

(1957) 12 AHC CK 0026
In the Allahabad High Court
Case No : Civil Misc. (Writ) No. 1485 of 1956

Ramesh Chandra

APPELLANT

Vs

State Government of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 23-12-1957

Acts Referred:

Constitution of India, 1950 — Article 16, 311, 311(2)

Citation : AIR 1959 All 47 : (1958) 28 AWR 429

Hon'ble Judges : J. Sahai, J

Bench : Single Bench

Advocate : K.C. Saxena, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

J. Sahai, J.—The petitioner was in permanent government service and was working as court clerk of the Bench of Magistrates at Rajepur in the district of Farrukhabad. On 5-3-1952 he received an order from the officer in charge, collectorate, Far-rukhabad, asking him to submit his explanation about the report of the petitioner's attendance in the rally of Rashtriya Swayam Sevak Sangh volunteers held on 17-2-1952. The petitioner filed an explanation on 6-3-1952. This explanation bears an endorsement by one of the Bench Magistrates which is as follows :

"Submitted to officer in charge with remark that he was on head quarters on 17-2-1952."

On 13-5-1952 a charge sheet was served on the petitioner. He was suspended the same day. The charge is as follows :

"Whereas while you Ramesh Chandra Shukla were, working as court clerk to the Bench Magistrate, Rajepur, and took part in certain political activities which is a contravention of the Government Servants Conduct Rules, the following charges are hereby framed against you :--

1. That you participated in a rally of R. S. S. Sangh volunteers held on 17-2-52 at Palra Park, Farrukhabad and thereby associated yourself with the political party.

2. That you participated in a meeting of the R. S. S. Sangh on 13-4-1952 held at Farrukhabad.

Now, therefore, you are called upon to explain why disciplinary action of the nature of dismissal or otherwise should not be taken against you.

You are directed to put in your written statement on or before 26th May, 1952 before Mr. C. E. David, S.U.O. Kaimganj and state whether you wish to be heard in person and adduce any evidence on your behalf.

Sd. V. Kumar, I.C.S., Collector, 13-5-1952."

2. The petitioner on 22-5-1952 made an application praying that he may be furnished with copies of the statements of persons on whose evidence the charges had been framed. The petitioner in reply received a note which is made annexure 6 to the petition. The note runs as follows :

"The following are the allegations on which charges have been framed against Sri Ramesh Chandra Shukla."

(1) It has been reported by S. I. D. I. S. that Shri Ramesh Chandra Shukla participated in a rally of R.S.S. Sangh volunteer held on 17-2-1952 at Palra Park Farrukhabad and thereby associated himself with the political party. He further attended a meeting of the R.S.S. Sangh on 13-4-1952 held at Farrukhabad.

The above participation of Shri Ramesh Chandra Shukla was witnessed by constable Brahma Nand, and Najmul Hasan of the D.I.S.

A copy of this is being handed over to Shri Ramesh Chandra Shukla as desired by him in his application dated 22-5-52 and he is called upon to submit his written explanation by June 6, 1952.

Sd. C. E. David, P.C.S., Combined Office, Collectorate, Fatehgarh. May 27, 1952."

3. The petitioner made another application on 5th of June, 1952 asking for further clarification of the evidence against him. He was however informed by the officer in charge that all the information had already been communicated to him in the note which I have reproduced above. On 26-6-1952 that petitioner submitted his explanation. On 22-7-52 the enquiring officer Sri C. E. David recorded the statement of constable Braliamanand and adjourned the enquiry to 25-8-52 on which date Brahmanand was cross-examined and constable Najmul Hasan was examined and cross-examined.

The petitioner was called upon to produce his witnesses on 28-10-1952. The petitioner presented himself along with five witnesses before Sri C. E. David and enquiring officer on 38-10-52. It is alleged that Shri David instead of recording the statements of these witnesses himself directed the statements of these

witnesses to be recorded by the Ahalmad and it is alleged that while the statements of these witnesses were being recorded by the Ahalmad Sri David himself left the court room and those statements were not recorded in his hearing but in his absence.

By an order dated 8th February, 1953 the petitioner was informed by Shri David that the charges against him were found proved and he was required to show cause as to why he should not be removed from service.

4. The - petitioner's case is that he was not supplied with a copy of the report of the enquiring officer and he remained ignorant about the matter contained in the said report. The petitioner complains that by not receiving a copy of the enquiring officer's report he was prejudiced; still he submitted an explanation on 15-3-1953. The enquiring officer made the following remark on the petitioner's explanation :

"Collector, I herewith attach the explanation submitted by Ramesh Chandra Shukla on the final notice given to him why he should not be removed from service.

"Shri Shukla is a young man, and in view of his explanation I suggest that it shall be sufficient punishment if he is not given pay for the period of his suspension and strict warning is given to him for the future.

"He could not submit his explanation earlier, as he fell ill".

5. The District Magistrate, however, removed the petitioner from service by his order dated 1-4-1953. The petitioner filed an appeal before the Commissioner which was dismissed. He then filed a revision application before the Board of Revenue which was also dismissed. The petitioner then sent an application to the State Government which was withheld by the Board of Revenue.

