

**(1974) 02 CAL CK 0024**  
**In the Calcutta High Court**

Nirmal Kanti Kanjilal

APPELLANT

Vs

Senior Manager, Post and Telegraph Motor Service

RESPONDENT

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**Date of Decision :** 07-02-1974

**Acts Referred:**

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

**Citation :** (1974) 02 CAL CK 0024

**Hon'ble Judges :** Sankar Prasad Mitra, C.J.;Sabyasachi Mukherjee, J

**Bench :** Division Bench

**Advocate :** Somnath Chatterjee, Mahitosh Majumdar and Ajoy Kumar Das, for the Appellant;Balai Chandra Ray, for the Respondent

**Final Decision :** Allowed

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## Judgement

1. The appellant was serving as a temporary M.V. Mechanic skilled in the post and Telegraph Motor Service, Calcutta. A police case was started against him. The senior Manager of the Motor Service placed him under suspension in the exercise of his powers under Rule 10 (1) of the Central Civil Service (Classification, Control and Appeal) Rules, 1965. On the 21st September 1970, the order of suspension was revoked and on that date the senior Manager in pursuance of the proviso to sub-rule (1) of Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965 terminated his services and directed that he would be paid the sum equivalent to the amount of pay and allowance for the period of one month in lieu of the period of notice. The appellant made representations against the order but did not succeed.

2. The appellant obtained this Rule challenging his termination of service by the aforesaid order of the 21st September, 1970. The Rule ultimately came up for hearing before Mr. Justice Chittatosh Mokerjee. His Lordship by his judgment and order dated the 20th January, 1972, has discharged the Rule. This appeal is directed against the said judgment and order.

3. It is common case that the appellant was a temporary Government Servant

who was not in quasi-permanent service. The respondent's case is, as we have said, that his service had been terminated under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. Rule 5 is as follows: -

(5) (1) (a) - The service of temporary Government servant who is not in quasi-permanent service shall be liable to termination at any time by a notice in writing given either by the Government servant to the appointing authority or by the appointing authority to the Government servant:

(b) The period of such notice shall be one month;

Provided that the service of any such Government servant may be terminated forthwith by payment to him of a sum equivalent to the amount of his pay plus allowances for the period of the notice at the same rates at which he was drawing them immediately before the termination of his services or as the case may be for the period by which such notice falls short of one month.

4. It is urged on behalf of the respondents that the order of termination under challenge is not hit by the provisions of Article 311(2) of the Constitution. It is not a case of dismissal as contemplated by the said Sub-Article. Before the order was passed, a review was made of the entire service career of the appellant and it was found that he was unsuitable for the post. That is why, according to the respondents, his services were terminated by the aforesaid order.

5. When the application was heard before Mr. Justice Chittatosh Mookerjee, his Lordship looked into the relevant records and directed that two papers from the appellant's personal file be produced and marked as Exhibits X and Y. Ext. X is a report of the Deputy Manager to the Senior Manager. This report deals with the case of the appellant and another officer called Asfaque Ahmed. It refers to the incident of the theft of a radiator on the 23rd August, 1970, as well as to previous service records of the officers concerned. Towards the concluding portion the Deputy Manager states:

Under the above circumstances we may come to the conclusion that these two officials for their records of bad character and conduct and for their involvement in such a serious offence of stealing the Government properties have rendered themselves unsuitable for further retention in service for the sake of maintaining the discipline in the organization and may perhaps be weeded out from service as early as possible \*\*\*

The report of the Deputy Manager was made on the 19th September, 1970. The senior Manager considered the report on the 20th September, 1970 and Ext. Y is the record of the findings made by the Senior Manager. We quote below the relevant extracts from Ext. Y :

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That Sarvashri Kanjilal and Asfaque Ahmed had been on duty in the garage till as late as the hour immediately after which they had been apprehended by the

police at the gate on that date and that they had managed to remain on duty even beyond their normal working hours after 5 p.m. in the evening amply confirms their direct involvement for committing the theft for which they had to overstay in the garage in order to get through their plans unnoticed by other colleagues of their who had all left the garage by then excepting for the shift duty of skeleton staff. The radiator has thus been taken out from the unserviceable godown under the heavy coverage of marked vehicles in front of the room (especially during such a holiday)\*\*\*

