

(1971) 08 CAL CK 0006
In the Calcutta High Court
Case No : C.R. No. 6660 (W) of 1968

Sachindra Nath Mahapatra		APPELLANT
	Vs	
The State of West Bengal and Others		RESPONDENT

Date of Decision : 17-08-1971

Acts Referred:

Bengal Police Regulations, 1943 — Regulation 883, 884

Citation : AIR 1972 Cal 385 : 76 CWN 33 : (1972) 1 LLJ 368

Hon'ble Judges : A.K. Sinha, J

Bench : Single Bench

Advocate : K.K. Maitra and Sushil Kumar Bajpayee, for the Appellant; Samir Kumar Mukherjee, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sinha, J.—This is a Rule obtained by the petitioner for quashing an order of dismissal from his service in writ jurisdiction of this Court.

2. The petitioner served as a Constable for more than 11 years under the West Bengal Police. While he was attached to the Dubrajpur Police Station in the district of Birbhum he was charged with gross misconduct unbecoming of a Police Officer. The charges briefly were firstly, outraging the modesty of a woman, secondly of assaulting a Dafadar and thirdly, demanding illegal gratification from few Ricksaw Paddlers of Dubraipur. An enquiry proceeding was started by one Mr. D. N. Panda, the then Superintendent of Police, Birbhum, but as he was subsequently transferred, one Mr. J. Barman who came in his place proceeded with the enquiry and found that the first and the third charges were proved. The petitioner was not dismissed as "considering the hard days and also his service records" he felt inclined "to give him a chance to rectify himself, and accordingly imposed on November 17, 1965, a penalty of reduction of Rs. 4/- from his pay per month for a period of three years from 18-11-65 without affecting his future increments and service. The petitioner did not prefer any appeal but suffered the penalty.

3. Thereafter, one Mr. D. Dhar, Deputy Inspector General of Police, Burdwan Range, again issued a show cause notice on May 16, 1967, upon the petitioner in exercise of his revisional power against his proposed punishment of dismissal from his service agreeing with the finding of Superintendent of Police on the identical charges Nos. I and III. Although the petitioner submitted an explanation, Mr. Dhar dismissed him from his service. An appeal preferred by the petitioner against the order of dismissal was also dismissed by the Additional Inspector General of Police. That is how, in short, the petitioner felt aggrieved and obtained the present Rule.

4. Quite a large number of grounds were taken but Mr. Maitra on behalf of the petitioner has raised four points as follows:

1. The revisional proceeding not having been initiated during the pendency of the case against the petitioner according to Regulation 884 of Police Regulations Bengal 1943 it was entirely illegal and without jurisdiction.

2. In any event, the proceeding not having been started within the time fixed under Regulation 883 or within a reasonable time but after lapse of about two years from the date of imposition of penalty such proceeding culminating in the order of dismissal was invalid.

3. Regulation 884 of Police Regulations is ultra vires Article 311(2) of the Constitution.

4. Alternatively, the petitioner in revisional proceeding was not given a reasonable opportunity consistent with the provisions of Article 311(2) of the Constitution, and therefore, order of dismissal cannot be sustained as valid.

5. In developing the first point Mr. Maitra has argued that in order to exercise revisional powers under Regulation 884 of the Police Regulations the case must be pending. It is said that in the instant case after the imposition of penalty the case was closed since the petitioner did not prefer an appeal but suffered the penalty. To appreciate the correctness of this contention I should read the Regulation 884 which is in these terms:

"The Inspector-General or the Deputy Inspector-General may call for the proceedings of any case, even where no appeal lies, and pass such orders as may seem fit provided that no order under this regulation shall be made to the prejudice of any person unless he has had an opportunity of showing cause against the proposed order. If he so desires he shall be granted a personal hearing and this fact should be recorded in the proceedings."

6. It is nowhere stated that the Re-visional Authority may call for the proceedings only where the case is pending. The contention raised by Mr. Maitra cannot be accepted as a sound proposition for it is only after the completion of the original proceeding before the Disciplinary Authority or disposal of appeal from the order passed in such an original proceeding or where no appeal lies against original order of disciplinary authority, the question of revision of such

order can arise and this regulation clearly contemplates interference By the revisional authority only where the final orders have been passed in a disciplinary proceeding. So, it cannot be doubted that if the final order is passed in a proceeding by the disciplinary authority or the appellate authority as the case may be it cannot be deemed to be pending any longer. Mr. Maitra, however, points out that, in the instant case, the petitioner has suffered penalty and there is no case against him. Even if it is so, I do not think, that fact by itself will preclude the revisional authority from interference if it is not otherwise barred by the Regulation to the present case, however, it is not quite correct to say that the petitioner has served out the punishment for the penalty appears to be of recurring nature and it is still continuing. I do not find anything under the regulations which warrants the conclusion that the revisional authority has no power to, interfere where a person is suffering the punishment imposed by the Disciplinary Authority or the Appellate Authority. I am, therefore, unable to accept the contention of Mr. Maitra as correct.

