

(1965) 11 CAL CK 0022
In the Calcutta High Court

Brojo Gopal Kar Bhowmick

APPELLANT

Vs

Commissioner of Police and Others

RESPONDENT

Date of Decision : 18-11-1965

Acts Referred:

Constitution of India, 1950 — Article 226, 311
Penal Code, 1860 (IPC) — Section 114, 161, 408
Police Act, 1861 — Section 10

Citation : (1966) 2 LLJ 532

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Judgement

B.N. Banerjee, J.—It appears from the service roll of the petitioner (copy annexed to. the affidavit-in-opposition affirmed by Dharendra Nath Mullick on 27 January 1965) that he was first appointed, on 3 October 1934, as a temporary constable, by the Superintendent of Police, at Tipperah. Later on, he was confirmed in the rank of assistant sub-inspector, on 7 September 1941, by the then Superintendent of Police, Tipperah-Comille. After the partition of Bengal in 1947, the petitioner was absorbed in the Calcutta Police and, with effect from 1 August 1945, was promoted to officiate as a sub-inspector of police. This appears from annexure A to the petition. Thereafter, the petitioner passed a departmental examination and his name was included in list II of officiating sub-inspectors. In his career in the Calcutta Police, prior to 1956, the petitioner had his ups and downs; he earned certain rewards and commendations and also suffered certain humiliations for neglect of duty.

2. In the year 1956, the petitioner and Anr. person of the name of Tarak Das Mukherjee were arrested by the police and were prosecuted before a Special Judge on charges, inter alia, u/s 161 of the Indian Penal Code, and Section 5(2) (1) of the Prevention of Corruption Act, 1947. The petitioner was convicted of the charges and sentenced to a term of imprisonment by the trial Court. The conviction and sentence were, however set aside, on 4 August 1960, by this Court, in Criminal Appeal No. 648 of 1958, with the following observations:--

Although we have not examined the evidence carefully, the facts disclose a gross corruption which should be enquired into. The point taken on the appellant's behalf goes to the root of the jurisdiction of the Special Court. The point is that the Court having taken cognizance of the case upon a chargesheet and not upon a complaint as required under the law, the trial was without jurisdiction. In view of a number of recent decisions of this Court, we must accept this contention and hold that the appellant's trial was without Jurisdiction.

3. The petitioner had been suspended during his criminal trial. The order of suspension was not, however, set aside upon the discharge of the petitioner. He was, on the other hand, called before a board, presided over by the respondent-Commissioner, convened to consider the suitability for confirmation of officiating sub-inspectors. That board passed the following resolution on 13 December 1960:

A board consisting of all Deputy Commissioners and presided over by the Commissioner of Police, Calcutta, met at Lalbazar on 2, 3, 6, 7, 9 and 10 December 1960 to consider confirmation of officiating Sub-Inspectors who had completed five years' continuous officiating service as sub-Inspectors and also suitability of officiating sub-inspectors to continue further in that post.

(2) The board also unanimously decided to remove the name of officiating sub-inspector, Brojo Gopal Kar Bhowmick of reserve force, from list II of assistant sub-inspectors fit to officiate as sub-inspectors on the grounds of general unsuitability. His name is accordingly removed from list II from 12 December 1960.

4. Upon the passing of the resolution, the petitioner was reverted to his substantive post as assistant sub-inspector. The petitioner says that he has appealed against the order, which is pending. I am not, however, concerned with the propriety or otherwise of the order, because the same is not the subject-matter of this rule.

5. On 10 March 1961, the petitioner was charged with misconduct in the following language:

You, assistant sub-inspector, Brojo Gopal Kar Bhowmick (under suspension), are charged with moral turpitude, gross misconduct and grave dereliction of duty in that--

(i) you demanded and accepted an illegal gratification of Rs. 70 as bribe on 16 November 1956 in a flat on the third floor of premises No. 62A, Free School Street, between 3-50 p.m. and 4-16 p.m. from one Mohanlal Badalia, son of Pearlal Badalia, of Beadon Street for showing him favour in your official capacity as a public servant, to wit, the investigation officer of Hare Street Police Station Case No. 127 dated 7 February 1956, u/s 408/114, Indian Penal Code, in which Mohanlal Badalia was an accused along with others;

