

Shri Bishan Lal Kuthiala v. The Income-tax Officer, Special Circle Ambala Cantonment Bhandari, C.J.

the Income-tax Act to the Income-tax Officer calling a statement of his assets and liabilities not included in the accounts. It is alleged that the written statement does not contain a categorical denial of the assertion that the Commissioner accorded his approval without having any material before him to satisfy himself that the notice was justified and that in the absence of this denial it must be assumed that the facts stated in paragraph 9 of the petition are admitted. This contention cannot, in my opinion, bear a moment's scrutiny. At no place was it admitted in the written statement that the Commissioner accorded his approval without examining the facts. On the contrary the court is entitled to presume that all official acts are regularly performed and that every public servant discharges his duties in accordance with the provisions of law. It must be assumed, therefore, that before according his approval in the present case the Commissioner had satisfied himself in regard to the necessity of calling for the world income of the assessee.

For these reasons I am of the opinion that the provisions of subsection (4) of section 22 of the Income-tax Act cannot be held to be *ultra vires* the Constitution. The petition is, in my opinion, wholly devoid of force and must be dismissed with costs which I assess at Rs. 150.

Bishan Narain.
J.

BISHAN NARAIN, J.—I agree.

CIVIL WRIT

Before Bhandari, C.J. and Khosla, J.

SHANKAR DASS,—Petitioner

v.

THE UNION OF INDIA,—Respondent

Civil Writ No. 66 of 1954.

1956
Sept. 1st.

Constitution of India, Article 311—Person employed in a State Railway—Whether member of a Civil Service or holder of a Civil post under the Union—Whether entitled to

protection afforded by Article 311—Government Servant—Whether can be removed or reduced in rank without notice or hearing even though his conviction on a criminal charge has been set aside on appeal.

Held, that the Railway Department is admittedly one of the great departments of the Union and a person employed under a State Railway must, therefore, be deemed to be a member of a civil service or the holder of a civil post under the Union.

Held, that Article 311 of the Constitution declares that no hearing is necessary when an officer is proposed to be removed or reduced in rank on the ground of conduct which has led to his conviction on a criminal charge. As the order of conviction on which the order of dismissal could be based was set aside by this Court, the order of conviction ceased to exist and could not be the foundation of an order of dismissal. If the Railway authorities entertained the view that the services of the petitioner should be terminated, notwithstanding his acquittal, it was their duty to hold an appropriate inquiry and to order the dismissal of the petitioner after complying with the necessary formalities. The order of dismissal was neither in accordance with the provisions of the Constitution nor in accordance with the provisions of the Statutory rules, for no specific charges were framed, no hearing was given and no proof in support of those charges was adduced.

Petition under Article 226 of the Constitution of India, praying that a writ of certiorari or any other writ or direction suitable to meet the ends of justice may be issued to give appropriate relief to the petitioner.

H. L. SIBAL, for Petitioner.

K. L. GOSAIN, for Respondent.

JUDGMENT

BHANDARI, C.J.—This petition raises two questions namely :— Bhandari, C. J.

- (1) Whether a person employed under a State Railway is entitled to the protection afforded by Article 311 of the Constitution, and

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(2) Whether a Government servant can be removed or reduced in rank without notice or hearing even though his conviction on a criminal charge has been set aside by the appellate Court.

The petitioner in this case is one Shankar Dass who was employed as a Station Master under the Northern Railway. He was convicted of a criminal charge on the 8th August, 1953, was acquitted on appeal on the 23rd November, 1953, and was dismissed from service on the 30th November, 1953. His representation against the order of dismissal elicited the following reply :—

“Please note that the original orders dismissing you from service on conviction by the Sessions Judge of Amritsar stand, as your acquittal by the High Court of Punjab is on benefit of doubt.”

The petitioner is aggrieved by this order and has presented this petition under Article 226 of the Constitution.

Although ordinarily a public servant holds office at the pleasure of the authority making the appointment and may be removed at the absolute discretion of the appointing power, it is open to the framers of the Constitution to prescribe the manner in which he shall be removed. If the Constitution has prescribed the method of removal he cannot be removed by any other method. Our Constitution provides in Article 311 that if a member of a civil service or holder of a civil post is proposed to be removed or reduced in rank he must be afforded a reasonable opportunity of being heard but if he is proposed to be removed or reduced in rank on the basis of a conviction on a criminal charge no such opportunity need be afforded him.

There can be little doubt that the petitioner who was working under a State Railway was a member of a civil service of the Union or was holding a civil post under the Union. The expression "civil service" means all service rendered to and paid for by the Union or a State other than that pertaining to military affairs. A civil post is an agency for the State and the person whose duty it is to perform this agency is the holder of the civil post : (compare definition of "public office" in *Clarke v. Stanley* (1). It is an appointment or office on the civil side of the administration as distinguished from the military side (*Yusaf Ali Khan v. Province of the Punjab* (2), and *Sher Singh Malhan v. State of Madhya Pradesh* (3). To use the phraseology employed in the Government of India Act, 1935, a person is said to be the holder of a civil post if he is serving Government in a civil capacity in connection with the affairs of the Union or of a State. A member of a civil service or the holder of a civil post is usually, but not invariably, a wholetime servant of Government and is remunerated either by salary or fees.

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The Railway Department is admittedly one of the great departments of the Union and a person employed under a State Railway must therefore be deemed to be a member of civil service or the holder of a civil post under the Union. The correctness of this statement appears to have been tacitly assumed in a number of authorities such as *Union of India v. Someswar Banerjee*, (4), and *Fakir Chandra Chiki v. S. Chakravarti and others* (5).

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- (1) 121 American State Report 488
 (2) A.I.R. 1950 Lah. 59
 (3) A.I.R. 1955 Nag. 175
 (4) A.I.R. 1954 Cal. 499
 (5) A.I.R. 1954 Cal. 566

