

(1955) 03 CAL CK 0011
In the Calcutta High Court

Siva Nandan Sinha

APPELLANT

Vs

State of West Bengal and Others

RESPONDENT

Date of Decision : 07-03-1955

Acts Referred:

Constitution of India, 1950 — Article 226, 311
Government of India Act, 1935 — Section 240

Citation : 59 CWN 794 : (1955) 2 LLJ 517

Hon'ble Judges : D.N. Sinha, J

Bench : Single Bench

Judgement

D.N. Sinha, J.—The petitioner was appointed as a constable of police, in 1933. He was appointed and confirmed in the rank of head constable for the special Armed Forces, district Burdwan, in 1949. In 1951, the petitioner with one naik and six constables was posted at Debipur checking gate, district Burdwan, to assist civil supply officers in checking rice smuggling from the district. On 7 May 1951, the superintendent of police remained in cognito inside the lorry, which was also loaded with rice and other articles. The intention was to form a trap and the driver of the lorry was given certain currency notes with directions to pay thereout any illegal gratification that may be demanded at the checking gate. He was also instructed not to disclose the identity of the officers that were travelling in cognito. It is alleged that at the checking gate the petitioner along with another constable demanded illegal gratification from the driver. On or about 9 May 1951, the petitioner was recalled to headquarters at Burdwan and placed under suspension. On 12 May 1951, he was served with a charge-sheet charging him with having been guilty of gross misconduct in demanding illegal gratification from the driver of the said lorry. He was asked to show cause why he should not be dismissed, degraded, reduced or otherwise severely dealt with, if found guilty of the charge. The chargesheet was signed by Mr. A.C. Chakravarti, the deputy superintendent of police, Burdwan (respondent 2), with the word "approved." Thereafter, proceedings were drawn up, numbered as proceeding No. 28 of 1951, and Mr. A.C. Chakravarti, the deputy superintendent of police, Burdwan, made

the enquiry. He recorded the evidence of various witnesses including that of the superintendent of police (respondent 2). In the record, he figures as P.W. 3. It appears that in June 1951, the petitioner made a prayer that the enquiry should be by another superintendent of police, but the application was rejected on the ground that there was no bar in the Police Regulations against the superintendent figuring as a complainant as well as passing final orders. It was pointed out that against the final order, there was a right of appeal to the Deputy Inspector-General. The deposition of witnesses was concluded on or about 18 June 1951, and the petitioner submitted his defence on 7 July 1951. On 17 July 1951, the enquiring officer recorded his finding, a copy of which was furnished to the petitioner. The petitioner submitted a written petition showing cause why the findings of the enquiring officer should not be given effect to. The matter then passed into the hands of the superintendent of police, respondent 2, and I set out below the relevant part of his order, dated 10 August 1951, whereby he dismissed the petitioner from service:

I have studied the evidence adduced in this case, the reply of the accused head constable and the findings of the enquiring officer. I have further studied the written cause he showed against the giving effect to the findings of the enquiring officer.

I think the charges have been clearly established. I have studied the reply of the accused head constable and also the written cause shown in these documents. He has tried to establish that he was always inside the checking hut and that his identification was difficult due to the darkness of the night. But it must be remembered that the negotiations continued for a long period and at a close distance and in the case of P.W. 1 face to face. The statement of P.W. 1 has been supported by P.W. 2 and P.W. 3. Even if P.Ws. 2 and 3, who were persons of responsibility and integrity were not there, it would be a matter of constable Poddar's word against word of driver Pasadhar?. In any case, the evidence of P.W. 1 reinforced by P.W. 2 and P.W. 3 is overwhelming. I, therefore, accept the findings of the enquiring officer and order that the head constable Siva Nandan Sinha be dismissed from service with effect from today,

2. It must be pointed out that P.W. 3 was the superintendent of police himself. The result is that in arriving at his opinion the superintendent of police, respondent 2, read his own evidence, gave himself a certificate and found the evidence of prosecution witnesses including himself, as overwhelming.

