

Dr. K. Subba Rao Vs State of Hyderabad (now Andhra Pradesh)

Court: Andhra Pradesh High Court

Date of Decision: Jan. 24, 1957

Acts Referred: Constitution of India, 1950 " Article 223, 311, 311(2)

Hon'ble Judges: Subba Rao, C.J; Ahmed Ansari, J

Bench: Division Bench

Advocate: Ramaswami Iyengar, for the Appellant; Govt. Advocate, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. This is an application under Article 223 of the Constitution of India to quash the order of the Government of Hyderabad removing the Petitioner

from service.

2. The Petitioner holds the degree of Doctor of Medicine conferred by the Andhra University and the Diploma in Tuberculous Diseases granted by

the Madras Government. On 1-1-1950, he was appointed senior T.B. Officer of the T.B. Clinic at Dabirpura. Hyderabad. On 18-6-1954, the

Government of Hyderabad made an order transferring the Petitioner to the T. B. Sanatorium at Vikara-bad with immediate effect. On 23-6-1954,

the Petitioner addressed a letter to the Director, Medical and Health Services, informing him that he had an attack of appendicitis, and that he

would not be able to go to a place where expert medical advice was not available.

He further requested the grant of three months privilege leave which he had earned by that time. The Director informed him on 26-6-1954 that his

application for leave could be considered only after Petitioner had taken charge at Vikarabad. The Petitioner by his letter dated 26-6-1954

pointed out that he was not in good health and made a request that, pending the decision on the question of privilege leave he might be granted sick

leave for three months from 28-6-1954. He also informed th-3 Director that he was handing over charge to Dr. Basheer Hussain, Medical Officer

of the T. B. Clinic, Dabirpura.

The Director by his letter dated 30-6-1954 asked the Petitioner to send a medical certificate in support of his illness and informed him that, on the

receipt of the same further action would be taken. The Petitioner thereafter got himself examined by Dr. P. Ramacharider, M. D. and a certificate

issued by him to the effect that the Petitioner was suffering from subacute appendicitis and should be under careful medical supervision for a period

of at least 3 to 4 months was sent to the Director.

But the Director, by his letter dated 12-8-1954, informed the Petitioner that a Special Medical Board had been arranged to examine him on 18-8-

1954 and asked him to appear before that Board on that date. The Petitioner duly appeared before the Board and he was examined by the Board.

On 24-8-1954, the Director sent a communication to the Petitioner intimating to him that the Board was of opinion that the Petitioner was fit

enough to carry out his duties and, therefore, he should join duty immediately.

In while the Petitioner sent several communications to the Rajpramukb, the Chief minister and the Health Minister. On 5-11-1954, the Director

informed him that his case had been referred to the Government and that no leave could be sanctioned till his case was decided by the

Government. On 19-11-1954, the Director finally sent a communication to the Petitioner drawing his attention to the previous letters whereunder

he was informed that his leave could not be granted unless and until he had taken charge of the new post.

On receiving the said communication, the Petitioner on 23-11-1954 wrote to the Director that, in Spite of his bad health, he would, be joining duty

within a few days and made a further request to grant him sick leave with permission to leave the State. After writing that letter, he went to

Vikarabad Sanatorium but he v/as informed by the Medical Officer-in-charge of the Sanatorium that he had orders not to hand over charge to the

Petitioner. On 11-12-1954, the Government of Hyderabad issued a notification placing the Petitioner under suspension with effect from the

forenoon of 27-6-1954 until further orders pending an enquiry into his conduct.

By another notification, the Government appointed Shri Kazi Moinuddin Hussain B. A., LL B., Deputy Director to the Government in the Medical

and Health Department to conduct the enquiry. The said Deputy Secretary made an enquiry and submitted a report dated 18-5-1955. He found

that the Petitioner was guilty of disobedience of Government orders and of unauthorisecly staying away from duty. He also, held that he made

unwarranted aspersions on the integrity, independence and judgment of the Medical Board. On those findings, he recommended that, if the

Petitioner submitted his unconditional apology to the Government and the Director, Medical and Health Services, he might be demoted to Class II

service for a period of two years from the date of suspension and that, if he failed to comply with the above, the Government might dispense with

his services. A copy of the report together with the provisional conclusion of the Government thereon were communicated to the-3 Petitioner on

18-5-1955 and he was asked to show, cause why, in consequence of the findings of the enquiry officer and the provisional conclusion thereon

reached by the Government, he should not be removed from service or demoted to Class II service. On 16-6-1955, the Petitioner made his

representations, against the punishment to be imposed. The Government, after considering the objections, removed him from service. The

aforesaid petition was filed for quashing .that order.

