

UNION OF INDIA
v
SHRI RATI PAL SAROJ AND ANR.

FEBRUARY 4, 1998

[SUJATA V. MANOHAR AND D.P. WADHWA, JJ.]

Service Law :

Appointment order—Withdrawal/cancellation—Principles of natural justice—Applicability of—Candidate, then Under Secretary, UPSC, was offered appointment to IAS on the basis of Civil Services Examination—Candidate accepted offer but failed to join as probationer by the due date since he was not relieved by UPSC—Later CBI registered a complaint against him that abusing his official position, the candidate entered into a criminal conspiracy with others whereby the originally written answer papers of the candidate in the Civil Services Examination were removed and substituted by other answer papers—Thereafter, the Government withdrew/cancelled the offer of appointment to the IAS—Subsequently, criminal and departmental proceedings were initiated against the candidate—Held: In the circumstances of the case, withdrawal /cancellation of the offer of appointment to IAS without giving a hearing to the candidate, valid—Administrative Law—Constitution of India, 1950, Art. 311(2)—IAS (Appointment by Competitive Examination) Regulations 1955, Regns. 11 and 13—IAS (Recruitment) Rules, 1954—IAS (Probation) Rules, 1955.

The respondent, who was Under Secretary, Union Public Service Commission (UPSC), was offered an appointment to the Indian Administrative Service (IAS) on the basis of the Civil Services Examination. The respondent accepted the offer of appointment but failed to join as probationer by the due date since he was not relieved by the UPSC. Subsequently, CBI registered complaint against the respondent and certain other persons to the effect that abusing his official position the respondent and these persons had entered into a criminal conspiracy whereby the originally written answer-papers of the respondent in the Civil Services Examination were clandestinely removed and substituted by other answer-papers. Thereafter, the appellant withdrew/cancelled the offer of appointment to the IAS. The respondent was suspended and criminal and departmental proceedings were initiated against him.

A The respondent filed an application before the Central Administrative Tribunal challenging the aforesaid withdrawal/cancellation of the offer of appointment to the IAS. The Tribunal allowed the application on the ground that the offer could not have been withdrawn without giving a hearing to the respondent. Hence this appeal.

B Allowing the appeal, this Court

C HELD : 1.1. The respondent, in the present case, is not, in the strict sense, governed by Regulation 13 of the Indian Administrative Service (Appointment by Competitive Examination) Regulations, 1955, since the appointment has been withdrawn after the appointment order was issued and not before. The Indian Administrative Service (Probation) Rules, 1955 also do not apply to the respondent because he does not belong to the Indian Administrative Service as a probationer. He is in the intermediate stage of a person who has accepted the appointment offer but has not joined the new service. [598-E]

D 1.2. It is well settled that a probationer's service can be terminated during the period of probation if he is found unsuitable. [598-G]

Samsher Singh v. State of Punjab, [1974] 2 SCC 831, followed.

E *Anoop Jaiswal v. Government of India*, [1984] 2 SCC 369, relied on.

F 2. An employee who has not yet joined the Central Government Service cannot be put on a higher pedestal than a probationer. If an employee who has been offered a post by the Central Government is not in a position to join on the date fixed under the appointment letter and there is no prospect of his joining for several years to come, the Central Government would be entitled to terminate the appointment as the person appointed is not available to the Central Government within a reasonable time of the appointment and hence he is not suitable. This does not cast any stigma nor is it a punishment for the prospective employee. If the employee has a right to be appointed by virtue of his acceptance of the offer of appointment, that right has to be exercised within a reasonable time. It is not a right, which remains for an indefinite period of time. In the same way, if the Government discovers after the offer of appointment, circumstances relating to the prospective employee which make him unsuitable for the post, the appointment can be cancelled. If the circumstances raise a doubt about the suitability of the candidate for the post or the service in question, the doubt should be dispelled within a reasonable

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time. Otherwise the employer is entitled to cancel the appointment.

