Krishan Chander Nayar vs The Chairman, Central Tractor ... on 23 August, 1961

Equivalent citations: AIR1962SC602, (1963)ILLJ661SC, [1962]3SCR187

Bench: B.P. Sinha, A.K. Sarkar, K.C. Das Gupta, N. Rajgopala Ayyangar, S.K. Das

JUDGMENT

Sinha, C.J.

1. This petition under Article 32 of the Constitution prays for a writ of mandamus or any other appropriate writ or direction to the respondents to remove the ban against the petitioner against his entry into government service. The respondents to the petition are :

1. The Chairman, Central Tractor Organisation, Ministry of Food and Agriculture, Government of India, New Delhi.

2. The Secretary, Ministry of Food and Agriculture, New Delhi.

3. The Secretary, Ministry of Home Affairs, Government of India, New Delhi.

2. The petition is founded on the following allegations. The petitioner is a trained machineman. In 1948, he was employed as a machineman in the Central Tractor Organisation. He continued in government service and rendered a good account of himself in that service until, by a notice dated September 16, 1954, his services were terminated. The office order No. 375 terminating his services is at Annexure 'A' to the petition and is in these terms :

> "Shri K. C. Nayar s/o Dr. Tara Chand Designation M/Man is informed that his services are no longer required in this Organisation. His services will accordingly stand terminated with immediate effect from the date on which this notice is served on him. In lieu of the notice for one month due to him under rule 5 of the Central Civil Service (Temporary Service) Rules, Shri K. C. Nayar will be given pay and allowances, for that period. The payment of allowances will, however, be subject to the conditions under which such allowances are otherwise admissible".

3. The petitioner appealed against the said order of termination of his services, but his appeal was rejected on December 6, 1954 (Annexure 'B'). Thereafter the petitioner applied for and obtained a certificate in the following terms (Annexure 'C') :

> "Certified that Shri Krishan Chander Nayar served in this organisation as a Machineman in the scale of Rs. 125-6-185 with effect from 13-5-1948 to 21-9-1954. His services were terminated under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1949".

4. After receiving the certificate aforesaid, the petitioner made several applications for appointment under the Government, but without any results. Later on "the petitioner learnt to his dismay that the respondents had placed a ban on the petitioner being ever taken into government service". The alleged ban is contained in the following memorandum (Annexure 'D');

> "With reference to his representations dated September 9, 1955 and September 21, 1955, the undersigned is directed to inform Shri K. C. Nayar, Ex-Machineman that Government of India regret their inability to lift the ban on his employment for the present".

5. It is this ban which, the petitioner pleads, has discriminated against him in the matter of government employment. The petitioner moved the Circuit Bench of Delhi of the High Court of Judicature for the State of Punjab, under Article 226 of the Constitution, but his petition was dismissed in limine by the Division Bench of that Court by it order dated September 12, 1956, and an application for grant of the necessary certificate for appealing to this Court was also dismissed by the Bench on April 26, 1957. This Court was moved under Article 32 of the Constitution by a petition dated August 20, 1957.

6. The answer to the petition is contained in the affidavit sworn to by one Mr. G. P. Das, Acting Chairman, Central Tractor Organisation, Ministry of Food & Agriculture, Government of India, New Delhi. This document runs into 23 paragraphs, and whoever may have been responsible for drawing up the answer in the form of the affidavit on behalf of the respondents aforesaid cannot be accused either of brevity or of accuracy. It is full of repetitions, but, as will presently appear, does not answer the main contention raised on behalf of the petitioner, based on Annexure 'D', quoted above. Besides containing the usual plea that the petition was "entirely misconceived and untenable in law", the affidavit aforesaid on behalf of the respondents states that the Central Tractor Organisation is a temporary organisation under the Ministry of Agriculture, Government of India; that the petitioner was appointed as a purely temporary hand; and that his services were liable to termination at any time by giving him one month's notice or one month's pay in lieu of the notice and without assigning any reasons. The statement is repeated more than once that the petitioner's services were duly terminated in accordance with rule 5 of the Central Civil Services (Temporary Service) Rules, 1949. Referring to the petitioner's main grievance, contained in paragraphs 6 and 7, with particular reference to the memorandum contained in Annexure 'D', referred to above, the answer is in these terms :

> "Referring to paragraphs 6 & 7 of the petition I do not admit that the Respondents had put a ban on the petitioner being taken into Government service..... I say that the petitioner was not deprived of his right to apply for any service, and that the petitioner had no right to appointment to a Government Service. But it is submitted

> that the petitioner is entitled to apply for any government service and such application would be considered on its merits".