3. Learned Counsel for the Petitioner questioned the validity of the order of the Government on the following grounds:

(1)The Petitioner was the senior T. B. Officer of the T. B Clinic at Dabirpura and the order of transfer from that post to that of junior T. B. Officer

of the T. B. Sanatorium at Vikarabad was a reduction in rank within the meaning of Article 311" of the Constitution of India, and, therefore, that

order, without giving him reasonable opportunity to show cause against it, was illegal.

(2) The Director though by notification dated 19-11-1954 informed that his application for leave would not be considered until he took charge of

the new post, the Government prevented him from taking charge by issuing orders to the Medical Officer in Charge of the said Sanatorium not to

hand over charge to the Petitioner and, therefore, the order dated 11-12-1954 directing an enquiry into the alleged misconduct was not

competent.

(3) The record of enquiry by the Deputy Secretary discloses that he violated a fundamental principle in not giving reasonable opportunity to the

Petitioner to establish his case and (A) The Government's order dismissing the Petitioner was based upon facts which were neither the subject-

matter of any issue nor were enquired, into by the Deputy Secretary.

I shall first take the third and the fourth grounds as they cover the point that the Petitioner was not given reasonable opportunity of showing cause

against the action proposed to be taken in regard to him.

The following charges were framed against the Petitioner.

1st Charge, (a) That, even before you had handed over charge of the office of Senior T. B. Officer, T. B. Clinic, Dabirpura on the 26th June 1954

in pursuance of the orders obtained in Government (Medical and Health Department.) notification No. 801/M/C7 dated the 18th June 1954

conveyed to you by the Director, Medical and Health, you had made up your mind to evade compliance with the further direction in that order

which had required of you to take charge of the T B. Sanatorium at Vikarabad, by applying for three months privilege leave on grounds of sickness

(vide your letter No. 269 dated 23rd June, 1954 (annexure 1 to this charge sheet)).

(b) That, further, when the Director, Medical and Health Services, categorically informed you through his letter No. 5218 dated 24th June, 1954

(vide annexure II) that the leave asked for in your said letter of the 23rd June, 1954, could only be considered after you had taken over charge at

Vikarabad, you categorically refused to go to and take charge at Vikarabad, again on grounds of sickness and applied for sick leave without

attaching a medical certificate in support of such request.

as required by the rules (vide your letter dated 26th June, 1954, at annexure III to this charge sheet), (c) that, even after you had been

subsequently examined, at the instance of Government by a Special Medical Board in the Osmania General Hospital on the 13th August 1954 and

had been informed by the Director, Medical and Health Services, through his letter dated the 24th August 1954 (vide annexure IV), that in the

opinion of the Board you were then fit enough to carry out duties and had in consequence been directed by the Director, Medical and Health

Services, to join duty immediately, you persisted in your refusal to join duty (vide your letter dated the 2nd September 1954 at annexure V).

You are thus prima facie guilty of disobedience of Government orders and of misauthorised staying away from duty and of irresponsible behaviour

a behaviour which considerably dislocated the work in the T. B. Hospital, Vikarabad and caused great inconvenience to the patients in that

institution.

2nd charge: (a) That you, in your letter dated (the 2nd September 1954 (vide annexure V) have cast unwarranted aspersions on the integrity,

independence and judgment of the Medical Board which examined you in the Osmania General Hospital, on the 18th August 1954, at the instance

of the Government, by characterising the opinion of that Board that you were then fit enough to carry out duties as ""evasive and diplomatic."" (b)

That, when a warning was administered to you in another connection by the Government (in the Medical and Health Department) through the

Director, Medical and Health Services in June 1954, you informed the Director, Medical and Health Services, through your letter dated the 24th

June 1954 (vide annexure vi) that you ""will not be able to accept the warning given by the Government"" and thereby displayed your disrespect for

the authority of the Government.

