

**(1956) 02 AHC CK 0011**

**In the Allahabad High Court**

**Case No :** Civil Miscellaneous Writ No. 1202 of 1955

Darbari Ram Sharma

APPELLANT

Vs

The State of U.P. and Others

RESPONDENT

**Date of Decision :** 24-02-1956

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 80  
Constitution of India, 1950 — Article 226  
Police Act, 1861 — Section 7

**Citation :** AIR 1956 All 578 : (1956) 26 AWR 325 : (1956) CriLJ 1147 : (1956) 2 LLJ 146

**Hon'ble Judges :** Mehrotra, J

**Bench :** Single Bench

**Advocate :** A.P. Gupta and S.S. Dhawan, for the Appellant; Standing Counsel, for the Respondent

**Final Decision :** Allowed

## Judgement

Mehrotra, J.—This is an application under Article 226 of the Constitution praying that a writ of a direction be issued quashing the order of the Deputy Inspector General of Police, Northern Range, Bareilly, dated 21st of May, 1953 whereby the petitioner was ordered to be reduced to the rank of a constable and also the order dated 29th August, 1953 passed in appeal confirming the aforesaid order, and a writ of certiorari be issued quashing the order dated 14th of May, 1954 dismissing the petitioner and the order dated 18th October, 1954 passed in appeal confirming the order of dismissal.

2. The petitioner was serving as a Sub-Inspector of Police in the U. P. Police Service since the year 1949. In 1952, he was posted as Second Officer at out post Sarai Qila in the City of Bareilly. He had investigated a case under sections 376/342, I. P. O., and he had, in that connection, challaned one Ram Gopal.

The accused in that case had been committed to the Sessions Court and the hearing of the case started from 11th November, 1952 before Sri D. S. Mathur,

District and Sessions Judge, Bareilly and a number of witnesses were examined. The petitioner had to appear as a witness in that case on the 13th of November, 1952. He reached the Court but it appears that he reached there late and when the case started before the Sessions Judge, he went out for a few minutes and when the statement of one Laddhan was finished, he was called to give his statement.

When he gave his statement, the Sessions Judge suspected that he was drunk. The Sessions Judge then sent a D.O. to the Superintendent of Police saying that the petitioner appeared before him late and he was drunk when he came to the court. The petitioner's case, however, was that he was suffering from colic pain since 7th November, 1952 and he was given two injections of morphine and atropine and a mixture which contained a little quantity of brandy.

On the D.O. being sent by the Sessions Judge to the Superintendent of Police, a departmental inquiry u/s 7 of the Police Act was instituted against the petitioner. He was suspended and charges were framed against the petitioner by the Superintendent of Police, Bareilly by his order dated 10th December, 1952. Three charges were framed against him:

- (a) That while he was posted at the outpost Sarai, he associated himself with undesirable persons and drank liquor.
- (b) That on 13-11-1952 he failed to attend the court of the Sessions Judge, Bareilly, till 11.45 A.M., and
- (c) That when on 13-11-1952 he did appear in the Sessions Court he was found in a drunken and absolutely unsteady state due to which he was not considered in a fit condition to give his evidence in court.

These three charges were investigated against him by the Superintendent of Police, Bareilly. When the inquiry was going on against him u/s 7 of the Police Act on these charges and he was under suspension, on the 21st April, 1952, it is alleged by the petitioner that he was maltreated by Sri K. L. Chhabra, Assistant Superintendent of Police and on the oral complaint of Sri K. L. Chhabra, the Superintendent of Police also interrogated the petitioner and ordered the detention of the petitioner.

As regards the incident which took place on the 21st of April, 1952, the petitioner served a notice u/s 80, C. P. C., on Sri Prem Swaroop, Superintendent of Police and Sri K. L. Chhabra, Assistant Superintendent of Police of a proposed civil suit against them. That was served on them on the 24th April, 1953. After having recorded the statements of some of the witnesses, the Superintendent of Police gave his finding on the three charges against him.

He found that charge (a) was not proved against the petitioner but from his statement on the record, he found both the charges (b) and (c) proved against him and along with his finding he submitted his recommendation to the Deputy Inspector-General of Police, Northern Range, Bareilly and recommended that he

should be dismissed from service.

A representation was made by the petitioner to the Deputy Inspector-General of Police, Northern Range, Bareilly against the finding of the Superintendent of Police and he also personally appeared before him. The Deputy Inspector-General of Police, however, upheld the finding of the Superintendent of Police but ordered that he should be reduced to the rank of a constable.

The petitioner went up in appeal to the Inspector-General of Police but that was also dismissed on the 29th of August, 1953. A revision was filed to the Local Government which was also dismissed on the 6th April, 1954.

3. After receipt of the notice u/s 80, C. P. C., it appears that the Superintendent of Police ordered that action u/s 7 of the Police Act should be taken against the petitioner for having sent such a notice without taking redress through proper channel and thereby committed a misconduct. On that, a fresh charge was framed against the petitioner on the 23rd of January, 1954 by the Superintendent of Police and another inquiry was held after giving him a copy of the charge-sheet.

