
(1964) 05 P&H CK 0012
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 224-D of 1963

Sohel Singh Gujral

APPELLANT

Vs

The Union of India and Another

RESPONDENT

Date of Decision : 15-05-1964

Acts Referred:

Penal Code, 1860 (IPC) — Section 120B

Citation : (1964) 05 P&H CK 0012

Hon'ble Judges : Shamsher Bahadur, J

Bench : Single Bench

Advocate : Frank Anthony and Charanjit Talwar, for the Appellant; S.N. Shankar, for the Respondent

Final Decision : Dismissed

Judgement

Shamsher Bahadur, J.—The facts on which the decision of this petition for a writ of certiorari must turn are not disputed and may briefly be set out. Sohel Singh petitioner joined the Central Secretariat Service as an Assistant on 15th June, 1948, and gradually acquired a permanent position as Section Officer Grade III from 6th of September 1956. Eventually, as a result of re-organization of different grades, he was appointed a permanent officer of the Section Officers Grade with Class I status with effect from 1st of July, 1960. At the relevant time the petitioner was working as a Section Officer in the Ministry of Defense in December, 1960, though, according to his assertion, his salary being paid from the Civil Services Estimates he could not be regarded a member of the Defense Civilian Services.

2. The petitioner was arrested along with others under the Official Secrets Act on 26th of December, 1960, and in consequence he was placed under suspension by the Ministry of Home Affairs on 10th of January, 1961, and was tried along with two other persons for criminal conspiracy u/s 120-B, Indian Penal Code, and sections 3 and 5 of the Official Secrets Act. The Additional Sessions Judge, trying the case, acquitted the petitioner on 17th of February, 1962, and said about him

that:

I do feel that this hard-working and patriotic officer has been rather harshly dealt with in being prosecuted. The mental torture of an industrious and honest Government servant in being hauled up like this can only be imagined and not described.

The Sessions Judge expressed the hope that the Government "would take steps to properly compensate him for all that he has suffered financially and mentally." The Government filed an appeal against acquittal of Jagjit Singh, a co-accused of the petitioner u/s 3 of the Official Secrets Act, and the ground was taken that the Judge should not have made any eulogistic remarks about the petitioner. This appeal was dismissed in limine by S.B. Kapoor and Gurdev Singh JJ. on 30th of May, 1962.

3. The petitioner thereafter raised the question of his reinstatement but he was served instead with an order of dismissal by the Ministry of Defense on 20th of December, 1962. This order of dismissal, which is sought to be impugned in this certiorari proceedings is Annexure F and purports to have been passed by the Under Secretary in the name of the President, it being stated therein that:

The President is satisfied that the retention of Shri Sohel Singh Gujral, Section Officer in service is prejudicial to national Security and that the said Shri Sohel Singh Gujral ought to be dismissed from service.

In this order of dismissal, the President expressed his satisfaction that under sub-clause (c) of the proviso to clause (2) of Article 311 of the Constitution.

It is not expedient to give the said Shri Sohel Singh Gujral an opportunity to show cause against the action proposed to be taken in regard to him as stated above.

The petitioner was, therefore, dismissed by the President without being afforded an opportunity to show cause against this action. His further representations having proved unsuccessful, the petitioner has invoked the jurisdiction of this Court for having the order of dismissal set aside.

4. The principal argument of Mr. Anthony, the learned counsel for the petitioner, is that the pleasure of the President could not have been delegated and should have been exercised by him personally. It is common ground that the order of dismissal which bears the signatures of the Under Secretary had not been seen by the President at any stage. The learned counsel submits that the eye and ear of the President should have been made cognizant of the order which was passed in his name.

It is conceded that the pleasure of the President is not a justifiable issue but this "pleasure has to be expressed by him personally and cannot be delegated." The second argument of the learned counsel is that even if the President did exercise his pleasure the resultant action is a fraud on his power. Thirdly, it is submitted

by Mr. Anthony that the petitioner having been exonerated under the charge of conspiracy u/s 120-B, Indian Penal Code, could not have been dismissed from service on the same score as a result of departmental action. Finally, the learned counsel has urged that the petitioner's salary being a charge on the Civil Services Estimate could have been dismissed by the Home Minister and not the Defense Minister.