You have thus been prima facie, guilty also of gross insubordination and indiscipline by resorting to indecorous and intemperate language in official

correspondence.

5. The Petitioner denied the charges and pleaded that the charges disclosed a prejudice against him entertained by the officers, who were

responsible for levelling the charges against him. During the course of the enquiry, he made his position clearer by making the following statement:

I have to state at this stage that I wish to elicit from you by cross-examining you that you have already formed your opinion in this case, that this

fact is well-known to the concerned authorities and that yet the said authorities have chosen you as the inquiry officer and are insisting that you

alone should hear my case.

6. In his arguments, he elucidated this defence in unambiguous terms thus:

The enquiry is the result of a conspiracy among some of the officers concerned to oust me by hook or by crook. They have gone to the extent of

defaming me by falsely and maliciously stating that I am mentally unsound and recommending my dismissal.

7. It is, therefore, abundantly clear that the defence of the Petitioner was that there was a conspiracy between the concerned officers to dismiss him

and that, pursuant to that decision, the present enquiry was started and pursued on slender material. That this attitude of the Petitioner was not an

imaginary grievance is clear from the following circumstances:

1. The disproportionate punishment awarded for a comparatively small offence;

2. The Secretariat, file shows that on 18-10-1954 i. e. long before the enquiry started, the Government had come to a tentative conclusion, that,

whatever the nature of the case, the punishment involved was the extreme punishment i. e. dismissal:

3. Though no enquiry was made by the Deputy Secretary in regard to the capacity of the Petitioner to work harmoniously with his seniors, the

Government dismissed him on the ground that from that angle he seemed to be a mis-fit in the service;

4. There is clear evidence that Dr. Pandit, (ho President of the Medical B"bard, was on inimical terms with the Petitioner. This is made clear by the

fact that, though he signed the medical re-Port to the effect that the Petitioner"s clinical history and physical examination suggested the diagnosis of

chronic appendicitis and that appemliccc-tomv was advisable, in his evidence he definitely stated that the Petitioner was not suffering from acute

appendicitis. This shows a definite animosity on the part of the President of the Medical Board against the Petitioner;

5. The transfer of the Petitioner, who was occupying the post of Senior T. 11. Officer, of the T. B Clinic at Dabirpura to the post of junior officer

at T. B. Sanatorium, Vikarabad, without coming to any conclusion that he was incompetent in his professional capacity; and

6. The fact that when he went to join the post to which he was transferred, he was prevented from doing so.

8. We have to state all the aforesaid circumstances not in an attempt to support the action of the Petitioner and to attribute any motives to the

officers concerned but only to indicate that the apprehensions of the Petitioner that the transfer as well as the enquiry started against him were the

result of a concerted action on the part of the officers- concerned were not imaginary. With that background, we shall now proceed to see whether

the Petitioner was given reasonable opportunity to substantiate his plea.

9. The law on the subject is well-settled. It is not necessary to consider in detail all the cases cited at the Bar. A Division Bench of this Court, of

which one of us was a member, has considered the relevant case law on the subject in *Jogarao v. State of Madras* 1956 AnWR 978: ((S) AIR

1957 AP 197) (A), and re-stated it at p. 982 (of Andh WR): (at p. 200 of AIR) thus:

Every member of the civil service holds his employment at the pleasure of the State. But the undoubted power of the State to dismiss him is

controlled by the provisions of Article 311 of the Constitution. Except in the cases governed by the proviso to Sub-clause (2) of Article 311, such

a servant cannot be dismissed or removed by an authority subordinate to that by which he was appointed and that he could be removed only after

he has been given reasonable opportunity of showing cause against the action proposed to be taken in regard to him. The action proposed to be

taken in regard to a civil servant will be known only after an enquiry is held and after the authority concerned comes to a tentative conclusion on

the merits, for, the punishment would necessarily depend upon the gravity of the offence committed by the civil servant. Therefore whatever

machinery is provided by the State for the enquiry, whether it be through one of its executive officers or through a Tribunal for Disciplinary

