
(1996) 08 AHC CK 0015
In the Allahabad High Court
Case No : C.M.W.P. No. 25499 of 1996

Sarnam Singh

APPELLANT

Vs

Senior Superintendent of Police and Another

RESPONDENT

Date of Decision : 14-08-1996

Acts Referred:

Constitution of India, 1950 — Article 311(1)
Penal Code, 1860 (IPC) — Section 354
Uttar Pradesh Police Officers of Subordinate Ranks (Punishment and Appeal) Rules,
1991 — Rule 17(1)

Citation : (1996) 20 ACR 920 : (1996) 3 UPLBEC 1860

Hon'ble Judges : B.S. Chauhan, J

Bench : Single Bench

Advocate : R.K. Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

B.S. Chauhan, J.—The Petitioner is facing criminal trial u/s 354, Indian Penal Code as on 5.7.1996 one Smt. Shobha Devi lodged a F.I.R. against the Petitioner, who was posted as a Sub-Inspector in police station Deorahat, district Kanpur Dehat, alleging that on that date at about 8.30 p.m. the Petitioner entered her house along with two other persons. The Petitioner was dead drunk, though he was in police dress. At that time there was no person in the house of the complainant, the Petitioner torn away her blouse and misbehaved with her. On raising the noise, other persons came there and the Petitioner was apprehended. The Petitioner was taken into custody by the Deputy Superintendent of Police and Station House Officer of Bhognipur from the house of the complainant as they arrived there on her complaint. The aforesaid case was registered against the Petitioner u/s 354, Indian Penal Code and he was sent to Jail. After being enlarged on bail, the Petitioner was suspended resorting to the provisions of Section 17(1) of the U.P. Police Officers of the Subordinate Rank (Punishments and Appeal) Rules, 1991. The Petitioner was put under suspension by the Superintendent of Police, Respondent No. 2 vide impugned order dated

10.7.1996 contained in Annexure-2 to the writ petition.

2. Being aggrieved and dissatisfied, the Petitioner has filed the instant writ petition challenging the impugned order on various grounds.

3. Learned Counsel for the Petitioner has vehemently argued that the impugned suspension order has been passed by the Superintendent of Police who is not the appointing authority of the Petitioner. According to the averments made In the writ petition, the Deputy Inspector General of Police is the appointing authority of the Petitioner and thus, the impugned order is bad for want of competence.

4. In State of Madhya Pradesh and Others Vs. Shardul Singh, , the Supreme Court held that Article 311(1) of the Constitution provides for guarantee to a civil servant that he would not be dismissed or removed by an authority subordinate to his appointing authority but it does not provide for further guarantee that the disciplinary proceedings resulting in dismissal or removal of a civil servant should also be initiated and conducted by the authority mentioned therein.

5. Similarly, in P.V. Srinivasa Sastry and others Vs. Comptroller and Auditor General and others, , the Hon"ble Supreme Court elaborated the same issue again and observed as under:

It need not be pointed out that initiation of a departmental proceedings per se does not visit the officer concerned with any evil consequences and the framers of the Constitution do not consider it necessary to guarantee even that too holder of civil posts.... At the same time this will not give right to authorities having the same rank as that of the officer against whom proceedings is to be initiated to take a decision whether any such proceedings should be initiated. In absence of a rule any supervisory authority, who can be held to be a controlling authority, can initiate such proceeding.

6. A view similar to Srinivas Shastri (supra) case has been taken by the Supreme Court in Inspector General of Police and Anr. v. Thavasiappan 1992 (2) SCC 145 and Director General, E.S.I. and another Vs. T. Abdul Razak, etc., .

7. In the aforesaid judgment, the Supreme Court had considered its earlier judgment in Vithaldas and others v. Ramchandra and others, 1995 Suppl. (3) SCC 374 , held that the rules applicable in that case do not permit any delegated authority to initiate the departmental proceedings.

8. It is well-settled law that the controlling/supervising authority has a right to initiate disciplinary proceedings unless the statutory rule provides for the contrary.

