**(1958) 08 MP CK 0015**

**Madhya Pradesh High Court (Gwalior Bench)**

**Case No:** Civil Miscellaneous Case No. 63 of 1956

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| Raghunath Singh | | APPELLANT |
| | Vs | |
| State of Madhya Bharat | | RESPONDENT |

**Date of Decision:** Aug. 18, 1958

**Acts Referred:**

- Constitution of India, 1950 - Article 311(1)

**Citation:** AIR 1959 MP 43 : (1959) 2 LLJ 187 : (1959) 4 MPLJ 423

**Hon'ble Judges:** H.R. Krishnan, J; A.H. Khan, J

**Bench:** Division Bench

**Advocate:** Anand Behari Misra, for the Appellant; Govt. Advocate, for the Respondent

**Final Decision:** Dismissed

**Judgement**

H.R. Krishnan, J.

This is an application by a Sub-Inspector of Police who was dismissed by the Order of the Deputy Inspector General Police, Northern Range (M. B.) after show cause notices, inquiry and report by the S. P. Guna. The gravamen of his case is that because he was appointed by the I. G. of Police of the erstwhile Gwalior State, and after the constitution of the Madhya Bharat confirmed by that Government in its services, his dismissal by the D. I. G. is illegal and in contravention of Article 311(1) of the Constitution as this authority is subordinate in rank both to the State Government and to the I. G. of Police Madhya Bharat.

He has also urged that the conduct of the inquiry was in contravention of the provisions of the Punishment and Appeal Rules, the Madhya Bharat Police Act and Police Regulations (paragraph 234). Accordingly, he has prayed for issue of a writ of certiorari quashing the order of the D. I. G., and directing the grant of all consequential reliefs.

The main points for decision are whether, the applicant was appointed by the I. G. Police erstwhile Gwalior, or by the Government of Madhya Bharat, or by the I. G. M. B.; and whether in the first alternative the dismissal by the D. I. G. N. R. M. B. is a contravention of the Article 311(1). Besides, the compliance or otherwise with the Police Act, Rules, or Regulations have also to be examined.

This is typical of a particular class of application against dismissal of the pre-accession "native State" employees. As there has been some apparent conflict between some of the rulings in similar cases it is convenient to state the facts at some length, and bring out the different, and mutually exclusive phases of this application.

The applicant was appointed Sub-Inspector of Police on 2-1-1939 by the I. G. of Police of the erstwhile State of Gwalior; and was actually working as such in 1948 when the new State of Madhya Bharat was constituted- He continued in service of the new State. On 31-8-1950 a notification No. S997 Int. was published in the Gazette, showing the provisional gradation of P. Is., S. Is. and Inspectors of Police. This list had been prepared in accordance with certain principles enunciated in the Chief Secretary''s memorandum dated 9-12-1948 and also the particulars relating to training and experience.

The signatory is the Superintendent of Police C. I. D., and it was issued from the office of the I. G. P. Anybody aggrieved with the gradation was invited to make the appropriate application for revision within 2 weeks; otherwise he would be deemed to have accepted his position in the provisional gradation list. Serial No. 106 to the Cub-Inspector''s list was the name of the present applicant. The applicant worked on as S. I. Police but in 1952 he got into difficulties. Certain complaints having been received against him, proceedings were started by the S. P. Guna in which district he was then working.

A formal charge-sheet containing 18 counts of corruption, and bribery was prepared,, and served sn the applicant; he was invited to show cause and submit his explanation. The S. P. held an inquiry affording opportunity to the applicant for adducing evidence, cross-examining the witnesses and the like. Uutimately, the S. P. gave a report an the charges and the findings to the D. I. G. Northern Range recommending that he should be dismissed from service. The D. I. G., accepted the S. P.''s findings in regard to 7 out of the 18 charges and decided that the punishment of dismissal should be meted out.

Accordingly, the D. I. G. issued the punishment notice, asking for cause, with the copies of charges, S. P.''s report and his own order. The cause being unacceptable, the order of dismissal was passed by the D. I. G. on 2-6-1953. The applicant filed an appeal to the I. G. of Police, but it was dismissed. 1C appears that the I. G. has got an Assistant I. G., who puts up notes on such cases; the applicant says that in this case it favourable note was put up by the Assistant, and the I, G. did not accept it, but

maintained the order of the D. I. G. and dismissed the appeal.

