

(1992) 12 PAT CK 0001

In the Patna High Court

Case No : Civil Appeals No's. 464-466 of 1982

P.V. Srinivasa Sastry and Others

APPELLANT

Vs

Comptroller and Auditor General and Others

RESPONDENT

Date of Decision : 11-12-1992

Acts Referred:

Constitution of India, 1950 — Article 311, 311(1), 311(2)

Citation : (1992) 12 PAT CK 0001

Hon'ble Judges : N.P. Singh, J;N.M. Kasliwal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

N.P. Singh, J.—These appeals have been filed against the Orders passed by the High Court dismissing the writ applications, filed on behalf of the these appellants, questioning the validity of their reversion from the posts of Auditors to the posts of Lower Division Clerks. Appellants, P.V. Srinivasa Sastry and M. Mahadeva Setty, had been appointed as Upper Division Clerks by process of direct recruitment in the year 1963. So far the appellant P. Gangireddy is concerned, he had been appointed initially as a Lower Division Clerk. They were working as Auditors in the year 1975. Departmental proceedings were initiated against them, for having withdrawn amounts in an illegal manner in connection with Leave Travel Concession. On 30th January, 1976, final orders were passed in the aforesaid proceedings, imposing the penalty of reduction in rank, by reverting them from the posts of Auditors to the posts of Lower Division Clerks.

2. Mr. Ganesh, the Learned Counsel appearing for appellants, submitted that the disciplinary proceedings, as well as the final orders of punishment against the appellants, have been vitiated, in view of the fact that the disciplinary proceedings have been initiated by Senior Deputy Accountant General instead of the Accountant General who was the appointing authority of the appellants. According to him, the whole exercise on the part of the respondents was violative of Article 311 of the Constitution and the appellants have been deprived of the

guarantee ensured to the holders of the civil posts under the State.

3. Article 311 (1) says that no person who is a member of a civil service of the Union or an all-India service or a civil service of a State or holds civil post under the Union or a State "shall be dismissed or removed by an authority subordinate to that by which he was appointed". Whether this guarantee includes within itself the guarantee that even the disciplinary proceeding should be initiated only by the appointing authority ? It is well known that departmental proceeding consists of several stages; the initiation of the proceeding, the inquiry in respect of the charges levelled against that delinquent officer and the final order which is passed after conclusion of the inquiry. Article 311 (1) guarantees that no person who is a member of a civil service of the Union or a State shall be dismissed or removed by an authority subordinate to that by which he was appointed. But Article 311 (1) does not say that even the departmental proceeding must be initiated only by the appointing authority. However, it is open to Union of India or a State Government to make any Rule prescribing that even the proceeding against any delinquent officer shall be initiated by an officer not subordinate to the appointing authority. Any such Rule shall not be inconsistent with Article 311 of the Constitution because it will amount to providing an additional safeguard or protection to the holder of a civil post. But in absence of any such Rule, this right or guarantee does not flow from Article 311 of the Constitution. It need not be pointed out that initiation of a departmental proceeding per se does not visit the officer concerned with any evil consequences, and the framers of the Constitution did not consider it necessary to guarantee even that to holders of civil posts under the Union of India or under the State Government. At the same time this will not give right to authorities having the same rank as that of the officer against whom proceeding is to be initiated to take a decision whether any such proceeding should be initiated. In absence of a Rule, any superior authority who can be held to be the controlling authority, can initiate such proceeding.

4. In the case of State of Madhya Pradesh and Others Vs. Shardul Singh, , the departmental enquiry had been initiated against the Sub-Inspector of Police by the Superintendent of Police, who sent his enquiry report to the Inspector-General, who was the appointing authority. The Inspector-General of Police dismissed the officer concerned from the service of the State Government. That order was challenged on the ground that the initiation of the departmental enquiry by the Superintendent of Police was against the mandate of Article 311 (1) of the Constitution. This contention was accepted by the High Court. But this Court said?

We are unable to agree with the High Court that the guarantee given under Article 311 (1) includes within itself a further guarantee that the disciplinary proceedings resulting in dismissal or removal of a civil servant should also be initiated and conducted by the authorities mentioned in that Article.

5. Reliance was placed on behalf of the appellants on the judgment of this Court in the case of Scientific Adviser to the Ministry of Defence and Others Vs. S.

Daniel and Others, . From the aforesaid judgment it shall appear that Rule 13 of the Central Civil Services (Classification, Control and Appeal) Rules, which was under consideration specifically provided:?

13. Authority to institute proceedings.?(1) The President or any other authority empowered by him by general or special order may?

(a) institute disciplinary proceedings against any Government servant;

Although Article 311 of the Constitution does not speak as to who shall initiate the disciplinary proceedings but, as already stated above, that can be provided and prescribed by the Rules. But if no Rules have been framed, saying as to who shall initiate the departmental proceedings, then on basis of Article 311 of the Constitution it cannot be urged that it is only the appointing authority and no officer subordinate to such authority can initiate the departmental proceeding. In the present case, it was not brought to our notice that any Rule prescribes that the Accountant General, who is the appointing authority, alone could have initiated a departmental proceeding.

