

Union of India

Vs

Jagjit Singh

Civil Appeal No. 1111 of 1965

(J. C. Shah, V. Ramaswami, G. K. Mitter JJ)

01.04.1969

JUDGMENT

MITTER, J. -

1. This is an appeal by special leave from a judgment and order, dated April 11, 1963, of the Punjab High Court (Circuit Bench at Delhi), in a Letters Patent Appeal which summarily dismissed the appeal preferred by the appellant from a judgment and order in a Second Appeal upholding the decree in favour of the respondent passed by the Additional District Judge, Delhi.

2. The questions canvassed in this appeal were : whether the dismissal of the respondent from service in the police force was illegal on the ground that the officer entrusted with the departmental enquiry against the respondent was not a police officer; secondly, whether the order of dismissal passed by Shri Jagannath was invalid because he was not a District Superintendent of Police; and thirdly, whether the dismissal was void on account of non-compliance with the provisions of Rule 16-38 of the Punjab Police Rules.

3. In order to appreciate the points raised, it is necessary to state the following relevant facts. The respondent had been appointed a Sub-Inspector of Police by the Inspector-General of Police in Sind before the partition of India and was thereafter posted in Delhi by the Deputy Inspector-General of Police, Delhi, after his migration to India. In the year 1949, he was posted as Sub-Inspector of Police in Police Station, Daryaganj, Delhi. A departmental enquiry was launched against him on the charge of acceptance of bribe in connection with a criminal case in the same year. The officer entrusted with the enquiry was one Diwanchand Bhatia who was employed up to April, 1949, as a Deputy Superintendent of Police in the City of Delhi. He retired from service in that month but was re-employed from the date of retirement as a Deputy Superintendent of Police (Enforcement Department). The enquiry against the respondent had taken place after the retirement of the said Diwanchand but during the period of his re-employment. The respondent was found guilty of the charge and was dismissed from service by the order, dated December 6, 1949, passed by one Jagannath, a Superintendent of Police in the Delhi Police Force. The appellant filed a suit challenging his dismissal on the grounds already mentioned in the court of the Subordinate Judge, Delhi, on January 12, 1954. The defendant - Union of India filed its written statement disputing the contentions of the plaintiff. The Subordinate Judge framed several issues; the principal ones relate to the competency of Jagannath to pass the order of dismissal and of Diwanchand Bhatia to conduct the enquiry against the plaintiff. Finding in favour of the plaintiff on both the issues, he decreed the suit. This decree was upheld in appeal by the Additional District Judge, Delhi and in Second Appeal by a single Judge of the Punjab High Court who modified the decree by an alteration in the figure of the salary claimed by the plaintiff but upholding his claim on the main issues. The Letters Patent

Appeal, as already stated, was dismissed summarily.

4. The first contention on behalf of the appellant was that Jagannath who was functioning as a Superintendent of Police but not designated as a District Superintendent of Police was quite competent to pass the order of dismissal against the respondent. Under Section 4 of the Police Act V of 1861, an Act for the regulation of Police :

"The administration of the police throughout a general police-district shall be vested in an officer to be styled the Inspector-General of Police and in such Deputy Inspectors-General and Assistant Inspectors-General as to the State Government shall deem fit.

The administration of the police throughout the local jurisdiction of the Magistrate of the district shall, under the general control and direction of such Magistrate, be vested in a District Superintendent and such Assistant District Superintendent as the State Government shall consider necessary."

Section 3 reads :

"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; and except as authorised under the provisions of this Act, no person, officer or Court shall be empowered by the State Government to supersede or control any police functionary."

Section 7 provides for the appointment, dismissal etc., of inferior officers. The relevant portion thereof reads :

"Subject to the provisions of Article 311 of the Constitution, and to such rules as the State Government may from time to time make under this Act, the Inspector-General, Deputy Inspectors-General, Assistant Inspectors-General and District Superintendents of Police may at any time dismiss, suspend or reduce any police-officer of the subordinate rank whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same,...."

The difference between the texts of the sections, after coming into force of the Constitution and that before January, 1950, is immaterial for our purpose. The interpretation clause is Section 1 under which (a) 'police' shall include all persons who shall be enrolled under this Act; (b) the words 'general police-district' shall embrace any presidency (State) or place, or any part of any presidency (State) or place, in which this Act shall be ordered to take effect; (c) "District Superintendent" and "District Superintendent of Police" shall include any Assistant District Superintendent or other person appointed by general or special order of the State Government to perform all or any of the duties of a District Superintendent of Police under this Act in any district; and (d) 'Magistrate of the district' shall mean the chief officer charged with the executive administration of a district and exercising the powers of a Magistrate, by whatever designation the Chief officer charged with such executive administration is styled. Under Section 2 of the Act the entire police establishment under a State Government shall, for the purposes of this Act, be deemed to be one police-force, and shall be formally enrolled; and shall consist of such number of officers and men, and shall be constituted in such manner as shall from time to time be ordered by the State Government.