6. The grounds on which this petition is founded are that the charges levelled against the petitioner were vague, that he was not supplied with copies of the reports which formed the basis of the charges, that he could not properly cross-examine the witnesses because the reports he had asked for were not supplied to him, that the District Magistrate did not apply his mind to the merits of the petitioner's case and therefore his order is wholly arbitrary, that he was removed from service without a reasonable opportunity being given to him for showing cause against it and lastly that the petitioner was not examined by the enquiring officer and thus was deprived of an opportunity of giving an explanation.

The prayer in the writ petition is that a writ of certiorari or other suitable writ or direction quashing the order of the Collector, Farrukhabad, dated 1-4-53 and the Commissioner's order dated 27-3-54 and the Board's order dated 31-8-55 be issued. During the course of arguments Mr. Sak-sena the learned counsel for the petitioner made an application for permission to urge a ground which was not taken in the petition, i.e., that the Government Servants' Conduct Rules infringe Article 16 of the Constitution of India inasmuch as a member of a political party

is liable to be removed on that ground.

Though no ground specifically was taken to the effect that a person could not be removed from government service only because he attended a meeting of a political party or was a member of a political party, this point was urged by Mr. Saxena in his arguments and I have allowed him to do so.

7. I will first take the ground of Article 16. In my opinion there is no substance in this point. It is in public interest that government servants should not be allowed to join political parties because it is of paramount importance that government servants should be free from all political bias. The petitioner has not been victimised on the ground of religion, caste, race, birth, place of residence, etc. and there is no allegation that there has been any discrimination on any of these grounds.

In my opinion therefore Article 16 would not apply to the petitioner's case. When a government servant enters government service there is an implied contract that he would abide by the rules and conditions of service. He cannot try to avoid the restrictions imposed by the rules and conditions of service by saying that they offend the Constitution of India which recognises fundamental rights in favour of the citizens of this country. -Such restrictions as are imposed by the rules far from being infringement of a fundamental right are fundamental obligations arising out of an implied contract entered into by the petitioner.

The petitioner by his conduct would be deemed to have waived those fundamental rights : see *Krishnan Kutty v. State of Travancore-Cochin* AIR 952 KER 287.

8. I do not think there is any substance in the allegation of the petitioner that he was not supplied with copies of the reports which formed the basis of the charges. The persons who had made reports against him were examined and the petitioner was allowed to cross-examine them. The reports which they had made were not evidence, It is the statement of the witness which is the evidence and the reports could only be used for refreshing the memory.

9. The ground on which I am inclined to agree with the petitioner is that he was removed from service without a reasonable opportunity having been given to him to show cause against the order of removal which was ultimately passed against him. This I say for two reasons. In the first place the report of the enquiring officer, copy of which was not supplied to the petitioner, would have indicated the grounds on which the petitioner's removal was recommended and inasmuch as that was not supplied to the petitioner he had no reasonable opportunity of showing cause against the action proposed. It was held in the case of AIR 1948 121 (Privy Council) that-

"If the civil servant has been through an en- quiry under Rule 55 it would not be reasonable that he should ask for a repetition of that stage, if duly carried out for that would not exhaust his statutory right and he would still be entitled to

represent against the punishment proposed as the result of the findings of the enquiry."

How could the petitioner represent against the punishment proposed as the result of the findings of the enquiry if he never saw the report of the enquiring officer?

10. Another ground on which I say he had no reasonable opportunity of showing cause is that the District Magistrate, who as I have already said above was not the enquiring officer, has observed in the order removing the petitioner as follows : --

"After a thorough enquiry conducted by Sri C. E. David, Deputy Collector, S. D. O. Sadar and after Shri Ramesh Chandra had been given an opportunity of producing defence, the charges framed were found to have been established. He was found guilty being a member of a political party while in government service, and was consequently asked to show cause as to why he should not be removed from service. He submitted a lengthy statement in this connection. At this stage he was asked to show cause as to why the punishment proposed should not be given to him. The question, therefore, of going into the merits of the case does not arise."

In my view the petitioner could urge before the District Magistrate that no case had been made out against him and therefore the notice asking him to show cause why he should not be removed from service be discharged. It was open to the District Magistrate to have considered the merits of the case and agreed with the opinion of the enquiring officer. It was equally open to the District Magistrate to have after reconsidering the merits of the case come to the conclusion that the charges which were found proved by the enquiring officer had not really been proved and thus to have refrained from imposing the punishment which he inflicted upon the petitioner.

The view the District Magistrate took was that he could not consider the question of merits at all. The opportunity of showing cause contemplated by Article 311 is the opportunity after the issuing of the show cause notice and it is always open to a government servant against whom an enquiry has already been held to urge before the dismissing or removing authority that on the basis of the material on the record the proposed punishment should not be awarded to him. Therefore the observations of the District Magistrate that "at this stage he was asked to show cause as to why the punishment proposed should not be given to him. The question, therefore, of going into the merits of the case does not arise" is based on a complete misconception of the provisions of Article 311 of the Constitution of India.

In that view of the matter it must be held that the petitioner had no reasonable opportunity of showing cause against the action proposed. It is thus not one of those cases where there has been any disregard of rules only. It is a case where there has been a clear disregard of the provisions of Article 311 of the

Constitution itself.

11. I therefore allow this petition with costs and quash the order passed by the District Magistrate of Farrukhabad dated 1-4-1953 removing the petitioner from government service as also the orders of the "Commissioner dated 27-3-1954 and of the Board of Revenue dated 31-8-1955 refusing to interfere with the order of the petitioner's removal. I further issue a writ of mandamus directing the respondents to treat the petitioner as in service.