

Tirlok Nath

v.

S Union Of India

(Supreme Court Of India)

HON'BLE MR. JUSTICE P.B. GAJENDRAGADKAR HON'BLE MR. JUSTICE
A.K. SARKAR HON'BLE MR. JUSTICE K. SUBBA RAO HON'BLE MR.
JUSTICE K.N. WANCHOO HON'BLE MR. JUSTICE J.R. MUDHOLKAR

Civil Appeal No. 322 Of 1957 | 01-11-1960

MADHOLKAR,

(1) This is an appeal by special leave against the judgment of the High court of Punjab dismissing in limn the appellant's petition under Art. 226 of the Constitution for quashing the order of the Chief Commissioner of Delhi removing him from service.

(2) The appellant was appointed as Sub-Inspector of Police in the North West Frontier Province on 1/01/1925, and was officiating as an Inspector of Police before the partition of India. After the partition he was appointed as Sub-Inspector of Police at Delhi and was later promoted as Inspector of Police and subsequently as Deputy Superintendent of Police in the Crime Branch.

(3) Certain criminal cases were investigated by the Delhi C. I. D. against a woman known as Dr. Vimla. The papers in connection with the investigation used to pass between the investigation officer and the Superintendent of Police through the appellant. It was alleged that on 4/03/1955, the appellant went to Dr. Vimla's office in Coandni Chowk and offered to help her in the cases against her. On March 11, he told her on telephone that she should meet him at the Delhi Railway Station at 5.00 P. M. and asked her that she should come alone and that too not in her own car. Hi also told her that he would take her to some place and so she should leave word at her house that she would not return till 9.00 P. M. Dr. Vimla immediately reported to the District Magistrate that the appellant was making overtures to her on the pretext that he would help her in the criminal cases pending against her Thereupon the District Magistrate asked her to telephone the appellant in his presence and in the presence of Shri M. L. Nanda, Senior Superintendent of Police. She did so and the telephone conversation between her and the appellant was tapped and recorded. Pursuant to the direction of

the District Magistrate a trap was then laid for apprehending the appellant and Dr. Vimla at the place where the appellant had proposed to take Dr. Vimla.

(4) That evening Dr. Vimla went to the railway station accordingly to the arrangement between her and the appellant and was picked up by the appellant in his car. He then took her to Shidipura, a locality in Karol Bagh and parked the car on the main road. Along with Dr. Vimla he went through a lane to a house situate therein. It may be mentioned that the appellant's car will followed by two cars, in one of which was the Additional District Magistrate and in the other the Superintendent of Police. At about 8.15 P. M. these persona knocked at the door of the house which was opened by the appellant and they asked him to allow them to make a search of the house. The appellant, was unwilling to allow the search without being shown a search warrant. The Additional District Magistrate thereupon prepared and signed the search warrant, and armed with that both the officers carried out the search of the house. They found Dr. Vimla in that house. The also noticed that the appellant and Dr. Vimla were having drinks The statement of Dr. Vimla was recorded by the Additional District Magistrate and therein she stated that after taking whisky the appellant made indecent overtures to her and outraged her modesty and because of this she cried out. The appellant was then questioned. He admitted that the house belonged to a friend of his and was in his temporary possession and said that Dr. Vimla was the wife of his friend. This fact was denied by Dr. Vimla. The appellant also said that he had no concern with the cases against Dr. Vimla but that she had been asking him to intercede in her behalf. He also said that one Jaswant Singh, Deputy Superintendent of Police, Gurgaon, had also recommended 'Dr.Vimla's case to him. He further said that Dr. Vimla had rung him up that day, told him that Jaswant Singh was due to arrive from Gurgaon at 6.30 P. M. and that he should come to the railway station. It was for this reason that he went to the railway station. Jaswant Singh did not however, arrive by that train and Dr. Viml who was there proposed that they should go to another place in Shidipura where they could meet Jaswant Singh. He, therefore, took her to the house which was close by but did not find Jaswant Singh there.

(5) Dr. Vimla's first information report was recorded thereafter at the Karol Bagh Police Station and the appellant was immediately arrested but released on bail. On the next day he was suspended. The case against the appellant was investigated bin it is common ground that though no charge sheet in a criminal court has been presented against the appellant, the papers in connection with the case have not yet been "filed". That is to say, the case against the appellant has not been dropped.

(6) Now, according to the appellant, the investigating officer reported that in view of the fact that Dr. Vimla is not reported to be a woman of good character, it was not

possible for the prosecution to succeed against the appellant and therefore it would be desirable to proceed against the appellant departmentally.

