
(1977) 07 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 61 of 1977

Sukh Dutt

APPELLANT

Vs

The State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 07-07-1977

Acts Referred:

Constitution of India, 1950 — Article 16
Himachal Pradesh Police (Fourth Amendment) Rules, 1976 — Rule 13.1(1), 13.1(3),
13.10, 13.6, 13.7
Penal Code, 1860 (IPC) — Section 109, 380, 409, 457
Police Act, 1861 — Section 10, 11, 12, 2A, 3

Citation : (1977) 6 ILR HP 486

Hon'ble Judges : T.U. Mehta, J

Bench : Single Bench

Advocate : M.R. Vasudeva and H.S. Mann, for the Appellant; A.G., for the Respondent

Final Decision : Allowed

Judgement

T.U. Mehta, J.—The Petitioner herein has challenged the order passed by the Respondent No. 2, Inspector General of Police, Himachal Pradesh recalling him from the training course known as upper school training course at Police Training College, Phillaur in Jullundur district of Punjab. His contention is too fold, namely (1) the Respondent No. 2 has no power or authority to recall him from the said course and (2) even if such power is presumed to be there, he could not have recalled him without complying with the rules of natural justice as the impugned order of recall involves civil consequences adverse to his service conditions.

2. Short facts of the case are that the Petitioner is serving in the Police Department of this State as Assistant Sub-Inspector of Police on which post he was confirmed on 1-4-1977. It is an admitted position that he is put in List "E" in accordance with Rule 13.10 of the Rules called Himachal Pradesh Police (Fourth Amendment) Rules, 1976 hereinafter referred to as the "amendment Rules". List "E" is maintained for the persons who are found eligible for promotion to the

next higher post of Sub-Inspector of Police. It is an admitted position that the Departmental Promotion Committee by its decision dated 26-3-1977 selected the Petitioner for being sent to be trained in upper school course at Phillaur college. The course for which the Petitioner is sent is for the period running from 1-4-1977 to 31-8-1977. While the Petitioner was still taking the training at the said college at Phillaur, the Inspector-General of Police, Respondent No. 2, passed the impugned order on 21-5-1977 in the following terms:

A.S.I. Sukh Dutt of this State undergoing training in the current upper school course at P.T.C. Phillaur may please be returned immediately to the State and directed to report to Commandant H.P.A.P. Junga. He is being withdrawn from training.

This order was communicated by a T.P. message to the Principal of the Training College at Phillaur. When the Petitioner was on casual leave he received this order on 23-5-1977. Pursuant to this order the Petitioner was relieved by the Principal of the college on 7-6-1977 but since the Petitioner obtained a stay order from this Court in this writ petition he was allowed to resume the course on 14-6-1977. The Petitioner, therefore, is still continuing his training at the said college.

3. The contention which is raised by the Petitioner is that according to Rule 13.10 of the Rules he has got a statutory right to take the training and, therefore, this right cannot be interfered with by the Inspector General of Police without any reasons. The Petitioner has pointed out that order of recall passed by the Inspector General of Police does not record any reason for his recall. He has further contended that there is no provision of law under which the Respondent No. 2, the Inspector General of Police has any authority to recall him from training course and he has lastly contended that even if it is presumed that the said Respondent has got any inherent authority to recall him from the training the said authority cannot be exercised without complying with the rule of natural justice, that is, without issuing any show cause notice to him because the order of recall involved civil consequences which would be adverse to him in the course of his service.

4. The Respondents have filed a return to this petition wherein it is pleaded that the second Respondent has "inherent powers" to recall the Petitioner from the training course. Giving reasons for recalling the Petitioner from the training course, the Respondents have stated as under in para 8 of the return:

The Petitioner's conduct in the discharge of his duties during the course of investigation of case F.I.R. No. 17/76 dated 12-4-1977 under Sections 380/457/409/109 I.P.C., P.S. Nichar District Kinnaur, was found to be reprehensible as he committed grave misconduct and misused his authority by arresting three innocent persons i.e. a Social Education Officer, a Sub-Inspector, Storekeeper and a Beldar of Agriculture Department with ulterior motive and pressurised another person to support these wrong arrests by giving false

evidence and who subsequently committed suicide. The verification of investigation of the aforesaid case by S.P. C.I.D. (Crime) was received by the Respondent on 21-5-1977. As the charges against the Petitioner as disclosed in the report of Superintendent of Police, C.I.D. (Crime) were very grave, it was decided by the Respondent that the A.S.I. should be withdrawn from Police Training College so that he could be dealt with suitably.