The applicant now filed a revision to the Home Minister which was also dismissed. Then he gave a review petition to the same authority, to which he says no reply was given; this means that it was also not accepted. Finally, he issued a lawyer''s notice on Government to which Government sent a reply refusing to accept the applicant''s contentions. All this process took more than 3 years, from 2-6-1953 to 12-10-1956. Thereupon the applicant filed the present application under Article 226 of the Constitution.

While the basic grievance is that the removal was by an authority subordinate in rank to the one that had appointed the petitioner, still number of other grounds have been alleged, such as that the inquiry was not in accordance with the Punishment and Appeal Rules, and there was no apportunity afforded to show cause and there was so proper inquiry and the like. Reserving for the moment a full consideration of the main ground, I find that these additional grounds are without substance and have been just mentioned as a sort of padding to the application. A perusal of the charge-sheet, the notice to show cause, both in respect of the charges and in respect of the punishment of dismissal proposed by the D. I. G. and the report of the S. P., clearly satisfies me that all requirements in this regard were fulfilled.

The point is that a full statement of allegations against the applicant was recorded and served on the applicant, and he was given full opportunity to show cause, to adduce evidence, and to cross-examine witnesses on the other side, if he chose. I also note that the Deputy Inspector General had applied his independent mind to the contents of the report given by the S. P. and has recorded his own order. It is, therefore, unnecessary to go into those general allegations about the form of the charges and the notice and the conduct of the inquiry.

Two more particular grievances have been made. Firstly, that there should have been an inquiry by a Magistrate u/s 34 of the Madhya Bharat Police Act Samvat 2007 (76 of 1950) which replaces the earlier ''The United State of Gwalior, Indore and Malwa (M. B.) Police Act of Samvat 2006. Secondly, that under Regulation 234 of the Madhya Bharat Police Regulations there should have been a criminal prosecution and not a departmental inquiry. Both the grounds are misconceived. Section 34 of the Madhya Bharat Police Act (76 of 1950) does provide that any charge under that Act against a Police Officer above the rank of a constable should be inquired into and determined by a Magistrate; but that Section applies only to the criminal offences and not departmental enquiries as the present one.

As for the para 234 of the M. B. Police Regulations, I noted that the "Regulations" are a collection of executive instructions to the officers of the Police force, and are not statutory rules or other mandatory directions made under the provisions of any law. These have no binding force, and give the members of the force no vested interest

in any particular procedure. From the view point of the petitioner the position is even worse. Para 234 says, that in the circumstances mentioned in it, a criminal prosecution is indicated, and the appropriate authority should promptly sanction it.

Whether the prima facie case is good enough to start a prosecution or whether the offence is of the description given in the later part of the regulation it is for the authorities to determine. It is indeed surprising for an officer of the police force, who has been dealt with in a departmental proceeding in accordance with a statutory rule, to argue that there is an executive instruction in the Manual that in certain circumstances similar offenders should be promptly prosecuted in a criminal court. It is not for him to choose.

This takes us to the main grievance namely alleged contravention of Article 311(1) of the Constitution. The procedure adopted in this case was in accordance with the Madhya Bharat Police (Powers of Officers) Rules, 1949 made u/s 7 of the United States of Gwalior, Indore and Malwa Police Act of 2006 which corresponds to Section 42 of the new Act of 1950. We are not directly concerned with the mechanics of appointment of S. Is. in the Madhya Bharat under these rules. But it is worth noting that Rule 2 (iii) empowers the D. I. Gs. subject to such conditions as may be laid down by the I. G. to make appointments to the rank of Inspectors and S. Is. of such candidates as may be accepted by the I. G. from among persons recommended for appointment by the Selection Board.

Rule 5 regarding punishment is to our purpose. Out of the list of punishments in Sub-rule 3, item No. 5 is dismissal. "If a S. P. desires to recommend ..... the dismissal of a Sub-Inspector he should complete departmental proceedings and send them to the D. I. G. with his recommendation". There is a note, "If the D. I. G. proposes to dismiss any S. I. he must personally record the officer''s explanation even if it has been once recorded by the S. P." This was the procedure adopted in this case; the grievance- is not that any particular step was omitted, but that the D. I. G. himself was incompetent to dismiss the petitioner. The petitioner has propounded three alternatives.

(i) Firstly, he was appointed by the I. G. of the erstwliile Gwalior State, and therefore he could not be dismissed by the D. I. G. Northern Range M. B. In this he assumes that the D. I. G. of the M. B. is subordinate in rank to the I. G. of the erstwhile Gwalior State, which office had ceased to exist with the merger in 1948.

