SUPREME COURT OF INDIA

State of U.P.

Vs.

Sughar Singh

C.A.No.1110 of 1971

(K. K. Mathew and M. H. Beg, JJ.)

22.11.1973

JUDGEMENT

MATHEW, J.:-

1. This appeal, by certificate is directed against the judgment and decree dated September 8, 1970 of the Allahabad High Court. The short facts of the case are as follows. The respondent Sughar Singh was a permanent head constable in the U. P. Police Force between 1950 and 1960. Sometime in 1960, he was deputed for training as a credit Sub-Inspector at the Armed Police Training Centre at Sitapur. On March 16, 1961, Sughar Singh was appointed an officiating Platoon Commander. He worked in that post till August, 1968. While working as a Platoon Commander, on July 22, 1966, the respondent was served with anotice by the Senior Superintendent of Police, Kanpur, in which he was asked to show cause within 10 days of the receipt of that notice as to why the following adverse entry should not be entered in his character roll:

"1966 - Is suspected to have got entries of date of birth and educational qualifications altered on the authority of a fictitious certificate which had to be corrected later on Severely warned."

The respondent submitted an explanation in accordance with the terms of this notice on July 30, 1966. The explanation was not, however, found acceptable and an adverse entry was actually made in his character roll in 1966. On August 12, 1968, the Deputy Inspector General of Police, Kanpur Range, U. P. passed an order to the following effect:

"Order No. 1207/P.H.Q. - No. T 13 B 68

Order - On his reversion from the post of Officiating Sub-Inspector, Armed Police, Shri Sughar Singh is taken back on his substantive post of Head Constable".

The order is in Hindi but we have set out an English translation of the order which we found included in the records.

2. The respondent challenged this order of reversion by a writ petition filed in the High Court of Judicature at Allahabad. His petition was at first dismissed by a learned Single Judge of the High Court on May 12, 1969. He filed a special appeal before a Division Bench. One of the Judges of this Division Bench allowed the appeal and quashed the order of reversion. The other learned Judge, however, was of a different view and held that the respondent's appeal was liable to be dismissed. The matter, thereafter, was referred to a third learned Judge who found in favour of the respondent and quashed the order of reversion. In view of the opinion of the third learned Judge, the special appeal filed by the respondent was allowed by a judgment of September 8, 1970 and the order reverting the present respondent to his post of head constable was quashed. The appellants have now come on appeal before this Court against the order of the Allahabad High Court.

3. The short question that arises for determination is as to whether the order of August 12, 1968, was made in violation of article 311 of the Constitution of India or in violation of any right of the respondent under Article 16 of the Constitution.

4. For answering this question the first essential is to determine what was exactly the nature of the appointment of Sughar Singh when he was posted as a Platoon Commander Both parties accept the proposition that the rank of a Platoon Commander is the same as that of a Sub-Inspector of Police. The appellants contend that Sughar Singh was never appointed substantively to the post of Sub-Inspector of Police and that he was merely officiating as a Platoon Commander in August 1968 when he was reverted to his substantive post of Head Constable. The respondent, on the other hand, contends that before he was appointed as a Platoon Commander, he had been appointed as a Sub-Inspector of Police and that even if his appointment to the post of a Platoon Commander was in an

Officiating capacity, his substantive rank was that of a Sub-Inspector of Police. In support of this contention, reliance was placed on the framing of the order dated March 21, 1961 which was in the following terms:

"Order - On completion of the practical training on March 16, 1961, the following S.I.A.P. Cadres are allotted to P.A.C. for posting as offg. Platoon Commanders:

Name	Distt/Unit of lien	Residence
xx	xx	xx
8. Sughar Singh	Agra	Etawah
xx	xx	xx

Sd. S. M. U. Ahmad I.P.S.

Dy. Inspr. Genl. of Police, Headquarter, U. P."

The order was made in respect of 15 head constables and reads as if all the officers mentioned therein who were posted as officiating Platoon Commanders already belonged on the relevant date to the S.I.A.P. Cadre i.e. they were sub-inspectors in the Armed Police. The respondent's counsel argued that the order specifically described the respondent as a Sub-Inspector belonging to the Armed Police Cadre and the obvious intent of that order was to allot him to the Provincial Armed Constabulary in the post of Officiating Platoon Commander. The argument, in other words, was that independently of and prior to the appointment of the respondent to the post of a Platoon Commander, he had been enjoying the status of a Sub-Inspector. It was further, contended that since the respondent's status as a Sub-Inspector of Police is not qualified as either officiating or temporary, it is impossible to resist the conclusion that on completion of his training he had already been appointed as a Sub-Inspector substantively.

