

(1969) 12 SC CK 0011

In the Supreme Court Of India

Case No : Civil Appeal No. 2554 of 1966

State of Madhya Pradesh and Others

APPELLANT

Vs

Shardul Singh

RESPONDENT

Date of Decision : 02-12-1969

Acts Referred:

Constitution of India, 1950 — Article 309, 311, 311(1)

Citation : (1970) 20 FLR 81 : (1970) 1 SCC 108 : (1970) 3 SCR 302

Hon'ble Judges : K. S. Hegde, J; J. C. Shah, J

Bench : Division Bench

Advocate : I.N. Shroff, for the Appellant; A.K. Sen, M. M. Kshatriya and G.S. Chatterjee, for the Respondent

Final Decision : Allowed

Judgement

K.S. Hegde, J.—Scope of Article 311(1) of the Constitution comes up for consideration in this appeal by certificate. The High. Court of Madhya Pradesh has opined that the power of dismissal and removal referred to in Article 311(1) implies that the authorities mentioned in that Article must alone initiate and conduct the disciplinary proceeding culminating in the dismissal or removal of delinquent officer.

2. The respondent herein was a Sub-Inspector of Police in the State of Madhya Pradesh. A departmental enquiry was initiated against him on the basis of certain charges, by the Superintendent of Police, Surguja, on June 24, 1962. After holding the enquiry as prescribed by the Central Provinces and Bihar Police Regulations, the Superintendent of Police submitted his report to the Inspector-General of Police, Madhya Pradesh through Deputy Inspector-General of Police, Raipur. On the basis of the enquiry held by him, the Superintendent of Police concluded that the respondent was guilty of the charges leveled against him. He recommended his dismissal. After receiving the report of the Superintendent of Police, the Inspector General sent a copy of the same to the respondent and called upon him to show cause why he should not be dismissed from service. The

respondent submitted his explanation. After considering the same, the Inspector General of Police dismissed the respondent from service on November 30, 1963. The respondent's appeal to the Government against the order dismissing him was rejected. Thereafter the respondent moved the High Court under Article 226 of the Constitution to quash the order dismissing him by issuing a writ of certiorari. The dismissal order was challenged on various grounds. The High Court rejected all but one of them. It came to the conclusion that the Superintendent of Police, Surguja was not competent to initiate or conduct the enquiry held against the respondent as he had been appointed by the Inspector-General of Police. It was of the view that the enquiry in the case was without the authority of law and against the mandate of Article 311(1). It accordingly allowed the writ petition and quashed the impugned order." The Superintendent of Police, Surguja initiated and conducted the enquiry against the respondent on the basis of Regulations 228 and 229 of the Central Provinces and Bihar Police Regulations. These Regulations are evidently framed on the basis of Section 241 of the Government of India Act, 1935, a provision which permitted the State Governments to make rules regulating the recruitment and conditions of service of persons appointed to State service. Regulation 228 says:

In every case of dismissal, reduction in rank, grade or pay, or withholding of increment for a period in excess of one year, a formal proceeding must be recorded, by the District Superintendent in the prescribed form, setting forth:

- (a) the charge;
- (b) the evidence on which the charge is based;
- (c) the defence of the accused;
- (d) the statements of his witnesses (if any).
- (e) the finding of the District Superintendent, with the reasons on which it is based;
- (f) the District Superintendent's final order or recommendation, as the case may be.

3. Regulation 229 prescribes that in cases where the District Superintendent is not empowered to pass a final order, he should forward his proposals for the dismissal, removal or compulsory retirement of an officer of and above the rank of Sub-Inspector to the proper authority through the District Magistrate, except in cases where an officer is not serving in a district.

4. There is no dispute that the Superintendent of Police had complied with the requirements of Regs. 228 and 229. The question for consideration is whether the power conferred on the Superintendent of Police under Regs. 228 and 229 is ultra vires Article 311(1).

5. Article 311(1) provides that no person who is a member of Civil Service of the Union or of an All India Service or Civil Service of a State or holds civil post

under the Union or State shall be dismissed or removed by an authority subordinate to that by which he was appointed. This Article does not in terms require that the authority empowered under that provision to dismiss or remove an official, should itself initiate or conduct the enquiry preceding the dismissal or removal of the officer or even that that enquiry should be done at its instance. The only right guaranteed to a civil servant under that provision is that he shall not be dismissed or removed by an authority subordinate to that by which he was appointed. But it is said on behalf of the respondent that that guarantee includes within itself the guarantee that the relevant disciplinary enquiry should be initiated and conducted by the authorities mentioned in the Article. The High Court has accepted this contention. We have now to see whether the view taken by the High Court is correct.

6. Article 310(1) of the Constitution declares that every person who is a member of civil service of a State or holds any civil post in a State holds office during the pleasure of the Governor of a State. But the pleasure doctrine embodied therein is subject to the other provisions in the Constitution. Two other Articles in the Constitution which cut down the width of the power given under Article 310(1) are Articles 309 and 311. Article 309 provides that subject to the provisions of the Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connection with the affairs of the Union or of any State. Proviso to that Article says:

Provided that it shall be competent for the President or such person as he may direct in the case of services and posts in connection with the affairs of the Union, and for the Governor of a State or such person as he may direct in the case of services and posts in connection with the affairs of the State to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under this article, and any rules so made shall have effect subject to the provisions of any such Act.

7. One of the powers conferred under this proviso is to make rules regulating the conditions of service of persons appointed to civil services of the Union or the State as the case may be. The expression "conditions of service" is an expression of wide import. As pointed by this Court in *Pradyat Kumar Bose Vs. The Hon'ble The Chief Justice of Calcutta High Court*, , the dismissal of an official is a matter which falls within "conditions of service" of public servants. The Judicial Committee of the Privy Council in *North West Frontier Province v. Suraj Narain Anand* [1948] L.R.75 IndAp 343 took the view that a right of dismissal is a condition of service within the meaning of the words u/s 243 of the Government of India Act, 1935.

8. Lord Thankerton speaking for the Board observed therein:

apart from consideration whether the context indicates a special significance to

the expression 'conditions of service' their Lordships are unable in the absence of any such special significance, to regard provisions which prescribe the circumstances under which the employer is to be entitled to terminate the service as otherwise than conditions of the service, whether these provisions are contractual or statutory; they are therefore of opinion that the natural meaning of the expression would include such provisions."

In *P. Balakotaiah Vs. The Union of India (UOI) and Others*, this Court proceeded on the basis that a rule providing for the termination of the service of a railway official can be made in exercise of the powers conferred on the Government by Sections 241(2), 247 and 263(3) of the Government of India Act, 1935.

9. The expression 'conditions of service' means all those conditions which regulate the holding of a post by a person right from the time of his appointment till his retirement and even beyond it in matters like pension etc.

10. But for the incorporation of Article 311 in the Constitution even in respect of matters provided therein, rules could have been framed under Article 309. The provisions in Article 311 confer additional rights on the civil servants. Hence 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.

11. In the result this appeal is allowed, the judgment of the High Court is set aside and the writ petition dismissed. In the circumstances of the case we make no order as to costs.