

PETITIONER:
V. S. MENON

Vs.

RESPONDENT:
UNION OF INDIA

DATE OF JUDGMENT:
22/11/1962

BENCH:
SINHA, BHUVNESHWAR P.(CJ)
BENCH:
SINHA, BHUVNESHWAR P.(CJ)
GAJENDRAGADKAR, P.B.
WANCHOO, K.N.
GUPTA, K.C. DAS
SHAH, J.C.

CITATION:
1963 AIR 1160 1963 SCR Supl. (2) 55

ACT:
Public Servant-Disciplinary action- Subversive activities-charge of associating with communists- compulsory retirement Legality of-writ Petition-If maintainable-Civil Services (Safeguarding of National Security) Rules, 1949. r 3- Constitution of India, Arts. 226, 311.

HEADNOTE:

The appellant, a public servant, was charged under r. 3, Civil Services, (Safeguarding of National Security) Rules, 1949, for associating with communists and others engaged in subversive activities. After enquiry, an order was made compulsorily retiring the appellant from service. He filed a writ petition before the High Court but it, was dismissed. He appellant contended that the order of compulsory retirement was illegal and that the High Court had jurisdiction to quash the same.

Held, that the charge against the appellant was not a charge, under, r. 3 and accordingly the order of compulsory retirement was illegal. The rule contemplated compulsory retirement was illegal. The rule contemplated compulsory

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retirement in cases where the Public servant was engaged or suspected to be engaged in subversive activities, or was associated with others in subversive activities. The appellant was Only alleged to have, been associated with others who were engaged in subversive activities, but it was not alleged that he had taken any part in subversive activities by himself or along with others. Taking interest in political activities of the communist party did not amount to taking part in subversive activities so long as the communist party was reorganised-political party and was not banned.

Held, further, that the impugned order. could be quashed on a petition under Art. 226. The premature termination of the service of the appellant, which was not justifiable under r. 3 amounted to removal from service by way of penalty and attracted the application of Art. 311.

P. Balakotaiah v. The Union, of; India,, [1958] S. C. R.

1052, distinguished.

JUDGMENT:

CIVIL, APPELLATE JURISDICTION : Civil Appeal No. 83 of 62. Appeal by special leave from the judgment and order dated October 6, 1960, of the Punjab High Court (Circuit Bench): Delhi in L.P. A. No. 23-D of 1957.

R.V. S. Mani, H. C. Mital and P. Kesava Pillai, for the appellant.

C. K. Daphtary, Solicitor General of India, R. H. Dhebar, P. D. Meson, for the respondents.

1962. November 22. The judgment of the Court was delivered by

SINHA, C. J.-This appeal by special leave is directed against the judgment and order of the, Punjab High Court, dated October 6, 1960, dismissing Letter Patent Appeal from, the judgment of a single Judge of that Court, dated September 10, 1957, dismissing the appellant's writ petition under Art. 226 of the Constitution. There are two respondents, namely, (1.) the Union of India and (2) Director General, Posts and Telegraphs, New Delhi.

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This case has had a chequered history as will appear from the following facts. The appellant was appointed in June 1943 as an Engineering Supervisor by the second respondent. In January 1, 1949, he was suspended from service on account of certain activities of his which were considered 'to be objectionable. He was duly served with a notice to cause, and his case was in due course considered by the Committee of Advisers, who recommended that he be retained in service. In pursuance of the recommendation of the Advisory Committee, the appellant was reinstated with effect from May 26, 1951. After passing his departmental examination in 1952, the appellant was appointed as officiating Sub-Divisional Officer, Telegraphs. While he was so employed at Nagpur, he was served with a notice dated November 3, 1952, from the office of the Director-General, Posts and Telegraphs, under the provisions of rr. 3 and 4 of Civil Services (Safeguarding of National Security) Rules, 1949-which hereinafter will be referred to as the Rules in the following terms

"No. Sta 98-10/52

New Delhi, the 3rd November, 1952.