(ii) Secondly, he was confirmed as S, I. of Police in the services of the State of M. B. by the Government. He feels that there was an order of the Government of the Madhya Bharat confirming him and that order is equivalent to an order of appointment.

(iii) Thirdly, since the notification of 31-8-1950 purported to come from the office of the I. G. of Police M. B., the I.G. M. B. should . he deemed to have appointed him. The questions are whether the notification was made by the J. G. or by an officer

acting on his orders; and if so, whether it amounts to an appointment by him.

Since there has been considerable confusion in this type of cases it would be proper to consider separately these three alternative cases in some, detail.

1. "That the petitioner was actually appointed by the Government of Madhya Bharat". As a fact there is not a particle of evidence on this averment. The notification dated 31-8-1950 (the relevant part of which I have already quoted) is not an appointment order at all. All that it does is to set out a state of affairs that is an order of seniority, of officers, already in service of the Madhya Bharat. Because these officers had been working in different constituent member states, there was likelihood of some misunderstanding or at least complaints in the matter of seniority, though the state of affairs had been tabulated with due regard to certain principles.

So officers were given an opportunity to object or represent. The idea of fresh appointment or of confirmation is altogether foreign to this notification. Thus I find on the facts of this case that the petitioner was not appointed by the Government of Madhya Bharat. Nor is there any covenant or statute or statutory order from which we can read off the authority in the State of Madhya Bharat, which was exercising the functions of the I. G, Police, erstwhile Gwalior State.

The petitioner has quoted two rulings of the Indore Bench of this Court. But they are not applicable to the present case, though during argument the petitioner has asserted that they conclude this case in his favour. The earlier of the 2 rulings is Abid Mohammad Khan v. State of M. B. AIR 1956 Mp 259. There the petitioner was an employee of the former Holkar State and later on was a S, I. of Customs and Excise in the Madhya Bharat. He was ultimately dismissed by the Commissioner of Customs and Excise. The operative part of the judgment is thus:

"The petitioner in this case was admittedly appointed by the Government of Madhya Bharat with effect from 1-4-1954 and was dismissed by the Commissioner who is an authority subordinate to the Government. The order of dismissal passed is clearly in contravention of the provisions of Article 311(1) of the Constitution and is, therefore invalid and inoperative."

Abid Mohd. came up again before the High Court in 1957 vide Abid Mohammad Khan v. The State, 1957 Jab LT 1080: (AIR 1958 M? 44); but that was in regard to another question. The second case is Khemchand Rajmal Vs. Chief Secretary, Madhya Bharat Govt. and Others, There were different grounds taken there, but so far as Article 311(1) is concerned the operative portion of the judgment is :

"The petitioner was appointed as a S. I. of Police in the then Rutlam State by the Ruler of that State by Darbar Order No. 9494 dated 31-12- 1945. Under the Covenant relating to the Madhya Bharat Union the functions of the Ruler of Rutlam, devolved on the U. S. of M. B., and the authority equivalent to the Ruler was the M. B.

Government Therefore a S, I, of Police who was originally appointed by the Ruler of Rutlam, but was not re-appointed in the M. B. State, can only be removed by the Madhya Bharat Government and his dismissal by the D. I. G. of Police is illegal.

If it is found that an officer has been really appointed by the State Government or a corresponding authority, then certainly removal by the D. I. G. of Police is illegal. This is the principle laid down in two P. C. rulings and accented by Mahesh Prasad Vs. The State of Uttar Pradesh, There is no question about it, and the correctness of its application in these two cases.

The petitioner has argued that the present case is identical in this regard with Hamchandia Gopalrao''s case. I find that it is not. I am unable to find that he was appointed by the Government of the Madhya Bharat. In that case the appointment was by the Ruler of the erstwhile Rutlam State, and the Court was able to find from the Covenant of the United State of Madhya Bharat that the M. B. Government was the authority exercising his functions, and should be considered the equivalent authority. In Abid Mohammad''s case it was held that appointment by the State Government was admitted, Here there is no evidence, and no admission that the appointment was by the State Government. The petitioner is not also able to show any covenant or law or order under statute equating this appointing authority i. e., the I. G. of Police of the erstwhile Gwalior to the Government of Madhya Bharat.

(ii) ''That the petitioner was appointed by the I. G. of the United State of Madhya Bharat''. This cannot be maintained; the gradation list is not an appointment order, or one of confirmation. Further, it is made by an S. P. on his own authority and not that of the Government or the I. G. Police, The fact that he had his office in the same place as the I. G. makes no difference.