On the 2nd April, 1954, the Superintendent of Police accepted the finding of the Deputy Superintendent of Police on this charge and proposed the Dismissal of the petitioner. The petitioner submitted his explanation but the Superintendent of Police passed an order of dismissal on the 14th of May, 1954.

An appeal to the Deputy Inspector-General of Police was rejected and consequently the present petition was filed challenging the order passed by the Superintendent of Police on the first three charges as well as the order of the Superintendent of Police dismissing the petitioner on the second charge.

4. Notices were issued to the opposite parties. A counter-affidavit has been filed challenging the various allegations made in the affidavit. Two points have been urged by Mr. Dhawan as regards the validity of the order passed by the Superintendent of Police on the first three charges. The first contention is that paragraph 490 of the Police Regulations provides the procedure in cases in which police officers are dealt with departmentally.

Sub-para 1 (b) of paragraph 490 provides that the evidence may be either oral or documentary and must be material to the charge. If oral, it must be recorded by the Superintendent of Police himself in the presence of the party charged who would be allowed to cross-examine the witnesses. Sub-para 6 under paragraph 490 also provides that the statements of the defence witnesses must be recorded by the Superintendent of Police himself.

The contention of the petitioner is that the Superintendent of Police had no power to delegate his powers to record the statement of witnesses to his subordinates. Sub-para 10 of paragraph 490 only provides that all or any of the functions exercisable by a Superintendent of Police under these rules may be exercised by a Police authority superior to a Superintendent of Police, but in any

case an officer inferior to the Superintendent of Police could not record the statements of witnesses in an enquiry which was being conducted by the Superintendent of Police himself.

In the present case, it is admitted that the statement of the District Judge was recorded in his chambers not by the Superintendent of Police but by the Deputy Superintendent of Police. The provisions of sub-para 1 (b) of paragraph 490 are mandatory and in view of the fact that the Superintendent of Police himself did not record the statement of the District Judge, his statement cannot be considered.

If his statement is not considered, then there is no evidence to prove the charge against the applicant. In my judgment, there is considerable force in this contention of the petitioner and the Superintendent of Police had no power to delegate his power of recording the statement to the Deputy Superintendent of Police.

5. The next point urged by the petitioner is that when the inquiry was being conducted by the Superintendent of Police, an incident happened on the 21st of April, 1952 & as regards that incident a notice u/s 80, C. P. C. was given to the Superintendent of Police. In fact, on the recommendation of the Assistant Superintendent of Police, the Superintendent of Police subsequently framed a charge against the petitioner for having sent such a notice and consequently the Superintendent of Police was biased and was disqualified to make an inquiry against the petitioner.

It was strongly urged by the counsel for the State that from the conduct of the Superintendent of Police, it cannot be said that he was prejudiced on account of the notice having been given to him by the petitioner. Whether he was prejudiced or not is not a matter on which this Court will express its opinion but there was a notice given to the Superintendent of Police as regards the incident of the 21st of April, 1952 and on his recommendation charges were framed against the petitioner.

It was against the principles of natural justice that he should have tried the case himself and investigated the charges against the petitioner. The order passed by the Superintendent of Police on the 25th April, 1953 is, therefore, set aside.

6. As regards the order passed by the Superintendent of Police on the 14th of May, 1954, Section 7 of the Police Act provides:

"Subject to such rules as the State Government may from time to time make under this Act, the Inspector-General, Deputy Inspector-General, Assistant Inspector-General and District Superintendent of Police may at any time dismiss, suspend or reduce any police officer of the subordinate ranks whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same."

The charge against the petitioner was that by sending a notice to the Superintendent of Police u/s 80, C. P. C., he violated the provisions of G.O. No.

O-3237/II-B-32-52, dated December 24, 1952 and consequently disciplinary action against him was justified. A copy of that G.O. has been filed as Annexure I to the counter-affidavit filed on behalf of the State.

The opening words of the G.O. are that Government have from time to time issued instructions which deal generally with the circumstances and the manner in which Government servants can seek redress of grievances arising out of their employment or conditions of service. Paragraph 3 of the said G.O. provides:

"In the matter of grievances arising out of a Government servant's employment or conditions of service, the proper course for him will be to seek redress from the appropriate departmental and governmental authorities, in accordance with the instructions prescribed for this purpose. Any attempt by a Government servant to seek a decision on such issues in a court of law (even in cases where such remedy is legally admissible), without first exhausting the normal official channels of redress, can only be regarded as contrary to official propriety and subversive of good discipline, and may well justify the initiation of disciplinary action against the Government servant."

On the 21st of April, 1952 some incident took place and in connection with that, a notice u/s 80, O. P. C. was sent by the petitioner to the Superintendent of Police. The allegation of the petitioner was that he was not properly treated by the Superintendent of Police and other officers and the behaviour of those officers on that date amounted to defamation.

That was not a matter regarding the conditions of his employment or service and consequently any notice sent by the petitioner could not amount to a breach of the provisions of the Government Order and! would not justify any disciplinary action against him.

7. In the result, I allow this petition with costs and set aside the order passed by the Superintendent of Police on the 25th April, 1953, reducing the petitioner in rank and also the subsequent order passed by him on the 14th May, 1954, dismissing him from service and the other orders confirming the aforesaid orders in appeal. I assess the costs at Rs. 100/- only.