7. This brings me to the second point which is that such proceeding in absence of any period of limitation must be made within the time limit fixed in Regulation 883 or within a reasonable time. Mr. Maitra argues that having regard to the various procedural clauses for the disciplinary proceeding and the time limit prescribed for preferring an appeal or revision the Re-visional Authority must exercise its power within a certain time otherwise, it is contended, it would lead to impossible result. Can it be said then in such cases where there is no time limit for exercise of a suo motu revisional power by Revisional Authority, the only reasonable view that ought to be taken is that such power must be exercised within a time limit or at any rate within a reasonable time?

8. It cannot be gainsaid that there must be finality of a proceeding not only in a Court of law but also before the Administrative Authority. A line must be drawn somewhere to set the parties at rest permanently over their rights involved in a particular proceeding. Under Regulation 883 of the Police Regulations the petition of appeal or revision is required to be presented by the petitioner within 37 days from the date of receipt of the order, but there is no time limit under Regulation 884 in exercising the revisional powers by the authorities on their own motion. The question is what then should be time limit in such cases in exercising revisional powers in a disciplinary proceeding under the Police Regulations? It is well settled that the Court will not normally supply any omission in the language of the statute unless it becomes imperative to do so where such omission having regard to the legislative intent makes a statute absurd or unreasonable or where legislative intent is clearly indicated by the context or other parts of the statute but there was accidental slip or unintentional omission. In the instant case omission of the time limit in Regulation 884 in exercising revisional powers will undoubtedly make the regulation "absurd, irrational or unreasonable." In such a situation I think the Courts are not precluded in applying the rule of "Casus Omissus." Maxwell in his "Interpretation of Statutes" 10th Edition (at page 250) while dealing with such cases of omission in statutes states:

"An omission which the context shows with reasonable certainty to have been unintended may be supplied, at least in enactments which are construed beneficially, as distinguished from strictly."

In support of this statement of law he has referred to amongst others an English decision in *In re Yeadon Local Board and Yeadon Waterworks Co.* (1889) 41 Ch D 52. In this case while considering somewhat similar questions under Public Health Act, 1875, where no time limit was fixed in the statute for making an award by the Umpire, Cotton, L. J. expressed himself as follows (at page 58):

"But what ought we to do? It is perfectly clear to my mind that the framers of the Act considered there was a time limited originally for the umpire to exercise his powers, which might be extended, in the proper sense of the word, by extending the original limited time. There is no clause in the Act expressly limiting the time during which the umpire is to act, but in my opinion it would be right on our part to act by analogy to that which is the limited time given to the arbitrators, namely, the date of appointment. Then the limit must be twenty-one days from the time when the reference of the matters to the umpire took place."

9. Following the principles indicated above it seems quite reasonable to suppose that in the instant case it was the intention of the framers of the Police Regulations that the revisional proceeding even without the petition of the delinquent servant must be commenced within the same time prescribed for presentation of petition of appeal or revision under Regulation 883. This omission to my mind as to time limit in Regulation 884 was unintentional. In my view in exercising powers under Regulation 884 the period of 37 days from the date of the final order in the original proceeding must be considered normally to be the time limit unless the delay for commencing the proceeding at a later date is unavoidable and sufficiently explained by the revisional authority.

10. Even assuming that I am wrong in reading such a time limit in Regulation 884 where it is not, then also there is an implied obligation to exercise such power with due diligence in such manner as it may not cause hardship and injustice to the person affected thereby. In construing implied powers and obligation in a Statute Maxwell again in his *Interpretation of Statutes* 10th Edition at page 364 states thus:

"But when an Act confers such powers, it also impliedly requires that they shall be exercised only for the purposes for which they were given and subject to the conditions which it prescribes, and also with due skill and diligence and in a way to prevent a needless mischief or injury."

11. So, considering the matter from this aspect also the revisional authority is under an implied obligation to commence the proceeding with diligence to prevent the "needless mischief or injury". In this connection I may refer also to *Craies on Statute Law* 5th Edition page 261, where it is stated that a statutory power of interference with property must be exercised within a reasonable time. I do not find any reason why this principle should not be extended to a case

where the Administrative Authority is conferred under statutory rules to perform its quasi-judicial duty affecting the rights of a person relating to his employment under the State. In this case no affidavit has been filed by any of the respondents or revisional authority countering the allegations in the petition or explaining that the delay caused was unavoidable nor there is any material on record to show that the delay in initiating the proceeding was justified. I may mention that direction to file affidavit-in-op-position was given on September 25, 1969, but no steps were taken. At the hearing of the Rule Mr. Mukherjee wanted me to consider whether time should be given to file such affidavit, if necessary. I cannot allow such prayer at this stage. It seems, therefore, clear that the proceeding started by the Revisional Authority after the lapse of about two years from the date of the imposition of penalty by the disciplinary authority no doubt resulted in breach of its implied obligation to commence the proceeding with diligence under Regulation 884 and this caused serious "mischief and injury" to the petitioner. Considering the matter, therefore, from both the aspects the entire revisional proceeding with the resultant order of dismissal cannot be sustained as valid.

