Babu Ram Upadhyaya case* A.I.R. 1931 S.C. 751 mentioned above. The impugned order is not in exercise of the pleasure conferred by Article 310 simpliciter. The order has been passed in compliance with Article 311. The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya, was not in respect of proviso (c) to Article 311(2). The power conferred on the President by that proviso has been held to be the executive power of the State. In *Narendra N. Das Vs. State of West Bengal*, it was held that.

The satisfaction contemplated under proviso (c) is not the personal satisfaction of the Governor but is the satisfaction of the Government. Security of the State is

the most essential executive act of the State and as such is a matter which is a responsibility not of the Governor but that of the Government. Such act cannot but be the responsibility of the Government and not the personal responsibility of the Governor. It was held that the order dismissing a Government servant under Article 311 issued in the name of the Governor and duly authenticated by a Secretary of the Government is in compliance with Article 166(2).

I am In agreement with this view-point. On facts, the petitioner had not established that there was any delegation. The counter-affidavit states that the President was satisfied and he passed the order.

8. The last submission of the learned Counsel was that there was no material on the basis of which the President could be satisfied that in the interest of the security of the State it was not expedient to hold an enquiry under Article 311(2). No such averment has been made. In the petition it has been stated that the petitioner Is a law-abiding peaceful citizen of this country and lie has no relations with any foreign country or In any foreign country. He is not a member of any political, social or cultural organization. He does not do anything else except performs the prayers five times or attends religious discourses. In *B. Eswaraiah v. State of Andhra Pradesh* AIR 1958 A.P. 288 (vide supra) Subba Rao, C.J., held that the said power is not circumscribed by any objective standard and, therefore, It cannot be questioned In a Court of law except on the ground of mala fides. Similarly in *Jagdish Dajiba Vs. The Accountant-General of Bombay and Others*, it was held that the satisfaction of the President was not justiciable. Proviso (c) requires the satisfaction of the President about the expediency of not/ giving an opportunity to the employee concerned in the interest of the security of the State. To make such a matter justiciable, would mean that the Court should also be satisfied about its expediency. This would amount to substituting the satisfaction of the Court in place of the satisfaction of the President. If Courts were to demand proof of such satisfaction and the evidence of material on which the satisfaction is reached the Courts would be virtually depriving the President of the powers and confidence which the Constitution in Its welcome has reposed in the President. Those observations were followed by the Calcutta High Court; in the case of *Narendra N. Das Vs. State of West Bengal*, .

9. For the petitioner reliance was placed upon the case of *The Barium Chemicals Ltd. and Another Vs. The Company Law Board and Others*, , u/s 237(b) of the Companies Act, 1956, the Central Government could order an Investigation if in its opinion the circum-stances set out in Sub-clause (i), (ii) or (iii) of that provision existed. The Supreme Court held that the opinion of the Central Government on which such an order could be passed being subjective could not be challenged on the ground of propriety or sufficiency but it could be challenged on the ground of mala fides or on the ground that it was beyond those limits mentioned in 01. (i), (ii) or (iii) or was passed on grounds extraneous to the legislation or if there are no grounds at all for passing it or if the grounds are such that no one can reasonably arrive at the opinion or satisfaction requisite

under the legislation. In these situations it could be said that the authorities did not honestly form the opinion or that in forming it they did not apply their mind to the relevant facts. This case is inapplicable. There the formation of the opinion was restricted by legislative provisions. The opinion had to be relevant to and within the content of the provisions. That case does not deal with a constitutional provision. Clause (c) of the proviso to Article 311(2) confers power on the President to his subjective satisfaction. Such a constitutional conferment of power is not justiciable at all. Moreover, on facts no materials have been placed to suggest that the President was not satisfied or that the President did not apply his mind to the question. The petitioner has only alleged that in fact no orders had been passed by the President satisfying himself that it is not expedient in the interest of the security of the State to hold an enquiry. This is not an allegation that there were no materials or that the President did not satisfy himself. The petitioner's grievance is that the President has not passed any order to that effect and not that the President was not satisfied. This allegation has been denied in the counter-affidavit where it is stated that the President was satisfied that in the interest of security of the State it is not expedient to hold an enquiry. It has also been stated that the impugned order was passed by the President. There is nothing to disbelieve this statement in the counter-affidavit.

10. It has also been alleged that the petitioner did not commit any subversive act and the authorities, merely to terminate the services of the petitioner, have acted mala fide in removing the petitioner from service under the garb of the national security. No material has been placed in support of this bald allegation. There is no suggestion that there was any ill-will between the petitioner and the President of India or the Deputy Director, Railway Board, who was authenticated the impugned order. This allegation seems to be perverse.

11. In the result, the petition falls and is dismissed with costs.