
(2008) 04 RAJ CK 0025
In the Rajasthan High Court

Manvendra Singh

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 02-04-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 174, 175
Police Act, 1861 — Section 45, 46

Citation : (2009) 1 RLW 310

Hon'ble Judges : Shiv Kumar Sharma, J;Guman Singh, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Shiv Kumar Sharma, J.—The appellant filed writ petition before the learned Single Judge seeking quashing of the order dated nil (appended as Annexure-7 with the writ petition) issued by the State Government reverting the appellant from the post of Inspector of police to the post of Sub-Inspector. The writ petition was dismissed by the learned Single Judge vide order dated November 29,1999. Hence this appeal.

2. Contextual facts depict that a charge sheet under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (in short "CCA Rules"), was served on May 30, 1986 on the appellant while he was posted as SHO Police Station Karauli. Following five charges were framed against the appellant:

vkjksi la[;k &1

mDr Jh ekuosnz flag] mifujh{kd iqfyl o"kZ 1982 eas iqfyl Fkkuk lyseiql ij Fkkuk izca/kd ds in ij dk;Zjr Fks] rc ,d vKkr vkSjr dh yk"k dq,a esa rSjus dh lwpuK izkIr gksus ij mUgksus Jh gtkjh yky lgk;d mi fujh{kd dks /kkjk & 174 tk-Qks ds vUrZxr dk;Zokgh djus ds fy, funsZf"kr fd;k A lgk;d mi fujh{kd }kjk mudh fLFkfr ls voxr dj;k;k x;k ysfdu mUgksus tkucw>dj vfHk;ksx iathc) ugh fd;k A tcfd lafnX/k voLFkk esa gqbZ ekSr dk vfHk;ksx iathc) djuk vfr vko;"d Fkka bl izdkj

mUgksus t?kU; izd`fr ds vijk/k dks Nqikdj viuh drZO; foeq[krk iznf"kZr dh gS vkSj vuq"kkluhurk ,oa ykijokgh dk izn"kZu fd;k gSA

vkjksi la[;k &2

mDr Jh ekuosUnz flag] mi fujh{kd iqfyl rRdky gh ?kVuk LFky ij u tkdj foyEc ls ? kVuk LFky dk fujh{k.k fd;k A vlfy;r dks Nqik;s ,ao vfHk;ksx dks iathc) ugh fd;k A mDr Jh flag dk ;g dk;Z jkT; lsok esa vuq"kkluhurk vdeZ.;rk ,oa ykijokgh dk |ksrd gSA

vkjksi la[;k &3

mDr Jh ekuosUnz flag] mi fujh{kd iqfyl mDr LFkku ij dk;Zjr gksrs gq, mDr ?kVuk dks Nqikus dh xjt ls o`Rrkf/kdkjh fg.Mksu ls jgcjh izkIr djus dk vkosnu i= izLqr fd;k gS A tcfd bldh dksbZ vko;"drk ugh Fkh A bl izdkj mDr Jh flag us viuh LokFkZ flf) gsrq drZO; foeq[krk iznZf"kr dhA

vkjksi Lka[;k &4

mDr Jh ekuosUnz flag mi fujh{kd iqfyl us pkyku 5 ekg ckn U;k;ky; esa izLqr fd;k x;k gS] ftlls Li"V gS fd mDr Jh flag us tkucw> dj ,d t?kU; vijk/k dh ?kVuk dks "kjkjr iw.kZ rjhds ls Nqikus dk iz;Ru fd;k rFkk drZO; foeq[krk ,ao vdeZ.;rk iznf"kZr dhA

vkjksi la[;k &5

;g gS fd mDr Jh flag us ?kVuk dks Nqikus dh uh;r ls yEcs le; rd vfHk;ksx iathc) ugh fd;k] ftlls vke turk esa ;g /kkj.kk QsSyh fd Fkkuk fd Fkkuk izca/kd o o`Rrkf/kdkjh] fg.Mksu us mRdksp ysdj y?kU; izo`fRr ds vijk/k dks Nqik;k gS A ftlls iqfyl foHkkx dh Nfo /kwfey gqbZ A mDr Jh flag dk ;g dk;Z jkT; lsok esa vdZe.;rk vuq"kkluhurk ,oa ykijokgh dk |ksrd gSA

3. Joint inquiry was initiated against the appellant and Bhagwan Singh, Dy. SP. Inquiry Officer was appointed who on conclusion of inquiry submitted his report on October 10, 1988. In the report all the charges except charge No. 5 were found proved against the appellant. The State Government considered the report of Inquiry Officer and proposed to withhold five annual grade increments of the appellant with cumulative effect. The proposal was sent to the Rajasthan Public Service Commission (RPSC). The RPSC examined the matter and found the punishment insufficient. The RPSC advised the State Government to revert the appellant from the post of Inspector to the post of Sub Inspector. The State Government agreed with the advise and reverted the appellant as indicated herein above.