[599-D-F]

Sharwan Kumar' Jha. v. State of Bihar, [1991] Supp 1 SCC 330, relied on.

3. In the present case looking to the facts and circumstances it was not necessary to give a hearing to the respondent. Although an FIR was filed against the respondent the earlier correspondence shows that the respondent was unable to join as a Probationer on the due date because he was not being relieved from his post. The Central Government thereafter learned why the respondent was not being relieved from his post. If thereafter it came to conclusion that the respondent was not a suitable person, or that it was not possible to wait for a long period for the respondent to join, it would be entitled to withdraw the appointment. Indian Administrative Service is a premier administrative service of the Central Government. If in the facts and circumstances of the present case the Central Government decided that the respondent was unsuitable to be given a post in the Indian Administrative Service, the decision cannot be faulted. [600-C-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2393 of 1992.

From the Judgment and Order dated 24.9.91 of the Central Administrative Tribunal, New Delhi in O.A. No. 485 of 1988.

Ms. K. Amareshwari, (Ms. Niranjana Singh) and Ms. Anil Katiyar for the Appellant.

A. Mariarputham and Ms. Aruna Mathur for M/s Arputham, Aruna & Co. for the Respondent.

The Judgment of the Court was delivered by

MRS. SUJATA V. MANOHAR, J. The respondent Rati Pal Saroj was, at the material time, Under Secretary, Union Public Service Commission as a Grade-I Officer of the Central Secretariat Service. He appeared for the Civil Services Examination 1985. On the basis of the results declared the respondent was offered an appointment to the Indian Administrative Service by a letter dated 31st July, 1986. The respondent accepted the offer of appointment by his telegram of 5th August, 1986.

A Under the letter of appointment respondent was required to join the Lal Bahadur Shastri National Academy of Administration, Mussoorie as a probationer on 24th August, 1986. A copy of joining instructions was also enclosed with the letter of appointment. The respondent was, however, not relieved from the post of Under Secretary, Union Public Service Commission to join the National Academy of Administration, Mussoorie. The Union Public Service Commission's letter to the respondent dated 22nd August, 1986 directed the respondent not to hand-over charge of his office or get relieved as Under Secretary, Union Public Service Commission until he got specific orders in this regard. Since he was not relieved from his post the respondent could not join the Indian Administrative Service as a probationer at the National Academy of Administration, Mussoorie. On 7th September, 1986 C.B.I. registered a complaint against the respondent and certain other persons to the effect that the respondent and these persons had entered into a criminal conspiracy whereby the originally written answer-papers of the respondent in the Civil Services Examination were clandestinely removed and substituted by other answer-papers. The respondent had abused his official position as a public servant and an official of the Union Public Service Commission in doing so. The appellant, by letter dated 9th September, 1986 withdrew its offer of appointment to the Indian Administrative Service made to the respondent by the letter of 31st July, 1986 and stated that the same should be treated as cancelled. The respondent was detained in custody on 10th September, 1986. He was suspended from Central Secretariat Service with effect from 10th September, 1986 and a departmental inquiry was also started. The respondent was served with a charge-sheet on 21st November, 1989. However, on the application of the respondent, the departmental inquiry has been ordered to be kept in abeyance because of the pending criminal proceedings.

F The respondent filed an application before the Central Administrative Tribunal challenging the withdrawal/cancellation of his appointment to the Indian Administrative Service by the letter of 9th September, 1986. The Tribunal held that the offer could not have been withdrawn after acceptance; if such a step became necessary the principles of natural justice would warrant giving a hearing to the respondent. So long as the respondent was not relieved from his previous post the offer of appointment should be treated as if it were in abeyance. The offer could not be withdrawn. The Tribunal, therefore, allowed the application of the respondent. Hence the present appeal by the appellant.