5. It is to be noted that the words "Superintendent of Police" do not occur anywhere in the Act. In

the Act this expression is always prefixed by the words "District" or "Assistant District". Under Rule 1.1 of the Punjab Police Rules, 1934, framed under the Police Act, the Punjab was divided into general police districts, viz., the Provincial Police District and Railway police district and all ranks of police employed in the Province were appointed or enrolled under Section 2 of the Act. Rule 1.2 shows that the responsibility for the command of the police force, its recruitment, discipline, internal economy and administration throughout the general police districts vested in the Inspector-General of Police who was to be assisted in the control and administration of the police force by such number of Deputy Inspectors-General and Assistant Inspectors-General as the Provincial Government might from time to time appoint. Rule 1.4 gave the administrative division of the police force. Rule 1.6 gives the functions of the Deputy Inspectors-General of Police and lays down that in the exercise of such responsibility they were to interfere as little as possible with the executive authority of the Superintendents under them. Under Rule 1.8 :

"The Superintendent of Police is the executive head of the district police force. He is directly responsible for the matters relating to its internal economy, training and management, and for the maintenance of its discipline and efficient performance of all its duties.

In every district there shall be one or more Superintendents and such number of Assistant Superintendents, Deputy Superintendents, Inspectors, Sergeants, Sub-Inspectors, Assistant Sub-Inspectors, Head Constables and Constables as the Provincial Government may direct."

6. The important thing to note in this connection is that the expression "District Superintendent of Police" is not used in the rules and the last mentioned rule shows that it was possible to have more than one Superintendent of Police in a district.

7. Chapter XII of the Rules deals with appointments and enrolments in the police force. Rule 12.1 contains a table summarising the directions given by the Provincial Government under clause (b) of sub-section (1) of Section 241 of the Government of India Act, 1935, in regard to the authorities competent to make appointments to the non-gazetted ranks. In respect of sub-inspectors the authority to whom the power of appointment is delegated is :

"Superintendents of Police and Deputy Superintendent (Administrative), Government Railway Police and Assistant Superintendent, Government Railway Police."

This authority is given full powers subject to rules governing the conditions of service as defined in the Police Rules.

8. Chapter XVI deals with punishments and sub-rule (1) of Rule 16.1 of this Chapter lays down that no police officer shall be departmentally punished otherwise than as provided in these rules. Sub-rule (2) of Rule 16.1 gives a table showing the departmental punishments which can be inflicted and the authorities competent to inflict the same. The table shows that the order of dismissal of a Sub-Inspector can be passed by a Superintendent of Police and Deputy Superintendent (Administrative), Government Railway Police.

9. The question therefore arises whether the words "Superintendent of Police" in the Rules and the words "District Superintendent of Police" in the Act refer to one and the same authority, or whether there is any distinction or difference between the two. In our opinion, there is none. Section 4 of the Police Act shows that the administration of police throughout the local jurisdiction of the Magistrate of the district under the general control and direction of such Magistrate is to be vested in a District

Superintendent. It is common knowledge that the police force expanded very considerably in between the year 1861, when the Act was passed and the year 1934 when the Rules were framed and a Magisterial district was divided into smaller areas for the purpose of better enforcement of law and order and a Superintendent of Police was placed in charge of each such area. This finds support from the testimony of Abdul Rehman, D.W. 1, Superintendent of Police, C.I.D. Lucknow. He said that he was posted as Superintendent of Police at the headquarters at Delhi in 1950. According to him, the District Magistrate was in charge of the entire Delhi area including New Delhi, Old Delhi and rural areas. Further, the police officer in charge of the entire area was the Inspector-General of Police and there were two Superintendents of Police, one for Delhi City and the other for New Delhi, Shri Jagannath was the Superintendent of Police, City and all the police stations of the city were under his charge. It is nobody's case that a Superintendent of Police is an authority inferior to that of a District Superintendent of Police, each Magisterial district having in many cases more than one Superintendent of Police. There is thus no incongruity between the Act and the Rules which have to be read together and as Jagannath, Superintendent of Police, was undoubtedly the Superintendent of Police, City of Delhi with jurisdiction over the police station, Faiz Bazar where the plaintiff was posted, he was competent to pass the order of dismissal on him.

10. On the question of the competence of Diwanchand Bhatia, the relevant rule is Rule 16.24 in Chapter XVI of the Punjab Police Rules which lays down the procedure to be followed in departmental enquiries. Sub-rule (1) of Rule 16.24(1) provides that :

"The police officer accused of misconduct shall be brought before an officer empowered to punish him, or such superior officer as the Superintendent may direct to conduct the enquiry. x x x."

