
(1970) 07 AHC CK 0021
In the Allahabad High Court
Case No : Second Appeal No. 323 of 1964

Roshanlal Sharma

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision : 14-07-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : AIR 1971 All 210

Hon'ble Judges : M.N. Shukla, J

Bench : Single Bench

Advocate : S.K. Tewari, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

M.N. Shukla, J.—This second appeal preferred by a police constable challenging the order of his dismissal involves the interpretation of some of the provisions of the Police Regulations, which are frequently employed for the purpose of holding enquiries against constables and awarding punishment to them.

2. The material facts of the case are that the appellant was a constable in the U. P. Police Force and posted at police station Shikarpur in the district of Bulandshahr in April, 1959. He along with some other constables was charged u/s 7 of the Police Act for arresting Budhan Nai on 10-4-1959 causing fracture on his legs and concealing the cause thereof by making a false report in the general diary. The appellant's case was that the charge-sheet against him was baseless but the Superintendent of Police, Bulandshahr, by his order dated 29-6-1959 dismissed him on account of those charges. The order was upheld by the Deputy Inspector General of Police, Meerut Range, who dismissed the plaintiff's appeal on 12-1-1960. The Inspector General of Police rejected the plaintiff's revision against the said order on 14-11-1960.

According to the allegations in the plaint the proceedings u/s 7 of the Police Act initiated against the plaintiff were wrong and illegal and all subsequent

proceedings and enquiries and also the orders passed were ultra vires, without jurisdiction and void ab initio. After serving a notice u/s 80. Civil P. C. the plaintiff instituted a suit on February 3/6, 1961, for a declaration that the aforesaid order dated 19-6-1959 passed by the Superintendent of Police dismissing the plaintiff from service was illegal and without jurisdiction and that the plaintiff was entitled to reinstatement with effect from the date of dismissal and also to full pay and allowances as if he was never dismissed and continued to be in service.

3. The suit was contested by the State of Uttar Pradesh, the sole defendant in the suit. The plaint allegations regarding the illegality and incorrectness of the enquiry and its findings were denied. It was pleaded that full opportunity was given to the plaintiff, the procedure prescribed by law was complied with and after the finding of the Inquiring officer the plaintiff was served with a show cause notice by the Superintendent of Police, Bulandshahr. The plaintiff's explanation was taken into consideration by the Superintendent of Police and in these circumstances the order of dismissal was properly and validly passed.

4. The trial court found that the enquiry was conducted properly by Sri Harish Kumar, Deputy Superintendent of Police, who had been duly authorised by the D. I. G., Meerut Range. It was also found that the proceedings conducted by him were proper, that full opportunity was afforded to the plaintiff and he was in no way prejudiced by any act or omission of the inquiring officer. However, though the learned Munsif found that the enquiry conducted against the plaintiff was fair and proper, he came to the conclusion, purporting to follow the decision of this Court in Darbari Ram Sharma Vs. The State of U.P. and Others, that the provisions of paragraph 490 of the U. P. Police Regulations were mandatory and hence the enquiry should have been conducted by the Superintendent of Police himself and not by Sri Harish Kumar. For this reason, the learned Munsif held that the enquiry against the plaintiff was void and, therefore, he decreed the suit for declaration filed by the plaintiff.

5. The State of Uttar Pradesh preferred an appeal against the decree of the trial court. The appeal was allowed. The decree was set aside, and the plaintiffs suit was dismissed with costs. It is against the decree that the plaintiff has come up in second appeal to this Court.

6. Four points were urged before me in support of this appeal by Sri S. N. Misra, learned counsel for the appellant:--

1. That the charge-sheet was not properly framed in accordance with the Police Regulations and the charges were not distinctly and clearly set out.

2. That the report submitted by the Medical Officer, Shikarpur, was relied upon by the court even without summoning the Medical Officer.

3. That the offence alleged to have been committed by the plaintiff was a cognizable one. Therefore, he should have first been prosecuted under the provisions of the Indian Penal Code and further the final report submitted by the

Investigating Officer in the present case was not accepted by the District Magistrate and, therefore, the departmental enquiry made against the appellant was illegal.

4. That the enquiry proceedings were quasi-judicial in nature and they could not be split up in two parts, the first part being conducted by Sri Harish Kumar, Deputy Superintendent of Police and the latter part i.e. the one relating to the award of punishment, to be dealt with by another officer i.e., the Superintendent of Police. In other words, the enquiry proceedings held piecemeal were not warranted by law and vitiated the entire order passed against the plaintiff.

7. So far as grounds Nos. 1 to 3 enumerated above are concerned, they do not find place in the memo of appeal and the grounds mentioned there. They involve mixed questions of fact and law and consequently I cannot permit these grounds to be canvassed before me in the second appeal. Thus, really speaking it is the last point alone which needs consideration and which has been argued with vigour before me by the learned counsel for the appellant.

