
(1983) 02 DEL CK 0023
In the Delhi High Court
Case No : C.W. No. 1100 of 1974

Shri Yashbir Singh

APPELLANT

Vs

Delhi Administration etc.

RESPONDENT

Date of Decision : 14-02-1983

Acts Referred:

Citation : (1983) 4 DRJ 369 : (1983) RLR 307

Hon'ble Judges : A.B. Rohtagi, J

Bench : Single Bench

Advocate : H.R. Bhutani, for the Appellant; R.M. Bagai, for the Respondent

Final Decision : Dismissed

Judgement

A.B. Rohatgi, J.—It was Diwali night between 18th and 19th October, 1971. One Sis Ram, a head constable, and the present petitioner, Yashbir Singh, a constable, were on patrol duty on that night in the area of Jama Masjid. They brought two persons--Ram Saran and Siri Chand to the Police Station of Jama Masjid without any rhyme or reason. On their way to the police station, the head constable and the petitioner divested Ram Saran of Rs. 66.45 which he had on his person and misappropriated the same. Ram Saran and Siri Chand were detained in the police station and beaten. They were released only after Ram Saran's brother came to the police station and paid Rs. 45/- as an illegal gratification.

2. A departmental inquiry was launched against Sis Rant and the present petitioner after obtaining the permission of the District Magistrate under the Punjab Police Rule 16.38. The Inquiry Officer held them guilty of grave misconduct in the discharge of their official duties. The Additional Superintendent of Police agreeing with the findings of the Inquiry Officer awarded punishment to the petitioner. The punishment he awarded was forfeiture of 3 years approved service and reduction in pay.

3. The petitioner preferred an appeal to the Deputy Inspector-General of Police.

This appeal proved to be his undoing. The D.I.G. thought that the petitioner has been dealt with leniently and ought to have been awarded severe punishment. He issued notice to him to show cause why punishment be not enhanced and why an order of dismissal from service be not made. He heard the petitioner. He came to the conclusion that the allegations of corruption against the head constable and the petitioner were fully proved. He, Therefore, ordered that they be dismissed from service with immediate effect.

4. Mr. Bhutani, learned counsel for the petitioner, has raised one substantial point. He says that though the alleged offence by the petitioner was committed on 18th October, 1971, information to the District Magistrate of the complaint under Rule 16.38 was given as late as 14-2-1972. On 23-2-1972 the District Magistrate gave the permission that the petitioner be proceeded against departmentally. Relying on *Bhajan Singh v. Bahal Singh*, 1967 SLR 610 counsel contends that, the application for permission to the District Magistrate under Rule 16.38 should have been made within a period of 3 months. Here the application was made more than 27 days after the expiry of 3 months. This, he says, is a breach of the mandatory provision of Rule 16.38 and as a consequence the inquiry and the punishment awarded are all vitiated. Rule 16.38 says as under :

"16 38 (i) 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".

The Supreme Court in *Union of India (UOI) Vs. Ram Kishan*, has held that this Rule is mandatory. But there is no time limit of three months prescribed by the Rule. The expression used is "immediate information shall be given to the District Magistrate". But no period is prescribed. I do not think Mr. Bhutani is right when he says that *R.S. Narula J. in Avtar Singh Uppal v. Inspector General of Police*, 1966 Current Law Journal (Punjab) 318 was defining the time within which information must be given to the District Magistrate. He did not specify the time limit of 3 months. In the facts and circumstances of that case he come to the conclusion that "immediate information" had not been given to the District Magistrate.

5. The facts of that case were that without giving information to the District Magistrate as required by Rule 16.38 as inquiry was made into the complaint against the police officer twice. First inquiry was made by Tek Chand, D.I.G. The second inquiry was made by Bhagwan Singh Rosha, D.I.G. Thereafter the Government realised the mistake of not obtaining the permission of the District Magistrate After having completed the two inquiries and after a lapse of more than 3 months the Superintendent of Police gave information to the District Magistrate and obtained his permission to proceed against the police officer departmentally. The learned judge held that this was a "fraud on the rule"

because no independent investigation was possible. It could not be expected that a D.S.P. will be in a position to come to a different conclusion from that arrived at by the D.I.G. Obtaining the permission of the District Magistrate after completing two inquiries was a force, the learned judge said. He came to the conclusion that there was a complete disregard of the mandatory provisions of Rule 16.38. He held that inquiry proceedings were rendered null and void on account of non-compliance with the mandatory Rule. This is the ratio of his decision. Not the period of 3 months. That was a mere circumstance in the case.

6. The Rule does not mean that the authorities can first make an inquiry into the complaint and then after coming to a conclusion adverse to the police officer they can resort to the procedure of obtaining sanction under Rule 16.38. This is the view Narula J. took in Avtar Singh Uppal's case. He stuck to this view in Bhajan Singh's case.