3. The petitioner made an application for the issue of a rule before Bose, J., who on 5 February 1952 summarily rejected the same. The petitioner appealed against the said order and the court of appeal on 21 July 1953 allowed the same and passed the following order:

In my opinion, the judgment of Bose, J., must be set aside and the case remitted to the learned Judge hearing applications under Article 226 of the Constitution. Notice should be given to the respondents to show cause. The respondents will

be given an opportunity to file their affidavit if any and the appellant will also have opportunity to file an affidavit in reply if any.

The application will then be heard and disposed of in accordance with law,

4. The matter was then mentioned before me and was put on the list. The parties appeared and asked for directions as to affidavits and upon the affidavits being completed the matter came before me for hearing. At that time it was discovered that by reason of the rejection by Bose, J., of the application no rule had been in fact issued or drawn up. To regularize the matter, it was agreed between the parties that a rule should be issued, the respondents agreeing to waive service and that the affidavit in opposition filed was to be treated as a return to the rule and the affidavit in reply filed was to be considered as a reply to the return. A rule has accordingly been issued calling upon the opposite parties to show cause why a writ in the nature of certiorari or any other appropriate writ should not issue quashing the proceedings No. 28 of 1951, and/or the order of dismissal passed against the petitioner and/or why such further or other order or orders should not be made as to this Court seems fit and proper.

5. Mr. Ghose appearing on behalf of the petitioner has taken three points. The first point is that under Regulation 745 of the Police Regulations, Bengal, Chap. XIII (appearing in Vol. I, p. 334) the Range Deputy Inspector General was the appointing authority. It is contended that the superintendent of police, who has actually dismissed the petitioner, holds a rank subordinate to that of the Range Deputy Inspector-General who was the appointing authority. It is contended that the superintendent of police, who has actually dismissed the petitioner, holds a rank subordinate to that of the Range Deputy Inspector-General. In my opinion there is no substance in this point. Regulation 745 appears in Chap. XII, which deals with appointment, recruitment and promotion. The relevant part of Regulation 745 is set out below:

Head constables

745. (a) Appointing Authority--Superintendent of police.

(6) Method of recruitment--Vacancies occurring in the Special Armed Forces shall be filled by promotion from the rank of naik and in the unarmed police from the rank of constable. No constable with less than one year's service computed from the date of his finally passing out of the Police Training College, shall be permanently promoted to the rank of head constable in the unarmed police. Nomination for promotion shall be made by the superintendent once a year to the Range Deputy Inspector-General, who shall interview the candidates on a suitable opportunity. The man nominated shall be able to read and write at least one vernacular. If nominated for promotion in the Special Armed Forces he shall, unless specially exempted by the Deputy Inspector-General, possess a certificate of competency in drill obtained not more than three years previously. If nominated for promotion in the unarmed police, he must be able to instruct constables in elementary drill and pass an oral examination in a knowledge of his

duties. This examination will be held by the superintendent.

An approved list of armed naiks and another of unarmed constables fit for promotion in their respective branches shall be made from these lists on the occurrence of a vacancy in the order in which the names are arranged.

6. Mr. Ghose concedes that the regulation is headed with the words "Head constables" and that the appointing authority is mentioned to be the superintendent of police. Nevertheless, he argues that the method of recruitment shows that the superintendent makes the nomination to the Range Deputy Inspector-General who has to interview the candidates. According to Mr. Ghose, it is the Range Deputy Inspector-General that is therefore the appointing authority. This is obviously incorrect because in Chap. XII the various posts are set out and the appointing authority is distinctly mentioned. There is, therefore, no room for argument that the appointing authority in the case of head constables is the superintendent of police. It may be that a particular method of recruitment is laid down, but that cannot affect the status of the superintendent of police as an appointing authority in respect of head constables. The original nomination has to be by the superintendent and although the Range Deputy Inspector-General interviews the candidates, there is nothing to show that he functions as the appointing authority. This point, therefore, fails.