8. Before examining that contention some facts need be noted. In the instant case Sri Harish Kumar, Deputy Superintendent of Police, made the enquiry. He was specially authorised by the Deputy Inspector General of Police, Meerut range, under paragraph 479 (f) of the Police Regulations to exercise all the powers of the Superintendent of Police as detailed in sub-paragraphs (d) and (e) of paragraph 479 of those Regulations. The actual order of delegation runs as under:--

"Sri Harish Kumar, Dy. Superintendent of Police Bulandshahr, is hereby authorised under Para. 479 (f) of the Police Regulations to exercise all powers of a Superintendent of Police as detailed in sub-paragraphs (d) and (e) of Para, 479, Police Regulations other than powers relating to the punishment of Inspectors of Police and powers under fundamental Rules 24 and 25. This authorisation will be subject to the provisions of para 491 of the Police Regulations."

Sd/- H. K. Kerr, I. P. S. Dy. Inspector General of Police

Meerut Range. U. P.

Dated Meerut. April 26, 1959.

Invested with that authority the Deputy Superintendent of Police proceeded to hold the enquiry. On the basis of the material on record he recorded his findings in detail and submitted the same to the Superintendent of Police recommending that the appellant be dismissed from service. The recommendation was couched in strong language and concluded with the following words:---

"As the charges proved are rather very serious, for which lesser punishment will not meet the ends of justice, I therefore recommend that all the parties charged are dismissed from the service, as they disgraced the name of Shikarpur Police in

particular and the entire Police Force in general."

Sd/- Harish Kumar C. O. I.

The Inquiring officer submitted his findings to the Superintendent of Police who served a show cause notice on the plaintiff. Against the proposed punishment the plaintiff filed his detailed reply. After taking the same into consideration and the evidence on record the Superintendent of Police came to the conclusion that dismissal alone would meet the ends of justice and he accordingly passed the impugned order of dismissal.

9. It may be pointed out at the very outset that it has been conceded by the appellant's counsel that the case reported in Darbari Ram Sharma Vs. The State of U.P. and Others, was distinguishable and the trial court acted erroneously in basing its decision on that case. In other words, it is not disputed that the Deputy Superintendent of Police namely Sri Harish Kumar having been authorised in this behalf was competent to make the enquiry but the point which has been vehemently pressed before me is that after the powers had been delegated to the Deputy Superintendent of Police by the Deputy Inspector General of Police in accordance with paragraph 479 (f) of the Police Regulations, he was competent to exercise all the powers of the Superintendent of Police as detailed in paragraphs (d) and (e) of paragraph 479 including the powers relating to punishment of the constables and consequently the procedure adopted in the instant case by the inquiring officer (Deputy Superintendent of Police) who submitted his findings to the Superintendent of Police and recommended the punishment to be awarded to the appellant was plainly illegal and contrary to the provisions of the Police Regulations. Although I do not find any such indication in the memo of appeal, yet it was argued at the bar that this procedure had prejudiced the appellant. Thus, the question to be examined is as to whether the above procedure was not in conformity with the provisions of the Police Regulations.

9a. Paragraph 479 of the Police Regulations mentions the powers of officers which are as under:--

"(a) The Governor reserves full powers of punishment with reference to all officers.

(b) The Inspector General may punish inspectors and all police officers of lower rank.

(c) Deputy Inspector General may punish all officers of and below the rank of Inspector temporarily or permanently subordinate to him.

(d) The Superintendent of Police may punish all inspectors and sub-inspectors temporarily or permanently subordinate to him except with dismissal or removal. Any case in which he proposes the dismissal or removal of an inspector or sub-inspector of any branch of the force must be forwarded for orders to the Deputy Inspector General of Police in accordance with the instructions contained in sub-

paragraph 8 of paragraph 490 below.

(e) The Superintendent may punish all head constables and constables temporarily or permanently subordinate to him.

(f) Subject to the provisions of paragraph 491 (i) all permanent Assistant Superintendents of Police and Deputy Superintendents of Police who have crossed the first efficiency bar in the time-scale of pay applicable to them and (ii) other Assistant Superintendents of Police and Deputy Superintendents of Police, specially authorized in this behalf by the Deputy Inspector General of Police so far as his Range is concerned, may exercise all the powers of a Superintendent of Police as detailed in sub-paragraphs (d) and (e) of this paragraph, other than powers relating to the punishment of inspectors of police and powers under Fundamental Rules 24 and 25.

(g) A reserve inspector may give punishment drill and fatigue duty up to a maximum of three days to constables posted in the reserve lines, but his orders must be despatched from the reserve lines" office to the Superintendent of Police for confirmation within twenty-four hours."

On the basis of Clause (f) it was argued that when the Deputy Superintendent of Police has been specially authorised in this behalf by the Deputy Inspector General of Police the former may exercise all the powers of Superintendent of Police as detailed in sub-paragraphs (d) and (e). According to the appellant it was sub-paragraph (e) which applied to the present case and in its terms the Deputy Superintendent of Police must be construed as the Superintendent who could punish all head constables and constables temporarily or permanently subordinate to him. In other words, the very fact of delegation did carry with it the full extent of the powers enumerated in sub-paragraph (e) without any reservation- Hence, the power of punishment could not be said to fall outside the competence of the Deputy Superintendent of Police.