On behalf of the appellant it was contended before us that all that this rule requires was that the officer conducting the enquiry must be superior in status to the person against whom charges had been levelled and there can be no doubt that a Deputy Superintendent of Police was an officer superior to a Sub-Inspector of Police. According to counsel it was really not necessary to consider whether he was also a police officer but on the facts of this case there can be no doubt that Diwanchand Bhatia was a police officer. Ext. D-5 is a certificate to the effect that Diwanchand Bhatia had on the forenoon of 28th April, 1949, received charge of the office of the Deputy Superintendent of Police, Enforcement, Delhi with the designation "Officiating Deputy Superintendent of Police". Ex. D-4, the order of the Inspector-General of Police, Delhi, dated June 6, 1949, shows that Diwanchand Bhatia was "posted to city vice Malik Bodh Raj, Deputy Superintendent of Police, who will take over charge as Deputy Superintendent of Police, Enforcement." There is also the oral testimony of Diwanchand Bhatia to the effect that he had taken over charge as shown in those documents and that he had conducted the enquiry against the respondent. It was sought to be argued before us by counsel for the respondent that Diwanchand Bhatia, when he conducted the enquiry had already retired from the post of police officer and he was only re-employed in the Enforcement Department and this would not make him a police officer. We see no force in this contention as the Enforcement Department was still a police department and a Deputy Superintendent of Police (Enforcement) was still a Deputy Superintendent of Police. The word 'enforcement' merely specifies the department to which he was attached and the order Ex. D-4 shows that he was to take over charge from Malik Bodh Raj who in turn was another Deputy Superintendent of Police.

11. The third point canvassed before us does seem to have engaged the attention of the courts hearing the matter although it was raised in the plaint. It was the plaintiff's case in Paragraph 6-A of

the amended plaint that the departmental enquiry could only have been started after the taking of certain essential preliminary steps and that it was necessary for the first to give immediate information to the District Magistrate of the alleged commission of a crime by the plaintiff and it was for that officer to decide whether the enquiry was to be conducted by a police officer or by a selected Magistrate First Class and that in his case the departmental enquiry had been started without following the above procedure. Although the plaint does not mention the rule in the Punjab Police Rules referred to by the plaintiff in Paragraph 6-A, there can be no doubt that the reference was to Rule 16.38 of Chapter XVI, sub-rules (1) and (2) whereof run 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 First 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 orders 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.

#(3) to (6) X X X."##

12. It was the contention of the respondent that there was no evidence to show compliance with the above rule. It was contended that the evidence on record was not sufficient for the purpose. Diwanchand Bhatia stated in his evidence in chief that he had received an application for making an enquiry against the plaintiff from Jagannath, Superintendent of Police, and that after making a preliminary enquiry when he found a prima facie case against the plaintiff he sent the same to the District Magistrate for approval. Thereupon the District Magistrate wrote that a departmental enquiry be made against the plaintiff and it was only following the direction of the District Magistrate that the enquiry was made. The Superintendent of Police, Jagannath, stated in his evidence in chief that he could not say whether the sanction of the District Magistrate had been obtained for the enquiry by Diwanchand Bhatia.

13. Mr. Anthony who argued on behalf of the respondent drew our attention to a judgment of this Court in *The State of Uttar Pradesh and Others v. Babu Ram* (1961-2 SCR 579) where it was observed that the Police Act and the Rules made thereunder constituted a self-contained Code providing for the appointment of police officers and prescribing the procedure for their removal. According to him no departure from the rules was possible and in order to justify a dismissal strict compliance with the rules was mandatory. Observations to a similar effect were also quoted from the judgment of this Court in *Delhi Administration v. Chanan Shah* (Civil Appeal No. 277/1996, decided on 12-2-1969). There what was said was :

"It is not necessary to decide 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."

We do not think that the same can be said of the facts of this case. We see no reason to disbelieve the testimony of Diwanchand Bhatia. The learned trial Judge did not frame an issue on this point and Abdul Rehman, the Superintendent of Police, C.I.D., who gave evidence in this case stated that the file relating to the departmental enquiry against the plaintiff had been destroyed under Police Rule 12.35 by his order. He also referred to the document Ex. D-2 which is an extract regarding the destruction of Panji Missals. The order seems to have been passed on 15th January, 1953, long before the institution of the plaintiff's suit. In the circumstances, we see no reason not to accept the evidence of Diwanchand Bhatia according to which Rule 16.38 of Chapter XVI had been complied with.

14. In the result, the appeal is allowed, the judgment and order of the courts below set aside and the suit filed by the respondent dismissed. As the special leave was given in this case on condition that the appellant will in any event pay the costs of the respondent, we make no order as to costs of this appeal and do not think it necessary to disturb the previous order for costs.

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