Lekh Raj Khurana vs Union Of India on 3 March, 1971

Equivalent citations: 1971 AIR 2111, 1971 SCR (3) 908, AIR 1971 SUPREME COURT 2111, 1971 LAB. I. C. 1240

Author: A.N. Grover

Bench: A.N. Grover, S.M. Sikri, G.K. Mitter, K.S. Hegde, P. Jaganmohan Reddy

PETITIONER:
LEKH RAJ KHURANA,

Vs.

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT03/03/1971

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
SIKRI, S.M. (CJ)
MITTER, G.K.
HEGDE, K.S.
REDDY, P. JAGANMOHAN

CITATION:
1971 AIR 2111 1971 SCR (3) 908
1971 SCC (1) 780

ACT:
Constitution of India, 1950-Article 311-Civilian employee of Defence Service-If entitled to protection of Article.
Statuory Rules-Breach of-justiciability Natural Justice-If can be invoked under general law of master and servant.

HEADNOTE:
The appellant was appointed in 1942 as Labour Supervisor, Army Ordnance Corps. In 1951, pending inquiry into certain charges against him his service was terminated by giving him one month's notice under rule 5 of the Civilians in Defence Services (Temporary Service) Rules, 1949. He challenged the legality of the order of termination on the grounds that it had been passed by an officer subordinate to the authority

who appointed him and that no adequate opportunity had been afforded to him of defending himself. He also alleged that the Order was vitiated by mala fides. In the appellant's appeal against the dismissal of his suit the High Court held that Article 311 of the Constitution was inapplicable, that breach of the Rules did not give an aggrieved party a right to go to the Court and that the Order was not vitiated by mala fides.-Dismissing the appeal to this Court.

HELD : The appellant, holding a post connected with Defence cannot claim the protection of Article 311 of the Constitution.

Jugatrai Mahinchand Ajwani v. Union of India C.A. 1185 of 1965 dt. 6-2-67 and S. P. Bahl v. Union of India C.A. 1918 of 1966 dt. 8-3-68: followed.

(ii)The view of the High Court that the rules are not justifiable cannot be sustained. Breach of statutory rules in relation to conditions ,of service would entitle the aggrieved government servant to have recourse to the court for redress.

R. Venkataro v. Secretary of State, A.I.R. 1937 P.C. 31, The State ,of Uttar Pradesh & Others v. Ajodhya Prasad, [1961] 2 S.C.R. 671 and State of Mysore v. M. H. Bellary, [1964] 7 S.C.R. 471, referred to.

In the present case the order of discharge has been passed by the ,appointing authority as required by rule 5.

(iii)In the appeal before this Court the finding on the point of mala fides must be accepted as final and the appellant cannot be allowed to re-agitate that matters.

(iv)As regards the applicability of the rule-of natural justice it has not been shown how under the general law of master and servant, in the absence of any protection conferred by Article 311 of the Constitution such a rule can be invoked.

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JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 17-19 or 67. Appeal from the judgment and decree dated May 23, 1961 of e Punjab High Court, Circuit Bench at Delhi in Regular Second appeal No. 43-D of 1956.

N. N. Keswani, for the appellant.

V. A. Seyid Muhammad and S. P. Nayar, for the respondent. The Judgment of the Court was delivered by Grover, L This is an appeal by certificate from a judgment and decree of the Punjab High Court (Circuit Bench, Delhi) by which the suit filed by the appellant for a declaration that the order dated May 26, 1951 directing his removal from service was wrongful, illegal and void and that he still continued to be in the service of the respondent as Supervisor, Army Ordnance Corps.

According to the allegations in the plaint the appellant was appointed by the Governor-General in July 1942 as Supervisor, Army Ordnance Corps which, according to him, was a civil post under the Crown in India. In the months of September and October, 1950 the appellant was served with chargesheets by the Ordnance Officer, Administration, Shakurbasti, Delhi State, where he was posted at that time calling upon him to submit his defence to the charges of making serious false allegations against his superior officer Maj. H. S. Dhillon. The appellant asked for grant of time for submitting his defence and be also demanded copies of certain documents etc to prove his case. On May 26, 1951 while this inquiry was pending he was served with an order by the Ordnance Officer, Administration, Shakur- basti, Delhi which was as follows--

> "Under instructions received from Army Head- quarters you are hereby given one month's notice of discharge with immediate effect, services being no longer required. Your services will be terminated on 25th June, 1951".

