

Delhi Administration

Vs

Chanan Shah

Civil Appeal No. 277 of 1966

(S.M. Sikri, R.S. Bachawat, K.S. Hegde JJ)

12.02.1969

JUDGMENT

BACHAWAT, J. -

1. The respondent was recruited as a constable in the police service in the undivided Punjab on April 3, 1934. By April, 1946, he was promoted to the rank of Assistant Sub-Inspector. In 1950, he was posted at Delhi. On August 26, 1955, he was confirmed in this rank by the Senior Superintendent of Police, Delhi.

2. In the beginning of 1957, an accusation was made against him that while investigation a case registered by him against one Mohammad Jamil under First Information Report No. 1322, dated November 25, 1956, he had taken one Rame Shah to the Lahori Gate police post without formally arresting him and received from him by way of illegal gratification Rs. 100/- which was paid on his behalf by one Roshan Lal. On coming to know of this complaint Sri A. C. Chaturvedi, Superintendent of Police (City), Delhi, made some kind of a summary inquiry into the matter and on February 28, 1957, passed the following order :

"Reference complaint received from S.P. Office, vide No. 1212/GB, dated the 12th of January, 1957.

Integrity of S. I. Chanan Shah, No. 112/B was found to be doubtful in connection with case F.I.R. 1322, dated 25-11-1956, under Section 20/11/78 of P. S. Kotwali, against one Mohd. Jamil a Pakistani National. He is hereby censured."

3. On a review of this order under Rule 16.28 of the Punjab Police Rules, 1934, Sri N. S. Saxena, the Deputy Inspector-General of Police passed the following order on June 12, 1957 :

"I have gone through the inquiries made by the city police as well as by the Crime Branch and feel that the S.I. should have been dealt with departmentally for his misconduct and by which course the S.I. could have a chance to prove his innocence. I therefore order under P. Rule 16.28 that the censure awarded to officiating Chanan Shah be cancelled and he should be dealt with departmentally. The departmental file will be prepared by Sri B. L. Gulati, I.P.S., Superintendent of Police (Traffic). The relevant papers may be sent to him."

The conduct of the departmental inquiry was entrusted to Sri D. C. Sharma, Superintendent of Police, Central District, Delhi. On August 20, 1957, Sri Sharma wrote the following D.O. letter No.

2165-C to Sri C. B. Dube, District Magistrate, Delhi :-

1. On 25-11-56, S. I. Chanan Shah No. 112/D while posted as I/c P. P. Lahori Gate recovered a revolver with 6 rounds from the possession of one Mohd. Jamil alias Mohan Lal of Lahore while the latter was staying at Regal Hotel. A case FIR No. 1322, dated 25-11-56, under Section 20/11/78 Arms Act was accordingly registered at P. S. Kotwali. The investigation of this case was carried out by S. I. Chanan Shah.
2. During the course of investigation, the S.I. raided the house of one Rame Shah owner of shop No. 1387, Lajpat Rai Market. Although nothing incriminating was found, yet he took Rame Shah to the P.P. where it is alleged, he (Rame Shah) was threatened with arrest and later on let off at midnight after he had paid a sum of Rs. 100/- through one Roshan Lal by way of illegal gratification.
3. In the course of inquiry it is felt that there is no sufficient evidence to prosecute the S.I. in a court of law under the Prevention of Corruption Act, though he can be successfully dealt with departmentally.
4. In view of the above it is proposed that he may be dealt with departmentally instead of filing judicial proceedings against him. Necessary approval under P.P. Rule 16.38 may kindly be accorded."

A copy of the letter was produced in this Court. On August 21, 1957 Sri C. B. Dube, District Magistrate, Delhi, sent the following letter to Sri D. C. Sharma :

"Please refer to your D.O. letter No. 2165-C dated the 20th August, 1967.

Sanction is hereby according to the taking of departmental action against S. I. Chanan Shah as required under Punjab Police Rule 16-38."

