

Makeshwar Nath Srivastava

Vs

The State of Bihar and Others

Civil Appeal No. 23 of 1967

(JCI S. M. Sikri, A. N. Ray, J. M. Shelat, C. A. Vaidilingam, A. N. Grover JJ)

02.03.1971

JUDGMENT

SHELAT, J. -

1. This appeal, by special leave, is against the judgment of the High Court of Patna dismissing in limine the writ petition filed by the appellant challenging the order of his dismissal from service passed by the Government of Bihar.
2. The appellant was first appointed as a stenographer, sub-Inspector of Police in 1940 in the Police Service of the state. After the requisite training in the Police Training College at Hazaribagh, he was posted as a Sub-Inspector in 1950 in Champaran District. In 1954, he was promoted to officiate as an Inspector of Police. In June 1955, he worked in Saharsa District as an officiating Inspector of Police.
3. In July 1955, he received a notice to show cause why disciplinary proceedings should not be taken against him in a matter relating to certain cloth recovered at Katihar Police station in a Police Case under Sections 379 and 414 of the Penal Code. The appellant submitted his reply denying any misappropriation by him. On September 26, 1955, he was served with a charge-sheet alleging misappropriation and connivance by him of misappropriation by two constables named therein. This was followed by an enquiry held by the Deputy Superintendent of Railway Police at Samastipur. The appellant alleged that the enquiry was held partially behind his back and was, therefore, had. In April 1956, the Deputy Superintendent of police submitted his findings to the Superintendent of Railway Police, Samastipur holding to the Superintendent of Railway Police Samastipur holding that the charges against the appellant had been established. These findings were then submitted to the Inspector-General of Police with a recommendation that the appellant should be awarded exemplary punishment. In September 1957, the Inspector-General served a second show cause notice on the appellant to show cause why he should not be dismissed. The appellant submitted his reply and also appeared in person.
4. By his order, dated September 30, 1958, the Inspector-General exonerated the appellant from the said charges. But on the basis of certain adverse remarks in the confidential character roll of the appellant, he passed an order reverting the appellant to his substantive rank of Sub-Inspector of Police for a period of one year. This order clearly was one of penalty. Admittedly, there was no charge against the appellant founded on the said adverse remarks. The adverse remarks on the basis of which the order of reversion was passed were as the said order itself pointed out, never notified to the appellant. Nor was any opportunity to explain these remarks ever afforded to the appellant before the order of reversion was passed.

5. Aggrieved by the said order the appellant filed an appeal before the Government. On November 7, 1959, the Government set aside the order of reversion passed by the Inspector-General. That was the relief prayed for by the appellant in his said appeal. The order was set aside on the ground that no opportunity had been given to the appellant to explain the said adverse remarks, and that therefore, it was legally unsustainable. But the Government passed instead an order of dismissal disagreeing with the findings of the Inspector-General and agreeing with the findings given by the enquiry officer, by whom the appellant had been found guilty.

6. On a further appeal to the High Court Government having been dismissed by the Government, the appellant filed a writ petition in the High Court. On January 18, 1962, the High Court allowed the writ petition setting aside the Government's order of dismissal, but directed that the appellant's appeal should go back to the Government for disposal according to law. The Government thereupon served a notice on the appellant to show cause why he should not be dismissed from service. That notice was issued on the strength of Rules 851(b) and 853-A of the Bihar and Orissa manual, 1930. The appellant thereupon gave his reply and requested for a personal hearing. The request for personal hearing was rejected. About a year after the High Court's order quashing the Government's order of dismissal, the Government issued an order dated March 5, 1963, the Government passed the order dismissing the appellant from service. Hence, the appellant filed once more the present petition which the High Court dismissed in limine.

7. The question is whether it was competent for the Government, in an appeal filed by the appellant against the said order of reversion passed by the Inspector-General of police, to set aside the findings of that officer by which he exonerated the appellant from the said charges against him which findings were not appealed against by the department, and then pass an order of dismissal accepting the findings of the enquiry officer.

8. The appellant was governed by the Police Act, 5 of 1861. Section 2 of the act deals with the constitution of the Police force and provides that the entire Police establishment under a State Government shall, for the purposes of the act, be deemed to be one Police force, and shall be constituted in such manner as shall from time to time be ordered by the State Government. Section 3 provides 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." Under Section 4, the administration of the police throughout a general Police district is vested in the Inspector-General of Police, and in such Deputy Inspectors-General of Police and Assistant Inspectors-General as the state Government-General shall deem fit. Section 7 runs as follows :

"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 Inspectors-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 ranks whom they shall think remiss or negligent in the discharge of his duty, or unfit for the same; or may award any one or more, of the following punishments to any Police Officer of the subordinate ranks who shall discharge his duty in a careless or negligent manner, or who by any act of his own shall render himself unfit for the discharge thereof, namely."

9. The section then sets out the punishments which the said officers can impose, namely, fine, confinement to quarters, deprivation of good-conduct pay and removal from any office of distinction or special emolument.

10. It is clear that the Act itself confers on the Inspector-General power to impose in suitable cases the penalty of dismissal, suspension and reduction, subject, of course, to the provisions of Article 311 and the rules made under the Act. The power of superintendence conferred on the State Government by Section 3 must, therefore, be read in the light of the provisions of Section 7 under which the Legislature has conferred specific powers to the officers mentioned therein. Therefore, the State Government cannot interfere with, under the purported exercise of the general power of superintendence under Section 3 with an order passed by any one of the officers mentioned in Section 7 in exercise of the power conferred on them by that section, unless there is some provision which authorises or envisages such interference. Under Section 46(2), the State Government has been given the power to make rules from time to time by notification in the official Gazette consistent with the Act, inter alia :

"(a) to regulate the procedure to be followed by Magistrates and police-officers in the discharge of any duty imposed upon them by or under this Act;

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and

(c) generally, for giving effect to the provisions of this Act."