It is an admitted position that pursuant to the above facts departmental enquiry against the Petitioner has not still been started and that the impugned order is based only on the report of the above referred Superintendent of Police C.I.D. (Crime) without issuing any show cause notice to the Petitioner.

5. Before dealing with the contentions which are raised by the learned advocates of the parties in this writ petition, it would be necessary to refer to Rule 13.10 of the Rules which are framed by the State Government in exercise of the powers conferred by Section 7 of the Police Act (V of 1861). This Rule 13.10 is with reference to the selection of candidates for promotion to the post of Sub-Inspector and is found to be in the following terms:

(1) List "E" shall be maintained for promotion to the rank of Sub-Inspectors in two parts (in Form 13.10) in each Range. The names of Assistant Sub-Inspectors who qualify the Promotion Course for Assistant Sub-Inspectors at Police Training College, shall be entered in Part I of the said list. While entering their names in this list, they shall maintain their seniority inter se. The names of such Assistant Sub-Inspectors of Police who have not qualified the course mentioned above but are otherwise of exceptional merit and are considered suitable may be entered in Part II of list "E" with the approval of the Inspector General of Police, Himachal Pradesh, provided they are not below the age of 50 years and have put in 8 years of continuous service in that rank. Provided further that not more than 10% of the posts of Sub-Inspectors inclusive of temporary and permanent posts, shall, at any time contain more than 5 per cent of the cadre strength of Sub-Inspectors in the range concerned.

(2) No Assistant Sub-Inspector Police of shall be eligible for admission to the Promotion Course for Assistant Sub-Inspectors at the Police Training College, unless:

(i) he has been confirmed as an Assistant Sub-Inspector of Police;

(ii) in the case of promote Assistant Sub-Inspector, he has completed 4 years of service as such after passing the promotion course for Head Constables, and in the case of directly recruited Assistant Sub-Inspector, he has completed 5 years of service after having passed Assistant Sub-Inspectors Promotion Course.

(3) Promotion to the rank of Sub-Inspector of Police shall be made strictly in accordance with the seniority positions on list "E".

Provided that such seniority position may be ignored in exceptional circumstances for reasons to be recorded in writing by the Deputy Inspector

General of Police concerned with the prior approval of the Inspector General of Police, Himachal Pradesh.

No person shall be confirmed in a substantive vacancy of Sub-Inspector of Police, unless he has functioned as an officiating Sub-Inspector of Police atleast for one year while holding an independent charge of a Police Station and his work has been found to the satisfactory by the Superintendent of Police, and the Deputy Inspector General of Police concerned.

The above rule is placed in Chapter XIII of the Punjab Police Rule, 1934 which are made applicable to this State. Chapter XIII of the said Rules provides for "promotions". Rule 13.1(1) says that promotion from one rank to another shall be made by selection tempered by seniority, and specific qualifications, whether in nature of training courses passed or practical experience, shall be carefully considered in each case.

6. Thus according to Rule 13.1(1) in order to get promotion from one rank to the higher rank one specific qualification which is required to be taken into account is the nature of the training course passed by the concerned officer.

7. Rule 13.1(3) contemplates six promotion lists vizlists "A" to "F" for the purpose of regulating promotion amongst enrolled officers. A brief reference to these lists will be useful in understanding the scheme.

8. Rule 13.6 contemplates list "A" which is to be maintained for promotion to the selection grade of Constables, while Rule 13.7, which is amended by Himachal Pradesh Police (Fourth Amendment) Rules, 1976, vide notification No. 7-39/73-Home (A), dated 16-6-1976, contemplates list "B" which is maintained to "include the names of all Constables selected for admission to the promotion course for Constables at the Police Training College". Thus list "B" is for "admission to the promotion course".

9. Rule 13.8 is not amended by the above referred "Amendment Rules". It contemplates list "C" which is the list of those constables who have passed the course referred to in Rule 13.7 and who are considered eligible for promotion as head constables.

10. The "amendment Rules" have amended the original Rule 13.9 which contemplates list "D". The scheme of this rule is not consistent with the schemes of the proceeding rules, and the same is not stated in proper sequence. It contemplates the list in two parts. The part I of the list is to consist of the names of Head Constables "who qualify at the Police Training College in the promotion course for Head Constables". Part II of this list is to consist of the names of Head Constables who "have not passed the above mentioned promotion course" due to unavoidable circumstances, but "who are otherwise of exceptional merit and are considered suitable for promotion". From this list promotion to the rank of Assistant Sub-Inspector is to be made.

