
(1966) 01 P&H CK 0018

In the Punjab And Haryana At Chandigarh

Case No : Civil Writs No's. 160-D, 161-D and 269-D of 1962

Sher Singh

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 10-01-1966

Acts Referred:

Constitution of India, 1950 — Article 226, 311
Criminal Procedure Code, 1898 (CrPC) — Section 164
Police Act, 1861 — Section 1, 12, 7
Police Rules — Rule 16

Citation : AIR 1966 P&H 370

Hon'ble Judges : A.N. Grover, J

Bench : Single Bench

Advocate : D.R. Sehgal, for the Appellant; Prakash Narain, Addl. Central Govt. Counsel, for the Respondent

Final Decision : Allowed

Judgement

A.N. Grover, J.—This order will dispose of Civil Writs Nos. 160-D of 1962, 161-D of 1962 and 269-D of 1962.

2. The petitioners at the material time belonged to the Delhi Armed Police. The allegation against them was that on the night between 25th and 26th June 1960 while they were on duty to check smuggling at Post Isa Pur in P. S. Najafgarh, they stopped four persons, namely, Nand Ram, Mir Singh, Zila Singh and Nathu who were residents of village Gohana District Rohtak and who had been taking tobacco leaves on the camels from Delhi State to Punjab State. The constables demanded a sum of Rs. 800 as illegal gratification from these villagers for allowing them to take their tobacco leaves out of the boundary of the Delhi State. After a certain amount of haggling a sum of Rs. 300 was agreed upon and after that had been paid by the villagers who went to bring them from somewhere, they were allowed to leave. A summary of misconduct was served on the petitioners (copy Annexure "A") in February 1961 by the Deputy Superintendent of Police. An enquiry was conducted by Shri S. P. Kriplani, Deputy

Superintendent of Police, New Police Lines, who made a report that the Department had failed to prove its case against the constables.

One of the reasons which prevailed with him was that the complainants had failed to identify them and their statements as regards the incident also were contradictory. However, Shri S. C. Tandon, Commandant, Delhi Armed Police, was not satisfied with the report of the Deputy Superintendent of Police and he was of the view that the discrepancies in the statements of the witnesses were not of such a nature that the witnesses should have been disbelieved.

He called upon the petitioners as also the 4th constable Bishamber Dayal to show cause why they should not be dismissed from service as the charge against them had been proved. After giving them an opportunity to show cause he recorded a lengthy order on 7th July 1961 (Copy Annexure "E") holding that the petitioners and Bishamber Dayal were guilty of the charge which had been preferred against them. He, therefore, directed their dismissal. Only three out of the four constables, Sher Singh, Bhag Singh and Suraj Bhan have filed these petitions under Article 226 of the Constitution.

3. The first point, which was raised by way of an additional ground by means of a petition, dated 31st August 1964 which was instituted before any return had been filed on behalf of the respondents, was that Shri S. C. Tandon, Commandant, Delhi Armed Police, had no power or authority to order the dismissal of the petitioners as he was not invested with the powers of the District Superintendent of Police who alone could take disciplinary action against them as provided by Section 7, read with Section 1, of the Police Act, 1861. This matter stands concluded by a Bench decision of this Court in *Union of India v. Ram Kishan*, Second Appeal No. 256-D of 1962, decided by *Falshaw, C. J.* and *Mehar Singh, J.* on 4th March 1964 (Punj). In that case it was held that Shri D. C. Sharma, who had ordered dismissal of a Head Constable, had not been appointed a District Superintendent of the General Police District of Delhi nor was there any general or special order where-under he performed all or any of the duties of the District Superintendent of Police under the Police Act in the General Police District of Delhi.

He was not, therefore, empowered to order the dismissal of the Head Constable. In the present case it has not been contended by Mr. Parkash Narain that Shri S. C. Tandon was ever appointed a District Superintendent of Police of the General Police District of Delhi or that there was any special or general order under which he could perform all or any of the duties of the District Superintendent of Police under the Police Act. The matter, therefore, is fully covered by this decision which is binding on me. Mr. Parkash Narain has, however, - sought to assail its correctness by referring to certain provisions of the Police Act which, according to him, were not considered by the Bench. It is not possible for me sitting singly to entertain any such argument.

4. The second point which has been raised on behalf of the petitioners has a

good deal of force in it. According to the petitioners, the procedure prescribed by Rule 16.38 of the Police Rules had not been followed. It is well settled by now that the procedure laid down therein must be strictly followed, vide Jagan Nath v. Senior Superintendent of Police, AIR 1962 Punj 38, Nand Singh v. Supdt. of Police and Hiralal Gulabchand Shah Vs. Keshavlal Parekh and Others, respectively, and Waliati Ram v. State of Punjab 1965 67 PLR 523. What has happened in the present case is that the

incident took place on the night between 25th and 26th June 1960. On 27th June 1960 a report was made to Head Constable Sham Lal attached to the Check Post Dhansa by Ch. Dalip Singh Zaildar and others. Inspector Kishan Singh made enquiries and recorded certain statements and submitted a report to the Superintendent of Police. The Superintendent of Police sent all those proceedings together with the report of Inspector Kishan Singh to the District Magistrate.