Whereas in the opinion of the "Competent Authority" as defined in rule 2 of the Civil Services (Safeguarding of National Security) Rules, 1949. (who in your case is the Director General) there are reasonable grounds for believing that after your reinstatement in service on May 26, 1951 you have continued to associate with others engaged in subversive activities in such a manner as to raise doubts about your reliability and consequently it is proposed to take action for your compulsory retirement from service under rule 3 of the said rules. The following are the allegations

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against you:--

"Soon after your arrival in 'Nagpur important local communists were reported to have contacted you and I during the discussions you were reported to have interested yourself in the political activities of the Communist party and other political organisations and groups in Nagpur. You are also reported to be actively, continuing your association with Shri

B.N. Mukherjee and other prominent local Communists."

2. You are hereby required to proceed on such leave as may be admissible to you with effect from November 15, 1952.

3. You are hereby required to state within 14 days of the receipt of this notice whether you accept or deny the accuracy of the above allegations. If you do not reply within that period, it will be assumed that you admit the allegations.

4. In either case, you may within the same period submit any representation you wish to make as to why you should not be compulsorily retired from service under the said Rules (copy attached).

5. If after considering your representation the competent authority decides that no further action should be taken against you, you will be informed accordingly.

6. If after considering your representation the competent authority considers that there are sufficient grounds for taking further action, the materials on record together with your

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representation will be referred to the Committee of Advisers set up by the Government of India for this purpose.

7. You are further asked to state whether you wish to be heard in person by the Director General or by the Committee of Advisers before orders are passed on your case.

8. If you send no reply within 14 days of the receipt of this notice orders will be passed on your case without any further reference to you.

Sd/

Director General,
Posts and Telegraphs,
New Delhi."

On November 17, 1952, the appellant submitted his answer to the show-cause notice. The answer runs into 9 pages typescript to the effect that the charge was valueless and without foundation, and requesting for a personal hearing before the second respondent, as well as before the Committee of Advisers. The appellant submitted a letter on January 23, 1953, requesting that "at the time of the oral hearing all the evidence on which the charges mentioned in your letter No. STA 98-10/52 dated 3.11.1952 have been framed", may be made available to him so that on scrutinising them he might prove his innocence. On January 28, 1953, the second respondent examined the appellant in person, and thereafter on May 19, 1953, he was served a second show-cause notice, which is in these terms

"Memo No. STA-98-10/52/SEA

Dated New Delhi, the 19th May, 1953.

Shri V. S. Menon, Sub-divisional Officer, Telegraphs, Nagpur, was called upon to answer

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the following charges:--

"Soon after your arrival in Nagpur important local Communists were reported to have contacted you: and during the discussion you were reported to have interested yourself in the political activities of the Communist party and other political organisation and Nagpur. You are also reported continuing your association groups, in to be actively with Shri B. N. Mukherjee and other prominent local Communists.

2. The Committee of Advisers have considered the defence submitted by Shri V. S. Menon and the record of the personal hearing and are provisionally of the opinion that sufficient

grounds exist to bring home these charges to Shri Menon, justifying his compulsory retirement from service under Rule 3 of the Civil Services (Safeguarding of National Security) Rules, 1949.

3. Shri Menon is, therefore, called upon to show cause within 15 days of the receipt of this Memorandum, why he should not be compulsorily retired from service.

4. A copy of the record of personal hearing granted to him is forwarded herewith.

5. If Shri Menon fails to submit his defence within the period stipulated above, orders will be passed ex Parte.

Sd/.

Director General."

On August 28, 1953, the following order was passed against him:

"Memorandum No. ST- A. 98-10/52/SEA Dated New Delhi, the 28th Aug. 53.

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In the office Memo" of the Director General),, Posts and Telegraphs No. STA. 98-10/52 dated tile 3rd November 1952, Shri V. S. Menon, Officiating Sub]Divisional, Officer Telegraphs, Nagpur, was informed of the grounds on which it is proposed to take I action for his compulsory retirement from service under Rule, 3 of the Civil Services (Safeguarding of National Security) Rules, 1949, and was called upon to submit any representation he wished to make as to why should not be compulsorily retired from service under the said rules. Shri Menon submitted his statement in defence on November 17, 1952, in which he also expressed

a desire for a personal hearing by the Director General. He was accordingly granted an oral hearing by the Director General on January 28, 1953.

(2) The Committee of Advisers having considered the defence submitted by Shri V. S. Menon, and the record of the personal hearing, were of the opinion that sufficient grounds exist justifying Shri Menon's compulsory retirement from service under Rule 3 of the said rules. Shri Menon was thereupon called upon in Director General, Posts and I Telegraphs Memo No. S T A." 98-10/52- SEA, dated May 19., 1953, to show cause why he should not be compulsorily retired from service. Shri Menon submitted his representation on June 18, 1953. This representation has also been

considered.