Proceedings, the entire enquiry from the beginning till the punishment is imposed on the officer is one process. It is an enquiry held by the authority

empowered to remove the servant. Though the enquiry may have to be held in two stages, one up to the time the authority comes to a conclusion

on the question of the offence committed by the civil servant and the other from the stage notice is given to show cause against the action proposed

to be taken in regard to him, the entire process of the enquiry will have to be scrutinised by ascertaining whether reasonable opportunity is given to

the servant to show cause against the action proposed to be taken in regard to him. The opportunity to show cause is qualified by the word

reasonable". It is for the court on the facts of each case to scrutinize the entire record to come to a conclusion whether such a reasonable

opportunity was given to the civil servant. If as a matter of fact, every opportunity was given to the civil servant to defend himself by examining

witnesses and by cross-examining the prosecution witnesses it would be unreasonable to compel the authority to repeat the entire enquiry after the

second stage is reached. It is true that reasonable opportunity to show cause against the action proposed to be taken includes an opportunity to

canvass the correctness of the reasons for taking the proposed action. The authority should necessarily in its order requiring the civil servant to

show cause, give not only the punishment proposed to be inflicted on him but also the reasons for coming to that conclusion. A civil servant can

show cause by pleading that the Tribunal's report is vitiated by gross irregularities committed by it or by violating the principles of natural justice

such as preventing him from examining his witnesses or cross-examining his witnesses or cross-examining the witnesses who spoke against him or

similar others. If the finding of the Tribunal is the basis for the proposed punishment, he can also attack the correctness of the finding by showing

that the finding was not based on the evidence or is not supported by evidence. But it would be unreasonable to compel the authority to have two

trials as it were no up to the stage of the notice contemplated by Article 311 and the repetition of it again after notice, though in a particular case, if

the inquiry is vitiated by any of the reasons mentioned above, a further inquiry may reasonably be asked by the civil servant. To put it shortly the

entire proceedings of the inquiry must be looked into carefully to ascertain whether reasonable opportunity within the meaning of Article 311 is

afforded to a civil servant or not.

The complaint of the Petitioner is that he was compelled to submit to an enquiry by an officer who had already prejudged him, that some important

documents which he asked to be produced were withheld from the enquiry, that some of the witnesses whom he intended to cross-examine were

not Produced and that the enquiry officer disallowed Important, questions put by the Petitioner to elicit answers in support of the said conspiracy.

10. From the outset, the Petitioner objected to the enquiry being made by the Deputy Secretary. On 13-1-1955, he requested the Government to

change the enquiry officer but the Government by their order dated 7-2-1955, decided that the same officer should make the enquiry. On 22-1-

1955, the Petitioner desired to cross-examine the enquiry officer. But as the Government refused to change the officer, he was denied that

opportunity. When the Petitioner was questioned by the enquiry officer how his evidence would be relevant, he gave the following answer:

I have to state at this stage that I wish to Elicit from you by cross-examining you that you (Sept.) 1957 Andh. Pra. D.F./27 have already formed

your opinion in this case, that this fact is well-known to the concerned authorities and that yet be said authorities have chosen you as the enquiry

officer and are insisting that you alone should hear my case. By giving you even this information my defence has been jeopardised to some extent

but I have been constrained to give out this information lest it should be said that I did not show how your evidence was going to be relevant and

hence I cannot be given an opportunity to cross-examine you. If I should state anything more or reveal to you as desired by you on what points I

wish to cross-examine you, the whole purpose of cross examination will fail and so you are not entitled to ask me to reveal, to you the points.

11. The officer communicated the Petitioner's request to the Govt. but the Govt. by their order D/-2-3-1955 directed him to proceed with the

enquiry. In the affidavit now filed in support of the present petition; the Petitioner alleged that the enquiry officer could not possibly be expected to

conduct the enquiry with an open mind or to reach impartial conclusions as he had previously expressed a strong view without notice or reference

to the Petitioner that the Petitioner should be removed from service on account of his alleged abnormal mental condition and that this bias coloured

and influenced his conduct of the enquiry and his conclusions. These allegations were not denied by the Government in their counter. It is,

therefore, clear that the Petitioner was compelled to submit to an enquiry by an officer who, according to him, in league with others, was

responsible for taking action against the Petitioner and whom those facts he intended to cross-examine. Doubt-less the Government, i.e., the

authority entitled to punish the Petitioner in this case can ordinarily delegate the holding of an enquiry to its subordinate officers before taking final

action against him. But it is a fundamental principle of natural justice that the officer selected to make an enquiry should be a person with an open

mind and not one who is: either biassed against the person against whom action is sought to be taken or one who has prejudged the issue. A

summary of the case law on the subject given by Sinha J. in A.R.S. Choudhury Vs. The Union of India (UOI) and Others, , may usefully be

extracted at this stage. The learned Judge says at page 666:

But the person dealing with the enquiry at any stage is in the position of a Judge, and the rules of natural justice demand that he should not himself

be personally interested in the case. From United Breweries Co. v. Bath Justices, 1926 ACC 586, at p. 590 (O). He should be a person with an

open mind, a mind which is not biassed against the delinquent. Eckersly v. Mersey Docks and Harbour Board, 1894 2 QB 667 (D); R. v. Sussex

Justices, 1924 1 KB 256 (E); R. v. Rand, 1886 1 QB 230(F); 1926 ACC 586 (C); B. v. Camborne Justices 1954 2 AllER 850 (G). He should

not have prejudged the issue. East India Electric Supply and Traction Co Ltd., v. S. O Dutt Gupta, 5 CWN 162 (H). He cannot act both as a

Judge and a witness. Bejoy Chandra Chatterjee v. State of West Bengal, 58 CWN 988 (I). There is no bar to a person, issuing the show cause

notice to try it himself. The principle that a prosecutor cannot be a Judge is not strictly applicable to departmental enquiries Province of Bombay

Vs. Kusaldas S. Advani and Others, . But he must not lower himself to the status of a common prosecutor, that is to say of a person who feels it a

part of his function to bring the guilt home to the accused at any cost. He must act with the detachment of a Judge, since he is professing to

exercise that dignified function.

12. We respectfully agree with the aforesaid observations. If those fundamental principles are not followed by the Government in selecting a

person to make an enquiry, the enquiry would be a farce and would not in any sense of the term be said to give a reasonable opportunity to the

officer concerned to defend himself. By selecting the Deputy Secretary, against whom the Petitioner made grave allegations and in spite of protests

by insisting upon the enquiry being made by him, the Government deprived the Petitioner of the only safeguard afforded to him under the

Constitution.

13. The Petitioner made another request to the enquiry officer that he may be permitted to engage an advocate. But, in his letter dated 7-2-1955

he asks the Petitioner among others to give his reasons for engaging an advocate in such a simple case which did not call for any specialised

professional help. "The Petitioner replied that, having regard to his status and the fact that he wished to challenge the correctness of the opinion of

the Medical Board, his case required to be handled by an advocate. But that simple request was refused. It might be that, in the opinion of the

enquiry officer, the case did not require specialised professional help, but from the point of view of the Petitioner, it was a serious matter which

affected his official career and which might, as indeed it has happened in this case, result in his dismissal from service. Rightly or wrongly when the

Petitioner was under a reasonable apprehension that the enquiry was the result of a preconceived plan and a concerted action on the part of the

Medical Department, his request for professional help was certainly justified and the enquiry officer should have given him that opportunity. His

refusal to accede to that simple request has certainly deprived the Petitioner in the circumstances of the case of an opportunity to defend himself.

14. Coming to the actual enquiry, on 22-1-1955. the Petitioner desired to cross-examine the following gentlemen:

1. D. B. K. Pandit, Osmania, Hospital, Hyderabad-Deccan.

2. Sri" Kazl Moinuddin Hussain, Deputy Secretary, Medical.

3. Dr. L. D. Khatari, Director.

4. Dr. Jatar. Additional Director.

5. Dr. Pai. Osmania Hospital, Hyderabad-Deccan.

6. Mr. Ram Lai. Secretary.

7. Dr. Bankat Chandra. Osmania Hospital.

8. Mr. K. Srinivasan, IAS, former Chief Secretary. He also wished to examine on his side as defence witnesses:

1. Dr. Ramachander.

2. Dr. Mrs. Subba Rao.

3. Dr. Chalapathi Naidu.

4. Dr. N. M. Jaisooraya, M.D., 5. Dr Shoaib.

6. Dr. G. Subbarao.

But the enquiry officer did not agree to the calling of Messers. Srinivasan and Ram Lal on the ground, that they had nothing to do with the points at

Issue. The Petitioner intended to examine them to establish his case of collusion between the officer? concerned to remove him from service on

some pretext or-other. It was the definite case of the Petitioner that the officers concerned have gone to"" the extent of defaming him by falsely and

maliciously stating that he was mentally unsound and recommending his dismissal. The Petitioner could have elicited facts from the said witnesses as

regards what happened- behind the scenes before a formal enquiry ""was initiated against him. It was not for the enquiry officer to decide for the

Petitioner who should be examined and who should not be examined in support of his case.

