

Union of india

Vs

Ram Kishan

Civil Appeal No. 571 of 1967

(G. K. Mitter, C. A. Vaidialingam, P. Jagmohn Reddy JJ)

07.05.1971

JUDGMENT

SIKRI, C.J. -

1. The respondent Ram Kishan, hereinafter referred to as the plaintiff, a Foot Constable, filed a suit in the Court of Sub-Judge Ist Class, Delhi, challenging his dismissal from service by an order, dated October 25, 1960. This order was passed by Shri M. K. Saxena, Superintendent of Police (Traffic), Delhi. It was alleged by the plaintiff that this order was bad and illegal on various grounds. Two grounds may be mentioned here : (1) That Shri M. K. Saxena, superintendent of Police (Traffic), Delhi was not a District Superintendent of Police; (2) That the mandatory provisions of Punjab Police Rule 16.38 had been violated inasmuch as no information was given to the District Magistrate as laid down in the Punjab Police Rule 16.38(1) and the District Magistrate never decided whether the preliminary investigation was to be conducted by the police or by selected Magistrate Ist Class. It was further alleged that even the provisions of sub rule (2) of Rule 16.38 were not observed. The learned Sub-Judge decreed the suit and gave a declaration that the dismissal of the plaintiff was void. A decree for Rs. 1,151/- was passed in favour of the Foot Constable. Among other issues framed, the following issues may be noticed :

(1) Whether the Superintendent of Police (Traffic) was not competent to pass the impugned order as alleged ?

(2) Whether the provisions of Rules 16.38 and 16.24 of the Punjab Police Rules were complied with by the defendant ? If not, to what effect !

The learned Sub-Judge held and decided Issue No. 1 against the Government and held the order of dismissal to be vitiated. Regarding Issue No. 2, however, he held that there was a complete compliance of Rule 16.24. He further held that even as regards Rule 16.38, the necessary permission of the District Magistrate, Delhi for taking the departmental action against the plaintiff was obtained from the District Magistrate vide Ex.P. 9-A.

2. The Government filed an appeal and the Additional District Judge dismissed the appeal.

3. The Government then filed an appeal before the High Court Mehar Singh, J. Following an earlier decision of the Division Bench of that Court, dated March 4, 1964, held that Mr. M. K. Saxena, Superintendent Police (Traffic), Delhi, was not competent to dismiss the plaintiff. The learned Judge did not give leave to file Letters Patent Appeal and the Government having obtained Special Leave, the appeal is now before us.

4. The first issue is now concluded against the plaintiff by a decision of this Court in the case Union of India v. Jagjit Singh. (1969 (1) SCC 737 : (1969) 3 SCR 658) However, the appeal must fail on the ground that the provisions of Rule 16.38 were not complied with in this case. In a similar case Delhi Admn. v. Chanan Singh, this Court observed :

"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 compliant fell within Rule 16.38, and it was for the District Magistrate to decide who should investigate 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."

5. In this case the permission relied on by the Government is in the following terms :

##MEMO##

Referring your memorandum No. 4425/T, dated February 9, 1960, on the subject noted above.

I agree to departmental action being taken against F. C. Ram Kishan No. 4494."

We may here reproduce relevant part of Rule 16.38 :

16.38. (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 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."

6. In the present case no immediate information was given to the District Magistrate in respect of the complaint received against the plaintiff nor did the District Magistrate 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. It is true that the Distract Magistrate purported to give permission under sub-rule (2) of Rule 16.38 but as the Ist part of the rule was not complied with at all the departmental inquiry is vitiated and the order of dismissal must be declared illegal. In the result we dismiss the appeal with costs.

</html