

(1965) 11 MP CK 0018

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 646 of 1964

Shardul Singh

APPELLANT

Vs

The State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 04-11-1965

Acts Referred:

Constitution of India, 1950 — Article 311(2)
Police Regulations — Regulation 228

Citation : AIR 1966 MP 193 : (1967) JLJ 21 : (1968) 2 LLJ 274 : (1966) 11 MPLJ 144

Hon'ble Judges : P.V. Dixit, C.J.; K.L. Pandey, J

Bench : Division Bench

Advocate : A.P. Sen and G.P. Singh, for the Appellant; R.J. Bhawe, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

This Judgment has been overruled by : State of Madhya Pradesh and Others Vs. Shardul Singh, (1970) 20 FLR 81 : (1970) 1 SCC 108 : (1970) 3 SCR 302

Dixit, C.J.

In this case the petitioner, who was a Sub-Inspector of Police, seeks a writ of certiorari for quashing an order dated the 30th November 1963 of the Inspector General of Police dismissing him from service. The order of the Inspector General of Police was upheld in appeal by the Government, and it writ is sought for quashing that order also.

The petitioner's dismissal was as a sequel to a departmental enquiry held against him on the charges that on 24th June 1962 when the constables detailed at Korandha border for checking smuggling of rice into Bihar State intercepted and seized twenty-two pony-loads of rice which was being taken across the border, the petitioner forced the constables to release the rice under the threat of dire and serious consequences; that he suppressed information about this crime

of smuggling; and that he also, under threats of harassment and vengeance, forced the constables to write out false duly certificates and thus abused his position. The departmental enquiry was initiated and held by the Superintendent of Police. Surguja; the charges were also framed by him. After the conclusion of the enquiry, the Superintendent of Police sent his report finding the petitioner guilty of the charges to the Deputy Inspector General of Police. Raipur, with the comments of the District Magistrate on his report. The Deputy Inspector General of Police in his turn submitted the report of the Superintendent of Police, with his own comments thereon, to the Inspector General of Police. On 9th September 1963 the Inspector General of Police issued a notice to the applicant stating that on a perusal of the record of the departmental enquiry he had provisionally reached the conclusion that the charges against the petitioner had been proved, and asking him to show cause why he should not be dismissed from service. The petitioner sent his reply to the show-cause notice denying the charges. The explanation offered by the petitioner did not convince the Inspector General of Police, who thereupon passed the impugned order dismissing the petitioner from service.

The applicant contends that his dismissal from service is invalid for three reasons, namely, first, as he was appointed as Sub-Inspector by the Government, his dismissal from service by the Inspector General of Police, an authority subordinate to the Government, was contrary to Article 311(1) of the Constitution; secondly, he was not given an opportunity of cross-examining some of the witnesses who gave evidence in support of the charges framed against him and of producing some witnesses on his behalf; and, thirdly, the departmental enquiry held by the Superintendent of Police on charges framed by himself was a nullity as the Superintendent of Police not being the disciplinary authority in regard to him, he had no power to initiate any departmental enquiry against him; and that consequently the notice to show cause given by the Inspector General of Police and the ultimate order passed by him dismissing him (the applicant) from service were invalid.

There is no substance in the contention that the Inspector General of Police was not competent to dismiss the petitioner from service and that the applicant was not given a reasonable opportunity of defending himself at the departmental enquiry. The record shows that the petitioner was appointed as a Sub-Inspector in 1946 by the Inspector-General of Police of the former Rewa State. That being so, the Inspector General of Police, Madhya Pradesh, was clearly competent to dismiss him from service, and it cannot be contended that the order dismissing the petitioner from service was passed by an authority subordinate to that by which he was appointed. It is also clear from the record that the applicant was given full opportunity of cross examining the witnesses examined in support of the charges against him and also of leading his own evidence in defence. Shri Sen, learned counsel appearing for the petitioner, however, strongly pressed before us the contention that the petitioner having been appointed by the Inspector General of Police, the disciplinary authority in relation to him was the

Inspector General of Police; that he alone could exercise disciplinary powers over the petitioner and decide whether a departmental enquiry should or should not be held against the applicant on certain charges and whether as a result of the findings of the enquiry, if any held, he should or should not be punished and in what manner; that the Inspector-General of Police had not delegated his power to the Superintendent of Police to frame charges against a delinquent police officer and to hold an enquiry into those charges, and could not delegate it in the absence of any statutory rule; and that, therefore, the departmental enquiry held by the Superintendent of Police on charges framed by himself was totally vitiated and a nullity, and all action taken on the basis of that enquiry was invalid.

