

(1969) 06 CAL CK 0031

In the Calcutta High Court

Case No : Appeal from Original Order No. 22 of 1969

The State of West Bengal and Others

APPELLANT

Vs

Mohammed Murtuza Khan

RESPONDENT

Date of Decision : 09-06-1969

Acts Referred:

Constitution of India, 1950 — Article 226, 311(2)

Citation : 74 CWN 953

Hon'ble Judges : D. Basu, J;Ajoy Kumar Basu, J

Bench : Division Bench

Advocate : P. Banerjee, for the Appellant;A.P. Chatterjee, for the Respondent

Final Decision : Dismissed

Judgement

D. Basu, J.—In this case the State of West Bengal is the appellant seeking to set aside an order of the Court below dated August 26, 1968 (T.K. Basil, J.) by which the order of discharge terminating the services of the respondent, dated February 9, 1965 (annexure B of the Paper Book) was quashed, with leave to the respondents to proceed against the petitioner again according to law, if so advised. The respondent was appointed a sub-inspector of police in the Calcutta Police by an order dated December 11, 1963, which is to be found at annexure A to the Paper Book. It was stated therein that he was to be on probation for a period of two years. The period of two years' probation follows also from the statutory provision in Rule 19 of the Calcutta Suburban Police (Subordinate Ranks Recruitment, Conditions of Service and Discipline) Rules, 1962, which have been framed under the Calcutta Police Act in respect of members of the subordinate ranks of the Police Forces. That the petitioner was a probationer and that he was discharged before completion of the period of probation are not disputed in this case. The order of discharge, however, did not state any grounds excepting that the services of the petitioner were "no longer required" and one month's remuneration in lieu of notice was offered to the petitioner. In the Court below, the order of discharge was challenged primarily on two grounds, (1) that

the provisions in the Statutory Rules, namely, Rule 19(3) of the Calcutta Suburban Police Rules referred to earlier as well as Rule 55-B of the Civil Services (Classification, Control and Appeal) Rules, 1930 were not complied with inasmuch as the order did not state any grounds for terminating the services of the probationer and (2) that the requirements of Article 311(2) of the Constitution were not complied with. The Court below held in favour of the Petitioner, on both points.

2. So far as Rule 55-B of the Civil Services Rules of 1930 are concerned, it has been pointed out on behalf of the appellant that this is not attracted to the case of the petitioner or the members of the Police Force who are governed by the Rules of 1962 by reason of the provisions in Rule 3A of the Civil Services (Classification, Control and Appeal) Rules, 1930 which says that "those Rules will not apply to persons for whose appointment and conditions of employment special provision is made by or under any law for the time being in force". It is evident that the Rules of 1962 are special Rules made for the Police Forces under the statutory power conferred by the Calcutta Police Act. If so, to those police officers who are governed by the 1962 Rules, the general Rules in the Civil Services Rules of 1930 will not apply.

3. Nevertheless, there is little doubt that Rule 19(3) of the Rules of 1962 is attracted to the present case. The dispute between the parties arises as to the proper interpretation of the requirements of Rule 19(3). The relevant portion of this Rule is:-"A Probationer Sub-Inspector shall be confirmed on the completion of his probationary period unless the Deputy Commissioner, Headquarters, shall make an order extending his period of probation or discharging him from service or reverting him to his substantive rank. Any order for such extension of the probationary period or reversion or discharge shall indicate grounds on which the order is made."

Prima facie it is clear that an order of extension of the period of probation or reversion or discharge must state the grounds on which the order is made. A faint argument was made that the word "indicate" does not connote the meaning implied in the word "state" or, in other words, the authority making the order of discharge need not state the grounds but may make some suggestion which, if pursued, might lead the aggrieved person to discover the grounds. To import such a meaning into the statutory language would be to import too much of metaphysics into law. It is quite clear that the intention behind the Rule is that when an order is made, exercising the statutory power conferred upon a competent authority, other than an order of confirmation, the person affected must be communicated the grounds as to why the confirmation was not made. On behalf of the appellant it was argued in the Court below, which argument has been repeated before us, that it is only when an order of discharge is made after the expiry of the two year period of probation that reasons need be given. If the order of discharge was made prior to the completion of the period of probation, no grounds need be given for such discharge. In other words, according to such