The appellant challenged the legality of the above order principally on the ground that it had been passed by an officer who was subordinate to the authority who appointed him and that no inquiry "as required by Fundamental Rules and under the provisions of the Constitution of India" had been held in the matter of allegations against him and that no adequate opportunity had been afforded to him of defending himself or of show-

ing cause against the action proposed to be taken. He all raised the question of the order being vitiated by mala fid In the written statement filed by the Union of India it was stat that the appellant had been appointed as a Labour Supervisor he Extra Temporary Establishment by the COO/Ordnan Officer Incharge, Ammunition Depot, Kasubegu under t authority of Financial Regulations, India, Part 1, Volume and not by the Governor General. It was pleaded, inter all that it was decided by the Government of India vide Army Headquarter's letter dated May, 25, 1951 to terminate the services by serving one month's notice. Consequently a notice of discharge from the service was given to him by the Ordnance Officer, Administration, who was competent to serve the notice on him under the authority of the Army Order No. 1202/1943 read in conjunction with 'Financial Regulations referred to before. The sole material issue which was framed was whether the order dated May 26, 1951 removing the appellant from service was illegal, wrong, void, ultra vires and inoperative. The trial judge held that Art. 311 of the Constitution was applicable to the case of the appellant and that his removal had not been ordered by the appointing authority. The suit was decreed. respondent preferred an appeal which was decided by the Additional District Judge, Delhi. It :Was held by him that Art. 311 was not applicable to the appellant as he held a post connected with defence. According to the learned judge the appellant's services were terminated under Rule 5 of the Civilians in Defence (Temporary Services) Rules, 1949, hereinafter called the 'Rules'. It was found that the order terminating the services had been passed by the proper authority. The appeal was allowed and the suit was dismissed. The appellant appealed to the High Court which was dismissed. His appeal was heard along with certain other appeals in which similar points were involved. It was found that the salary of the appellant was paid out of the estimates of the Mnistry of Defence and he was intimately connected with the defence of the country not as a combatant but as a person holding a post the object of which was exclusively to serve the Military Department. In the opinion of the High' Court Articles 309 and 310 were applicable to the case of the appellant but Article 311 was inapplicable. On

the question whether the services of the appellant were terminated without complying with the rules the High Court expressed the view that the breach of such rules did not give the aggrieved party a right to go to the court Reliance in that connection was placed on the decision of the Privy Council in R. Venkatarao v.

Secretary of State(1) and certain other cases in which that decision was followed. In the case of the appellant the only other point which appears to have appear to have been argued on his behalf and which was decided by the High Court related to the allegation of mala fides. The decision went against him on that, point.

The question whether the case of the appellant was governed by Art. 311 of the Constitution stands concluded by two decisions of this court. In Jagatrai Mahinchand Ajwani v. Union of India(2) it was held that an Engineer in the Military Service who was drawing these salary from the Defence Estimates could not claim the protection of Art. 311(2) of the Constitution. In that case also the appellant was found to have held a post connected with Defence as in the present case. This decision was followed in S. P. Bell v. Union of India (3). Both these decisions fully cover the case of the appellant so far as the applicability of Art. 3 1 1 is concerned.