In reply, learned Government Advocate submitted that under regulation 228 of the Police Regulations framed u/s 7 of the Police Act, 1861, the Superintendent of Police had the power to initiate a departmental enquiry against a Sub-Inspector on a charge framed by him; and that in any case the framing of a charge and the holding of an enquiry were administrative acts which could be delegated by the Inspector General of Police to a subordinate authority.

In our judgment, the petitioner's contention that the Superintendent of Police had no authority to initiate a departmental enquiry against him on charges framed by himself and that consequently the departmental enquiry held by him was a nullity and the order of dismissal passed by the Inspector General of Police on the basis of that enquiry was totally invalid, must be accepted. The important question raised by this contention is whether the appointing authority, who has the power of taking disciplinary action against a civil servant, can delegate to a subordinate authority the power to initiate disciplinary action against the civil servant by framing charges and holding an enquiry into them. The answer to this question does not depend on the question whether the exercise of disciplinary authority is a judicial or quasi judicial act or an administrative act. Judicial power cannot, no doubt ordinarily be delegated unless the law expressly or by clear implication permits it. But many administrative duties and functions also cannot be delegated in the absence of any statutory provision expressly or impliedly permitting the delegation. In the case of the power of appointment to an office, which is plainly an administrative act, it cannot be doubted that if the power of appointment has been given by a statute to the holder of an office, then he cannot delegate that power to another authority unless the statute expressly or by clear implication permits the delegation. If the power of appointment cannot be delegated, then it follows that the concomitant power of the appointing authority to dismiss the employee or to take disciplinary action against him cannot also be delegated. Now, the exercise of disciplinary powers, or the field of disciplinary action, is not confined merely to the passing by the appointing authority of an ultimate order imposing disciplinary punishment against the employee. It extends even to the very initiation of disciplinary action against a civil servant or employee by framing charges against him and holding, or directing the holding of, an enquiry into those charges. The framing of charges, the holding of an enquiry into them, the suspension of the civil servant during

the enquiry, the notice to show cause, are all steps in the exercise of the disciplinary powers. These steps must be taken by the disciplinary authority and not by a delegate of that authority.

It is easy to see that it would be utterly subversive of the maintenance of discipline and morale in service if any authority subordinate to the disciplinary authority claimed the power to initiate disciplinary action against a civil servant, to frame charges against him, and to hold an enquiry on those charges and thus force the hands of the disciplinary authority or forestall its decision in the matter of disciplinary action against the civil servant concerned. In such a situation, the disciplinary authority would be placed in an embarrassing position and the civil servant cannot have the confidence or the assurance that his case has been considered by the disciplinary authority before requiring him to go through the harassment of the gamut of a formal departmental enquiry. The power to initiate disciplinary action against a civil servant by framing charges and holding, or directing the holding of, an enquiry into them is as much the exercise of disciplinary powers as the power to pass the ultimate order imposing punishment on him. In the absence, therefore, of a statutory provision permitting expressly or impliedly the delegation of disciplinary powers, the disciplinary authority, if it decides that disciplinary action should be taken against a civil servant, must itself frame the charges and hold an enquiry into them or direct another authority to hold an enquiry into those charges. An authority other than the disciplinary authority has clearly no power to frame, on its own initiative, charges against a civil servant and hold an enquiry into them.

This view finds support in the observations made by the Supreme Court in *Pradyat Kumar Bose Vs. The Hon'ble The Chief Justice of Calcutta High Court*, while holding that the actual conduct of an enquiry can be delegated by the disciplinary authority. In that case, the Supreme Court, after pointing out that the exercise of the power to appoint or dismiss an officer is the exercise not of a judicial power but of an administrative power, proceeded to say that-

"It is well recognised that a statutory functionary exercising such a power cannot be said to have delegated his functions merely by deputing a responsible and competent official to enquire and report. That is the ordinary mode of exercise of any administrative power. What cannot be delegated except where the law specifically so provides--is the ultimate responsibility for the exercise of such power."