7. It is impossible to lay down any hard and fast rule as to the meaning of the word "immediately" in all cases. The words "forthwith" and "immediate" have the same meaning. Where a statute or rule of court requires an act to be done forthwith, it means that the act is to be done within a reasonable time, having regard to the object of the provision and the circumstances of the case. (See Ex. p Lamb (1881) 19 Ch. D. 169, Hillingdon London Borough Council v. Cutler (1968) 1 QB 124.

8. The expression "immediate information" shall be construed as such convenient time as is reasonably requisite for doing the thing. The word "immediately" implies that the act to be done should be done with all convenient speed. It is sufficient if it is done within a reasonable time. Regard must be had to all the circumstances of a particular case. What is a reasonable time will depend on all the circumstances of the case. The thing should be done as quickly as is reasonably possible. The word "immediate" means, it is true, prompt vigorous action without delay. But that is imposing an obligation to do what is impossible. The rule must receive a reasonable interpretation, so far that it cannot be considered as imposing an obligation to do what is impossible. (Alexiadi v. Robinson (1861) 2 F. & F. 679 : 175 E.R. 1237 per Cockburn C.J.)

9. I think this is what was done in the present case. The District Magistrate was informed on 14-2-1972. He gave permission on 23-2-1972. There is no such long lapse of interval of time or long delay as would persuade me to hold that the rule was not complied with. In Avtar Singh's case the rule was completely inverted by holding an inquiry first and giving information to the District Magistrate afterwards. The enquiry was made without obtaining permission. What happened in that case was a complete inversion of the Rule.

10. But such is not the case here. It has not been shown to me that the petitioner has been prejudiced in any manner by giving information to the District Magistrate on 14-2-1972. The word "immediate" means a reasonable time in view of the particular facts and circumstances of the case under

consideration. After obtaining the permission an inquiry was started in this case. There was an appeal from the order of the Additional Superintendent of Police. The petitioner was heard at all stages.

11. Mr. Bhutani invited my attention to a circular issued by the District Magistrate dated 24-12-1971. In the circular the words "immediate information" were construed to mean a period of 3 months on the basis of the ruling in Avtar Singh's case. The circular says that the Superintendent of Police must inform the District Magistrate of the complaint within 3 months of the receipt of the complaint by him. If this is not done "the entire subsequent inquiry proceedings would stand the risk of being rendered null and void". This is a misreading of Avtar Singh's case. The circular cannot lay down a rigid rule of time. No one can. Nor was Narula, J. laying down any such rule. It is a complete misapprehension to say that he defined the time limit as 3 months. In each case it has to be seen whether information was given to the District Magistrate as quickly as was reasonably possible having regard to all the circumstances of the particular case. It must be done as soon as possible in the circumstances, the nature of the act to be done being taken into account (37 Halsbury's Laws (3rd Edn.) 103). The ultimate question in each case will be whether the mandatory provisions of Rule 16.38 have been complied with or not.

12. Mr. Bhutani then argued that there was no proof of guilt of the petitioner and that the punishment awarded, in any case, was too harsh. This was a question for the authority to whom the statutory appeal lay to decide. It is a question of the weight of evidence and awarding suitable punishment. It was for the D.I.G. to decide whether he should award the punishment of dismissal or not in all the facts and circumstances of the case before him. He came to the conclusion that the complaint of Ram Saran and Siri Chand had been proved and that Sis Ram and the petitioner were guilty of a criminal offence in connection with their official relations with the public. Keeping in view the allegation of misconduct against Sis Ram and the petitioner the D I.G. thought that he should award punishment nothing short of dismissal. So he did. I cannot go into the merits of the complaint. I am not hearing an appeal from the order of the D.I.G. dated 11-1-1978.

13. Mr. Bhutani then referred me to Rule 16.2 which says that "dismissal shall be awarded only for the gravest acts of misconduct". He says that there were no such grave acts of misconduct in this case as to merit this severe punishment of dismissal. I do not agree. The D.I.G. found as a fact that the petitioner was guilty of "the gravest acts of misconduct". He found him and the head constable guilty of divesting Ram Saran of Rs. 66.45. He found them guilty of beating the two persons and detaining them at police station and lastly of demanding and accepting a bribe of Rs. 45/- as an illegal gratification. These, in my opinion, constitute "the gravest acts of misconduct".

14. Mr. Bhutani then called my attention to Section 42 of the Police Act, 1861. In my opinion, this provision has nothing to do with the Rule 16.38 with which we

are directly concerned. Section 42 is intended as a protection to Police Officers against actions and prosecutions brought by a third party, in respect of anything done or intended to be done by them in performance of their duties, Here it is not a question of the provisions of the Police Act. Nor has Section 42 anything to do with the giving of the information to the District Magistrate under Punjab Police Rule 16.38. (See Mohammad Hanif Ashan Ullah Khan Vs. The Deputy Supdt. of Police and Another, ; Kanyialal Vs. Inspector General of Police Northern Range, Bareilly, U.P. and Another,).

15. For these reasons the petition is dismissed. There will however be no order as to costs.