
(1968) 05 GAU CK 0006
In the Gauhati High Court

Manihar Singh

APPELLANT

Vs

Superintendent of Police and Others

RESPONDENT

Date of Decision : 20-05-1968

Acts Referred:

Citation : AIR 1969 Guw 1 : (1969) 2 LLJ 493

Hon'ble Judges : S.K. Dutta, C.J;K.C. Sen, J

Bench : Division Bench

Judgement

K.C. Sen, J.—This is an application filed by Manihar Singh for a writ of certiorari or a writ of like nature for quashing the impugned order dated 29 January 1960 passed by respondent 1, the Superintendent of Police, United Khasi-Jaintia Hills, Shillong, and the order passed in appeal by respondent 3, the Deputy Inspector-General of Police, Range Assam, Gauhati, dated 24 June 1966. He has also prayed that a writ of mandamus or a writ of like nature should be Issued directing the respondents to cancel, recall or otherwise forbear from giving effect to the impugned orders as aforesaid.

2. It appears from the petition that constable No. 405, Manihar Singh of Laban Beat House at Shillong, was chargesheeted for commission of alleged offences as mentioned in the chargesheet and ultimately after evidence was taken, the Superintendent of Police dismissed the constable.

3. The main charge was that he Instigated a number of constables to approach the secretary of the Head Constables and Constables" Association, Shillong, to represent their grievances for delay in receipt of pay-packets for the month of June 1959. Further the constable also did an act of Indiscipline by ringing up directly to the Superintendent of Police, Shillong, to represent their grievances. There are various other charges to which no reference need be made for disposal of this petition, but at this stage it may be pointed out that he was also indicted for infringement of the Government Servants" Conduct Rules by the Additional Circle Inspector of Police. It will be found from anuexure A that the entire chargesheet was drawn up by the Additional Circle Inspector of Police, Shillong,

and the evidence as against the constable was recorded by him as well. On the basis of this report the Superintendent of Police, however, dismissed the petitioner from service and stressed in his order that he had violated the Government Servants' Conduct Rules in committing the offences charged with. Although an important charge was framed for an Indisciplinary act of ringing up, the Superintendent of Police with the obvious purpose of having a conversation with him, the latter, however with fairness, did not enter into this charge for punishing the constable as he was a witness to such an event.

4. The Assam Government Servants' Conduct Rules, 1937, as amended up to 1 October 1952, do not bring in the acts as mentioned In the chargesheet as acts of indiscipline, within their purview. In the later rules of 1965 it has been however provided In Rule 3(1)(iii) that

every Government servant shall at all times do nothing which is unbecoming of a Government servant.

The appropriate authority has undoubtedly jurisdiction to punish any member of the subordinate staff for any delinquency and other acts of indiscipline without reference to the Government Servants' Conduct Rules, 1937, and, therefore, in the absence of any provision as mentioned in the rules of 1965, resort to the former rules appears to be inappropriate. We have, without entering into the merits of the Impugned order, reasons to say so, as the aggrieved persons are prone to catch hold of any loophole for criticism as appearing in the order complained of.

5. The main point as urged by Sri Bhattacharjee appearing for the petitioner is that the charge in this case ought not to have been framed by the Additional Circle Inspector of Police, as he is not the dismissing authority. Under the Assam Police Manual, Part III, rule 66 (latest amendment), it is not clearly stated whether an officer subordinate to the appointing and dismissing authority has any power to frame charge against a delinquent Government servant. Clause IV of the said rule provides as to what authority can inflict punishment and the nature thereof. In the schedule under Clause IV it appears that an Inspector of Police cannot inflict the punishment of dismissal on a constable. Such punishment under the said clause can only be inflicted by a Superintendent of Police. In the instant case it appears that charges against the constable were framed by the Circle Inspector of Police and therefore, a matter for serious consideration arises whether in the absence of delegation for framing charges an order of dismissal can be passed by the Superintendent of Police on the basis of charges framed by the Circle Inspector.

6. We have already stated that in rule 66 of the Assam Police Manual, Part III, no provision for delegation has been made, so far as dismissal is concerned. In spite of it, no material has been placed before us to show that any delegation for framing charge was ever made and, therefore, the averment in the counter-affidavit that the Additional Circle Inspector of Police was duly authorized by the

Superintendent of Police by a demi-official letter No. 1604, dated 7 July 1959, in the absence of any such provision in Rule 66, *ibid*, and consequently the entire proceedings against the constable were valid, cannot be invoked in aid of the respondents' contention. In this connexion Sri Bhattacharjee has first of all referred us to a decision in *Shardul Singh Vs. The State of Madhya Pradesh and Others*, In this decision it has been held *inter alia* that the factum of the framing of charge cannot be delegated by a dismissing authority to any of its subordinates, and their lordships observed as follows:

The exercise of disciplinary powers or the field of disciplinary action, is not restricted merely to the passing, by the appointing authority, of an ultimate order imposing disciplinary punishment against the employee. It extends also to the very initiation of disciplinary action against a civil servant or employee by framing charges against him and holding or directing the holding of an inquiry into those charges. The framing of charges, the holding of an inquiry into them, the suspension of the civil servant during the enquiry, the notice to show cause, are all steps in the exercise of the disciplinary powers. All these steps are required to be taken by the disciplinary authority and not by a delegate of that authority. In the absence of a statutory provision permitting expressly or impliedly delegation of disciplinary powers, an authority other than the disciplinary authority has clearly no power to frame, on its own initiative, charges against a civil servant and hold an enquiry into them.

With great respect we agree with the view expressed by the Madhya Pradesh High Court and in the instant case we find that there being no authoritative delegation under the relevant rules, the framing of charge by the Additional Circle Inspector, even assuming that there was such direction, is against the fundamental principles of law stated above and the rules, and as such the petitioner can claim that his fundamental rights have been invaded. Regard being had to this aspect of the matter, we are of opinion that both the Superintendent of Police and the appellate authority built the structure on a very shaky foundation, which must result in its collapse. On this ground alone the petitioner is entitled to succeed.

7. The last point as made by Sri Bhattacharjee is that the Superintendent of Police being a witness to one of the impugned derelictions of duties or delinquency of the constable, who is the petitioner before us, *viz.*, having telephonic conversation with him, he ought not to have taken up the inquiry at all, as in any event the question of bias in such circumstances may arise. We have already said that the Superintendent of Police with sufficient amount of fairness has refused to take any notice of this charge as he was a witness thereof, yet on the principle of propriety and for preventing any loophole as to apprehension of prejudice in the mind of the petitioner, the Superintendent of Police would have done better if he did not take up the case at all.

8. In this connexion Sri Bhattacharjee has referred to a decision in *Mineral Development Ltd. Vs. The State of Bihar and Another*, . In Para. 10 of the

judgment, their lordships have observed as follows:

Tribunals or authorities who are entrusted with quasi-judicial functions are as much bound by the relevant principles governing the "doctrine of bias" as any other judicial tribunal. This Court in a recent decision in Gullapalli Nageswara Rao etc. Vs. The State of Andhra Pradesh and Others, , observed:

The principles governing the "doctrine of bias" vis-a-vis judicial tribunals are well-settled and they are:

- (i) no man shall be judge In his own cause;
- (ii) justice should not only be done but manifestly and undoubtedly seem to be done."

The two maxims yield the result that if a member of a judicial body is "subject to a bias (whether financial or other) In favour of, or against, any party to a dispute, or is in such a position that a basis must be assumed to exist, lie ought not to take part In the decision or Bit on the tribunal"....

As already pointed out, this principle of law, as enunciated by the Supreme Court, justifiably applies to the instant case.

9. Lastly, we may mention a Calcutta decision in A.R.S. Choudhury Vs. The Union of India (UOI) and Others, in which it has also been pointed out that a departmental enquiry consists of four main stages, namely:

- (a) charge,
- (b) investigation of the charge,
- (c) finding, punishment, and
- (d) appeal.

10. So far as the charge is concerned, his lordship Justice Sri Sinha (as he then was) has stated that a departmental enquiry is not conducted with the rigidity of a judicial trial. Hence, the charge which Is to be framed need not be framed with the precision of a charge in a criminal proceeding. But it must not be vague or so general as to make It impossible of being traversed. So far as the investigation of the charge is concerned, his lordship has said that a departmental enquiry is not a judicial proceeding and the law and procedure applicable to judicial proceedings are not applicable. But the proceedings cannot be held in an arbitrary manner and the rules of natural justice must still be applied.

11. Regard being had to the matters discussed above, we find that the impugned orders were lacking in observance of the law and rules and were also against the rules of natural justice.

12. On these main points we are of the opinion that the petition must succeed and the rule must be made absolute. The order passed by the Superintendent of

Police and the Impugned appellate order passed by the Deputy Inspector-General of Police are hereby quashed and let a writ in the nature of certiorari be issued against them with a direction to forbear from giving effect to the orders passed by them.

13. Be it noted, however, that in spite of the order passed by us as aforesaid, it is open to the appropriate authority to start a fresh proceeding against the constable, namely, the petitioner, strictly In accordance with law and the rules and procedure prescribed.

14. The petition is accordingly allowed and the rule is made absolute, but there will be no order as to costs.

S.K. Dutta, C.J.

15. I agree.