15. Several documents relevant to the enquiry were not furnished to the Petitioner. The confidential record and the Medical Board's certificate

were withheld from the Petitioner on the ground that they were privileged documents. As already stated, the Petitioner's complaint against the

enquiry was that the officers concerned both at the Secretariat level and in the Medical Department decided to remove him on the false ground that

he was mentally unsound and started the present enquiry. The confidential record, which must have, contained the correspondence between the

various officers and the conclusions tentatively arrived at by them, would have disclosed the facts necessary for his defence. It was also curious

that the Medical Board's certificate was also not given to him. He was informed that the Medical Board expressed the view that he was in a fit

condition to go and take charge at Vikarabad T.B. Sanatorium. But he was not told the other part of the opinion, namely, that he was suffering

from chronic appendicitis. Whether the suppression of that fact was designed or accidental, an important fact, which supported the Petitioner's

case, was not disclosed to him. indeed. Dr. Pandit, the President of the Medical Board in his evidence stated that he was not suffering from chronic

appendicitis and the Petitioner having no knowledge of the certificate was not in a position to cross-examine him. The exclusion of the said

documents from the evidence certainly prejudiced the Petitioner.

16. When the witnesses were being examined many questions were disallowed on the ground that they were not relevant to the issue. When the

Petitioner sought to ask Dr. Pandit the following questions, they were disallowed:

1. Is it a matter of fact that you have recommended Dr. Rahman as superintendent of T.B. Hospital. He is junior to me in service and less qualified

than me?

2. You have not been supplying scheduled quota of streptomycin to T.B. Hospital when Dr. Subbarao was in charge,

3. When I have started giving operation, you have sent Dr. Modi to do this?

4. When surgical work was not progressing with Dr. Modi you have asked me to do surgery work and retain Dr. Modi also?

5. After I have done a few operations and became popular, you have prevented me from doing certain operations.

6. You wanted to prejudice Mrs. Vellodi against me re bed head tickets, you wrote an insulting letter to me.

7. Did you give a certificate of three years experience in T.B. work for Dr. Kanwal Chander to facilitate him to appear for his T.D.D. Wales?

8. When Dr. Kanwal Chander returned from England, you have recommended him for Superintendent's post? Did you say that Dr. Kanwal

Chander is more qualified than me and who is more qualified and experienced?

9. Did you recommend my transfer to Vikarabad?

10. Why did you not recommend any charge-allowance for me?

The aforesaid questions were certainly relevant to establish the Petitioner's case that Dr. Pandit was one of the officers pulling the strings to

remove the Petitioner from service.

17. The following question asked of Dr. Khatari was disallowed:

You have threatened with disciplinary action and sent the papers to the Secretary with motive of circulating defamatory letter and take action as you

and the Secretary and the Deputy Secretary are hand in hand to defame me and dismiss me?

18. It will be seen from the aforesaid questions and their disallowance that there was a conflict between the enquiry officer and the Petitioner. The

latter was trying to prove that the entire enquiry was a cloak and carry out a pre-conceived and prearranged plan among the officers

concerned while the former was anxious that nothing which happened behind the scenes should come to light. The questions were certainly relevant

to prove that there was concerted action as alleged by the Petitioner. What is more, the Government finally removed him from service on the

ground that he was not temperamentally capable of working harmoniously with- his seniors, his colleagues and his juniors. Incompatibility of

temperament was not one of the charges leveled against the Petitioner. Except alleging that the Petitioner by characterising the opinion of the

Medical Board as evasive and diplomatic cast unwarranted aspersions on the integrity, independence and judgment of the Medical Board, no

allegations were made, much less a charge was framed against him that he was not harmoniously working with his seniors, colleagues and juniors.