H The above facts show that the respondent had been offered an

appointment to the Indian Administrative Service which he had accepted. The respondent, however, could not join Indian Administrative Service as a probationer within the prescribed period because he was not relieved from his previous post. Before the respondent could join the Indian Administrative Service as a probationer, the appointment is withdrawn or cancelled. Therefore, one thing at least is clear - the respondent was not a probationer in the Indian Administrative Service on the date when his appointment was withdrawn or cancelled. He held the post of a Grade-I Officer in the Central Secretariat Service on the date when the appointment was withdrawn and he continues to hold that post. A B

What is the position of the respondent? Once an appointment order is issued, is it open to the Government to withdraw that appointment on *bona fide* ground before the prospective employee actually joins service; or is the Government required to hold a departmental inquiry or give a hearing to the prospective employee? Obviously, the employer will have no right to hold a departmental inquiry because the employee has not joined service and is, therefore, not amenable to the Service Rules of the employer. The only question, therefore, is whether a hearing necessarily needs to be given to the prospective employee before the appointment letter can be withdrawn, or whether this will depend on the facts and circumstances of each case. C D

Our attention was drawn to The Indian Administrative Service (Appointment by Competitive Examination) Regulations, 1955, framed under the Indian Administrative Service (Recruitment) Rules, 1954. The regulations provide for holding of examination by the Public Service Commission and the manner in which this examination is to be held. Regulation 11 deals with Disciplinary action. Under this regulation a candidate for the examination who has been declared by the Commission to be guilty of, *inter alia*, using unfair means during the examination may, in addition to rendering himself liable to criminal prosecution, be liable, *inter alia*, if he is already in service under the Government, to disciplinary action under the appropriate rules. Regulation 13 provides as follows :- E F

“13. *Inclusion in List Confers no Right to Appointment* - The inclusion of a candidate's name in the list confers no right to appointment unless the Central Government is satisfied, after such enquiry as may be considered necessary, that the candidate having regard to his character and antecedents is suitable in all respects for appointment to the Service.” G H

- A Therefore, even though a candidate's name may be included in the select list, he has no right to appointment and the Central Government is entitled to satisfy itself about the character and antecedents of the candidate before offering him an appointment. Therefore, it is open to the Central Government not to offer appointment to a candidate although he is on the select list if the
- B Central Government is not satisfied about his character or antecedents. There is no question of any enquiry or hearing at this stage because no right is created in favour of a candidate whose name is on the select list. If the candidate is offered appointment and joins, he is governed by the Indian Administrative Service (Probation) Rules of 1954. Under Rule 12 of these
- C Rules, a probationer shall be liable to be discharged from service or, as the case may be, reverted to the permanent post on which he holds a lien if, *inter alia*, the Central Government is satisfied that he is unsuitable for being a member of the Service or he is found lacking in qualities of mind and character needed for the Service. The proviso to this Rule requires that except in the case of a probationer's services being terminated for failure to pass the re-examination, in all other cases the Central Government shall hold a summary
- D enquiry before passing an order.

- E The respondent, in the present case, is not, in the strict sense, governed by Regulation 13 of The Indian Administrative Service (Appointment by Competitive Examination) Regulations, 1955, since the appointment has been withdrawn after the appointment order was issued and not before. The Indian Administrative Service (Probation) Rules of 1955 also do not apply to the respondent because he does not belong to the Indian Administrative Service as a probationer. He is in the intermediate stage of a person who has accepted the appointment offer but has not joined the new service. What are his rights?

- F His position appears more akin to the position of a selectee rather than a probationer because he has not joined the new service when the appointment is cancelled. He continues to belong to the Service which he had joined and to which he belonged prior to his present selection. One thing at least is clear - he cannot have higher rights than a probationer. It is well settled that a
- G probationer's service can be terminated during the period of probation if he is found unsuitable. No enquiry is necessary for such termination of the services of a probationer. In the case of *Samsher Singh v. State of Punjab & Anr.*, [1974] 2 SCC Page 831, a Bench of this Court consisting of seven Judges, *inter alia*, held that the services of a probationer can be terminated when the authorities are satisfied regarding his inadequacy for the job, or
- H unsuitability for temperamental or other reasons not involving moral turpitude,