(ii) you, in violation of Sections 76, 77 and 78 of the Calcutta Police Act, did not make the said Mohanlal Badalia to appear before a magistrate at the next sitting,

though you released him on bail from Hare Street Police Station on 22 February 1956 after arrest in connexion with the aforesaid case and did not even forward his bail bond to that Court;

(iii) you hoodwinked the Court by stating that Mohanlal Badalia was not wanted as an accused in connexion with the aforesaid case and did not even report that Mohanlal had been arrested in the said case when the Court called for a report from you on the surrender " application of Mohanlal on 21 September 1956;

(iv) you kept in your personal custody a set of seven English novels, one fountain-pen, three pictures made of ivory and a photograph of the said Mohanlal with a girl, with a dishonest motive, without entering them in the malkhana register of Hare Street Police Station or depositing them in the malkhana although the properties had been obtained by you and could not be accounted for.

You will show cause within a week from the date of receipt of the chargesheet whether you plead guilty to the charges and whether you want to be heard in person.

6. The statement of allegation, on which the Charges were based, reads as follows:

A case of criminal breach of trust in respect of electric cables belonging to Osier Electric Lamp Manufacturing Company, Ltd., was started at Hare Street Police Station against Mohanlal Badalia, son of Pearilal Badalia, of Beadon Street, Calcutta, in Case No. 127 dated 7 February 1956 u/s 408/114, Indian Penal Code. The investigation of the case was conducted by officiating sub-inspector Brojo Gopal Kar Bhowmick while he was attached to that police station. Mohanlal was arrested by him on 22 February 1956 and he released the accused on bail on the same date. He did not take any step to make Mohanlal appear before any magistrate at the next sitting and did not even forward his bail bond to any Court.

On 21 February 1956 the said Mohanlal had filed a surrender application in Court. On this the learned Chief Presidency, Magistrate called for a report from the Investigating officer. The sub-inspector submitted a report on 23 September 1956, wherein he stated that the said Mohanlal had not been required in the said case but that he was required for further examination. Even then he did not state that Mohanlal had been arrested as far back as 22 February 1956.

The sub-inspector demanded and accepted a sum of Rs. 70 (seventy only) in seven 10-rupee Government currency notes in a flat on the third floor of 62A, Free School Street, between 3-30 p.m. and 4-15 p.m. from the said Mohanlal for showing him favour in his official capacity as a public servant.

The sub-inspector obtained a set of seven English novels, one fountain-pen, three pictures made of ivory and photograph of the said Mohanlal with girl but he did not deposit the exhibits at the thana malkbana. These exhibits were found on search by Sri A. K, Sen Gupta, Deputy Superintendent of Police, Anti-corruption, from a looked-up steel almirah at Hare Street Police Station on the night of

16/17 November 1956. The said steel almirah was under his exclusive control.

7. The petitioner pleaded not guilty to the charges, on grounds with which I need not concern myself in this rule. Respondent 2, Assistant Commissioner, was thereafter authorized by the respondent-Commissioner to conduct the enquiry against the petitioner.

8. The petitioner alleges that the enquiry against him was not held in an orderly manner and rules of natural justice were violated in conducting the enquiry. The specific grievances of the petitioner, in this respect, may be tabulated as hereinafter stated:

(a) The previous statements of witness Mohanlal Badalia, recorded on 14 and 16 November 1956, were not furnished to the petitioner, though asked for by him.

(b) The first information report in the criminal case was not brought on the record, which, according to the petitioner, was unfavorable to the department.

(c) The petitioner could not complete the cross-examination of Mohanlal Badalia who was examined on the very day the petitioner began cross-examination. The petitioner asked for time on 12 July 1961 for further cross-examination. This opportunity was not given to the petitioner.

(d) The documents and records asked for by the petitioner on several dates, all in writing, for cross-examination of witnesses, were not supplied to him.

(e) R.C. Maheshwari and Tarakdas Mukherji were not called as prosecution witnesses so that the petitioner might cross-examine them and the petitioner was compelled to examine them as defence witnesses, much to his disadvantage.

(f) The enquiry officer used to have private discussion with each of the prosecution witnesses first of all and then used to record their deposition in the presence of the petitioner. The enquiring officer was thus alleged to have acted both as the prosecutor and the judge.