(7) On 26/04/1955, the Chief Commissioner formulated a charge of misconduct against the appellant and appointed his Chief secretary, Shri H. C. Sharma, as Inquiry officer for holding an inquiry into the charge. This inquiry was ordered under r. 55 of the Civil Services (Classification, Control and Appeal) Rules, 1930. A copy of the order which contained the charge was served on the appellant and he was asked to submit his explanation to the Inquiry Officer within one month of the date of service. He was also asked to inform the Inquiry Officer whether he wanted to be heard in person and also whether he would like to produce any witnesses. The grounds on which the charge of misconduct was based were also supplied to the appellant. The appellant, however, did not file a written statement in answer to the charge arid to the allegations contained is the grounds furnished to him. Instead of that, he sent a letter dated 30/04/1955, through his Advocate to the Chief Commissioner in which it was stated on his behalf that the criminal charge registered at the Karol Bagh Police station should be withdrawn or cancelled or it should be proceeded with first and the departmental inquiry might be held afterwards. It was also stated that the appellant would furnish his explanation to the charge only 762 after the criminal charge was cancelled or withdrawn. By his letter dated 12/07/1955, the Chief Commissioner informed the appellant that no reply on the points raised by him in his letter dated 30/04/1955, was required and advised the appellant to send his explanation to the Inquiry Officer "within the prescribed period." By a letter dated 23/07/1955, the appellant complained that he had not been furnished with all the relevant material which was required by him for the preparation of a statement. He further stated that the procedure laid down in the public servants' (Inquiries) Act, 1850, should be followed and added that the criminal charge and the departmental proceedings were the outcome of a deep rooted conspiracy in which high officials of the Delhi State government were involved. He, therefore, suggested that a Judge from outside Delhi should be appointed to make the inquiry. The inquiry Officer again called upon the appellant to submit his statement but the appellant merely referred to the letter which he had addressed to the Chief Commissioner and asked the Inquiry Officer to consider the objections mentioned in that letter. The Inquiry Officer agreed to do so and adjourned the matter till 19/08/1955 on which date the appellant appeared before him. The Inquiry Officer informed him that the objections raised were unwarranted and said that as the inquiry was under the Civil Services Classification. (Control and Appeal) Rules the provisions of the public servants (Inquiries) Act, 1850, could not be followed. He further informed the appellant that it was open to him to ask for any documents which he wanted to see. The Inquiry Officer further told him that the charge sheet was comprehensive enough to enable him to make his statement in reply. According to the respondent, the Inquiry Officer told the appellant that the material before him did not show that the officers of the Delhi State bore any malice towards

the appellant and asked the appellant to any show why he thought that there was a conspiracy against him. The appellant told the Inquiry Officer that he did not consider the Inquiry Officer to be a person involved in the conspiracy but that these were high officials in Delhi who were involved therein. The Inquiry Officer sold the appellant that he was not in the least concerned with this alleged conspiracy and asked the appellant to submit his statement. The appellant, however, said that he had no intention of submitting one. Thereupon the Inquiry Officer proceeded ex-parte against the appellant and came to the conclusion that the appellant was guilty of the charge of misconduct and recommended that he should be removed from service. The appellant was thereafter supplied with a copy of the report of the Inquiry Officer dated 30/09/1955. The Chief Commissioner, after considering the report sent a notice to the appellant stating that he had accepted the finding of the Inquiry Officer and that in consultation with the Union public service commission he had proposed to remove the appellant from police service and asked him to show cause against the action. The appellant submitted an explanation on 8/10/1955, after considering which, the Chief Commissioner removed the appellant from Service as from 17/12/1955.

(8) Aggrieved by this decision the appellant moved the High court of Punjab under Art, 226 of the Constitution for quashing the order of the Chief Commissioner. His application in that behalf was however as already stated, dismissed by the Punjab High court in limini. Shri Anand, who appeared for the appellant, has raised a number of grounds in support of his contention that the removal of the appellant from service was illegal. The grounds are : "(1) that the appellant, having been appointed before the probation of the Civil Services (Classification, control and Appeal) Rules 1930, inquiry against him could not have been made under R. 55 thereof but could only have been made under the Public Servant's (Inquiries, Act) 1850; (2) that the Chief Commissioner of Delhi was not the authority competent to remove him from service in as much as he was not appointed by him; (3) that the ground on which the Inquiry was undertaken was that the prosecution of the appellant based upon the same facts would not succeed and that, therefore, the Inquiry must be characterised as mala fide. (4) that in any case the provisions of R. 55 were violated and so the appellant was not given a reasonable opportunity under Art. 311 (2) of the constitution of showing cause against the action proposed to be taken against him; (5) that the Inquiry Officer did not have the necessary material before him for coming to the conclusion that the charge had been established against the appellant; (6) that as Dr. Vimla was an agent provocateur it cannot be said that the appellant had committed an offence under S. 354, Indian Penal Code, even assuming that he has made overtures to her."