On 27th October 1960 the District Magistrate made an order in the following terms as is apparent from the record which has been placed before me by Mr. Parkash Narain:--

"I find from the statements of the camel men and the villagers: that a prima facie case is made out against the four constables. There are no grounds to disbelieve or doubt their statements at this stage. I am, therefore, inclined to direct that the statements of the camel men, etc., should be recorded by a Magistrate u/s 164, Cr. P. C. and if they stick to the statements already made by them the four accused constables should be prosecuted in a Court of law."

The statements of these four persons were then recorded by the Magistrate u/s 164 of the Cr. P. C. There is no order of the District Magistrate in the record which has been produced before me and Mr. Parkash Narain agrees that there is no such order of the District Magistrate which he can show. He has, however, relied on the following notings on the police file which are found at p. 77:--

No. 4052, Dt. 4-2-61 Office of the Supdt. of Police

Central District, Delhi.

Kindly refer to your No. 1576/DAP, dated 24-1-1961. The statements of the following persons have been recorded u/s 164, Cr. P. C. All of them are enclosed in original for further disposal of the case:--

"(1) Nand Ram s/o Sangram r/o V. Gohana, District Rohtak.

(2) Nathu Ram s/o Harphul r/o V. Gohana, District Rohtak.

(3) Mir Singh s/o Maha Nand r/o V. Gohana, District Rohtak.

(4) Zile Singh s/o Harphul r/o V. Gohana, District Rohtak.

(5) Ram Narain s/o Nebi Ram r/o V. Gohana, District Rohtak.

I have discussed this case with Shri S. Banerji, I.A.S., District Magistrate, Delhi.

He has agreed that for want of adequate evidence, the defaulter constables may be dealt with departmentally instead of being proceeded against criminally in the Court of law.

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Sd/- D. C. Sharma, I.P.S.,

Supdt. of Police, Central Dist.

Delhi. Commandant D. A.

* * * ** * * *"

As stated before, however, the approval of the District Magistrate is not found anywhere and, therefore, I cannot but hold that there is no order of the District Magistrate whatsoever by which sanction was accorded to proceed departmentally against the petitioners. Mr. Parkash Narain says that the statement of the Superintendent of Police in the communication or memorandum reproduced above that he had discussed the case with the District Magistrate, who had agreed that for want of adequate evidence the constables be dealt with departmentally, proves that the District Magistrate had passed such an order. It is not possible for me to spell out any order of the District Magistrate from what the Superintendent of Police has stated. What seems to have happened is that the Superintendent of Police had a discussion with the District Magistrate and had persuaded him to accord sanction to departmental proceedings. The last note also shows that the approval of the District Magistrate had to be obtained but strangely enough no order of the District Magistrate was ever obtained.

It is further significant that no affidavit has been filed of the District Magistrate saying that he had ever recorded any order or given his approval to taking of departmental proceedings. Now, Rule 16.38, says that immediate information shall be given to the District Magistrate of any complaint received by the Superintendent of Police, which indicates the commission by a police officer of a criminal offence in connection with his official relations with the public. The District Magistrate will decide whether the investigation of the complaint shall be conducted by a police officer, or made over to a selected Magistrate having 1st Class powers. When investigation of such a complaint establishes a prima facie case, a judicial prosecution shall normally follow; the matter shall be disposed of departmentally only if the District Magistrate so orders for reasons to be recorded. When it is decided to proceed departmentally the procedure prescribed in Rule 16.24 shall be followed.

An officer found guilty on a charge of the nature referred to in the rule shall ordinarily be dismissed. In the present case initially also a wholly irregular procedure was followed. The District Magistrate had originally recorded an order that after the statements of the four camel men u/s 164, Cr. P. C., judicial prosecution should be launched against the petitioners, if they stuck to the statements already made by them. If, therefore, the petitioners were to be

proceeded against departmentally it was for him to make that order after applying his mind to the statements as recorded u/s 164 of the Cr. P. C. or to any other relevant material and then to give reasons for deciding to proceed departmentally against the petitioners. This was never done and in the absence of any such order of the District Magistrate, it must be held that the provisions of Rule 16.38 were not at all complied with.

5. The learned counsel for the petitioners has sought to raise two more points which are--

(1) No proper and reasonable opportunity was given to the petitioners in the departmental proceedings; the main grievance being that the " petitioners were not supplied either the list of prosecution witnesses or the copies of their statements which had been recorded by Inspector Kishan Singh.

(2) The Enquiry Officer, Shri Kriplani, has exonerated the petitioners principally on the ground that there was a complete absence of any evidence of identification, apart from other reasons. The Commandant, Shri Tandon, considered that there was such evidence of identification which according to the learned counsel for the petitioners did not exist on the record. There are other pieces of evidence also on which Shri Tandon has relied which according to the learned counsel for the petitioners cannot be substantiated from the record.

6. As the decision on the first two points, which are more or less questions of law, has gone in favour of the petitioners, I consider it wholly futile to give any final decision on the other two points which have been raised on their behalf. The petitions are allowed and the orders of dismissal against the petitioners are hereby quashed. The petitioners shall be entitled to their costs in this Court.