7. The again in paragraph 12, after referring to the temporary character of his service and its termination under the rule aforesaid, the following statement are made :

> "As regards the ban alleged by the petitioner it is submitted that it was purely a Departmental instruction for future guidance which did or does not in any way prevent the petitioner from applying for any post under the Govt. and such application of the petitioner will be entertained on merits and the petitioner is not debarred from applying for any post under the Government as he has alleged in his petition. As the petitioner was governed by Rule 5 of the Central Civil Services (Temporary Service) Rules, 1949, no question of the issue of any show cause notice can arise. So far as the question of ban is concerned it is further submitted that after the petitioner had submitted his representation to the Chairman, Central Tractor Organisation, for reinstatement it was duly considered by the Government which took into consideration all the circumstances and the antecedents of the petitioner and came to the finding that it would not be desirable to reinstate him".

8. The careless and irresponsible way in which the affidavit has been drawn up is further illustrated by the following statement in paragraph 13 of the affidavit :

> "Referring to paragraph 11 of the petition it is submitted that the petitioner is not entitled to move this Hon'ble Court under Article 32 of the Constitution after his application for special leave before this Hon'ble Court from the judgment of the Punjab High Court, Circuit Bench, was dismissed on the 26th of April, 1957, and the order passed by this Hon'ble Court dismissing the said special leave petition on the 26th of April, 1957 is final between the parties and should be treated as res judicata against the present application".

9. This is reiterated in paragraph 23, which runs as follows :

> "Referring to Grounds 10 and 11 of the said petition, I say that there is no fundamental right in the petitioner to move an application before this Hon'ble Court as he has sought to do. The petitioner has already exhausted all his remedies and this Hon'ble Court was also pleased to dismiss his application for special leave and as such it is submitted that the present application is wholly misconceived and should be dismissed with costs".

10. It is clear that the averments, quoted above, are intended to convey the idea that this Court dealt with an application for special leave to appeal from the judgment of the Punjab High Court, Circuit Bench, and dismissed the same by its order dated April 26, 1957. As a matter of fact, there was no such special leave application filed in this Court, and, therefore, there is no foundation, in fact, for that averments. What appears to have happened is that the High Court refused to grant the

necessary certificate when it was moved to certify that was a fit case for appeal to this Court. It is manifest, therefore, that the person responsible for drawing up the affidavit was either negligent or ignorant. Such remissness cannot readily be passed over. Those who are charged with the duty and responsibility of drawing up affidavits to be used in this Court have got to be circumspect and should not make statements and re-emphasize them when there is no basis, in fact, for such statements.

11. As already indicated, the affidavit, in answer to the petitioner's case, is unnecessarily verbose. But it does not suffer only from that infirmity; it is also misleading and disingenuous. Though the petitioner had pointedly drawn attention to the 'ban' contained in Annexure 'D', quoted above, and that, indeed, was his main grievance against the respondents, the affidavit in answer to the petition, does not make any reference to Annexure 'D' and, ignoring it, purports not to admit that the respondents had put a 'ban' on the petitioner being taken into Government service. The answer of the respondents is, in effect, that the petitioner has not been deprived of his right to apply for a post under the Government, though so long as the 'ban' is there, any application by the petitioner for employment under the Government is bound to be ignored. In spite of the denial on behalf of the respondents that there was no ban against the petitioner's employment under the Government, the fact of the matter is that the petitioner is under a ban in the matter of employment under the Government, and that so long as the ban continues, he cannot be considered by any Government department for any post for which he may make an application, and for which he may be found qualified. If the affidavit on behalf of the respondents had clearly indicated the nature of the ban and the justification, therefore, the Court would have been in a better position in deciding the question whether or not the petitioner had any substantial grounds for complaining against the treatment, meted out to him. A person who has once been employed under the Government, and whose services have been terminated by reason of his antecedents, may or may not stand on an equal footing with other candidates not under such a ban. Of course, the ban imposed by Government should have a reasonable basis and must have some relation to his suitability for employment or appointment to an office. But an arbitrary imposition of a ban against the employment of a certain person, under the Government would certainly amount to denial of right of equal opportunity of employment, guaranteed under Article 16(1) of the Constitution. In the instant case, the affidavit filed on behalf of the respondents does not indicate the nature of the ban, and whatever may have been the nature of the ban, there not appear to have been any proceeding taken against the petitioner giving him the opportunity of showing cause against the action proposed to be taken against him. We are, therefore, not in a position to say that the reason for the ban, whatever its nature, had a just relation to the question of his suitability for employment or appointment under the Government.

12. It is clear, therefore, that the petitioner has been deprived of his constitutional right of equality of opportunity in matters of employment of appointment to any office under the State, contained in Article 16(1) of the Constitution. So long as the ban subsists, any application made by the petitioner for employment under the State is bound to be treated as waste-paper. The fundamental right guaranteed by the Constitution is not only to make an application for a post under the Government but the further right to be considered on merits for the post for which an application has been made. Of course, the right does not extend to being actually appointed to the post for which an application may have been made. The 'ban' complained of apparently is against his being considered on merits.

It is a ban which deprives him of that guaranteed right. The inference is clear that the petitioner has not been fairly treated.

13. The application is, therefore, allowed and a direction issued to the respondents to remove the ban against the petitioner. The petitioner is entitled to his costs.

14. Petition allowed