
(1970) 03 AHC CK 0022

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 2551 of 1965

Satya Deo Singh

APPELLANT

Vs

Inspector General of Police UP and Others

RESPONDENT

Date of Decision : 26-03-1970

Acts Referred:

Uttar Pradesh Police Regulations, 1948 — Para 490(2)(b)

Citation : (1970) 40 AWR 322

Hon'ble Judges : H.C.P. Tripathi, J

Bench : Single Bench

Advocate : S.K. Tewari and B.P. Srivastava, for the Appellant; S.C. for opposite parties., for the Respondent

Final Decision : Dismissed

Judgement

H.C.P. Tripathi, J.—Petitioner was appointed as Head Constable at Police Lines, Ghazipur on 1-6-1944. He was confirmed as such after the expiry of the probationary period.

2. Petitioner was charged u/s 7 of the Police Act for remisness and a charge-sheet dated 6-1-1962 was issued to him by the Superintendent of Police, Ghazipur, charging him for having developed illegal connection with a woman and for having kidnapped and kept her at the house of his relation from where she had been recovered in the night of 29/30-7-1961 at about 1.30 a.m. by the Station Officer Mardah Police Station. Petitioner was asked to submit his explanation to the charges levelled against him.

3. Petitioner denied the charges and submitted his explanation. Tnereafter departmental proceedings were held against the Petitioner and a number of witnesses were examined both in support of the charge and in the defence of the Petitioner. The Superintendent of Police who held the enquiry by his detailed order dated 16-5-1962 (Annexure E) reached the conclusion that the charge against the Petitioner of having kidnapped a girl was established and he deserved

the punishment of dismissal. Petitioner was again asked to show cause why the aforesaid punishment be not inflicted upon him. After taking into account the explanation offered by the Petitioner in response to the second show cause notice regarding the proposed punishment the Superintendent of Police passed the impugned order dated 28-5-1962, dismissing the Petitioner from service.

4. On appeal the DIG Varanasi Range agreed with the findings arrived at by the Superintendent of Police Ghazipur and confirmed the dismissal of the Petitioner. Petitioner's application in revision was dismissed by the Inspector-General of Police by his order dated 9/10-3-1965. This writ petition is directed against the aforesaid orders of the police authorities.

5. Learned Counsel for the Petitioner has raised two points in support of this petition. It is urged that as the statement of the witnesses examined during the enquiry had not been recorded by the Superintendent of Police himself there has been a clear disregard of injunction contained in para 490(2)(b) of the UP Police Regulations which provides that the evidence must be recorded by the Superintendent of Police himself and therefore the entire proceedings stand vitiated. Reliance is placed by the learned Counsel on a single Judge decision of this Court in the case of Sri Darbari Lal Sharma v. State of UP and Ors. 1965 ALJ 447 and also on a Division Bench decision in the case of State of Uttar Pradesh and Ors. v. Hari Shankar Kaushik 1964 ALJ 576. The other contention which has been raised as a challenge to the validity of the impugned orders is that the Petitioner had not been afforded a reasonable opportunity to defend his case. However, I find no force in any one of these contentions. The two cases relied upon by the learned Counsel are distinguishable on facts. In Darbari Lal Sharma's case the statements of witnesses had been recorded by the Deputy Superintendent of Police and the Superintendent of Police who was conducting the enquiry had relied on those statements. In the case reported in 1964 ALJ 576, also the statements recorded by the Deputy Superintendent of Police in the course of preliminary enquiry had been relied upon by the Enquiry Officer. In such circumstances this Court held that evidence in proceedings u/s 7 of the Police Act must be recorded by the Superintendent of Police himself in the presence of the party charged who must be allowed to cross-examine the witnesses, as envisaged Under para. 490 of the Police Regulations which is mandatory in character.

6. In the instant case the statements of witnesses had been dictated by the Superintendent of Police to his stenographer in the presence of the Petitioner. The aforesaid statements were read over under his supervision by the witnesses concerned and were confirmed. The Petitioner was present when they were examined and had cross-examined them. It will be reasonable, therefore, to hold that the evidence was recorded by the Superintendent of Police himself within the meaning of para. 490(2)(b) of the Police Regulations and only the mechanical part of transcribing the evidence was done under his direction by his stenographer. It is not a case where the evidence recorded by a person other

than the Enquiry Officer in the absence of the party charged has been utilised by the Enquiry Officer for arriving at a conclusion against him.

7. There is another reason why it cannot be held that it is incumbent on the Enquiry Officer to write out personally the evidence during the enquiry. Para 490(1)(b) as it stood before August 1960 which has been relied upon by the learned Counsel in support of his contention reads:

As much evidence must first be placed on record as the Superintendent of Police considers necessary to establish a charge u/s 7 of the Police Act. This evidence may either be oral or documentary and must be material to the charge. If oral

(a).....

(b) it must be recorded by the Superintendent of Police himself in the presence of the party charged, who will be allowed to cross-examine the witnesses....

The aforesaid paragraph 490 of the Police Regulations was, however, substituted by the present paragraph 490 in September 1960, vide G.O. No. 4990/VIII-A, dt. 2-9-1960 in which subparagraph (b) of paragraph 2 provides:

that if the evidence be oral, it must be recorded by the Superintendent of Police in the presence of the party charged who will be allowed to cross-examine the witnesses....

It will be noticed that in the old Sub-para (b) of para 490 as it stood before September 1960, the provision was that the oral evidence must be recorded by the Superintendent of Police himself, but in the existing paragraph the word himself has been dropped which makes it clear that it is not at all incumbent on the Superintendent of Police to perform the mechanical part of writing out the evidence. The first contention in support of the petition, therefore, must be rejected.

8. The Petitioner was allowed opportunity from 28th February to 5th May 1962 for producing evidence in defence. A number of witnesses were examined by him and several documents were put on record on his behalf, all of which had been considered by the Enquiry Officer (paragraph 11 of the counter affidavit filed by Sri A.M. Shah, who was then Superintendent of Police at Ghazipur). It has been urged, however, that on the last date fixed for defence, namely on 5-5-1962 the Petitioner was present with some of his defence witnesses but they could not be examined because the Enquiry Officer was not present at the headquarters. There is no such allegation either in the petition or in the affidavit support the petition, or in the supplementary counter-affidavit. On the other hand, in paragraph 16 of the writ petition the allegation made on this score is that as the order of the Superintendent of Police dated 30-4-1962 fixing 5-8-1962 as the final date for the defence evidence was served on the Petitioner at 6.10 a.m. it was impossible for any one to produce the evidence. There is no allegation that the Petitioner and his witnesses were present at the place of enquiry but their evidence could not be recorded because of the absence of the Enquiry Officer. I

have, therefore, no doubt that such an allegation has been made as an after-thought. I am satisfied that the Petitioner was afforded reasonable and sufficient opportunity to defend himself.

9. In the result, I find no force in this petition and it is dismissed with costs.