9. Learned Counsel for the Petitioner has not produced the rules applicable in the instant case to show that the said rules do not permit the controlling/supervising authority to initiate the disciplinary proceedings. Thus, the first contention raised by the learned Counsel for the Petitioner is rejected.

10. Learned Counsel for the Petitioner next contended that as the criminal trial

may take a long time and if the suspension order is not revoked, it will prejudice the entire future career of the Petitioner.

11. In *Kusheshwar Dubey Vs. Bharat Coking Coal Ltd. and Others*, , it has been held that where disciplinary proceedings and criminal proceedings are based on the same set of facts, the disciplinary proceedings should be stayed.

12. Similarly, in *R.P. Kapur Vs. Union of India (UOI) and Another*, , the Constitution Bench of the Supreme Court has observed as under:

The usual practice is that where a public servant is being tried on a criminal charge, the Government postpones holding a departmental enquiry and awaits the result of the criminal trial and departmental proceedings follow on the result of the criminal trial.

13. In *The Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan*, , the Apex Court observed as under:

It is true that very often employer stays the enquiries pending the decision of the trial court and that is fair ; but we cannot say that principle of natural justice requires that an employer must wait for the decision at least of the criminal trial court before taking action against an employee.... We may, however, add that if the case is of a grave nature and involves question of fact or law, which are not simple, it would be advisable for the employer to await the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced.

14. However, the law laid down in the aforesaid cases is not applicable in the instant case. The reason being that in all the aforesaid cases, the offence committed by the employees do not relate to their respective official duties.

15. The Constitution Bench of the Apex Court in *R. P. Kapoor (supra)* observed as under:

The usual ground for suspension pending a criminal proceeding is that the charge is connected with his position as a Government servant and is likely to embarrass him in discharge of his duties or involves moral turpitude. In such a case a public servant may be suspended pending investigation, enquiry or trial relating to a criminal charge.

16. In *Pawan Kumar Vs. State of Haryana and another*, , the Supreme Court has explained the meaning of moral turpitude as conduct which is "inherently base, vile, depraved or having any connection showing depravity". For example, the acts which shock merely the conscience of the society in general, a motive which leads to the act which is base one or the act by which the perpetrator would be considered to be of a depraved character or a person who can be looked down upon by the society.

17. The scope of interference by the Court or Tribunal in a case of suspension has considered by the Supreme Court in *U.P. Rajya Krishi Utpadan Mandi*

Parishad and Others Vs. Sanjiv Rajan, . wherein the Supreme Court has held as under:

Whether the employees should or should not continue in their office during the period of Inquiry is a matter to be assessed by the concerned authority and ordinarily, the Court should not interfere with the orders of suspension unless they are passed mala fide and without there being even a prima facie evidence on record connecting the employees with the case, before the preliminary report was received, the Director was impressed by the Ist Respondent-employee's representation. However, after the report, it was noticed that the employee could not be innocent. Since this is the conclusion arrived at by the management on the basis of the material in their possession, no conclusion to the contrary could be drawn by the Court at the interlocutory stage and without going through the entire evidence on record. In the circumstances, there was no Justification for the High Court to revoke the order of suspension.

18. This view has been reiterated by the Supreme Court in State of Orissa Vs. Bimal Kumar Mohanty, .

19. On the issue of delay in conclusion of the criminal proceedings, this Court in Vinai Pal v. State of U.P. and Anr. 1996 AWC 861, has observed as under:

It is well settled that it is always open to the appointing authority to review the suspension order and revoke the same if either the disciplinary proceedings or the criminal case is unusually delayed for no fault of the employee concerned. However, this cannot be a ground to quash the suspension order at the threshold. If, inspite of long delay in conclusion of the proceedings, the Government does not accept the prayer of an employee to revoke the suspension order, it is always open to him to approach this Court.

20. Thus, in view of the facts and circumstances of the case, there is no scope of interference with the impugned suspension order. Petition is devoid of any merit and is accordingly dismissed.