Learned counsel for the appellant sought to argue that since the appellant was admittedly governed by the rules which framed under s. 241(2) 'of the Government of India Act 1935 he was entitled to the protection of s. 240 of that Act. Chapter I of Part 10 of that Act related to the Defence Services. According to ss. 239, 235, 236 and 237 were applicable to persons who not being members of His Majest's Forces held or had held posts in India connected with the equipment or administration of those forces or otherwise connected with Defence as they applied in relation to persons who were or had been members of those forces. Section 240, to the extent it is material was in the following terms:-

> "240(1) Except as expressly provided by this Act, every person who is a member of a civil service of the Crown in India, or holds any civil post under the Crown in India, holds office during His Majesty's pleasure. (2) No such' person as aforesaid shall be dismissed from the service of His Majesty by any authority subordinate to that by which he was appointed.
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> (3) No such person as aforesaid shall be dismissed or reduced in rank until he has been given a reason able opportunity or showing cause against the action proposed to be taken in regard to him :
>
> (1) A.I.R. (1937) P.C. 31. (3) C, A 1918 of 1966 dt. 8-3-68. 14-L1100sup.CI/72 (2) C. A. 1185 of 1965 dt. 6-2-67.

Provided..... Section 241 provided for recruitment and conditions of service. On behalf of the appellant it was contended that since his conditions of service were governed by the rules which were framed under the above section, s.240 was clearly applicable and his services could not have been terminated in terms of subs. (2) of that section by any authority subordinate to that by which

he was appointed nor could he be dismissed or reduced in rank until he had been given a reasonable opportunity of showing cause against the action proposed to be taken in regard to him. At no stage of the proceedings in the courts below the appellant relied on s. 240 of the Government of India Act and rightly so because the order of his discharge or termination of service was made after the Constitution had come into force. It was apparently for that reason. that protection was sought from Art 311 and not s. 240 of the Government of India Act 1935. We see no reason or justification in the present case for determining whether a person holding a civilian post which is connected with the defence and for which he is paid salary and emoluments from the Defence Estimates would be governed by the provisions of section 240 of the Government of India Act if the provisions of that Act were not applicable to the case of such a servant.

The next question is whether rule 5 of the Rules was applique able and whether the appellant could claim the benefit of that rule. It provided, inter-alia, that the service of a temporary government servant who is not in quasi-permanent service shall be liable to termination at any time by notice in writing given either by the", government servant to the appointing authority or by the appointing authority to the government servant. The view of the High Court that the rules were not justifiable cannot be sustained as the decision of the Privy Council in Venkatarao's case (supra) and the other cases following that view have not been accepted as laying down the law correctly by this court. It has been held that the breach of a statutory rule in relation to the conditions of service would entitle the government servant to have recourse to the court for redress; vide The State of Uttar Pradesh & Others v. Ajodhya Prasad(1) and State of Mysore v. M. R. Bellary(1). Now Exhibit P. 3 which is a letter dated May 26, 1951 and which was produced by the appellant himself shows that one months notice of discharge was given by the ordnance Officer, Administration, under instructions received from the Army Headquarters. A copy of another letter Exht. P-2 dated May 27, 1951 was produced according to which it had been decided by the Government (1) [1951] 2 S.C.R.671.

(2) [1964] 7 S.C.R.471.

of India that the services of the appellant be terminated by giving him one month's notice. It is true that the origin of that letter was not produced although it had been summoned by the appellant It is at least clear that the. Ordnance Officer, Administration, had served the notice of discharge under instructions from the Army Headquarters. In this view of the matter there is no substance in the contention raised on behalf of the appellant that the order of discharge had not been made by the appointing authority. At any rate before the High Court there was no challenge to the finding of the learned District Judge on the point and a question of fact cannot be allowed to be reopened at this stage. The learned counsel for the appellant attempted to reopen the finding on the question of mala fides and also invoked the rule of natural Justice in so far as the appellant had not been afforded any opportunity of showing cause against his discharge or termination of services. In the appeal before this Court the finding on the point of mala fides must be accepted as final and the appellant cannot be allowed to reagitate that matter. As regards the applicability of the rule of natural justice it has not been shown to us how under the general law of master and servant, in the absence of any protection conferred by Article 311 of the Constitution such a rule can be invoked. The appeal fails and it is dismissed but in view of the cir- cumstances we leave the parties to bear their own costs in this Court.

R.K.P.S. Appeal dismissed.