Nor did the Government in their notice to the Petitioner give that as one of the reasons for their proposed action against him. It is, therefore,

obvious that he was dismissed on the basis of a reason which was neither the subject matter of a charge against him nor in regard to which he was

given an opportunity to disprove.

19. To summarise admitted facts: Dr. P. Ramachander, M.D. certified on 3-7-1954 that the Petitioner was suffering from subacute appendicitis

and that he should undergo operation immediately in case of any further trouble. On 23-8-1954, the Medical Board expressed the view that his

clinical history and physical examination led to the diagnosis of chronic appendicitis and that appendices to my was advisable. In their evidence, Dr

Pai and Dr. Chalapathi Naidu agreed that an early operation was necessary. Though some surgical help was available at the Sanatorium at

Vikarabad, it is not an unreasonable attitude on the part of a Doctor like the Petitioner if he decided not to take the risk of operation in a place

where medical help could not necessarily be of the same standard as at Hyderabad or Madras. He had privilege leave to his credit and, therefore,

he applied for it. After some correspondence, he was finally informed by the Director that he would not be given leave unless and until he took

charge of the new post. But when he went to take charge of the new post, he was told by the authorities concerned that they have received orders

not to allow him to take charge. After making an enquiry wherein he was not allowed to prove that the enquiry was really the off-shoot of a pre-

arranged plan between the officers concerned in the Secretariat as well as in the Medical Department and that it was only a ruse to remove him in

accordance with the conclusions already arrived at, he was dismissed by the Government on the ground of incompatibility of temperament which

was never made a charge against the Petitioner. We are not stating that the Petitioner had established his case of mala fides. But we are satisfied

that lie was not given an opportunity much less a reasonable opportunity to establish his case of mala fides and that every genuine attempt made by

him was thwarted by the enquiry officer. We, "therefore, bold that the (Petitioner was not given a reasonable opportunity within the meaning of

Article 311 of the Constitution of India.

20. The next ground is that, by the order of transfer, from the Dabirpura T.B. Clinic to the Sanatorium at Vikarabad. the Petitioner was reduced in

rank, without giving him reasonable opportunity under Article 311 of the Constitution, and, therefore, the order was illegal and that the Petitioner

was not bound to obey it. It is said that the post he was holding at Dabirpura, Clinic) was that of a senior T.B. Officer with a salary of Rs. 800/-

plus I.G. Rs. 100/- special pay and that the officer. In charge of the Vikarabad Sanatorium Was designated T.B Officer without any special pay

attached to him. It is also said that, as senior T.B. Officer at Dabirpura. he was a professor in Tuberculosis at the Osmania Medical College, for

which he was paid Rs. -20/- per lecture, whereas the T.B. Officer at Vikarabad, by reason of his office did not discharge any duties carrying

additional remuneration. On the basis of the aforesaid facts, it is contended that the post at the Dabirpura T.B. Clinic is of. a higher cadre than that

at Vikarabad and, therefore, the transfer of the former to the latter was in effect and substance reduction in rank without enquiry. Though factually

there was "some difference in the nomenclature, given, to the office and the emoluments received by the two officers," we are not satisfied on the

material placed before us that there was reduction in rank involved in the transfer. The T.B. Officer at the Dabirpura, T.B. Clinic and the T.B.

officer at Vikarabad were both class I officers drawing a salary in the scale of Rs. 500-1500 O.S. The Government in their counter says that the

officer at the Dabirpura T.B. clinic was designated senior officer because there were other junior officers working there as T.B. Officers II grade.

The explanation is acceptable. The allowance the Petitioner was getting as part time Lecturer in the Osmania Medical College was not connected

with his salary as Class I Medical Officer and that could not be taken into consideration in evaluating the cadres of the two officers. Both the

officers held the same rank of Class I officers and we are not satisfied on the material placed before us that the transfer from one post to the other

was reduction in rank. We reject this contention.

21. In the view we have taken on the first point, it is not necessary to express our opinion on the question whether the Government by their order

dated 19-11-1954 waived the Petitioner's defaults and whether thereafter the Petitioner was prevented by the Government from taking charge of

the post to which he was transferred.

22. In the result we quash the order of the Government removing the Petitioner from service. The Respondent will pay the Petitioner the costs of

this petition. Advocate's fee Rs. 200/-.