9. On the evidence thus collected and ignoring all contradictions and improbabilities in the evidence, the petitioner alleges, the enquiring officer found the charges proved against the petitioner and recommended his dismissal. Respondent 2, the Deputy Commissioner, agreed with the findings and, after service of a notice to show cause why he should not be dismissed, passed an order of dismissal upon the petitioner on 4 January 1962.

10. An appeal preferred by the petitioner against the order was dismissed by the respondent-Commissioner on 23 March 1962.

11. In these circumstances, the petitioner moved this Court, under Article 226 of the Constitution, praying for the quashing of the disciplinary action taken against him and for a mandate upon the respondents restraining them from giving effect thereto and obtained this rule limited to grounds I, IV, V and VI.

12. In ground I, the point taken was that the respondent 2 was not the authority

competent to dismiss the petitioner and as such the order of dismissal must be set aside. The petitioner relied upon Section 10 of the Police Act in support of this contention. Section 10 reads as follows:

10. (1) The Commissioner of police may at anytime suspend or dismiss any member of the subordinate ranks of the police force whom he shall think remiss or negligent In the discharge of his duty or otherwise unfit for the same.

(2) A police officer shall not, by reason of being suspended from office, cease to be a police officer. During the term of such suspension the powers, privileges and duties conferred or imposed upon him as a police officer shall be In abeyance, but he shall continue subject to the same responsibilities, discipline and penalties and to the same authorities, as If he had not been suspended.

13. This argument ignores Section 90, introduced in the Calcutta Police Act, by Calcutta and Suburban Police (Amendment) Act, 1962, with retrospective effect. Section 9C reads as follows:

9C. Notwithstanding anything contained elsewhere in this Aot or any decision of any Court to the contrary, all appointments made by the Commissioner of Police or any other authority subordinate to him, all orders of dismissal or removal from office passed by any such appointing authority or other authority and all orders inflicting any other punishment passed by any authority, before the commencement of the Calcutta and Suburban Police (Amendment) Act, 1962, in respect of members of the subordinate ranks of the police force shall be deemed to be and to have always been validly passed as if the said Act were in force when such appointments were made or such orders were passed.

14. If under the law as it now stands the dismissal by an officer not subordinate to the appointing authority stands validated, the argument based on the old law, as in Section 10, cannot succeed.

15. Faced with this difficulty, Sri Nath, learned advocate for the petitioner, recast his argument and contended that the respondent Deputy Commissioner was an authority subordinate to that by which the petitioner was appointed and the order of dismissal by the Deputy Commissioner was bad, under Article 311(1) of the Constitution. This argument was wholly misconceived. The petitioner was first appointed as an assistant sub-inspector by a Superintendent of Police. The authority which dismissed him from the rank of assistant sub-inspector was not subordinate to a Superintendent of Police but an officer of the rank of Deputy Commissioner.

16. I now take up for consideration grounds IV, V and VI, by which the petitioner makes the grievance that provisions of Article 311(2) and the rules of natural Justice were violated in the disciplinary action against the petitioner. So far as the violation of the rules of natural justice is concerned, the petitioner alleges, in the first place, that the first information report, which started the criminal action against the petitioner, was not brought on the record. That first information

report was not relied upon by the enquiring Assistant Commissioner. The petitioner also did not ask for the document. I find this grievance without any substance. It is alleged in the next place that the petitioner could not complete the cross-examination of Mohanlal Badalia, on 12 July 1961, and applied for an opportunity to carry on the cross-examination on a subsequent day. That application (annexure H to the petition), the petitioner alleges, was received by the enquiring Assistant Commissioner but no order was passed thereon. This allegation is denied in Para. 16 of the affidavit-in-opposition in the following language:

The petitioner cross-examined Mohanlal Badalia In the course of the said disciplinary proceedings at length on 12 July 1961. I gave the petitioner every opportunity to cross-examine Mohanlal Badalia and after the petitioner had expressed that he had finished the cross-examination of Mohanlal Badalia, the proceedings on that day were closed and the farther hearing of the matter was adjourned. After I had adjourned the proceedings, the petitioner presented a petition that he wants further to cross-examine Mohanlal Badalia. I did not consider it necessary to allow the petitioner to continue the cross-examination of matters desired which were not relevant for the purpose of the disciplinary proceeding. The petitioner had ample opportunity to inspect the records of the disciplinary proceedings and take copies of the relevant papers which he might have desired or considered to be necessary, I deny that the petitioner was not given reasonable opportunity to defend himself.