12. There is yet another aspect of the matter. Apart from the disputed question whether in absence of any condition imposed in the rule in exercising revisional power the concerned authority ought to on principle exercise such power only in the manner and under the circumstances set forth in Section 115 of the Code of Civil Procedure, the administrative authority, as it acts quasi-judicially in exercising power of revision, must have to give his decision with reasons. The Supreme Court in *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*, while examining a similar rule conferring powers of revision upon the Central Government under Rule 54 of Mineral Concession Rules 1960 of order passed by the State Government held (at p. 674) as follows:

"The conception of exercise of revisional jurisdiction and the manner of disposal provided in Rule 55 of the Rules are indicative of the scope and nature of the Government's jurisdiction. If tribunals can make orders without giving reasons, the said power in the hands of unscrupulous or dishonest officers may turn out to be a potent weapon for abuse of power. But, if reasons for an order are to be given, it will be an effective restraint on such abuse, as the order, if it discloses extraneous or irrelevant considerations, will be subject to judicial scrutiny and correction. A speaking order will at its best be a reasonable and at its worst be at least a plausible one. The public should not be deprived of this only safeguard."

It is to be noticed, however, that Bachawat, J. (with Mudholkar, J.) in a separate Judgment made a distinction between the case where the order of the inferior Tribunal was followed and where such order is reversed or set aside by the Tribunal exercising power of revision. On a reference to earlier decision of the Supreme Court in *Harinagar Sugar Mills Ltd. Vs. Shyam Sundar Jhunhunwala and Others*, Bachawat, J. while dealing with this aspect of the matter inter alia observed (at page 677):

"In that case, it appears that the Central Government acting as an appellate tribunal u/s 111(3) of the Companies Act, 1956, had without giving any reasons for its order, set aside a resolution of the directors of a company refusing to register certain transfers of shares. There was nothing on the record to show that the Central Government was satisfied that the action of the directors in refusing to register the shares was arbitrary and untenable and, moreover, on the materials on record it was not possible to decide whether or not the Central Government transgressed the limits of its restricted power u/s 111(3). The Central Government reversed the decision appealed from without giving any reasons; nor did the record disclose any apparent ground for the reversal."

13. The majority view in this case has been consistently followed by the Supreme Court in later decisions See *Bharat Raja Vs. The Union of India (UOI) and Others*, and *Travancore Rayon Ltd. Vs. Union of India (UOI)*, *Travancore Rayons v. Union of India*. Even, in either view of the matter expressed in *Madhya Pradesh Industries Ltd. Vs. Union of India and Others (UOI)*, , the impugned order passed in revision in the instant case imposing penalty of dismissal upon the petitioner cannot be sustained. For, here also the order of the disciplinary authority was reversed and punishment of dismissal was inflicted without giving any reasons. It is simply said that after giving personal hearing and after going through the show cause explanation and considering "the pros and cons of the serious nature of charges Nos. 1 and 3 proved against the delinquent I see no reason why the maximum punishment of dismissal should not be inflicted on the delinquent. ..." and thus the petitioner was dismissed. There is nothing in the order to show that the order of the disciplinary authority in imposing a lesser punishment was arbitrary and untenable or it went beyond its limits in imposing a lesser punishment upon the petitioner. Having regard to the principles indicated in the above decisions of the Supreme Court it seems clear that the impugned order of dismissal passed by the revisional authority is not a reasoned order" at all. Mr. Mukherjee on behalf of the respondent relying on a decision of the Supreme Court in *Syed Yakoob Vs. K.S. Radhakrishnan and Others*, has submitted that in any case on agreeing with the disciplinary authority on finding of fact the punishment was enhanced to one of dismissal by the Revisional Authority and, therefore, no error either of jurisdiction or of procedure resulting in violation of rules and principles of natural justice is involved. This case is not of any assistance to the respondents, for, failure to give reasoned order constitutes a breach of duties of Revisional Authority enjoined under the Rules to act quasi-judicially and involves clearly consequential failure to exercise its jurisdiction vested in it. In this view of the matter. I think, the impugned order passed by the Revisional Authority imposing penalty of dismissal upon the petitioner suffers from serious infirmities and must be struck down as invalid.

14. Turning now to the appellate Order I do not find any provision in the Police Regulation for such an appeal. The order passed on this appeal is, therefore, of no consequence. In any case, even in the appellate order no reason has been given. The Appellate Authorities have only agreed with the revisional authority in

justifying the penalty of dismissal. Such being the case, it is clear, the appellate order is equally invalid.

15. In view I have taken on the second point it is unnecessary to examine the correctness of contention of Mr. Maitra on the third and fourth points and I do not express any opinion on them.

16. The result, however, is, the petition succeeds. The impugned order of penalty of dismissal is quashed. The Rule is made absolute accordingly but there will be no order as to costs.

17. Let a writ both in the nature of Mandamus and Certiorari issue accordingly.

18. Stay of the operation of the order made today as prayed for by Mr. Samir Kumar Mukherjee learned Advocate on behalf of the respondents is not allowed.