5. The order of March 21, 1961 was merely an order of posting and not an order indicating the appointment of the respondent to a particular cadre. We are unable to accept this argument of the respondent's counsel To understand the position clearly, one has to refer to certain provisions of the Police Regulations under which the respondent had been selected for promotion from the post of Head Constable to the rank of Sub-Inspector in the Armed Police:

"406. (b) Armed Police - Permanent promotion to the rank of sub-inspector in the armed police are made by Deputy Inspectors General from the list of those who have qualified at the course prescribed under paragraph 448. Superintendents may promote in officiating or temporary vacancies.

"447. Recruitment to the rank of Sub-Inspector Armed Police/Platoon Commander will be made in the following manner:

"(a) 80 per cent of the posts both temporary and permanent in the combined cadre of Sub-Inspector, Armed Police/Platoon Commander will be filled in by selection of men from the ranks.

"(b) The remaining 20 per cent of the posts both temporary and permanent in the combined cadre of Sub-Inspector, Armed Police/Platoon Commander will be filled in by direct recruitment.

"For category (a) the Range Deputy Inspector General of Police, Deputy Inspector General, Provincial Armed Constabulary and the Deputy Inspector General of Police Headquarters in the cases of the Railway Police, will nominate from time to time as required by the Inspector General such number of head constables of the Armed Police as may be specified.

"For category (b) selection of the required number of candidates will be made by a committee consisting of the Inspector General, the Deputy Inspector General Provincial Armed Constabulary and one more Deputy Inspector General nominated by Inspector General.

"448. (i) Candidates nominated or selected under paragraph 447, will undergo a course of training of 7 months' duration at the armed training centre, Sitapur including one month's practical training in the Provincial Armed Constabulary Units.

(ii) Before taking training under the above sub-para, candidates selected under para 447 (b) shall undergo a successful preliminary training for a period of two months at the Armed Training Centre, Sitapur.

"448-A. Relative seniority will be governed by the date of passing the Sub-Inspector Armed Police Course and for men passing the same course by the position obtained in the final examination of Sub-Inspector Armed Police Course between two men obtaining equal marks in the same final

examination (i) promoted man will take seniority over directly recruited candidate (ii) if both men are directly recruited the age will be the determining factor and in the case of the ranker cadets it will be the length of service".

6. Certain things are clear from the above regulations. There is a combined cadre of Sub-Inspectors of Armed Police and Platoon Commanders. That means there is no difference in rank between a Sub-Inspector of Armed Police and Platoon Commander. eighty per cent of the posts of this cadre are filled up by promotion from the ranks and twenty per cent by direct recruitment. These appointments whether by promotion or by direct recruitment are made to posts which may be temporary or permanent. When appointments are made by promotion, the promotees are nominated from among the head constables of the Armed Police. As soon as the selection of nominees is made, they have to undergo first a preliminary training for a period of two months and, if successful in that training a further training of 7 months at the Armed Police Training Centre, Sitapur. There are certain rules for determining the relative seniority of the promotees inter se and also vis-a-vis the direct recruits. We are ot concerned with those rules in this appeal.

7. In the light of these regulations and from the facts set out in the different affidavits on record, it is clear that the respondent was selected for training as a cadet Sub-Inspector under Regulation 447 of the Police Regulations and on his successful completion of the training he was promoted to the combined cadre of "Sub-Inspector, Armed Police/Platoon Commander". The order of March 21, 1961 was the order posting the respondent and his other colleagues who were successful in the training to certain vacant posts in that combined cadre of Sub-Inspector and Platoon Commander for the first time. The order is not happily worded. The order seems to make a kind of distinction between the rank of Sub-Inspector of the Armed Police Cadre and the rank of a Platoon Commander, though, in fact, there was no such distinction. Regulation 447 (a) makes that position indubitably clear. The respondent's contention that he was first appointed Sub-Inspector and then posted as Officiating Platoon Commander is based on this obvious erroneous drafting of the order of March 21, 1961. Had the respondent been appointed in the first instance to the post of a Sub-Inspector and then posted as a Platoon Commander, it would have been possible for him to produce the first order by which he claims to have been promoted to the cadre of sub-inspector. He produced no such order. In fact, there can be little doubt that there was no such order. The order of March 21, 1961 was an order passed immediately after the completion of the practical training on March 21, 1961. That is clear from the order itself. There is no room for any order intervening the commpletion of the practical training and the passing of the posting order on March 21, 1961. Having regard to these considerations, it is imposible for us to accept the respondent's contention that he had been appointed substantively to the rank of Sub-Inspector of Police. In our opinion, his first appointment was as an officating Platoon Commander and he was never given a substantive rank in the combined cadre of Sub-Inspectors, Armed Police and Platoon Commanders.