5. In support of his first submission, Mr. Anthony has invited my attention to the authority of the Supreme Court in *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, the respondent Babu Ram in that case had been dismissed from his post of Sub-Inspector by the order of the State Government. A Division Bench of the Allahabad High Court quashed this order on the ground that the provisions of para. 486 of the Police Regulations had not been observed and, therefore, the proceedings taken u/s 7 of the Police Act had consequentially become invalid and illegal. In that case it was argued on behalf of the State of Uttar Pradesh that the power to terminate the service at pleasure under Article 310 of the Constitution is the part of the executive power of the State which under Article 154 can be exercised" by the Governor directly or through officers subordinate to him. In repelling this contention Mr. Justice Subba Rao, speaking for the Court, said at page 769 that "Article 154 of the Constitution speaks of the executive power of the State vesting in the Governor, it does not deal with the constitutional powers of the Governor which do not form part of the executive power of the State." The power to dismiss a public servant at pleasure was stated to be outside the scope of Article 154 and could not be delegated, and had to be exercised in the manner prescribed by the Constitution.

6. In the instant case, it has been stated in the affidavit of the Deputy Secretary, Ministry of Defense, that the business allotted to a Department of the Government of India is disposed of in accordance with the statutory rules under the general or special directions of the Ministers in charge, and these orders are not required to be shown to the President. The order of dismissal had been approved by the Defense Minister who was the Minister in charge for the disposal of the business of the concerned Ministry where the Petitioner was employed. Annexure R. 3 is a copy of the Government of India (Transaction of Business) Rules, and clause 3 says that":

All business, allotted to a department under the Government of India (Allocation of Business) Rules, 1961, shall be disposed of by, or under the general or special directions of, the Minister-in-charge.

In the Government of India (Allocation of Business) Rules, 1961 Entry No. 9, under the Ministry of Defense, relates to "Civilian Services paid from Defense Estimates."

7. The requirement of Article 311 is that no person who is a member of Civil Service of the Union shall be dismissed or removed by an authority subordinate to that by which he was appointed. Under clause (2), he is to be given, a

reasonable opportunity to show cause against the action proposed to be taken. The ease of the petitioner is covered by sub-clause (c) of the proviso to clause. (2) of Article 311, which provides that a reasonable opportunity need not be given "where the President is satisfied that in the interest of the security of the State, it is not expedient to hold such inquiry." According to the affidavit of the Deputy Secretary, Ministry of Defense the President was satisfied that in the interest of the security of the State it was not expedient to give an opportunity to show cause against the action. The order was passed in accordance with the Government of India (Transaction) of Business Rules, 1961. The pleasure of the President was expressed not in contravention of any provisions of the Constitution, nor in derogation of any law nor under the executive power of the Union (Article 77) which was taken exception of by their Lordships of the Supreme Court. As stated by Mr. Justice Bose in *The State of Bombay Vs. Purushottam Jog Naik*,

The Constitution does not require a magic incantation which can only be expressed in a set formula of words. What the Court has to see is whether the substance of the requirements of Article 166(1) is there.

The order which is sought to be impugned in the present instance shows that the case of the petitioner had been examined at the highest level and it was found that the reasonable opportunity contemplated in Article 311 could not be provided. The argument that the President himself had not personally seen the papers does not seem to me to effect the constitutional validity of the order and it is conceded by Mr. Anthony, that the pleasure of the President, is not a matter which is justifiable.

8. The argument of Mr. Anthony that the exercise of the President's pleasure is a fraud on his power does not appear to be convincing. Reference may be made once again to the affidavit of Shri Venugopalan, Deputy Secretary. The petitioner though he had been acquitted of the criminal charge was found to have been "instrumental in unauthorisedly passing on official information vital to the security of the country at least in respect of 21 cases other than those which formed the subject-matter of his prosecution." It is averred in the affidavit that after a careful examination of and on the basis of these facts the President was satisfied that the continued retention of the petitioner in public service would be prejudicial to the security of the State, and that, therefore, in the interest of the security of the State it was not expedient to give him an opportunity as required by Article 311 (2) of the Constitution. The impugned order Annexure F was accordingly passed on 20th of December, 1962, and the President, according to this order, felt satisfied that the retention of the petitioner was prejudicial to the national security.

9. As regards the argument of the learned counsel that the petitioner could have been dismissed by the Home Minister and not the Minister for Defense, it would be necessary to refer to the second affidavit of Mr. Venugopalan, Deputy Secretary, filed in Court on 7th of April, 1964. It is stated therein that since

October, 1962, the Central Secretariat Service upto the Section Officers Grade was decentralized and separate cadres for these grades were constituted Ministry-wise. The control over the staff of the Section Officers was transferred to the administrative Ministries concerned. Matters concerning conduct and discipline including the power to dismiss vest in the respective Ministries.. This is in accordance with the Memorandum. of 28th of September, 1962 (marked Annexure R 4). The petitioner thus came under the administrative control of the defense Minister who under the rules was to dispose of and transact all business relating to the Ministry.

10. This petition must accordingly fail and is dismissed. In the circumstances, I would make no order as to costs.