Supreme Court of India
Harishankar Khanna (Since Dead By ... vs Union Of India & Anr on 3 March, 1971
Bench: S.M. Sikri (Cj), G.K. Mitter, K.S. Hegde, A.N. Grover, P.J. Reddy

CASE NO.:
Appeal (civil) 1785 of 1969

PETITIONER:
HARISHANKAR KHANNA (SINCE DEAD BY HIS LRS.)

RESPONDENT:
UNION OF INDIA & ANR.

DATE OF JUDGMENT: 03/03/1971

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

JUDGMENT:

JUDGMENT 1971 AIR (SC) 1085 = 1972 (4) SCC 213 The Judgment was delivered by GROVER, J. :

Grover, J. for the This appeal by certificate from a judgment of the Punjab High Court (Circuit Bench), Delhi arises out of a suit filed by Harishankar Khanna, who is now dead, for a declaration that his discharge from service by the officer Commanding Engineering Stores Dept. (O.C.E.S.D.) Karachi dated July 15, 1946 was illegal, without jurisdiction and ineffective and that it should be declared that he was continuing in service. The suit was decreed by the trial Court principally on the ground that he had not been dismissed by the proper authority and that the provision of Section 240 of the Government of India Act, 1935, had been contravened. The appeal of the respondent to the Additional District Judge failed. The High Court, however, reversed the decision of the Courts below and dismissed the suit.

2. The case of the appellant as laid in the plaint was that he had joined the Central Provisions Office (C.P.O.) as a Clerk in December, 1941 and in March 1954 he was absorbed in the office of the Engineer-in-Chief, Army Headquarter as an Upper Division Clerk. In December, 1945 he was transferred to the office of the Officer Commanding Engineering Stores Depot., Karachi. In March, 1946 he was granted 15 days leave with permission to of Delhi. During that period he fell ill and was obliged to take sick leave under medical advice. While he was ailing and confined to bed the O.C.E.S.D. Karachi summarily, illegally and against rules discharged him by means of letter dated July 24, 1946 although his application for leave was supported by proper medical certificate. He made representations but was only given one month's pay in lieu of notice in the year 1951. The main point raised in the plaint was that the order of discharge had been made by an authority that was different from the appointing authority. In the written statement it was admitted that Khanna had been granted 16 days leave from March 1946 to April 9, 1946. He subsequently applied for extension of leave from April 10, 1946 to June 25, 1946. He was due back for duty on June 26, 1946 but on expiry of that leave he neither reported back for duty nor submitted any application for further extension of leave. He was consequently discharged from service with effect from July 15, 1946 in accordance with Article 229, Civil Service Regulations. It was claimed that under that

regulation by which the civilians working in the Defence Establishment were governed no notice of discharge was necessary.

3. The main issue which required determination was whether the order of discharge or dismissal of Khanna was wrong, invalid and ultra vires. It was found that Section 240(1) of the Government of India Act had not been complied with inasmuch as Khanna had been discharged from service by an authority subordinate to that by which he had been appointed and that he had also not been afforded a reasonable opportunity of showing cause against his discharge or removal in terms of Section 240(3). The suit was held to be within time and a decree was granted by the trial Court that the discharge of Khanna from service was void and inoperative and that the continued to be in service of the Union of India. In the appeal of the respondent the Additional District Judge felt that it was very likely that Khanna had sent an application foe extension of leave for the period beyond June 25, 1946 and his application somehow got mislaid in the office of the Engineer-in-Chief. As he had not been given any opportunity to show cause against his proposed dismissal the view of the trial Judge was upheld and the decree was confirmed.

4. When the matter was taken in appeal to the High Court it was heard along with other appeals including the companion appeal (C.A. 1719 of 67) of Lekh Raj Khurana the judgment in which has been delivered today. On the question of the applicability of Article 311 of the Constitution the High Court expressed the same view which has already been mentioned in the aforesaid judgment. It is, however, difficult to understand how Article 311 could be applied to an order which was made prior to the coming into force of Constitution. But in the judgment of the High Court it is stated that the suit of Khanna was based on breach of the Rules (Presumably Civil Service Regulations) and not on Section 240 of the Government of India Act. It had been contended on his behalf that according to the rules a notice ought to have been issued to him to show cause against the proposed order of discharge. The High Court, however, held that the breach of any rule was not justiciable. In Lekh Raj Khurana "s case we have overruled that view and it is not possible to dispose of the matter on the ground that the breach of the rules was not justiciable.

5. No rule appears to have been specifically relied upon before the trial Court or the District Court. Our attention has been invited to the Civil Service Regulations. In Chaudri's compilation of these Regulations, Vol. 1, it is stated in Article 1 as follows :"

(a) These Regulations are intended to define the conditions under which salaries and leave and pension and other allowances, are earned by service in the Civil Departments and in what manner they are calculated. They do not deal otherwise than indirectly and incidentally with matters relating to recruitment, promotion, official duties, discipline or the like.

"In Article 1(b) it has been stated that the Regulations have been framed so as to embody all orders in force affecting the acting allowance, the leave allowance, the leave, the pension and the travelling allowance of officers, the conditions of whose service in respect of these matters are not defined by the Army and Marine Regulations. According to the respondent the case of Khanna fell under Article 229 of the Civil Service Regulations. This article is as follows :"

An Officer who remains absent after the end of his leave is entitled to no allowance for the period of such absence and ceases to have a lien on any appointment -

(i) if his leave was furlough without medical certificate - immediately, and

(ii) if it was furlough on medical certificate or vacation or privilege leave, - after a week. In the case of officers to whom exception (ii) under Article 251 applies the week commences from the fifteen days mentioned therein."

It is pointed out that as the Officer concerned ceased to have a lien on any appointment in the circumstances of the case his discharge was almost automatic even though an order had to be made to that effect. If the case of the respondent is established that Khanna remained absent after the end of the leave then in view of Article 229 the order of discharge would be perfectly valid and legal. Now so far as the applicability of Section 240 of the Government of India Act is concerned that point was apparently not pressed before the High Court and it cannot be allowed to be raised now. No rule has been shown by which Khanna was governed which contained the same requirements as are to be found in sub-sections (2) and (3) of the above section regarding the authority which was competent to pass the order of discharge or the giving of a reasonable opportunity to show cause against the action proposed to be taken. The order of discharge had been made in view of Article 229 of the Civil Service Regulations and no such requirements exist therein.

6. As regards Article 229 of the Regulations even if it be assumed in favour of Khanna that he had sent his application in time for extension of leave supported by proper medical certificate, as is the evidence, he having died no declaration can now be made that he still continued to be in service. It is common ground that he was not a permanent employee and was holding a temporary post. All that he could, therefore, get was one month's pay in lien of notice under Article 352 of the Regulations. It is not disputed that the same had in fact been paid to him in 1951.

7. The appeal thus fails and it is dismissed but in view of the entire circumstances the parties are left to bear their own costs.