8. We now turn to the question whether the order of reversion of the respondent was either a reduction in rank in contravention of Art. 311 of the Constitution or a contravention of the respondent's fundamental right under article 16 of the Constitution. Though the law in this matter has been laid down in a large number of decisions of this Court considerable difficulty arises in

applying the various principles enunciated by those decisions to the fats of any particular case.

9. The first decision which has now because a locus classicus on the subject is the decision in Parshotam Lal Dhingra v. The Union of India, 1958 SCR 828 = (AIR 1958 SC 36). The principles that were laid down in that case are as follows:

(1) Article 311 of the Constitution of India makes no distinction between permanent and temporary posts and extends its protection equally to all government servants holding permanent or temporary posts or officiating in any of them.

(2) The protection of Article 311 is available only where dismissal, removal or reduction in rank is sought to be inflicted by way of punishment and not otherwise.

(3) If the termination of service or reduction in rank is not by way of punishment article 311 (2) is not attracted. To determine whether the termination or the reduction is by way of punishment one has to consider whether the servant has the right to hold the post from which he has been either removed or reduced. In the case of a probationary or officiating appointment to a permanent or temporary post there is no such right. This does not mean, however, that the termination of service or reduction in rank of a servant who has no right to the post can never be dismissal or removal or reduction by way of punishment. If government expressly chooses to penalise the servant for misconduct, negligence, inefficiency or the like by inflicting on him the punishment of dismissal, removal or reduction, the requirements of Art. 311 must be complied with.

(4) A reduction in rank must be a punishment if it carries penal consequences with it and the two tests to be applied are:

(i) Whether the servant has a right to the post or the rank and

(ii) Whether evil consequences such as forfeiture of pay and allowance, loss of seniority in his substantive rank, stoppage or postponement of future chances of promotion follow as a result of the order ?

Where either of these tests apply, the reduction in rank must be one within the meaning of Article 311 (2) of the Constitution and will attract its protection.

10. The principles formulated in Parshotam Lal Dhingra's case, 1958 SCR 828 = (AIR 1958 SC 36) have furnished the principal guidelines in all future cases relating to dismissal, removal or reduction in rank of government servants. As we have already said, however, the matter is not altogether free of difficulty even after the formulation of these principles. Depending on the nature and circumstances of each individual case it has often been necessary to clarify and modify these principles in certain respects. In this process, sometimes new but analogous principles have been evolved and sometimes the old principles have been themselves elaborated, analysed and re-formulated in a different language.

11. It is necessary at this stage to refer to one special difficulty which has been created by the process of elaboration and reformulation which we have mentioned just now. Sometimes in applying the principles of Parshotam Lal Dhingra's case, 1958 SCR 828 = (AIR 1958 SC 36) to the facts of a particular case, one aspect had to be emphasised in view of the peculiar circumstances of that case and in doing so this Court gave a special formulation which covered the facts of that case. That principle was later found neither inadequate or inapplicable in another case where the facts and circumstances have been slightly different and which called for emphasis on a different aspect of the rules. In this way, this Court has found it necessary to mould the principles to suit the needs of the varying circumstances of different cases. The original principles were not intended to be abandoned but re-shaping of the principles became necessary and even unavoidable to fit them accurately and appropriately to new set of circumstances. This has often led to formulation of principles with varying contours which superficially at least seem to suggest that some of them are anomalous and even contradictory. If, however, the principles are construed with reference to the fats of any particular case for which they have been evolved, it will, we believe, be fouund that there is no fundamental discrepancy or contradiction in the principles.