3. The competent authority (who in this case is the Director, General, Posts and Telegraphs) after careful consideration of this case of the opinion that Shri V. S. Menon has been associated with others in subversive activities in such a manner, as to raise doubts about his reliability.,

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and is satisfied that his retention in the public service is prejudicial to national security. Shri V. S. Menon is hereby informed that the competent authority has accordingly decided, with the prior approval of the President that Shri V. S. Menon should be compulsorily retired from service in accordance with the provisions of the Rule 3 of Civil Service (safeguarding of National Security) Rules, 1949.

(H. L. jerath)

Director General,
Post and Telegraphs"

The appellant moved the erstwhile High Court of Judicature at Nagpur under Art. 226 of the Constitution. 'The case was heard by a Full Bench of three judges consisting of Kaushalendra Rao, V. R. Sen and Bhutt, JJ. The Court was agreed as to the order to be passed, namely, that the petition should be dismissed on the ground that no writ could issue against the respondents though the judges were Kaushalendara Rao, J.- was of the view that even on not agreed, on the merits of the controversy merits the Court could not grant any relief, whereas Sen and Bhutt, JJ., took the view that it was not covered by Art. 310 of the Constitution, and that the Allegations in the initial, show-cause notice, were vague, nor did they disclose any personal association on the part of the Appellant in any subversive activities, and that, therefore, there was no compliance with r. 4 of the Rules.

As the petition under Art. 226 of the Constitution in the Nagpur High Court proved infructuous, the appellant moved the Circuit Bench of the Punjab High Court at Delhi under the same Article. The petition was heard by a learned Single judge (Falshaw, J.) who by his judgment and order dated September 10, 1957, disagreeing with the views of the majority of judges of the Nagpur High Court

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dismissed the petition holding that the charge laid against the appellant should not be too strictly construed, and that his compulsory retirement under the Rules did not amount to dismissal or removal from service under Art. 311 of the Constitution. From the judgment of the learned Single judge, the appellant preferred a Letters Patent appeal, which was heard by a Division Bench consisting of Khosla, C.J., and Shamsher Bahadur, J. The Bench dismissed the appeal, though in their view also the charge-sheet submitted against the Petitioner was "not entirely in accordance with the terms of rule 3". In their view, the enquiry was proper, and reasonable opportunity had been, afforded to the petitioner to show cause against the proposed action. The appellant moved this Court for special leave which was granted on February 21, 1961, and that is how the matter is before us.

Learned Counsel for the appellant has raised a number of contentions' namely, that (1) the Rules are a colourable exercise of the power conferred on the Governor-General to make rules under s. 241 (2). of the Government of India Act, 1935, because the purpose of the Rules is not regulation of conditions of service; (2) the Rules violate s. 241 (3) (c): (3) the Rules, do not provide for or authorise the constitution of a Committee of Advisors; (4) the charge against the petitioner is outside the provisions of r. 3, which requires the participation of the officer proceeded against in subversive activities and not, his association with persons who are concerned with such activities; (5) the appellant was not given reasonable opportunity of showing cause because, in the first instance, the charge and the allegations were vague without any particulars, and secondly because the "competent authority" withheld all evidence, on the ground that it was contained in secret documents; (6) the appellant was not given any opportunity of hearing by the Committee of Advisors, for which he

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had made a special request; and (7) compulsory retirement means premature termination of service, and is, therefore, a special penalty which could not be inflicted without

appropriate enquiry and proper opportunity to show cause. It is not necessary to consider all the grounds of attack raised on behalf of, the appellant because, in our opinion, the appeal must succeed on the ground that the charge against the appellant, as quoted above, is that "you have continued to associate with others is engaged in subversive activities", which is not the gravamen of the charge as contemplated by r. 3, which is in these terms:

"3, A Government servant who, in the opinion of the Competent authority is engaged in or is reasonably suspected to be engaged in subversive activities or is associated with others in subversive activities in such a manner as to raise doubts about his reliability may be compulsorily retired from service;

Provided that a Government servant shall not be so retired, unless the competent authority is satisfied that his retention in the public service is prejudicial to national security and unless, where the competent authority is a head of a department, the prior approval of the Governor General has been obtained."