7. The next point taken is that under Regulation 861(o) (appearing in Chap. XVII at pp. 393-394), in cases of serious misconduct against officers of, and below, the rank of sub-inspector, proceedings shall be drawn up by the superintendent. It is argued that this is a case of serious misconduct as it has resulted in a dismissal and consequently the proceedings should have been drawn up by the superintendent. It is said that in this case the proceedings were drawn up by the deputy superintendent and not the superintendent. I do not think there is anything in this point also. As I have mentioned above, the charge as drawn up was signed by the deputy superintendent of police, countersigned by the superintendent of police, with the word "approved." This seems to me to be a sufficient compliance with the regulation.

8. The third ground taken by Mr. Ghose is that the entire proceedings have been vitiated as a result of the superintendent of police giving evidence at the enquiry, and then deciding the matter himself after a consideration of his own evidence. In my opinion, this ground is sound and must be upheld. Mr. Majumdar appearing on behalf of the respondents argues that in case of departmental proceedings such as happened in this case, the question of bias is unimportant. He follows this up by saying that in proceedings like this, the rules of natural justice should not be imported. Mr. Ghose has drawn my attention to my own decision in *Bejoy Chandra Chatterji v. State of West Bengal* 58 C.W.N. 988. There, the enquiring officer gave evidence before himself and made a report after consideration of his own evidence. I held there, that although a departmental enquiry need not be carried out strictly according to the rules applicable to judicial proceedings, still the principles of natural justice should be

followed and that there was a violation of those principles, where the person adjudicating gave evidence before himself and weighed the same while coming to a decision. The facts in this case are nearly the same. Here, the superintendent of police figured as a prosecution witness, whose evidence was given and recorded, and the enquiring officer made his recommendations on the strength of the evidence adduced before him, including that of the superintendent. The superintendent then proceeded to consider the recommendations, and himself went through the evidence, weighed the same, and came to a decision on the strength of such evidence, including that given by himself. This, I think, is equally repugnant to the rules of natural justice. Mr. Majumdar argued that in an enquiry of this description, the rules of natural justice are not to be imported. I cannot agree with him. It is true that the rules of natural justice are not applicable to every description of departmental proceedings, but are certainly applicable to the present proceedings which are governed by the Police Regulations as well as Article 311 of the Constitution. According to Article 311(2), a civil servant cannot be dismissed, removed or reduced in rank until he has been given "a reasonable opportunity" of showing cause against the action proposed to be taken in regard to him. A man cannot be said to have had a reasonable opportunity if the proceedings are conducted in violation of the principles of natural justice. In *High Commissioners for India and Pakistan v. I. M. Lall* 52 C.W.N. 761 the facts were as follows.

9. Mr. Lall was a member of the Indian Civil Service and the Punjab Government decided to hold a departmental enquiry against him under Rule 55 of the Civil Services (Classification, Control and Appeal) Rules in respect of the conduct of Mr. Lall while stationed at Multan during 1935-36. He put in his written statement in answer to the charges, and Mr. Anderson, Commissioner of Rawalpindi Division, was appointed to hold a departmental enquiry. Mr. Anderson could not complete the enquiry, but made a report and the enquiry was taken up by Mr. Brayne, Commissioner of Rural Reconstruction, Punjab. The report of Mr. Anderson and Mr. Brayne were not disclosed to Mr. Lall. The Government of the Punjab sent these reports and recommendations to the Federal Public Service Commission expressing their opinion that Mr. Lall should be removed from the Indian Civil Service and the Public Service Commission having agreed to this, Mr. Lall was removed from the Indian Civil Service. Mr. Lall instituted a suit in the court of the subordinate judge, first class, Lahore, which was transferred to the High Court and heard by a Division Bench as a Court of first instance. The High Court granted a decree declaring that the order removing Mr. Lall was illegal, void and inoperative. There was an appeal to the Federal Court which upheld the decree but changed the form thereof to a declaration that Mr. Lall was wrongfully dismissed from the Indian Civil Service. The matter was then taken before the Judicial Committee. Lord Thankerton referred to Section 240 of the Government of India Act, 1935, which also mentions the words "reasonable opportunity" as in Article 311 and also to Rule 55 of the Civil Services (Classification, Control & Appeal) rules which mentions the words adequate opportunity. Just as in *Lall*