Also the past working conduct of these two officials would indicate that they had been suspected for several other acts involving moral turpitude and the present act of thieving the radiator is a crowning event meriting deterrent action against them. As such in my opinion it is dangerous to entertain such elements in employment without detriment to the cause of service or Government property inside. Inasmuch as these officials have not even been made quasi permanent in view of their post unsatisfactory work and conduct, as per the note of the Head Clerk their services are ordered to be terminated under Rule 5 of CCS (TS) Rules, 1965

6. The order of termination, as we have already stated, was passed on the 21st September, 1970.

7. Several Supreme Court decisions have been placed before us dealing with the law applicable to such cases. The decisions are reported in (1) State of Punjab and Another Vs. Shri Sukh Raj Bahadur, , (2) The State of Bihar and Others Vs. Shiva Bhikshuk Mishra, , (3) R. K. Bhatt v. Union of India and others, 1970 SLR 867 (4) Appar Apar Singh v The State of Punjab and others, 1970 SCC 338, (5) K.H. Phadnis Vs. State of Maharashtra, , (6) Union of India v. Raj Kumar Gujral, 1970 SLC 82.

8. In the (1) State of Punjab and Another Vs. Shri Sukh Raj Bahadur, at page 1094 the following propositions have been stated:

1. The services of a temporary servant or a probationer can be terminated under the rules of his employment and such termination without anything more would not attract the operation of Article 311 of the Constitution.
2. The circumstances preceding or attendant on the order of termination of service have to be examined in each case, the motive behind it being immaterial.
3. If the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant.
4. An order of termination of service in unexceptionable form preceded by an enquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service, does not attract the operation of Article 311 of the Constitution.

5. If there be a full-scale departmental enquiry envisaged by Article 311, i.e. an Enquiry Officer is appointed, a charge-sheet submitted, explanation called for and considered, any order of termination of service made thereafter will attract the operation of the said Article.

9. So far as this case is concerned, it is argued on behalf of the respondents that the order of the 21st September, 1970, is an order of termination of service of a temporary servant under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1965. It is an order in an unexceptionable form which was preceded by an enquiry launched by the superior authorities only to ascertain whether the appellant should be retained in service. And since the appellant was found to be unsuitable the order had to be made. The order, therefore, cannot be challenged as being in contravention of Article 311 (2) of the Constitution.

10. On behalf of the appellant it is stated that we have to examine the circumstances preceding or attendant on the order of termination of service. And when we do so, we find that the immediate cause of the order of termination was the finding that the appellant had committed theft of the radiator.

11. From the trend of the Supreme Court decisions referred to above, it appears that in cases like these the court has to ask itself the following questions;

1. Where there are any charges against the Government servant?

2. If so, was the order of termination made because of these charges? In other words, in the absence of the charges would the order have been made at all?

12. If the answer to the first question is in the affirmative and the second position is in the negative, the order has to be struck down if the procedure indicated by Article 311 (2) is not followed.

13. In the instant case, if the Senior Manager had taken into consideration the past records of the appellant as well as the incident of disappearance of the radiator and had come to the conclusion that the appellant was unsuitable for retention in service, no exception could be taken to the order of termination. But unfortunately in Ext. Y, as we have pointed out he has made certain observations which indicate his definite finding that the appellant had committed the theft. This finding was arrived at without giving to the appellant an opportunity of being heard. And there is no doubt, on the facts and in the circumstances of this case, that this finding is the principal ground for the order of termination of service. That being the position, this order had to be struck down.

14. The appeal, therefore, is allowed. The judgment and order appealed from are set aside. The Rule is made absolute. Let appropriate Writs be issued. There will be no order as to costs.

15. But we make it clear that this order of ours will not, under any circumstances, prevent the respondents from taking action against the appellant in accordance with law.

16. Let the operation of this order remain stayed for four weeks from this date.

Mukharji, J.

17. I agree.