(1970) 02 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 535 of 1969

Sawaran Puri APPELLANT

Vs

The State of Haryana RESPONDENT

Date of Decision : 23-02-1970

Acts Referred:
Police Act, 1949 — Section 7

Citation : (1970) 02 P&H CK 0001

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Advocate : J.S. Shahpuri, for the Appellant; H.N. Mehtani, Assistant Advocate-General, Haryana, for the Respondent

Final Decision : Dismissed

Judgement

B.R. Tuli, J.—The Petitioner was enlisted as as Constable in the Government Railway Police, Haryana, on December 18 1967, u/s 7 of the Police Act, in accordance with the conditions of service laid down in that Act and the Punjab Police Rules framed thereunder. The Petitioner was sent to the Recruits Training Centre, Jahan Khelan, district Hoshiarpur, to undergo the necessary training prescribed for the recruits of the Police Force of the Punjab and Haryana States. He successfully completed the training and passed the Recruits Training Course in October, 1968. He was thereafter posted in the Government Railway Police Lines, Ambala City, where he remained for a few days and thereafter was put on telephone duty at the residence of the Assistant Inspector General, Government Railway Police, Haryana, at Ambala Cantt. He was discharged from service by Shri Shamsher Singh, Deputy Superintendent of Police (Admn.), G.R.P. Haryana, under Police Rule 12. 21 by order dated December 9, 1968. with effect from that very day. The Petitioner then filed the present writ petition in this Court on February 28, l969, which was admitted on March 10, 1969.

2. The grounds of attack in the writ petition are that under Police Rule 12. 21 only the Superintendent of Police can discharge a Constable and not the Deputy

Superintendent of Police And the order passed by Respondent 2 is, therefore, without jurisdiction and is liable to be quashed. The second ground is that the power under Police Rule 12. 21 is arbitrary as no guide-lines have been indicated so that the Superinten-det of Police can discriminate between one Constable and another and discharge any Constable that he likes from service even if he is likely to prove to be an efficient police officer. Both these pleas have been controverted in the written statement.

3. As regards the first point, reference is necessary to the definition of "Superintendent of Police" in the Police Act, which reads as under:

The words ''District Superintendent'' and ''District Superintendent of Police'' shall include any Assistant District Superintendent or other person appointed by general or special order of the State Government to perform all or any of the duties of a District Superintendent of Police under this Act in any district,

Rule 1.1 of the Police Rules provides for the constitution of General Police Districts in the State, namely, the Provincial Police District and the Railway Police District. Rule 1.4, 1.8 and 1.9, which are relevant, are as under: -

1.4 The districts of the province are grouped in ranges and the adminstration of all police within each such range is vested in a Deputy Inspector-General under the control of the Inspector-Gene-ral of Police.

The Railway Police district is administered, under the control of the Inspector-General of Police, by an Assistant Inspector-General of Police, who has the powers of, and is responsible for the duties allotted to, a Deputy Inspector-General of a range. The limits of the Railway Police district are the railway limits within the Punjab and Delhi Provinces and Indian States lying within the boundary of the Punjab including the State of Bahawalpur.

The Training School is under the direct control of the Inspector-General subject to such delegation of powers as he may make to one or other of the range Deputy Inspectors-General The Criminal Investigation Department is administered by a Deputy Inspector-General, who also supervises the Finger Print Bureau.

1 8 The Superintendent of Police is the executive head of the district police force. He is directly responsible for all matters relating to its internal economy, training and management, and for the maintenance of its discipline and the efficient performance of all its duties.

In every district there shall be one or more Superintendents and such number of Assistant Superintendents, Deputy Superintendents, Inspectors, Sergeants. Sub-Inspectors, Assistant Sub Inspectors, Head Constables and Constables as the Provincial Government may direct.

1 9. The authority and duties of Assistant and Deputy Superintendents of Police are the same and interchangeable. They derive their powers from the fifth

definition in Section 1 of the Police Act (V of 1861) and from Section 551 of the Code of Criminal Procedure. Assistant and Deputy Superintendents of Police are posted to districts and other duties at the discretion of the Provincial Government to be trained and to assist the Superintendent in the discharge of his responsibilities, and the authority of the Superintendent is delegated to them to the extent prescribed by these rules.