17. The above statement in the affidavit-in-opposition is generally denied in Para. 14 of the affidavit-in-reply. I cannot, in view of the factual dispute, decide in which way the truth lies, I, however, feel, even assuming the version in the affidavit-in-opposition being incorrect, that the enquiring officer might have done well if he had granted to the petitioner the opportunity to cross-examine Mohanlal Badalia. Disciplinary tribunals, on whose findings the life's career of a public servant depends, should not adopt a technical attitude, as done in this case, and refuse opportunity to cross-examine a witness who is being dealt with in the disciplinary action. Mohanlal Badalia was a very important witness. His examination started late in the day and Immediately after the examination-in-chief the petitioner was asked to cross-examine him. The petitioner had no copy of his evidence and as a layman might not have fully thought of the cross-examination. In similar circumstances, a Special Bench of this Court held refusal to adjourn as violative of principles of natural justice--I mean the observations of P. B. Mukherji, J., in *Nripendra Nath Bagchi Vs. Chief Secretary, Govt. of West Bengal*, . His lordship's observations are set out below:

The next breach of the principles of natural Justice alleged by the petitioner is that he was refused time or adjournment for the purpose of cross-examining three witnesses:

(1) Ushapati Lahiri, Subdivisional Officer, Cooch-Behar,

(2) Sitangshu Mohan Banerjee, a local resident teacher at Surl, and

(3) Phani Mohan Lahiri, Subordinate Judge, Bankura,

and that even copies of the deposition were not supplied to him, Applying the above principles formulated by the Supreme Court, this also is a breach of the principles of natural justice. The answer of the Government that they were only formal witnesses cannot be accepted, because they were called to prove material facts on the charge, for instance, witness Banerjee spoke on the value of the land the charge being of undervaluation, and witness P. M. Lahiri gave evidence on the mischief case under the Indian Penal Code concerning the charge. There was no excuse for not supplying copies of deposition to the petitioner.

18. It is also alleged further that certain documents, which the petitioner called for in order to enable him to cross-examine witness P.R. Dey, were not produced and the petitioner was put to unnecessary difficulty.

19. The documents were--

(1) Case diary of the case started against the petitioner by the accounts department.

(2) All the seizure lists prepared in connexion with the said case.

(3) Letter written by Santosh Gosh addressed to the petitioner, which was also seized by the accounts department.

(4) Statement of P. W. 1, Mohanlal Badalia, made before the accounts department on 14 November 1956 (Ex. 4),

(5) Further statement of P.W. 1, Mohanlal Badalia, recorded by the accounts department on 16 November 1956.

20. There is no averment in the affidavit-in-opposition that the above documents were produced. Nor is it pleaded that the documents were irrelevant for the purpose of cross-examination. Nor is it said that the documents were not in possession of the respondent. I treat this as a serious lacuna in the enquiry.

21. I need however notice that regarding items 4 and 5 of the list of documents, which the petitioner asked for, there is a statement in Para. 16 of the affidavit-in-opposition to the following effect:

I say, as there was no preliminary enquiry and no statement of any witness was recorded in such alleged enquiry, no such statement could be supplied to the petitioner.

22. From the list it appears that the statement of Mohanlal Badalia was Ex. 4 in the criminal trial. I believe that the above statement may have been made out of confusion, but I am not sure of that.

23. It was also argued that the respondent Deputy Commissioner was acting

both as a prosecutor and as a judge and was having private conference with the departmental witnesses before examining them. This is denied in Para. 18 of the affidavit-in-opposition as false. This contention, not being substantiated, cannot be upheld.

24. Lastly, it was urged that the respondents should have examined R.C. Maheshwari and Tarak Das Mukherji, who were material witnesses, and should not have compelled the petitioner to call them as defence witnesses. The petitioner had the opportunity of examining the two persons. I do not, therefore, make much of this argument.

25. Thus, although I overrule the argument of the petitioner that he was not dismissed by the competent authority, I uphold the argument that the rules of natural justice were violated in the enquiry. I, therefore, quash the penal order, with liberty to the respondent to proceed afresh from after the stage when the petitioner submitted his explanation to the charges.

26. This rule is made absolute to the limited extent indicated. Let a writ of certiorari issue. There will be no order as to costs.