12. Confusion has arisen particularly in respect of cases where this Court has had to deal with orders of government from the aspect of the motive underlying those orders. What is the weight to be given to motive in deciding whether a particular order is penal in character and therefore falling within the mischief of Art. 311 of the Constitution or whether it has been passed for departmental considerations and in exigencies of public service? It is well recognised that very often the motive of a particular order of government and the language and terms of the order itself are not in harmony. In many cases though government take action under the terms of a contract of employment or under the specific service rules for the purpose of terminating the service or reducing the rank of an officer, the real motive or inducing factor which influences the government to take action is different and is connected with some disqualification or ineficiency of the officer. In other words, government, while pretending to act in terms of the contract of service or service rules, in reality wants to get rid of the officer concerned or to reduce him to a lower rank by way of punishment for his misconduct or inefficiency or disqualification. In such a case, the action taken by government is in an innocuous form but the real intent of it is penal. Such a situation was contemplated by Das, C. J. in Parshotam Lal Dhingra's case, 1958 SCR 828 = (AIR 1958 SC 36). He observed:

"It is true that the misconduct, negligence, inefficiency or other disqualification may be the motive

or the inducing factor which influences the government to take action under the terms of contract of employment or the specific service rule, nevertheless, if a right exists, under the contract or the rules to terminate the service, the motive operating in the mind of the government is, as Chagla, C. J. has said in Shrinivas Ganesh v. Union of India (AIR 1956 Bom 455) wholly irrelevant. In short, if the termination of service is founded on the right flowing from contract or the service rules, then, prima facie the termination is not a punishment and carries with it no evil consequences and so article 311 is not attracted."

Following this enunciation of the principle this Court has in many later cases refused to give any weight to the motive operating in the mind of the authority which passes an order terminating the service of a temporary servant or reducing the servant in rank so long as the particular action taken was "founded on the right flowing from contract or the service rules".

13. Since we are concerned in this case with a case of reversion, we propose to confine our attention to the different circumstances in which an order of reversion may be made. An order of reversion is in its immediate effect bound always to be a reduction in rank. Even a reversion from a higher but temporary or officiating rank to a lower substantive rank is in a sense a reduction. But such orders of reversion are not always reduction in rank within the meaning of Article 311. If the officer is promoted substantively to a higher post or rank, he gets a right to that particular post or rank and if he is afterwards reverted to the lower post or rank which he held before, it is a "reduction in rank" in the technical sense in which the expression is used in Article 311. The real test in all such cases is to ascertain if the officer concerned has a right to the post from which he is reverted. if he has a right to the post then a reversion is a punishment and cannot be ordered except in compliance with the provisions of Art. 311. If, on the other hand, the officer concerned has no right to the post, he can be reverted without attracting the provisions of Article 311. But even in this case, he cannot be reverted in a manner which will show conclusively that the intention was to punish him. The order itself may expressly state that the officer concerned is being reverted by way of punishment. In fact the order may in various other ways cast a stigma on the officer concerned. In all such cases, the order is to be taken as a punishment. Sometimes again, the order of reversion may bring upon the officer certain penal consequences like forfeiture of pay and allowances or loss of seniority in the subordinate rank or the stoppage or postponement of future chances of promotion: in such cases also the government servant must be regarded as having been punished and his reversion to the substantive rank must be treated as a reduction in rank. In such a case article 311 will be attracted.

14. In State of Punjab v. Sukh Raj Bahadur, (1968) 3 SCR 234 = (AIR 1968 SC 1089), Mitter, J., after analysing the decisions of this Court in Purshotam Lal Dingra v. Union of India, 1958 SCR 828 = (AIR 1958 SC 36), State of Orissa v. Ram Narayan Das, (1961) 1 SCR 606 = (AIR 1961 SC 177), R.C. Lacy v. State of Bihar, C.A. No. 590 of 1962 D/- 23-10-1963 (SC); Madan Gopal v. State of Punjab, (1963) 3 SCR 716 = (AIR 1963 SC 531), Jagdish Mitter v. Union of India, AIR 1964 SC 449 and A.G. Benjamin v. Union of India, C.A. No. 1341 of 1966 D/- 13-12-1966 (SC), has formulated the following propositions:

"1. The services of a temporary servant or a probationer can be terminated under the rules of his employment and such termination without anything more would not attract the operation of Article 311 of the Constitution.

2. The circumstances preceding or attendent on the order of termination of service have to be examined in each case, the motive behind it being immaterial.

3. If the order visits the public servant with any evil consequences or casts an aspersion against his character or integrity, it must be considered to be one by way of punishment, no matter whether he was a mere probationer or a temporary servant.

(4) An order of termination of service in unexceptionable form preceded by an enquiry launched by the superior authorities only to ascertain whether the public servant should be retained in service, does not attract the operation of Article 311 of the Constitution.

(5) If there be a full scale departmental enquiry envisaged by Art. 311 i.e. an Enquiry Officer is appointed, a charge-sheet submitted, explanation called for and considered, any order of termination of service made thereafter will attract the operation of the said article."