or when his conduct may result in dismissal or removal but without a formal enquiry. An enquiry is necessary only when the termination is by way of a punishment and to determine this the substance of the order and not the form is decisive. The same position has been re-affirmed in *Anoop Jaiswal v. Government of India & Anr.*, [1984] 2 SCC 369 where the decision in *Samsher Singh v. State of Punjab*, (supra) has been quoted extensively. Before a probationer is confirmed, the authority concerned is under an obligation to consider whether the work of the probationer is satisfactory or whether he is suitable for the post. If it comes to the conclusion that the probationer is not suitable he is liable to be discharged. He cannot, in this situation, claim the benefit of Article 311(2).

There is no reason why the same right to terminate the offer of appointment on the ground of the prospective employee's unsuitability should be denied to the Central Government. An employee who has not yet joined the Central Government Service cannot be put on a higher pedestal than a probationer. If an employee who has been offered a post by the Central Government is not in a position to join on the date fixed under the appointment letter and there is no prospect of his joining for several years to come, the Central Government would be entitled to terminate the appointment as the person appointed is not available to the Central Government within a reasonable time of the appointment and hence he is not suitable. This does not cast any stigma nor is it a punishment for the prospective employee. If the employee has a right to be appointed by virtue of his acceptance of the offer of appointment, that right has to be exercised within a reasonable time. It is not a right which remains for an indefinite period of time. In the same way, if the Government discovers after the offer of appointment, circumstances relating to the prospective employee which make him unsuitable for the post, the appointment can be cancelled. If the circumstances raise a doubt about the suitability of the candidates for the post or the Service in question, the doubt should be dispelled within a reasonable time. Otherwise the employer is entitled to cancel the appointment. This is not by way of a punishment nor does it cast a stigma on the prospective employee.

Learned counsel for the respondent relied upon a decision of this Court in *Sharwan Kumar Jha & Ors. v. State of Bihar & Ors.*, [1991] Supp. 1 SCC 330, where the appellants were appointed as Assistant Teachers and were required to join the schools by a specified date. There was a dispute whether they had joined the schools or not when an order was passed cancelling their appointments. This Court said that in the facts and circumstances of the case

A the appellants should have been given a hearing before cancelling their appointments. This decision turns on the facts and circumstances of the case, especially when there was a dispute as to whether the teachers had actually joined or not joined. This decision will have no application to the present case where it is quite clear that the respondent was not even a Probationer at the time when his appointment was withdrawn.

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In the present case looking to the facts and circumstances it was not necessary to give a hearing to the respondent. It is urged that the withdrawal of appointment was on account of the F.I.R. filed against the respondent and, therefore, the respondent should have been heard and given an opportunity to present his case before withdrawing his appointment. Or his appointment should be kept in abeyance till he is found guilty or acquitted. The earlier correspondence, however, shows that the respondent was unable to join as a Probationer on the due date because he was not being relieved from his post. The Central Government thereafter learnt why the respondent was not being relieved from his post. If thereafter it came to a conclusion that the respondent was not a suitable person, or that it was not possible to wait for a long period for the respondent to join, it would be entitled to withdraw the appointment. Indian Administrative Service is a premier administrative service of the Central Government. All those who are members of the Indian Administrative Service are called upon to discharge heavy responsibilities which require on the part of an incumbent to the post the highest degree of probity, rectitude, and an impeccable character. If in the facts and circumstances of the present case the Central Government decided that the respondent was unsuitable to be given a post in the Indian Administrative Service, the decision cannot be faulted. The impugned letter merely withdraws the offer of appointment. It casts no stigma. So long as the decision is taken *bona fide* on relevant facts and in the interest of the service it cannot be faulted.

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The appeal is allowed, the impugned order of the Tribunal is set aside and the application filed by the respondent before the Central Administrative Tribunal is dismissed with costs.

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V.S.S.

Appeal allowed.