My attention was drawn to the language of the order of delegation (quoted earlier) which categorically conferred all the powers on the Deputy Superintendent of Police, contained in Clauses (d) and (e) of paragraph 479. Thus, it was argued that there could not be any doubt with regard to the competence of the Deputy Superintendent of Police to award the final punishment on the plaintiff and the procedure of abstaining from doing so and forwarding the recommendation to the Deputy Superintendent of Police was in the teeth of the aforesaid provisions of the Police Regulations.

10. This argument appears to be attractive but on closer scrutiny I find it untenable. Mr. Misra also adverted to paragraph 490 and pointed out that the entire procedure of enquiry had been set out in that provision, which enjoined on the Superintendent of Police performance of certain functions relating to the departmental trial, which could conclude only by passing an order of punishment. He laid great emphasis on the article "the" attached to the word "Superintendent of Police" as it occurred at various places in paragraph 490 and suggested that

the intention of those provisions seemed to be that the Superintendent of Police mentioned therein must be the very person who made the enquiry.

11. Sri Section N. Upadhya, learned counsel for the State, referred to the other provisions of the Police Regulations and contended that even in cases where the power of enquiry was conferred on a Deputy Superintendent of Police as contemplated by sub-paragraph (f) of paragraph 479 the decisive factor was the quantum of punishment. It could not follow as a matter of course that where the power under Clause (e) was delegated to an inferior inquiring officer, he also derived therefrom the power of awarding punishment. In this connection he relied on the provisions of paragraph 491 which runs as follows:--

"The officers holding the posts enumerated in paragraph 479 (f) shall follow the procedure prescribed in paragraph 490 when conducting departmental trials, and their orders shall with the concurrence of the Superintendent of Police, have the same executive force in all cases as the orders of the Superintendent of Police except in cases in which the officer conducting the proceedings recommends the dismissal or removal of a constable or under-officer. In such cases, the Superintendent of Police shall (if this has not already been done) give the officer a copy of the finding of the enquiring officer and ask him to show cause within a reasonable time (which shall not be less than one week) why such punishment should not be Imposed. All orders of dismissal or removal of an under-officer or constable must be passed by the Superintendent of Police himself and any case in which a Superintendent of Police concurs in a proposal to dismiss or remove a sub-inspector of any branch of the Force must be forwarded to the Deputy Inspector General of the range for orders."

12. An analysis of the above paragraph reveals that where the punishment recommended by the inquiring officer (who is an officer inferior to the Superintendent of Police but has been specially authorised to pass the order of punishment) is other than dismissal or removal of a constable or an under-officer, it shall have with the concurrence of the Superintendent of Police the same executive force as the order of the Superintendent of Police. The other category contemplated by paragraph 491 relates to those cases where the punishment recommended by the enquiring officer specially authorised such as the Deputy Superintendent of Police is dismissal or removal of a constable or an under-officer. In such cases all orders of dismissal or removal must be passed by the Superintendent of Police himself after giving a copy of the finding of the inquiring officer and a show cause notice as to why the proposed punishment should not be enforced.

The language of paragraph 491 makes it abundantly clear that the Deputy Superintendent of Police specially authorised to make the enquiry is not competent to pass the order of punishment where it intends to be one of dismissal or removal of a constable or an under-officer. That power is expressly reserved to the Superintendent of Police. It is true that the language of sub-paragraphs (e) and (f) of paragraph 479 is somewhat general and paragraph 490

deals with the manner of enquiry but these provisions cannot be considered in isolation from those of paragraph 491 which supplements the preceding provisions and acts as a rider to the power dealt with in Sub-clauses (e) and (f) of paragraph 479.

The contention of the appellant that there is an untrammelled delegation of power by virtue of Clause (f) of paragraph 479 has to be repelled in view of the opening words of sub-paragraph (f) viz., "Subject to the provisions of paragraph 491 (i)", which are crucial and contain the guideline for interpreting the scope of paragraph 479. The result of the inclusion of these words is that the scope of sub-paragraph (e) of paragraph 479 becomes restricted and subject to the condition incorporated in paragraph 491 with regard to the competence of the inquiring officer in the matter of awarding punishment.

13. That disposes of the technical and the legal objection raised on behalf of the appellant as to the validity and manner of the enquiry held against him u/s 7 of the Police Act. But I cannot refrain from expressing my surprise over the other grievance which has been made on behalf of the appellant viz., that he was prejudiced on account of the fact that the punishment was awarded by an officer different from the one who was the inquiring officer. We are not unaware of the fact that more often than not the inquiring officer is different from the punishing authority and the former records the findings and submits them to the punishing authority for necessary action. One could understand a genuine grievance being expressed if the vital power of punishment was exercised by an inferior or less experienced officer than the one who made the enquiry. In a case where the power of awarding punishment has been exercised by a superior officer, the grievance made on that account smacks of being more artificial than real and must be rejected.

14. Thus, there is no force in this appeal and it is accordingly dismissed with costs.