(9) We do not, however, think it necessary to refer to any of them except one, which, in our opinion, is sufficient to warrant the quashing of the order of the Chief Commissioner. That ground is that the principles of natural Justice were violated by

the Inquiry Officer with the result that the appellant was deprived of reasonable opportunity of showing cause against the action proposed to be taken in regard to him as provided for in Art. 311(2) of the Constitution.

(10) We shall assume for the present that R. 55 of the Civil Services (Classification, Control and Appeal) rules applies to this case. But this rule requires that the public servant concerned must be afforded an adequate opportunity of defending himself. It is for this reason that it is obligatory upon the Inquiry Officer not only to furnish the public servant concerned with a copy of the charges leveled against him, the grounds on which those charges are based and the circumstances on which it is proposed to take like action against him. Further, if the public servant so requires for defence, he has to be furnished with copies of all the relevant documents, that is, documents sought to be relied on by the Inquiry Officer or required by the public servant for his defence. That the appellant had made a request for the supplies of copies of documents is clear from the following passage in the report of Shri Sharma: "He further pointed out that even the provisions of Civil services (Classification Control and Appeal) Rules had not been complied with and said that he should have been given a statement of allegations, the grounds on which each charge was based, any other circumstances which it was proposed to take into consideration, a list of the prosecution witnesses and copies of the documents on which the prosecution case rested." In spite of this complaint the documents upon the perusal of which alone the Inquiry Officer has based his report were not furnished to him. All that the Inquiry Officer had to say about this is as follows: "I then informed him that in so far as his objections regarding the supply of documents etc. was concerned, it was for him to ask for any documents etc., that he wanted to see, but he did not do so. As for the charge-sheet, I thought that was comprehensive enough to enable him to draw up a statement which he was bound to furnish under R. 55 of the Civil Services (Classification, Control and Appeal) Rules." Later in his report, the Inquiry Officer observed ; "I then asked the Raizada for the statement which he was required to submit ; but he told me point blank that he had no intention of submitting any such statement." It may be mentioned that even according to the Inquiry Officer, the appellant did not say that he wanted to take any part in the Inquiry or that he did not want to adduce any evidence before him. In spite of this, the Inquiry Officer thought that the circumstances warranted his proceeding against the appellant ex-parte. We have no doubt whatsoever that in doing so the Inquiry Officer fell into a grave error. No doubt, the appellant was chary of giving an answer to the charge framed against him and of dealing with the grounds which the charge was based on but that was because he apprehended that a charge-sheet might be put up against him. It cannot be inferred from this that the appellant had adopted a defiant attitude and was going on boy-coating the inquiry against him altogether. It seems to us that the attitude adopted by the appellant cannot be characterised as unreasonable. His whole idea in objecting to file the written statement was to obviate the use of any statements made by him for the purpose of improving the criminal case.

Indeed, it would be clear from the fact that he was insisting on being furnished with copies of documents on which the Inquiry Officer proposed to rely that he did not want to take part in the inquiry proceedings. It is no doubt true that the appellant did not say that he wanted an oral inquiry to be held but it was within the discretion of the inquiry Officer to hold such an inquiry. Had he decided to do so, the documents would have been useful to the appellant for cross examining the witnesses who deposed against him. Again had the copies of the documents been furnished to the appellant he might, after perusing them, will have exercised his right under the rule and asked for an oral inquiry to be held. The result, in our view the failure of the Inquiry Officer to furnish the appellant with copies of the documents such as the first information report and the statements recorded at the Shidipura house and during the investigation must be held to have caused prejudice to the appellant in making his defence at the Inquiry. The inquiry held must, in these circumstances, be regarded as one in violation not only of r. 55 but also of Art. 311 (2). Accordingly we quash the order of removal of the appellant from service passed by the Chief Commissioner of Delhi. The costs of this appeal shall be paid by the respondent to the appellant.