11. As said above, the Petitioner is already promoted and confirmed on the post

of Assistant Sub-Inspector of Police.

12. Then follows the above quoted Rule 13.10 which is substituted by the "amendment Rules" of 1976 and which contemplates maintenance of list "E". The scheme of this rule shows that the list is to be maintained in two parts. Part I is to contain the names of Assistant Sub-Inspectors "who qualify the promotion course" for Assistant Sub-Inspectors at the Training College and Part II is to contain the names of those Assistant Sub-Inspectors "who have not qualified the course mentioned above" but "who are otherwise of exceptional merits and are considered suitable". Thus the name of the Petitioner would be entered in the list "E" either if he has "qualified" the promotion course i.e. passed the said course, or if he is "otherwise of exceptional merits and considered suitable". Since the Petitioner is still taking the course, and is yet to pass the same, it is difficult to understand how his name is entered into the list "E". Be that as it may, the question which arises to be considered in this petition is not whether the name of the Petitioner is correctly entered in the list "E" or not, but the question is whether he has a statutory right to take promotion course and if so, whether the said right can be defeated in the manner adopted by the Respondent No. 2.

13. As stated above, it is not in dispute that the Departmental Promotion Committee, by its decision dated 26-3-1977, has selected the Petitioner for being sent to be trained in the Upper School Course. The scheme of Rule 13.10 shows that once an officer is so selected, he acquires a statutory right to take that course because passing of that course is pre-requisite for future promotion to the rank of a Sub-Inspector. It is evident that Petitioner's future chances for further promotions cannot be improved if he is not allowed to pass the course to which he is sent for training. The fact that the Departmental Promotion Committee has selected him for the said training, and the further fact that pursuant to the said selection he is actually sent to the college for the said purpose, fully qualify the Petitioner to take the course and vest in him a statutory right which can be defeated only by a procedure contemplated by law (which includes Rules).

14. The question whether a police officer can be deprived of an opportunity to pass the training course of this type came up to be considered by the High Court of Punjab and Haryana in Kirpal Singh v. State of Punjab ILR (1970) 2 P&H 28. The decision was given under Rule 13.10 of the Punjab Rules which is substituted by the Himachal Pradesh Amendment Rules of 1976 in the terms quoted above. The Punjab Rule 13.10, unlike the Himachal Pradesh Rule 13.10, did not specifically refer to qualifying the training course, but merely said that a list of all Assistant Sub-Inspectors "who have been approved by the Deputy Inspector General" as fit for trial in independent charge of a police station or for specialist posts on the establishment of Sub-Inspectors should be maintained. Before the High Court it was admitted by both the sides that there was no rule which made a provision for selection of Assistant Sub-Inspectors for being sent to the training course, but on pleadings the court found that it was clear that the training in the Upper School Course was an essential pre-requisite for placing the name of an

Assistant Sub-Inspector on promotion list "E", as such a qualification was being observed "as a practice from time immemorial". Under the circumstances, the court held that the Inspector General of Police had no right to deprive an Assistant Sub-Inspector of Police of the opportunity of going through that course. The court also observed that the denial of this opportunity would, in a case, offend Article 16 of the Constitution.

15. In the subsequent case of Sardul Singh v. Inspector General of Police and Ors. 1970 S.L.R. 505, a Full Bench of the same High Court has endorsed this view holding that every Assistant Sub-Inspector of Police has a right to be deputed for Upper School Course vide para 17 read with para 10 of the reported judgment.

16. So far as the instant case is concerned, the taking of the course in question is specifically provided in Rule 13.10 which is substituted by Himachal Pradesh Amendment Rules, 1976, and so, the ratio of the above decisions applies to this case with greater force, in view of the fact that the Petitioner, after being selected for the course, has been actually sent to the college for the said purpose. It should, however, be clarified that Punjab and Haryana decisions above referred to should be read in light of the provisions contained in Himachal Pradesh Rule 13.10 of the amended rules which do not give an unqualified right to an Assistant Sub-Inspector to be sent for training because the provisions of Sub-rule (2) prescribe the rules of eligibility for admission to the promotion course in question.