6. It was then urged that even if it is held that the departmental proceeding could have been initiated by the Senior Deputy Accountant General, the Accountant General while imposing the punishment of reduction in rank could not have reverted the appellants from the posts of Auditors to the posts of Lower Division Clerks. According to appellants, P.V. Srinivasa Sastry and M. Mahadeva Setty had been appointed against the posts of Upper Division Clerks by process of direct recruitment, as such they cannot be reverted to the posts of Lower Division Clerks i.e. below the rank of the posts to which they had been appointed initially by process of direct recruitment.

7. The expression "reduction in rank" in Article 311 (2) has an obvious reference to different grades in service. Whenever there is a reduction in rank it implies reversion from a higher post to a lower post. Reversion from a higher post to a lower post may be under exigencies of situation or by way of punishment. The expression "reduction in rank" occurring in Article 311 (2) covers only such reversions which are by way of punishment. The expression "reduction in rank", within the meaning of Article 311 (2) as the expression itself suggests, means reduction from a higher to a lower rank or post. But whether in this process an officer can be reduced from a higher rank or a post to a rank to which he never belonged and to a post which he never held ? If the power to reduce an officer by way of punishment to a rank which was never held by such officer is conceded, then a person directly appointed as Upper Division Clerk cannot only be reverted to the post of Lower Division Clerk, but even to the post of a Peon; an Engineer to the post of a Fitter, a Head-Master of a School to the post of an Accountant or Clerk in the said School. As such even while imposing the punishment of reduction in rank, the order must have nexus with the post held by the delinquent officer concerned, from which he had been promoted to the post from which he is being reverted, if such an officer had not held that post or was not

member of that cadre then he cannot be reverted to a lower cadre to which he did not belong or to a lower rank which he did not hold at any stage.

8. this Court in the case of Nyadar Singh Vs. Union of India (UOI) and Others, , in connection with Rule 11 (vi) of the Central Civil Services (Classification, Control and Appeal) Rules, 1965 said.

The argument that the rule enables a reduction in rank to a post lower than the one to which the civil servant was initially recruited for a specified period and also enables restoration of the Government servant to the original post, with the restoration of seniority as well, and that, therefore, there is nothing anomalous about the matter, does not, in our opinion, wholly answer the problem. It is at best one of the criteria supporting a plausible view of the matter. The rule also enables an order without the stipulation of such restoration. The other implications of the effect of the reduction as a fresh induction into a lower grade, service or post not at any time earlier held by the Government servant remain unanswered. Then again, there is an inherent anomaly of a person recruited to the higher grade or class of post being asked to work in a lower grade which in certain conceivable cases might require different qualifications... ..But, an overall view of the balance of the relevant criteria indicates that it is reasonable to assume that the rule making authority did not intend to clothe the disciplinary authority with the power which would produce such anomalous and unreasonable situations. The contrary view taken by the High Courts in the several decisions referred to earlier cannot be taken to have laid down the principle correctly.

We are in respectful agreement with the aforesaid view.

9. So far the facts of the present case is concerned a very anomalous situation has arisen. The two appellants as already stated above had been appointed by process of direct recruitment to the posts of Upper Division Clerk which posts have been re-designated as Auditor. Admittedly, they did not hold at any stage the posts of Lower Division Clerk. In this background it was not open to the Disciplinary Authority to pass an order of reduction in rank reverting them to the posts of Lower Division Clerk. Normally, we would have quashed the order of punishment imposed against them and directed the Disciplinary Authority to apply his mind afresh on the question of imposing a penalty against the appellants afresh. But it appears that the punishment was imposed as early as in January, 1976 and it has been stated that they have been restored to the posts of Auditor w.e.f. 1st February, 1981 after expiry of period of five years. It has also been pointed that in process of the aforesaid reversion to the posts of Lower Division Clerk, they have suffered monetary loss which runs into several thousand rupees. Mr. Ganesh, the Learned Counsel, suggested that instead of directing the Disciplinary Authority to consider the question afresh in respect of imposition of the punishment if the order of reversion is quashed, no consequential direction be given regarding payment of any amount which the said appellants will be entitled. Accordingly, the appeal is allowed to the extent

that orders of reduction in rank passed against the appellants, P.V. Srinivasa Sastry and M. Mahadeva Sttey, are quashed. However, we make it clear that the said appellants shall not be entitled to claim any amount as monetary loss for the period they were holding the posts of Lower Division Clerk as a result of the impugned order. They will be deemed to be holding the posts of Auditor throughout for purpose of their seniority and other benefits. Coming to the case of P. Gangireddy, the appellant in the third appeal, as already stated above, he had initially been appointed as a Lower Division Clerk. By the impugned order he has been reverted from the post of Auditor to the post of Lower Division Clerk by way of punishment. As he had been appointed to the post of Lower Division Clerk from which post he was promoted to the post of Upper Division Assistant/Auditor, the plea available to the other two appellants is not available to him. By way of punishment certainly he could have been reverted from the higher post of Upper Division Assistant/Auditor to the post of Lower Division Clerk which post he held before his promotion. In that view of the matter there is no merit in his appeal and it is accordingly dismissed. But in the circumstances of the case there shall be no order as to costs.