15. In Ram Gopal Chaturvedi v. State of Madhya Pradesh, (1970) 1 SCR 472 = (AIR 1970 SC 158), this Court refused to interfere with an order terminating the services of an officer who had been temporarily appointed to the Judicial Service of Madhya Pradesh under Rule 12 of the Madhya Pradesh Government Servants (Temporary and Quasi-Permanent Service) Rules, 1960 without passing any stigma on the officer concerned and merely stating that his services were terminated from a specified date. Even though the order of termination had been preceded in that case by an informal enquiry into the conduct of the officer with a view to ascertain if he should be retained in service, this Court followed the decision in (1968) 3 SCR 234 = (AIR 1968 SC 1089) and observed:

"On the face of it the order did not cast any stigma on the appellant's character or intergrity nor did it visit him with any evil consequences. It was not passed by way of punishment and the provisions of Article 311 were not attracted."

16. In the Union of india v. Gajendra Singh, (1972) 3 SCR 660 = (AIR 1972 SC 1329), this Court sustained an order passed by the Union of India reverting an officiating Naib Tehsildar to his permanent post of Kanungo on the ground that he could not pass the departmental examination. This Court clearly held in that case that "appointment to a post on officiating basis is, from the nature of

employment, itself of a transitory character and in the absence of any contract or specific rule regulating the conditions of service to the contrary, the implied term of such an appointment is that it is terminable at any time. The Government servant so appointed acquires no rights to the post. But if the order entails or provides for forfeiture of his pay or allowances or the loss of his seniority in the substantive rank or the stoppage or postponement of his future chances of promotion then that circumstance may indicate that though, in form, the government had purported to exercise its undoubted right to terminate the employment, in truth and reality, the termination was by way of penalty.

17. Let us now consider whether in the light of the various cases decided by this Court the order of reversion amounted to a reduction in rank within the meaning of Art. 311 (2) of the Constitution. We will apply all the different tests laid down by this Court one by one. First, the order is not attended with any stigma. The order merely states that Sughar Singh is reverted and that he is reverted to his substantive post of head constable. By no stretch of imagination can this language be construed as casting a stigma on the respondent. Secondly, there is nothing to show that Sughar Singh has lost his seniority in the substantive rank. It is true that some of his colleagues who were also holding the substantive post of head constable and who had also been appointed in an officiating capacity to the post of Platoon Commanders were not reverted on the day when the respondent was reverted. But that cannot be regarded as a penal consequence by way of loss of seniority in the substantive rank. In Divisional Personnel Officer v. Raghavendrachar, (1966) 3 SCR 106 = (AIR 1966 SC 1529), this Court has clearly held that where a number of employees are placed on a senior list on a provisional basis they do not get any indefeasible right to retain their seniority on that provisional basis so that the reversion of a person who was in the list does not constitute a reduction in rank merely on the ground that persons lower on the rank have not been reverted. Thirdly, there is no evidence to show and, in fact, it was not contended on behalf of the respondent that there has been any forfeiture of his pay or allowances or any loss in the seniority in the substantive rank which is, one must remember, the rank of Head Constables. On a careful scrutiny of the order of reversion we do not find any indication that it affects the seniority of Sughar Singh in his substantive rank or that it affects his chances of his future promotion from that rank. It is true that Sughar Singh will be deprived by the order of reversion of the post of Platoon Commander but that is not considered a penal consequence. Such deprivation is the usual consequence of any order of reversion from the officiating post which an incumbent has no right to hold. Such deprivation has been held by the Court not to be an order attended with penal consequences (see Union of India v. Jeewan Ram, AIR 1958 SC 905).

18. It has been suggested that the motive behind the reversion was really the infliction of punishment. There was a formal proceeding held against the respondent and the explanation that he had submitted in reply to the charges made out against him had not been accepted by his superior officers. The order of reversion which came soon after this must, it was suggested, be connected with the disciplinary proceedings and the order of reversion must be taken as motivated by the desire to punish him. The reply to this suggestion is two-fold. The proceedings had been drawn up two years before the order of reversion. The proceedings were limited in nature. The only punishment proposed in the proceedings was the making of certain adverse entries in the character roll. That penalty had already been imposed on the respondent. There is nothing to show that after two years the authorities proposed to rake up that matter and inflict a heavier punishment on the

respondent than they had previously proposed and also inflicted. Besides, it is well known that in a matter like this we are concerned only with the question whether the order of reversion entails any penal consequence. We are not concerned with the motive behind the reversion (see Madhav v. State of Mysore, AIR 1962 SC 8 at 11 and State of Bombay v. Abraham, AIR 1962 SC 794).