The statement in the above observation, namely,

"what cannot be delegated except where the law specifically so provides--is the ultimate responsibility for the exercise of such power ",

is important and must be noted carefully. That observation cannot be read as merely meaning that the power of passing an order dismissing an officer or imposing a punishment on him cannot be delegated. According to the Supreme Court, what cannot be delegated is the "exercise" of the power referred to in the

earlier passages of the judgment, that is to say, the exercise of disciplinary powers. The disciplinary power, as pointed out earlier, does not consist merely in passing a final order of punishment, but also includes the power to initiate disciplinary action by framing charges and holding, or directing the holding of, an enquiry into them.

In *Pradyat Kumar Bose Vs. The Hon'ble The Chief Justice of Calcutta High Court*, the Supreme Court adopted the reasoning given in *Local Government Board v. Arlidge* 1915 AC 120 that in the matter of actual conduct of an enquiry, the disciplinary authority could act by official duly deputed for the purpose, and held that delegation of the conduct of enquiry did not amount to delegation of the exercise of the disciplinary power itself.

The decision of the Supreme Court in *Mohd. Ghouse v. State of Andhra*. (S) AIR 1957 SC 210 also lends support to the view that it is the disciplinary authority that is competent to initiate action against a civil servant by framing charges and holding, or directing the holding of, an enquiry into them. That was a case where an enquiry was held against a District Munsif by one of the Judges of the Madras High Court on charges framed by that High Court. The report of the Judge into the enquiry was approved by the High Court and as a result thereof the High Court suspended the District Munsif. When the report was sent to the Government for action, a notice was issued by the Government to the District Munsif to show cause why he should not be dismissed or removed from service. The District Munsif challenged in the Supreme Court the validity of the order of suspension passed by the High Court contending that as the authority which appointed him was the Governor of the Province, it was only that authority that could dismiss or remove him from service, and that the order of suspension made by the High Court was in contravention of Article 311(1) of the Constitution and was in consequence bad. While negating this contention, the Supreme Court observed that the order of suspension passed by the High Court pending final orders by the Government was neither one of dismissal nor of removal from service within the meaning of Article 311 of the Constitution and that under Rule 13 of the Madras Civil Services (Classification, Control and Appeal) Rules, the Madras High Court had the power to impose suspension pending enquiry into grave charges under Rule 17(c) against the members of the State Judicial Service. The Supreme Court also observed that-

"... it is the appropriate authority under Article 311 that proposes to take action against the appellant, find it is for that authority to pass the ultimate order in the matter."

No doubt, this observation was made in connection with the notice to show cause which was given by the Government to the District Munsif. Nonetheless, it does indicate that the proposal to take action falling under Article 311 must be of the appropriate authority under Article 311 of the Constitution. In other words, it is the appointing or the disciplinary authority that can initiate disciplinary action against a delinquent civil servant. In *Mohammad Ghouse Vs. State of Andhra*, ,

the. charges were no doubt framed by the High Court and not by the Government. But, as held by the Supreme Court very recently in *State of West Bengal v. Nripendra Nath Bagehi*, Civil Appeal No. 391 of 1904 D/-10-9-1995 : (AIR 1960 SC 447) "within the exercise of the control vested in the High Court under Article 235", the High Court can hold enquiries, impose punishments other than dismissal or removal on District and Sessions Judges and the High Court alone has the power to hold disciplinary enquiries. The decision of the Supreme Court in *Bagchi's case* (supra) also supports the view that it is the disciplinary authority and no one else that can initiate disciplinary action against a civil servant. The Calcutta High Court has also held in *Provat Kumar Ghosh Vs. State of West Bengal*, at p. 665 that the charge must be issued by or in the name of the punishing authority.

There is also a decision of the House of Lords in *Vine v. National Dock Labour Board* 1057 AC 48 : 195 3 All ER 939. In that case, a dock labourer employed in the reserve pool by the National Dock Labour Board under the scheme set up under the Dock Workers (Regulation of Employment) Order, 1947, was allocated work with a stevedore company but failed to report to them. A complaint against the dock labourer was then lodged with the National Dock Labour Board. The complaint was heard by the disciplinary committee appointed by the Local Dock Labour Board. The Local Dock Labour Board upheld the complaint and purporting to act under Clause 16(2) (c) of the Order, gave to the dock labourer a notice terminating his employment with the National Dock Labour Board. When the labourer's appeal to the tribunal set up under the scheme was dismissed, he started proceedings against the National Dock Labour Board claiming damages for his dismissal and a declaration that his purported dismissal was illegal, ultra vires and void. When the matter ultimately went up before the House of Lords, it was held that the labourer's dismissal was invalid since the Local Dock Labour Board had no power under the scheme to delegate to a disciplinary committee their disciplinary powers given by Clause 16 of the Order. The speeches of the Lord Chancellor and other Law Lords in the case of *Vine* 1957 AC 488 : 1956 3 All ER 939 recognised the principle that disciplinary powers, whether "judicial" or not, cannot, be delegated.