It is thus apparent from these Rules that the Railway Police district is administered by an Assistant Inspector General of Police who has the powers of, and is responsible for the duties allotted to, a Deputy Inspector General of Police of a range. The Superintendent of Police is the executive head of the district police force and is directly responsible for all matters relating to its internal economy, training and management, and for the maintenance of its discipline and the efficient performance of all its duties- Under Rule 1.9. the Assistant and Deputy Superintendents of Police dervie their powers from the fifth definition in section I of the Police Act (which defines ''Superintendent'') and from Section 551 of the Code of Criminal Procedure. They are to assist the Superintendent in the discharge of his responsibilities. Same powers of the Superintendent are delegated to them as prescribed under the Rules.

Chapter XXVIII of the Police Rules deals with the Railway Police and other Special Rules. Rule 28.1. states that the General Railway Police district administration is under the Inspector General of Police, but is under the direct supervision of the Assistant Inspector General, Government Railway Police, who is invested with the same departmental powers within his jurisdiction as a Deputy Inspector General of a range. Under the Assistant Inspector General, there is an Assistant Superintendent of Police who is in executive charge of inetrior economy, of the Reserve, and of the staff of Inspectors, Sergeants and lower subordinates who are specially allocated to the protection of passengers and the maintenance of order at railway stations The Government Railway Police jurisdiction is divided into a number of sub-divisions, each sub-division being in the executive charge of a Deputy Superintendent of Police, It is thus clear that in his sub-division the Deputy Superintendent of Police controls the staff of Inspectors, Sergeants and lower subordinates and exercises the same powers as a Superintendent of Police in a civil district post.

Rule 12.1 sets out of a table summarising the directions given by the Provincial Government under Clause (b) of Sub-section (I) of Section 241 of the Government of India, Act, 1935, in regard to the authorities competent to make appointments to the non-gazetted ranks. The power to appoint Head Constables and Constables, as far as the Government Railway Police is concerned, is vested in the Deputy Superintendent (Admn) Government Railway Police, Assistant Superintendent Government Railway Police, and Deputy Superintendents, Incharge of Railway Sub-Divisioin. To these officers are delegated full powers for appointment subject to rule governing the conditions of service as defined in the Police Rules. Rule 12 21 provides-

A Constable who is found unlikely to prove an efficient police officer may be discharged by the Superintendent at any time within three years of enrolment. There shall be no appeal against an order of discharge under this rule."

Chapter XVI of the Police Rules deals with the departmental punishments and the authorities who are competent to inflict them. With regard to the Constables in the Government Railway Police, the Deputy

Superintendent (Admn.) Government Railway Police, is competent to dismiss a Police Constable of the Government Railway Police. He is, therefore, competent to discharge him from service also under Rule 12.21

4. From the Rules, set out above, it is clear beyond doubt that as far as the Government Railway Police is concerned, the Deputy Superintendent (Admn.), exercises the powers or the Superintendent of Police of a civil district. The order of discharge made by Respondent 2, therefore, was with jurisdiction and cannot be set aside on that ground.

5. The second submission of the learned Counsel for the Petitioner is also without merit Police Force is a special kind of force for which merely passing of examinations and tests is not enough. Certain other qualities are required, as is stated in Rule 19.5 of the Police Rules, It is wrong to suggest that there are no guide-lines indicated in the Rules for the exercise of the power by the competent authority under Rule 12.21 of the Police Rules. The guide-lines are stated in Chapter XIX, particularly rules 19.3 and 19.5. The competent authority exercises the power under Rule 12.21 on certain reports and not in an arbitrary manner. It cannot, therefore, be said that the competent authority under rules 12.21 exercise any arbitrary powers. In Messrs. Pannalal Binjraj v. Union of India A. I. R 1967 S. C. 397., their Lordships made certain observations with regard to the power given to the Commissioner of Income Tax and Central Board of Revenue u/s 5(7A) of the Income Tax Act, 1922. which aptly apply to the power of the Superintendent or any other competent authority under Rule 12.21 of the Police Rules. These observations are as under:

Nevertheless this power which is given to the Commissioner of income tax and the Central Board of Revenue has to be exercised in a manner which is not discriminatory. No rules or directions having been laid down in regard to the exercise of that power in particular cases, the appropriate authority has to determine what are the proper cases in which such power should be exercised having regard to the object of the Act and the ends to be achieved. The cases of the assesses which come for assessment before the income tax authorities are of various types and no one case is similar to another, There are complications introduced by the very nature of the business which is carried on by the assesses and there may be, in particular cases, such wide spread activities and large remifications or inter-related transactions as might require for the convenient and efficient assessment of income tax the transfer of such cases from one income tax Officer to another. In such cases the Commissioner of income tax or the Central Board of Revenue, as the case may be, has to exercise its discretion with due regard to the exigencies of tax collection. Even though there may be a common attribute between the Assessee whose case is thus transferred and the assesses who continue to be assessed by the income tax Officer of the area within which they reside or carry on business, the other attributes would not be common. One Assessee may have such widespread activities and remifications as would require his case to be transferred from the income tax Officer of the particular area to an income tax Officer of another area in the same State or in another State, which may be called ''X''. Another Assessee, though belonging to a similar category may be more conveniently and efficiently assessed in another area whether stated within the State or without it, called ''Y''. The considerations which will weigh with the Commissioner of Income-tax or the Central Board of Revenue in transferring the cases of such assess-ees either to The area ''X'' or the area ''Y'' will depend upon the particular circumstances of each case and no hard and fast rule can be laid down for determining whether the particular case should be transferred at all or to an Income tax Officer of a particular area Such discretion would necessarily have to be vested in the authority concerned and merely because the case of a particular Assessee is transferred from the Income tax Officer of an area within which he resides or carries on business to another income tax Officer whether within or without the State will not by itself be sufficient to characterise the exercise of the discretion as discriminatory. Even if there is a possibility of discriminatory treatment of persons falling within the same group or category, such possibility cannot necessarily invalidate the peace of legislation.

It may also be remembered that this power is vested not in minor officials but in top-ranking authorities like the Commissioner of income tax and the Central Board of Revenue who act on the information supplied to them by the Income tax Officers concerned. This power is discretionary and not necessarily discriminatory and abuse of power cannot be easily assumed where the discretion is vested in such high officials. (Vide Matajog Dobey Vs. H.C. Bhari,). There is morover a presumption that public officials will discharge their duties honestly and in accordance with the rules of law. (Vide People of the State of New York v. John E. Van De Carr. etc., (1955) l99 U. S. 552: 50 Law Ed 3 5). It has also been observed by this Court in A. Thangal Kunju Musaliar Vs. M. Venkitachalam Potti and Another, with reference to the possibility of discrimination between Assessees in the matter of the reference of their case to the income tax Investigation Commission that-

''It is to be presumed, unless the contrary were shown, that the administration of a particular law would be done "not with an evil and unequal hand" and the selection made by the Government of the cases of persons to be referred for investigation by the commission would not be discriminatory.

This presumption, however, cannot be stretched too far and cannot be carried to the extent of always holding that there must be some undisclosed and unknown reason for subjecting certain individuals''''or corporations to hostile and discriminatory treatmen Gulf Colorado- etc. v. W.H.- Ellis (1897) 165 U.S. 150: Law Ed. 666). There may be cases where improper execution of power will result in injustice to the parties. As has been observed, however, the possibility of such discriminatory treatment cannot necessarily invalidate the legislation and where there is an abuse of such power, the parties aggrieved are not without ample remedies under the law vide Dinabandu Sahu v. Jacumoni Mangaraj, 1965 1 S C.R. 140 at page 146: AIR 1954 S.C 411 at page 414 What will be struck down in such cases will not be the provision which invests the authorities with such power but the abuse of the power itself.

Respectfully following that judgment, I hold that the power given to the Superintendent under Rule 12.21 of the Police Rules is not arbitrary and cannot be struck down.

No other point has been argued before.

For the reasons given above, this petition is without merit and is dismissed with on order as to costs.