(iii) ''That the petitioner was appointed by the I. G. P. of the erstwhile Gwalior State''. This is the real position. He continued in the new State of M. B. without re-appointment. Had it been aa appointment by the Ruler of Gwalior then it could have been similar to Ramchandra Gopal Rao''s case; but that Government not nominating the authority discharging the functions of the I. G. of erstwhile Gwalior, a similar principle cannot be applied.

We are now led to the question that arose in Mangal Singh v. State, AIR 1956 Madh-B 257 Indore Bench and solved in Sobhagmal Vs. State, the latter having been distinguished by this High Court in Raniachandr Gopalrao''s case. Bat in my opinion, there may still be certain circumstances in which it can be usefully applied, During the last ten or twelve years there have been three occasions when States that were comparatively small were brought together; difficulty was bound to be experienced in equating authorities that functioned in those erstwhile "native" States with the similar authorities functioning in the new enlarged Unions or States or Provinces. Firstly, there was the merger of a large number of States into the British Provinces as they used to be before 1950. The orders relating to these were in exercise of

foreign Jurisdiction, under the Foreign Jurisdiction Act,. 1947.

Most of them actually contained the tables showing list of authorities in the merged States, and the corresponding ones in the provinces. Wherever we had these tables, we had only to look them up and read off the corresponding authority. Secondly the Unions in Part B of the Constitution of 1950, were formed by the fusion of smaller states; each of them had a covenant or agreement which mentioned that the Rajpramukh or the United State would exercise the functions of the Ruler of the fusing State. Otherwise, they did not mention or tabulate the authorities of the fusing State along with the corresponding authorities in the Union. Had that, been done it would have been just as easy as in the case of merged states. Finally, came the States Reorganization in 1956; the Parliament itself has tried to remove this difficulty in regard to many authorities.

In the present case it is clear that the appointing authority namely the I. G. of Police of the erstwhile Gwalior States has ceased to exist. Certainly it does not follow that a person appointed by that defunct authority cannot at all be removed. But when he is removed, and he questions the removal as repugnant to Article 311(1) it would be for him to show that the authority actually lemoving him is subordinate in rank to the authority appointing. This is a well-nigh impossible task when that authority has ceased to exist, and the corresponding authority has not been mentioned in any Statute or Covenant or Order. This is exactly the position that arose in Mangal Singh''s case.

Saying that the authority that dismissed him has a name and description not so high-sounding as the authority which appointed him cannot take him very far. This is because in most of the States that existed before 1948, high sounding names were given to authorities whose powers, jurisdiction, and general status were comparatively low. The petitioner has not shown that the D.I.G. Northern Range, M.B. was subordinate in rank to the I.G. of erstwhile Gwalior State. In fact, he has not even averred so because he has all the time been asserting (as I find wrongly) that he had been appointed by the Government of Madhya Bharat or the I.G. of Police of M.B. Thus the ruling in Mangal Singh''s case applies.

The petitioner has not asked us to ascertain, who was the authority in the M.B. in 1953, that could be considered co-ordinate in status and functions with the I.G. of Police, erstwhile Gwalior State. If he had, then, the principles contained in the Rajasthan Ruling Sobhagmal Vs. State, may be helpful. They are reasonable, and show the only way in which this difficulty can bo solved; any way, that is the only ruling, I have been able to find, in which, an attempt has been made to find the relative status of the appointing and the punishing authorities, when, because of merger and integration, the former has ceased to exist, the State in which the appointment has been made has also lost its individual existence, there has been no re-appointment in the new State, and it is not possible to find out from any Covenant, Statute or Order, which authority is deemed to exercise the functions of

the one that made the appointment.

If these principles, or any reasonable tests, are applied, one will have to find that in the matter of appointing Sub-Inspectors of Police, the D.I.G. Northern Range, Gwalior, exercises the same functions as (and is co-ordinate in authority) with the defunct I.G. of Police in the erstwhile Gwalior State.

The result is that the application is without force. The rulings reported in AIR 1956 Mp. 259 and Khemchand Rajmal Vs. Chief Secretary, Madhya Bharat Govt. and Others, the principles of which, I accept, have no application to the present case. The application is dismissed, costs pay- able to non-applicant, and pleader''s fee Rs. 100/-one hundred only.

A.H. Khan, J.

I agree.