It would seem that in pursuance of the rule making power under Section 46(2) rules have been made which are to be found in the Bihar and Orissa Police Manual, 1930. The manual has not been produced before us. But we find Rule 851 set out by the High Court in its judgment in the first writ petition filed by the appellant, reported in *Makeshwar Nath v. Bihar*. (AIR 1962 Pat 276.) The rule so set out reads as follows :

"General rules as to appeals :

#(a)##

(b) Against an order of dismissal, removal, reduction, withholding of promotion or periodical increment..... there shall be one appeal in each case as follows :

Against an order passed by a Superintendent, to the Deputy Inspector-General;

Against an original order passed by a Deputy Inspector-General, to the Inspector-General;

Against an original order passed by the Inspector-General, to the Local Government.

(c) The order of the appellant authority on any such appeal shall be final."

11. Under this rule an appeal would lie before the Government against the order of the Inspector-General reverting the appellant to his substantive post of Sub-Inspector for one year. Such an appeal was in fact filed by the appellant. But no appeal was filed by the department against the order of the Inspector-General exonerating the appellant of the charge of misappropriation and connivance of misappropriation by the two constables. Under Rule 851(b), therefore, the only question before the Government was whether the order of reversion should be sustained or not. There was not other matter by way of an appeal before the Government by the department or by any one else being

aggrieved against the order of the inspector-general by which he held that the charges against the appellant had not been established. That being so, the Government could pass in exercise of its appellate power under Rule 851(b) such an order as it thought fit in the appeal filed by the appellant, i.e., either upholding the order or reversion or setting it aside. In the absence of any other appeal, the Government could not sit in judgment over the findings of the Inspector-General given by him under the power conferred upon him by Section 7 of the Act. An appeal before the Government having been provided for under Rule 851(b), presumably both by the delinquent Police officer, as also by the department, if aggrieved by an order passed by the Inspector-General, there would also be no question of the Government exercising its general power of superintendence under Section 3 of the Act. The exercise of such a power is ordinarily possible when there is no provision for an appeal unless there are other provisions providing for it. The order of dismissal passed by the Government in the appeal filed by the appellant, therefore, was not sustainable.

12. We are, however, informed by counsel that the Government of Bihar has framed two rules, Rule 853 and Rule 853-A. Rule 853, a copy of which has been furnished to us, provides :

"Memorials and Revisions : No petition or memorial which is a representation against an order passed in a disciplinary case shall be submitted to any authority other than the authority which under the rule for the time being in force is empowered to entertain the appeal."

13. No memorial or revisions was filed either by the appellant or any one else before the Government, which was the appellate authority which could entertain such a memorial or revision. Assuming that under Rule 853 the Government could suo moto revise the order of the Inspector-General, an appeal having been filed before it, it could not so act. The fact that the power of revision is conferred on the authority possessed of appellate power indicates that the power of revision is intended to be used when an appeal could not for some reason be filed and the appellate authority felt that the order was so unjust or unreasonable that it should act under its revisional power. That was not the case of the Government before us. Nor did the Government say so in the impugned order. Therefore, there was no occasion for the Government to revise the order passed by the Inspector-General exonerating the appellant of the charges preferred against him.

14. In its order, dated January 31, 1963, the Government no doubt, has referred to Rules 851(b) and 853-A as being the rules under which it purported to act for the purpose of making the impugned order of dismissal. Rule 851(b), as already pointed out, however, confers no such power. As regards Rule 853-A, it is neither set out in the impugned order, nor in the statement of case of the respondent-State. We called for its production, or even its copy, but counsel for the State expressed his inability to produce the same. Further, counsel for the appellant told us that even if Rule 853-A had been framed, it cannot operate because so far it has not been published in the Official Gazette as required by Section 46(2). Counsel for the State was not in a position to throw any light whether the said rule has been framed or not and if framed whether it was notified in the Gazette. In these circumstances, he could not rely upon that rule to sustain the order of dismissal passed by the Government. We have, therefore, to go upon Rule 851(b), which clearly does not empower the Government to pass an order such as the one impugned by the appellant on the ground of its revisional power or any such similar power under Section 3 of the Act. In the absence of any other provision of law or any rule conferring on the State Government of the power to pass an order of dismissal in exercise of its revisional power or power of general superintendence, the general principle must prevail. Namely, that an appellate authority in an appeal by an aggrieved party may either dismiss his appeal or allow it either wholly or partly and uphold or set aside or modify the

order challenged in such appeal. It cannot surely impose on such an appellant a higher penalty and condemn him to a position worse than the one he would be in if he had not hazarded to file an appeal. Since under Rule 851(b) an appeal to the Government has been provided for and the Government had under that rule the appellate authority to dispose of appeals filed before it against the original order passed by the Inspector-General, it could not resort to any general power of superintendence except in cases where there is a provision conferring such a power in addition to its appellate authority and in the manner envisaged by such a provision.

15. In our view, the High Court was not right in dismissing the appellant's writ petition. The appeal has, therefore, to be allowed and the order of the the State Government quashed as being without jurisdiction. The consequence is as if the appellant was never dismissed and continued to remain in the Police force to which he was attached. The respondent-State will pay to the appellant the costs both of this appeal and also of the writ petition filed by him in the High Court.

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