It will be sufficient here to note what Lord Somervell of Harrow said in his speech- "In deciding whether a "person" has power to delegate, one has to consider the nature of the duty and the character of the person. Judicial authority normally cannot, of course, be delegated, though no one doubted in *Arlidge's case* 1915 AC 121) that the local government board, which consisted of the President, the Lord President of the Council, the Secretaries of State, the Lord Privy Seal and the Chancellor of the Exchequer (Local Government Board Act, 1871), could act by officials duly deputed for the purpose, whether or not the act to be done had judicial ingredients. There are, on the other hand, many administrative duties which cannot be delegated. Appointment to an office or position is plainly an administrative act. If under a statute a duty to appoint is placed on the holder of

an office, whether under the Crown or not, he would, normally, have no authority to delegate. He could take advice, of course, but he could not, by a minute, authorise someone else to make the appointment without further reference to him. I do not, therefore, find it necessary to consider what judicial requirements might be held implicit in the local board's proceedings under Clause 16. I am, however, clear that the disciplinary powers, whether "judicial" or not, cannot be delegated. The non-entitlement to pay, the suspension, the notice or the dismissal, must be a step taken by the local board and not by a delegate."

The above observations fully support the view taken by us that the framing of a charge against a civil servant is a step in the exercise of disciplinary powers and that a formal departmental enquiry can be initiated only by the disciplinary or punishing authority.

Now, here it is beyond dispute that the Inspector General of Police was the punishing or disciplinary authority in relation to the petitioner and that the Superintendent of Police had no authority to take any disciplinary action against the petitioner. The Superintendent of Police was, therefore, not competent to hold an enquiry on his own against the petitioner on the charges framed by him. Regulation 228 of the Police Regulations, on which the learned Government Advocate relied, does not in any way delegate to the District Superintendent of Police the power of the Inspector General of Police to initiate disciplinary action. All that it says is that in every case of dismissal, removal from service, reduction in rank, grade etc., a formal proceeding must be recorded by the District Superintendent of Police in the prescribed form setting forth the charge, the evidence on which the charge is based, the defence of the accused, the statements of his witnesses, the finding of the District Superintendent of Police with the reasons on which it is based, and the District Superintendent's final order or recommendation, as the case may be. Regulation 228 thus only prescribes the manner in which the District Superintendent of Police should record proceedings of an enquiry which he is competent to hold or which he has been directed to hold. By itself it does not confer on him the power to hold a departmental enquiry against a Sub-Inspector. There is no regulation in the Police Regulations by which the power of the Inspector General of Police to take disciplinary action against a Sub-Inspector has been delegated to the District Superintendent of Police. There is also no such rule in the Civil Services (Classification, Control and Appeal) Rules. If, as we think, the Superintendent of Police was not empowered to frame charges against the petitioner and to conduct an enquiry into them on his own, then clearly the enquiry held by him cannot be treated as a departmental enquiry contemplated by Article 311(2) of the Constitution as construed by the Supreme Court in *Khem Chand Vs. The Union of India (UOI)* and Others, and several other cases. That enquiry was at the most in the nature of a preliminary fact finding enquiry making out a case for a formal departmental enquiry against the petitioner. There being thus no departmental enquiry against the petitioner, the notice issued to him by the Inspector General of Police asking him to show cause why he should not be dismissed, and the

order of dismissal passed by the Inspector-General of Police subsequently, were null and void. The order passed by the Inspector-General of Police dismissing the petitioner being a nullity, the order of the Government upholding the determination of the Inspector-General of Police was also a nullity.

For all these reasons, this petition is allowed, the order dated the 30th November 1963 of the Inspector-General of Police dismissing the petitioner from service, as also the decision in appeal of the Government upholding that order, are quashed, and it is declared that the petitioner still continues to be in service. The applicant shall have costs of this petition. Counsel's fee is fixed at Rs. 150/-. The outstanding amount of security deposit shall be refunded to the petitioner.