That rule contemplate,% compulsory retirement from service of a government servant who (a) is engaged in subversive activities, or (b) is reasonably suspected to be engaged in subversive activities, or (c) is associated with others in subversive activities. If any one of those three alternative conditions is fulfilled, then the competent authority has also to be satisfied that the manner of his activities is such as to raise doubts about his reliability, as also that his retention in the public service is prejudicial to

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national security. And, finally, where such an order is passed by a competent authority in his capacity as the head of department, the prior approval of the Governor-General (now the President) has to be obtained. It is manifest on the charge,, as framed against appellant that he was not even alleged to have been engaged or to be reasonably suspected to have been engaged in subversive activities or to be engaged in such activities in association with others. It was only alleged against him that he associated with others who were engaged in subversive activities. That is not a charge which could be sustained under r. 3. As the rule is of a penal character, it has to be very strictly construed. If the appellant was even suspected to have been engaged in subversive activities, the charge could have been in those terms. But it is not even, alleged that he was suspected to be engaged in subversive activities, far less to have been engaged in such activities either by himself or in, association with others. As-the charge against the appellant did not strictly come within the purview of r. 3, there was no basis for the procedure adopted in pursuance of r. 4. It is not, therefore, necessary to pursue the enquiry as to whether the procedure actually adopted complied with that laid down in r. 4.

Apart from the initial serious defect in the charge laid against the appellant, even in the allegations made against him it was only said that after his arrival in Nagpur important local communists were reported to have contacted him, and that he was interested in political activities of the Communist party and other political organisations and groups in Nagpur, and finally, that he was reported to be continuing his association with Shri B Mukherjee and other prominent local communists. But no where it is, alleged that the appellant had taken any part in subversive

activities by himself or alongwith others with whom he is said to have been associated

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Taking interest in a political activities of, the, Communist party would not amount to taking part in subversive activities so long as the Communist party continued to be a recognised political. Organisation, which has not been banned. It cannot be asserted that, Simply taking with members of the Communist party or associating with such members would amount to engaging, in subversive, activities. Subversive activity, in order to bring the person within the purview of the, rule must amount to actively pursuing such activities as are calculated to subvert the government established by law, No such allegations appear to have been made against the appellant.

The question remains whether in the facts and circumstances disclosed in this case, the appellant has, any just grievance which could be remedied by the, High Court under Art. 226. The, judgment, under appeal has taken the view that this case is governed by the decision of this Court. in P. Balakotaiah v. The Union of India (1). That was case in which the services of the appellants who were, railway servants had been terminated for reasons of national security under r. 3 of the Railway; Service (Safeguarding of National Security) Rules, 1949. Rule 3 in that case was practically in the same terms as r. 3 in this case. Rule 3 in that case was held to be constitutionally valid as not being repugnant to Art. 14 of the Constitution. But, in our opinion, the High Court was in error in holding that the decision of this Court in Balakotaiah's case (1) governed the present case also. This Court held further that the charge drawn up against the railway servants concerned showed not only that they were communists or trade unionists but that they were engaged in subversive activities. Hence, it could not be said that the orders terminating their services contravened Art. 19 (1) (c) of the Constitution. It was also held by this Court that Art. 311 of the Constitution was not attracted to the case because (1) [1958] S.C.R. 1052.

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that was not a case of dismissal or removal from service by way of punishment. It was also held in that case that the order terminating the services under r. 3 of the Security Rules stood on the same footing as an order of discharge under r. 148 of the Railway Establishment Code and was, therefore, outside the purview of Art. 311 of the Constitution. It is not disputed that there is no provision in the Rules relating to Posts and Telegraphs Service corresponding to r. 148 of the Railway Establishment Code. In the instant case, therefore, the premature termination of service before the age of superannuation could be justified only by virtue of r. 3. As r. 3 had not been attracted to the appellant's case for reasons given above, it follows at the premature termination of the appellant's service would be tantamount to removal from service by way of penalty. In that view of the matter, the appellant certainly had a grievance which he could ventilate under Art. 226 of the Constitution, and on the findings arrived at by us on the main question he is entitled to the declaration that his service was not legally terminated in accordance with r. 3 of the Security Rules. The appeal is accordingly allowed with costs.

Appeal allowed.

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JUDIS