17. So far as the present Petitioner is concerned, it is evident that he was recommended for the training course and, therefore, he was eligible and fully qualified to take the training. Therefore, the real question is whether the Respondent No. 2, the Inspector General of Police, had any authority to recall him from the training course at a subsequent stage. On this point the contention which is raised by the Respondents in the return is that the Inspector General of Police has got "inherent right" to recall any person from the training. It is, therefore, to be seen whether such "inherent right" as is pleaded by the Respondents can be spelled out from any of the provisions of the Police Act or the Rules framed thereunder. The learned Advocate General appearing on behalf of the Respondents drew my attention, in this connection, to several provisions of the Police Act of 1861. I shall shortly refer to these provisions in order to find out whether any of these provisions on which reliance is placed authorises the Inspector General of Police to pass an order of recall of a person who is already sent for training.

18. Before referring to the powers of the Inspector General of Police under the Police Act, it would be necessary to note the provisions contained in Section 2-A of the Police Act which refers to the power of the State Government to make rules. According to this section, the State Government can make rules relating to the recruitment, conditions of service, disciplinary proceedings and punishment in respect of the members of the subordinate rank of the police force. Thus

according to this section it is only the State Government which can make rules relating to "the conditions of service". Section 3 of the Police Act says that the superintendence of the police throughout a general police district shall vest in and shall be exercised by the State Government to which such district is subordinate. It further provides that except as authorised under the provisions of the Act, no person, officer or Court shall be empowered by the State Government to supersede or control any police functionary. Thus Section 3 provides for the general superintendence of the State Government for the police force. But it also provides that the State Government can authorise any officer under the provisions of the Act to supersede or control any police functionary. Then follows Section 4 according to which the administration of the police throughout the general police district shall be vested in an officer to be styled as the Inspector General of Police and in such Deputy Inspector General and Assistant Inspector General as to the State Government shall seem fit. This provision of Section 4 vests in the Inspector General of Police the powers of administration. This power of "administration" cannot be construed as power to regulate the "service conditions" of a police functionary. It should be noted here that since the recall of a police functionary from attending a particular course of training which involves his future prospects of promotion, affects his "service conditions", such a power of recall cannot be read in the connotation of the expression "administration of the police", for the simple reason that the power to regulate conditions of service of the members of the police force, is vested only in the State Government u/s 2-A.

19. Section 5 which follows provides for the powers of the Inspector General. But even this section is not helpful to the Respondents because it refers only to the Magisterial powers to be exercised by the Inspector General throughout the police district. This magisterial power, therefore, cannot include any power to recall from a prescribed course of training.

20. Section 7, which refers to the other powers of the Inspector General speaks about the power of appointment, dismissal, suspension and reduction in rank of a subordinate police officer. In this case there is no question of dismissal, suspension or reduction of rank of the Petitioner. Therefore, even this Section 7 is not relevant for determining the point at issue.

21. Sections 8, 9, 10 and 11 are admittedly not relevant on the point. But the reliance is placed by the learned Advocate-General on Section 12. Reference to this section shows that it speaks of the powers of the Inspector General to make rules. This section is in the following terms:

The Inspector General of Police may, from time to time, subject to the approval of the State Government, frame such orders and rules as he shall deem expedient relative to the organisation, classification and distribution of the police force, the places at which the members of the force shall reside, and the particular services to be performed by them; their inspection, the description of arms, accouterments and other necessities to be furnished to them; the

collecting and communicating by them of intelligence and information; and all such other orders and rules relative to the police force as the Inspector General shall, from time to time, deem expedient for preventing abuse or neglect of duty, and for rendering such force efficient in the discharge of its duties.

A close reading of his Section 12 shows that the Inspector General is authorised by this section to frame such orders and rules as he shall deem expedient "relative to the organisation, classification and distribution of the police force and other allied matters". This is provided in the first part of the section. But this part is not applicable to the point at issue because it refers to the orders and rules which can be framed with regard to general matters such as organisation, classification and distribution of the police force and other allied matters. Power to recall from a training course cannot be read from any of the provisions of the first part of Section 12. Second part of Section 12 is more general in nature inasmuch as it authorises the Inspector General of police to pass all such orders and rules which are relative to the police force for the purpose of preventing abuse or neglect of duties as well as for rendering such force more efficient in discharge of its duties. This power is also of a general nature which can be exercised for framing orders and rules generally relating to the whole of the police force. In my opinion, therefore, a specific power authorising the Inspector General of police to recall an individual police officer from the training course cannot be read even from the provisions of this second part of Section 12.