case (supra), what amounts to reasonable opportunity is undoubtedly a question of fact in each case. In my opinion, however, if such proceedings are conducted in violation of the principles of natural justice, it cannot be said that a person has had a "reasonable opportunity" of showing cause. In the Police Regulations, Bengal, detailed provisions have been made as to how such a proceeding should be conducted. Regulation 861 lays down that a definite charge has to be framed specifying the offences. The charge has to be served on the delinquent and then evidence has to be taken. The enquiring officer is required to discuss separately all the charges and then arrive at his findings. In my opinion, all these elaborate safeguards are of no avail if it is to be held that in such proceedings one need not follow any rules, not even the rules of natural justice. The enquiring officer has taken evidence here and recorded the evidence of the superintendent. No doubt the evidence of the superintendent was of some weight. In fact, upon the facts of the case, it is obvious that the superintendent of police was an important witness in the case and I do not blame the authorities for having called him as a prosecution witness. But having given evidence against a delinquent, it would be violative of all principles of natural justice if such a person is entrusted with the task of considering or weighing the evidence including that of himself and then deciding upon the guilt of the delinquent and the punishment to be awarded. As will appear from the facts stated above, the superintendent gave himself a certificate and was literally overwhelmed with his own evidence. This was not an unnatural thing to do, but it is precisely in order to guard oneself against yielding to such a very human weakness that it is necessary that a person cannot be both a judge and a witness in the same action. The person who has to adjudicate, must be able to weigh the evidence impartially, and the frailties of the human mind make it impossible of achievement, if it includes the evidence of a person himself, I might repeat here that proceedings such as these are not necessary to be conducted with the niceties of a formal judicial trial. This, however, does not mean that such proceedings can be conducted without any formalities whatsoever. By enunciating a regulation, containing detailed provisions for the procedure to be followed, there is an implication that it was necessary to hold such proceedings with some amount of care and caution. Article 311 makes it incumbent that the delinquent must have "reasonable opportunity." If it is permissible for a man to weigh his own evidence and come to a conclusion, the delinquent might well say that it was unreasonable to expect a man to reject his own evidence and therefore the result was inevitable, and he might also say that under such circumstances the result was also foregone and that the entire proceedings became meaningless.

10. In my opinion, it is unnecessary to go into the question of bias and as to whether the principle of bias would apply to a departmental proceeding. Mr. Majumdar has drawn my attention to a recent decision, namely, *R. v. Camborne Justice, Ex Parte Pearce* (1954) 2 All. ER. 850. The learned Judges there while endorsing and fully maintaining the integrity of the principle asserted by Lord Hewart in *R. v. Sussex, J.J., Ex Parte McCarthy* (1924) 1 K.B. 259, that it was "of

fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done," felt that the continued citation of it in cases to which it was not applicable might lead to the erroneous impression that it was more important that justice should appear to be done than that it should in fact be done. It is obvious, therefore, that the case depended on the facts and that no new principle was laid down.

11. In my opinion, the very reasonable prayer of the petitioner that the matter should be dealt with by another superintendent of police, should have been granted and that the procedure adopted is contrary to the rules of natural justice and has vitiated the proceedings. Mr. Ghose has asked me to declare that not only the order of the superintendent of police is bad, but that the enquiry and recommendation that preceded it have also been rendered void. I do not see how that can be so. So far as the enquiry is concerned, in which the superintendent gave evidence, all the rules were complied with and there is nothing to complain. What I have to declare as bad is the order of the superintendent of police. 12. This rule must accordingly be made absolute and there will be an order quashing and/or setting aside the order of the superintendent of police, respondent 2, dated 10 August 1951, a copy of which is annexure A to the petition. There will be a writ of mandamus directing the respondents not to give effect to the same, This, however, will not affect the finding of the enquiring officer, which preceded the order, nor the evidence adduced by him. If the respondents wish to proceed further with the departmental enquiry, the matter must be taken up by a superintendent of police or by a person not lower in rank than a superintendent of police, other than Mr. R.K. Gupta, respondent 2.

13. There will be no order as to costs.