contention there would be two kinds of orders of discharge of a probationer, (1) one within the period of probation and (2) one after the completion of the two-year period, and it was only in the latter class of cases that grounds were required to be given by Rule 19(3). The basic fallacy of such a contention is that unless the power to discharge within the period of probation was to be derived from Rule 19(3) of these Rules, there must be some other source for such power to be derived by the Government. It is to be noted that the Rules of 1962 were a special set of Rules to govern the members of Police forces, which excludes the application of the General Rules of 1930, as we have stated at the outset. The arrangement of these Rules would also show that the rulemaking authority made specific and exhaustive rules relating to all classes of Police officers beginning from Constables and Jamadars, Sub-inspectors, Inspectors, Sergeants and the like and under each category an attempt has been made to exhaustively lay down the different conditions of services pertaining to each of these classes. When, therefore, the conditions of probation of a Sub-inspector are laid down in Rule 19, it would not be permissible for the Government to say that they had apart from these Rules something to do with the probationers which can be derived from general principles. Secondly, to say that the entire sentence in Rule 19(3), as quoted above, would come into operation only at the completion of the probationary period would lead to the anomalous result that if the probationer had been discharged before the period of probation was completed still then he was to be confirmed at the completion of the period of probation inasmuch as the word "shall" at the beginning of the Rule makes it mandatory for the competent authority to pass an order for confirmation of the Sub-inspector unless he makes an order of discharge at the very time, namely, on the completion of the probationary period. Any such interpretation would make the entire sub-rule (3) of Rule 19 unworkable and illogical.

4. Our conclusion, therefore, is that grounds will have to be stated in the order of discharge of a probationer by reason of the statutory provision in Rule 19(3) whether such order is passed during or after the completion of the period of probation. It is true that on this point Rule 19(3) is not as explicit as Rule 55-B of the Punjab Civil Services (Classification, Control and Appeal) Rules 1930 which came up for review before the Supreme Court in the case of (1) Ranendra Chandra Banerjee Vs. Union of India (UOI), where the requirement to state the grounds was made expressly applicable to an order of termination made "whether during or at the end of the period of probation". Nevertheless, on a proper interpretation of Rule 19(3) we have come to the same conclusion. If that be so, the impugned order of discharge is liable to be quashed on this ground alone, namely, that it did not state the grounds for the discharge and it is now well-established that even apart from the requirements of Article 311(2) of the Constitution, where the order of termination of service violates any statutory provision or any Rules having statutory force, the result would be the same and the aggrieved employee can get relief from the High Court under Article 226 of the Constitution. In the above view, it is not necessary for us to enter into the

second question, namely, whether on the facts of this case, the requirement of Article 311(2) were violated. In our opinion, the stage has not yet arrived for pronouncing any opinion on that question. The impugned order of discharge does not state any grounds and it was only, on the affidavit filed on behalf of the State that the trial Court came to hold that the ground which the Government sought to apply would have cast a stigma upon the petitioner and that, therefore, Article 311(2) would be attracted but it is only when the order of discharge contains a stigma that the employee may possibly urge that the order was in fact penal in nature and that accordingly he should get an opportunity to rebut the allegation involved in the stigma under Article 311(2) of the Constitution. Before proceeding further we should make it clear that so far as Rule 19(3) is concerned, it does not itself go beyond requiring that the grounds need be stated. There are in fact similar rules which require further, namely, that an opportunity must be given to the employee to show cause against the ground as so stated, before orders are passed by the authority competent to terminate the employment, as for instance, Rule 55-B of the Civil Services (Classification, Control and Appeal) Rules, 1930 or the corresponding Rule in the Punjab Civil Services Rules of 1930, which we have referred to earlier. Under such Rules, the petitioner-respondent can demand an opportunity to show cause not under statutory rules but only under Article 311(2) of the Constitution.

But Rule 19(3) does not require such opportunity to be given. The petitioner's right to challenge the order of discharge under Article 311(2) will in fact arise only after a formal valid order stating the grounds is made under Rule 19(3) of the Rules of 1962. We cannot anticipate at the present moment what grounds would be given by the Government in the eventual order. If, for instance, it is simply stated that the services of the petitioner were terminated merely on the ground that his performance during the period of probation was not to the satisfaction of the competent authority, "prima facie, it would not involve penal consequences or a stigma, as has been explained in relevant decisions of the Supreme Court. If, however, some imputation beyond this, is that for instance, the fact of suppression of his previous employment and the like are included, then possibly a case for invoking Article 311(2) may arise. Beyond this we need not make any further pronouncement now and we prefer to leave this question open until a formal order in compliance with Rule 19(3) of the Rules of 1962 is made by the appellant.

Subject to keeping open the question under Article 311(2) of the Constitution, the order of the Court below is affirmed and this appeal is dismissed.

We are making no order as to costs.

Ajoy Kumar Basu, J.

I agree.