4. We have given thoughtful consideration to the submissions advanced before us by the learned Counsel for the parties.

5. Constitution Bench of Hon"ble Supreme Court in Union of India (UOI) Vs. H.C. Goel, held that the High Court can and must enquire whether there is any evidence at all in support of the conclusion arrived at by the Disciplinary

Authority. If the whole of the evidence led in the enquiry is accepted as it stands, it will be seen whether from such evidence the impugned conclusion follows or not? It was observed as under:

In dealing with a writ petition filed by public servants who have been dismissed, or otherwise dealt with so as to attract Article 311(2), the High Court under Article 226 has jurisdiction to enquire whether the conclusion of the Government on which the impugned order of dismissal rests is not supported by any evidence at all. Although the order of dismissal which may be passed against a Government servant found guilty of misconduct, can be described as an administrative order, nevertheless, the proceedings held against such a public servant under the statutory rules to determine whether he is guilty of the charges framed against him are in the nature of quasi-judicial proceedings and there can be little doubt that a writ of certiorari, for instance, can be claimed by a public servant if he is able to satisfy the High Court that the ultimate conclusion of the Government in the said proceedings, which is basis of his dismissal, is based on no evidence.

It was further indicated thus:

It is not necessary that in order to attack the order on the ground that it is based on no evidence malafide exercise of power by the Government should be alleged. The two infirmities are separate and distinct though, conceivably, in some cases both may be present. If it is proved that there is no evidence to support the conclusion of the Government, a writ of certiorari will issue without further proof of malafides.

6. Having carefully gone through the material on record we find that there is no evidence to support the conclusion of the State Government. A look at the memorandum of charges demonstrates that in the year 1982 while the appellant was posted as SHO at Police Station Salempur, informant Kinduri Lal Sarpanch, Gram Panchayat Jagdishpura submitted a written report on October 17, 1982 to the effect that dead body of unknown woman was floating in the well. The appellant registered Mrig Report No. 3/82 u/s 174 CrPC and handed over inquiry to Hajari Lal, Asstt. Sub-Inspector. Hajari Lal immediately went to the spot, got the dead body out of the well, drew inquest report and memo of site and got the autopsy on the dead body performed. During inquiry it was found that dead body was of Bhagwani, whose husband Sri Lal had already died some two and half years back. Hajari Lal suspected that somebody had murdered Bhagwani. Long and short of the five charges framed against the appellant was that he did not deliberately register a case and directed Hajari Lal ASI to proceed u/s 174 CrPC.

7. We therefore, at the outset, proceed to scan Section 174 CrPC, which reads as under:

174. Police to inquire and report on suicide, etc. (1) When the officer in charge of a police station or some other police officer specially empowered by the State Government in that behalf receives information that a person has committed

suicide, or has been killed by another or by an animal or by machinery or by an accident, or has died under circumstances raising a reasonable suspicion that some other person has committed an offence, he shall immediately give intimation thereof to the nearest Executive Magistrate empowered to hold inquests, and, unless otherwise directed by any rule prescribed by the State Government, or by any general or special order of the District or Sub-divisional Magistrate, shall proceed to the place where the body of such deceased person is, and there, in the presence of two or more respectable inhabitants of the neighbourhood shall make an investigation, and draw up a report of the apparent cause of death, describing such wounds, fractures, bruises, and other marks of injury as may be found on the body, and stating in what manner, or by what weapon or instrument (if any), such marks appear to have been inflicted.

(2) The report shall be signed by such police officer and other persons, or by so many of them as concur therein, and shall be forthwith forward to the District Magistrate or the Sub- divisional Magistrate. (3) When:

- (i) the case involves suicide by a woman within seven years of her marriage; or
- (ii) the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman; or
- (iii) the case relates to the death of a woman within seven years of her marriage and any relative of the woman has made a request in this behalf; or
- (iv) there is any doubt regarding the cause of death; or
- (v) the police officer for any other reason considers it expedient so to do, he shall, subject to such rules as the State Government may prescribe in this behalf, forward the body, with a view to its being examined, to the nearest Civil Surgeon, or other qualified medical man appointed, in this behalf by the State Government, if the State of the weather and the distance admit of its being so forwarded without risk of such putrefaction on the road as would render such examination useless.

(4) The following Magistrates are empowered to hold inquests, namely, any District Magistrate or Sub-divisional Magistrate and any other Executive Magistrate specially empowered in this behalf by the State Government or the District Magistrate.

Their Lordships of the Supreme Court in *Pedda Narayana and Others Vs. State of Andhra Pradesh*, indicated that the proceedings u/s 174 CrPC have a very limited scope. The object is merely to ascertain whether a person has died in suspicious circumstances or an unnatural death. The question regarding details as to how the deceased was assaulted or who assaulted him or under what circumstances he was assaulted is foreign to the ambit and scope of the proceeding u/s 174.

8. As noticed above, the power to hold inquest has been conferred by CrPC on

the District Magistrate, Sub Divisional Magistrate and any other executive Magistrate.

9. Section 175 CrPC provides that a police officer proceeding u/s 174 may by an order in writing summon two or more persons for the purpose of said investigation. The provisions of Sections 174 and 175 afford a complete and autonomous code in itself for the purpose of inquiries in cases of accidental or suspicious deaths.