22. There is no other section on which reliance was placed by the learned Advocate-General during the course of the arguments. In fact, the return filed by the Respondents shows that they do not rely upon any specific provision of the Police Act, or the Rules framed thereunder, to show that the Inspector-General has got any statutory power to recall a person from the training course. The fact of the matter is that the Respondents have relied upon "inherent powers" of the Inspector General of Police for such a recall. It is difficult to understand from which provision of the Act or the Rules such inherent powers can be spelled out. If once it is believed that it is the statutory right of a particular officer to take training in the prescribed course with a view to improve his chances of future promotion, it must follow that any obstacle put in the exercise of such a right amounts to an interference with the service conditions of such an officer. In ordinary course, power to interfere with service conditions of a Government servant must seek its justification from specific and explicit provisions of law. Such a power cannot be impliedly read unless the implication is obvious and necessary. I am not referred to any provision of Police Act or Rules framed thereunder from which such inherent power in favour of the Inspector General of Police can be read by necessary implication. Under the circumstances, there is no escape from the conclusion that the Respondent No. 2, the Inspector General of Police, has no power to recall a person who is already sent to take course in training.

23. of course, this does not mean that the officer concerned would be entitled to

promotion to higher post merely because he passes the required course, because passing of this course would merely mean that he has satisfied one of the conditions for being promoted to a higher post. Therefore, even if a person passes a training course, he may not be considered suitable for promotion on consideration of other facts and circumstances of each individual case, nonetheless, it cannot be over emphasised that a police officer who wants the promotion to a higher post is required to pass a particular training course and, therefore, if he is prevented from doing so without any statutory authority, there would be civil consequences which would work adverse to his future chances of promotion.

24. Now, presuming for the sake of argument that the Respondent No. 2 has got any "inherent powers" to recall an officer who is sent for training, the question is whether such inherent powers could be exercised without complying with the rules of natural justice. It may be again repeated here that recalling of an officer from training course involves some civil consequences because such a recall would prevent him from passing the course in time and, therefore, other of his colleagues, who are equally situated would be able to pass the course earlier than him and this would enable them to get future promotions also earlier. It, therefore, cannot be disputed that consequences which would work adversely to the officer concerned would follow if he is not allowed to pass a particular course at proper time. When such adverse consequences follow, the order which is responsible for such consequences must be passed after complying with the rules of natural justice as held by the Supreme Court in *State of Orissa v. Dr. Binapani Dei and Ors.* reported in 1967 S.L.R. 465. The Supreme Court has observed therein that an order by the State to the prejudice of a person in derogation of his vested rights can be made only in accordance with the basic rules of justice and fair play. The Supreme Court further observed in this case that it is one of the fundamental rules of our Constitutional set up that every citizen is protected against exercise of arbitrary authority by the State or its officers. Duty to act judicially would, therefore, arise from the very nature of the function intended to be performed. If there is power to decide and determine to the prejudice of a person, duty to act judicially is implicit in the exercise of such power.

25. It is evident from the facts of this case that the impugned order of recalling the Petitioner from the training course (which is already quoted above) has been passed without giving any show cause notice to the Petitioner. From the return which is filed by the Respondents it is clear that the Respondent No. 2 has relied upon certain facts which came to his notice subsequently. But the enquiry which revealed these facts was at a preliminary stage, and was held at the back of the Petitioner. The Petitioner had no opportunity to meet with any of these allegations and even the departmental enquiry has not yet been undertaken against the Petitioner. Under these circumstances the impugned order Annexure "A" is found to be the one which is passed without complying with the rules of natural justice.

26. The learned Advocate-General contends that the action in question is taken in contemplation of a departmental enquiry. I find that even if the Petitioner is recalled in contemplation of a departmental enquiry that does not improve the merits of the Respondents' case because, as already stated above, the impugned action is without authority and illegal as it does not comply with the rules of natural justice. If the competent authority wants to initiate any departmental inquiry, there is nothing to prevent it from doing so in accordance with the provisions of law.

27. This being the position, this writ petition should succeed. It is, therefore, declared that the impugned order Annexure "A" by which the Petitioner is recalled from the Upper School course to which he is sent, is without authority and illegal and should, therefore, be set aside. The said order, is, therefore, set aside and the rule is accordingly made absolute without any order as to costs.