4. On November 15, 1957, Sri Sharma drew up a formal charge-sheet. On the basis of the charge-sheet he held an inquiry and found that the allegations against the respondent were substantially true. On March 18, 1958, Sri Sharma served a notice on the respondent to show cause why he should not be dismissed. After considering his reply and hearing him personally Sri Sharma passed an order on April 12, 1958, dismissing him from service. An appeal filed by him against the order was rejected by the Deputy Inspector-General on February 14, 1959, and a revision petition filed by him was rejected by the Inspector-General on June 5, 1959.
5. On August 18, 1959, the respondent filed a writ petition in the Punjab High Court for quashing the dismissal order. One taken by him was that the departmental inquiry was made in contravention of Chapter 16, Rule 38 of the Punjab Police Rules, 1934. Gosain, J., dismissed the petition. The respondent filed a Letters Patent appeal against this order. A Divisional Bench of the High Court allowed the appeal and set aside the order dismissing the respondent from service. The Divisional Bench held that the dismissal order could not be sustained in view of the fact that the inquiry was made in contravention of Chapter XVI, Rule 38. The present appeal has filed by the Delhi Administration after obtaining special leave.
6. Chapter XVI of the Punjab Police Rules deals with punishments. Rule 1 prescribes the punishment and provides that "no police officer shall be departmentally punished otherwise than as provided in these rules". Rule 23 provides for prompt record of complaints against a police officer

made by a member of the general public and the transmission of the record to the Superintendent of Police or other gazetted officer under whose immediate control the officer who has recorded the complaint is serving, if such officer is of opinion that the allegations in the record constitute a prima facie case for inquiry, a departmental inquiry as in Rule 24 must be held. Rule 38 specially deals with certain types of complaints against a police officer. Sub-rules (1) and (2) of Rule 38 are as follows :-

"(1) 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 Ist class powers.

(2) 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 order 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 this rule shall ordinarily be dismissed."

7. The provisions of sub-rules (1) and (2) of Rule 38 are attracted in cases of complaint received by the Superintendent of Police, indicating the commission by a police officer of a criminal offence in connection with his official relations with the public. In such a case, the Superintendent of Police is required to bring the complaint to the notice of the District Magistrate who is to decide whether the investigation of the complaint should be made by a selected magistrate having first class powers or should be left to a police officer. If the investigation discloses a prima facie case, a judicial prosecution should normally follows unless for reasons to be recorded in writing the District Magistrate directs that the matter should be disposed of departmentally.

8. In the present case, the complaint received by the Superintendent of Police (City) Delhi indicated his commission by the appellant of a criminal offence in connection with his official relations with the public. The complaint fell within Rule 38(1) and should have been dealt with accordingly. Nevertheless there was no investigation of the kind prescribed by rule 38(1). The District Magistrate did not direct any preliminary investigation nor was any prima facie case against the appellant as a result of such an investigation established.

9. In *State of Uttar Pradesh v. Babu Ram Upadhyaya* ((1961) 2 SCR 679, 711, 727-728) the Court by majority held that the provisions of Paragraph 486, rule 1 of the U.P. Police Regulations were mandatory and that a departmental action against the police officer in disregard thereof was invalid. The minority held that the paragraph was directory and as there was substantial compliance with its provisions the departmental proceedings were not invalid. In *Jagan Nath v. Sr. Supdt. of Police, Ferozepur* (AIR 1962 Punj 38) the Punjab High Court held that the provisions of Rule 16.38(1) and (2) were mandatory and that a departmental inquiry held without following its provisions was illegal.

It is not necessary to decide in this case whether the provisions of Rule 16.38 of the Punjab Police Rules are mandatory or directory. Even assuming that the rule is directory we find that there has been no substantial compliance with its provisions. The complaint fell within Rule 16.38, and it was

for the District Magistrate to decide who should investigate in the case. No investigation of any kind was made under his directions without obtaining his directions, the Superintendent of Police held an inquiry and passed an order of censure. The order was set aside by the Deputy Inspector-General. Thereafter by D.O. letter No. 2165-C, the Superintendent of Police, asked for the sanction of the District Magistrate to proceed departmentally. Even at this stage, the District Magistrate was not informed that the Superintendent of Police held an inquiry and passed an order of censure and that, his order was set aside by the Deputy Inspector-General. The inquiry held by the Superintendent of Police was not authorised by the District Magistrate nor did it receive his approval. The District Magistrate gave his sanction without recording any reasons and without applying his mind to the requirement of Rule 16.38. In the circumstances, we are constrained to hold that the departmental action taken against the respondent is invalid.

10. In the result, the appeal is dismissed with costs.

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