10. Bearing this legal position in mind when we weigh the charges levelled against the appellant we find that the officer, who served the charge sheet on the appellant was not well worsted with the scope of Sections 174 and 175 CrPC. The appellant had acted strictly in accordance with Section 174 CrPC and he had every right under the police rules to hand over inquiry to ASI.

11. The Criminal Law of India and the Police Organisation, both are founded on the principle that public order depends essentially upon the responsibility of every member of the Community within the law to prevent offences and to arrest offenders. The ideal to be aimed at in respect of relations with the public is that every police officer of whatever rank should be regarded by every law abiding person as a wise and impartial friend and a protector of injury to his person and property.

12. The Rajasthan Police Rules, 1965 (for short "Rules") were made in exercise of the powers conferred by Sections 45 and 46 of the Police Act, 1861. Rule 3.1 of the Rules which relates to the officer incharge of the Police Station, reads as under:

3.1 Officer incharge of Police Station: (1) The Officer incharge of a Police Station is ordinarily a Sub-Inspector, within the limits of the Police Station Jurisdiction the Sub- Inspector is primarily responsible for the effective working, management, good conduct and discipline of the local police, for the preservation of peace and the prevention and detection of crime, the due performance of all police duties, the exercise by the police of the powers granted them by law, the correctness of all registers, records and reports prepared by them, and the direction, instructions and efficiency of all police subordinates in the station jurisdiction and matters for which the officer incharge of a police station is essentially answerable.

It is the duty of the officer incharge of a police station to acquire detailed and accurate local knowledge, to secure the whole-hearted cooperation of Panchas of Panchayats and Chowkidars, encouraging them to give an information, to assist him in this work and to range themselves loyally on the side of the administration. Through them and his own subordinates he is required to keep a strict watch over all known bad characters, and he shall communicate all intelligence of movement to his superiors and to other police stations without delay.

(3) Within the limits of his charge he is the Chief investigating officer and as such he shall conduct all investigations in person, so far as circumstances permit. His responsibility in this matter must be carefully maintained. Should it be necessary, owing to the absence of the Sub-Inspector or any other cause, for a subordinate to undertake an investigation, the Sub-Inspector shall satisfy himself by perusing the case diary and questioning the investigating officer that the investigation has been fully and properly conducted, shall remedy what is defective, and take over the investigation as soon as he is free to do so, except in a case originally investigated by an Assistant Sub-Inspector where he will be guided by rule.

(4) When present at the police station, he shall personally supervise the routine work of the station house, and shall be careful to see that there are no arrears of correspondence and that the accounts are correct.

Rule 3.2 of the Rules, which relates to Assistant Sub Inspector, reads thus:

3.2 Assistant Sub-Inspectors (1) One or more Assistant Sub-Inspectors are attached to each police station, in proportion to the normal amount of crime registered, as subordinate investigating officers. An Assistant Sub-Inspector is the Assistant and deputy of the Officer Incharge of the Police Station, who, without detracting from his own authority or ultimate responsibilities as described in rule 3.1 may delegate powers and duties generally or specifically to one or other of his assistants, on the same principles as the Superintendent of Police delegates authorities and duties to Gazetted Officers subordinate to him.

(2) An Assistant Sub-Inspector is required to have approximately the same standard of efficiency in all branches of Police Station work, detective and administrative, as a Sub- Inspector, but his responsibilities are less, in that he is not in independent charge, and his powers are subject to the detailed control and supervision of the Sub-Inspector. In respect of investigations, the Sub-Inspector is required to exercise careful supervision over the work of his Assistant Sub-Inspector, as laid down in rule 3.1 but need not, and should not, normally take into his own hand in investigation started by an Assistant Sub-Inspector except when he finds the latter's investigation gravely defective.

13. Evidently the appellant after registering Mrig report No. 3/82 u/s 174 CrPC, handed over the inquiry to Hajari Lal, Assistant Sub-Inspector, who forthwith proceeded to the spot and initiated inquiry. The Disciplinary Authority as well as RPSC appear to have ignored the provisions contained in Section 174 CrPC and Rule 3.2 of the Rules. The initiation of disciplinary inquiry under Rule 16 of CCA Rules thus had no foundation. This legal position escaped attention of learned Single Judge too. The charges levelled against the appellant had no legs to stand since the appellant had proceeded strictly in accordance with law. He was neither negligent nor irresponsible in discharging his duties. There was no evidence at all in support of the conclusion arrived at by the Disciplinary Authority and punishment imposed on the appellant deserves to be quashed.

14. For these reasons, we allow the appeal and set aside the order dated

November 29, 1999 of the learned Single Judge as well as the order appended to the writ petition as Annexure-7 passed by the Disciplinary Authority. We also quash the entire disciplinary proceedings initiated under Rule 16 of the Rajasthan Civil Services (Classification, Control & Appeals) Rules, 1958 vide memo dated May 30, 1986. There shall be no order as to costs.