19. The respondent's counsel then challenged the order of reversion on another ground. He pointed out that at least 200 head constables who had taken training as Cadet Sub-Inspector of Armed Police at Sitapur after the respondent and who were junior to the respondent have still been allowed to retain their present status as Sub-Inspector and have not been reverted to their substantive post of Head Constable. Unless this can be justified as a measure of punishment, the reversion of the respondent would amount to discrimination in contravention of the provisions of Articles 14 and 16 of the Constitution. The facts on which this contention is based are found in paragraphs 7 and 20 of the petition. The contention itself is to be found in ground No.3 of the writ petition. The complaint, we must say, is one which has to be sustained. No possible explanation in this extreme form of discrimination has been shown to us. Indeed, it appears from the judgment of the third learned Judge who heard the petition in the High Court that in answer to a question put by him, the standing counsel appearing for the State clearly stated that the order of reversion was a result of the adverse entry made in the appellant's confidential character roll. If this statement of the learned standing counsel has to be accepted. It is impossible to resist the suggestion that the respondent's order of reversion was really an order of punishment in disguise in which event the order must be struck down for non-compliance with the requirements of Article 311 of the Constitution. The appellant in fact faces a dilemma. if it was not a case of punishment, it becomes difficult to explain why this discrimination was made against the respondent vis-a-vis at least 200 other officers who were junior to him in the substantive cadre. That would make the order liable to be struck down as violative of Article 16 of the Constitution. Reference may be made to State of Mysore v. P. R. Kulkarni, AIR 1972 SC 2170, where an order of reversion was struck down by this Court on the ground of "unjustifiable discrimination" which brought the order within the mischief of Articles 14 and 16 of the Constitution. If, on the other hand, the order has to be justified with reference to the adverse entry in the character roll, it becomes not merely a case of double punishment, but also a case of infringement of Article 311 of the Constitution. It is true that the order ex facie does not show anything which can suggest the contravention of Article 311 of the Constitution. We have already analysed the order and discussed that aspect of the matter. But the compelling logic of the totality of circumstances attending the order of reversion indicates that if the order is not discriminatory and has to be justified with reference to the proceedings against the respondent and the earlier order regarding his character roll, it is impossible to avoid the criticism that it was really a punishment in the garb of an order of reversion. In the State of Bihar v. Shiva Bhikshuk Mishra, (1971) 2 SCR 191 = (AIR 1971 SC 1011), this Court was called upon to consider the effect of an order of reversion passed on a member of the Bihar Police Force who while holding the substantive post of Sergeant, was promoted to officiate temporarily as Subedar Major in 1948 but was substantive post. The High Court of Patna found that the reversion was not in the usual course or for administrative reasons but it was after the finding on an enquiry about some complaint against the plaintiff and by way of punishment to him. The matter having come on appeal to this Court, this Court held that the form of the order is not conclusive of its true nature and might often be a clock or camouflage for an order founded on misconduct. This Court further observed:

"It may be that an order which is innocuous on the face and does not contain any imputation of misconduct is a circumstances or a piece of evidence for finding whether it was made by way of punishment or administrative routine. But the entirety of circumstances preceding or attendant on the impugned order must be examined and the overriding test will always be whether the misconduct is a mere motive or is the very foundation of the order."

20. In the instant case we have no doubt in our mind that the peculiar circumstances that from out of a group of about 200 officers most of whom are junior to the respondent, the respondent alone has been reverted to the substantive post of Head Constable makes it absolutely clear that there was no administrative reason for ths reversion. In fact there was no suggestion at any time made on behalf of the appellant that the post had been abolished or that the respondent was, for administrative reasons, required to go back to his own post of Head Constable. This circumstance only corroborates what the learned standing counsel for the State admitted before the High Court that the foundation of the order of reversion is the adverse entry made in his character roll in this view of the matter, we have no doubt that the order was passed by way of punishment, though all outward indicia show the order to be a mere order of reversion. Even if it were not so, we have no doubt that the order would be liable to be quashed on the ground of contravention of Articles 14 and 16 of the Constitution.

21. In these circumstances, the appeal must be dismissed with costs and we do so.

22. Before parting with this case, we think it only fair to mention that in writing this judgment, we have derived considerable assistance from a draft of the judgment prepared by our late Brother Mukherjee, J. who, sitting with us, heard the case in the first instance.

Appeal dismissed.