

Union Territory, Chandigarh and Others

Vs

Mohinder Singh

Civil Appeal No. 787 of 1997

(Sujata V. Manohar, B. P. Jeevan Reddy JJ)

14.02.1997

JUDGMENT

B. P. Jeevan Reddy, J.

1. Leave granted. Heard the counsel for the parties.

2. The respondent, a Sub-Inspector of police in the service of the Administration of the Union Territory of Chandigarh, had been dismissed from service by the Senior Superintendent of Police, Union Territory, Chandigarh. The Senior Superintendent of Police dispensed with the enquiry invoking proviso (b) to clause (2) of Article 311 of the Constitution of India and made the order of dismissal on 5-7-1991. An appeal preferred by the respondent was dismissed by the Inspector General of Police on 30-9-1991 whereupon the respondent approached the Central Administrative Tribunal, Chandigarh. The Tribunal found following its earlier order dated 2-6-1995 in OA No. 232/Ch/94 (Baljit Singh v. Chandigarh Admn.), that the ground upon which the Senior Superintendent has dispensed with the enquiry is not sustainable in Law. Accordingly, the Tribunal quashed the order of dismissal and the appellate order and directed the administration to reinstate the respondent with all attendant benefits.

3. The order of dismissal reads as follows :

"ORDER

Whereas SI Mohinder Singh No. CHG/1 was holding the post of Sub-Inspector in the Police Department, Union Territory, Chandigarh.

It was brought to my notice that he indulged in gross misuse of official power and attempted to extort money from an innocent victim after illegally detaining and torturing him in the Police Station, which amounts to grave misconduct on the part of a Police Officer.

Shri Baldev Singh, Superintendent of Police, Intelligence, UT, Chandigarh, has also conducted an enquiry against him for his aforesaid nefarious activities and misdeeds and has submitted a report which proves the misconduct of SI Mohinder Singh No. CHG/1.

From the facts and circumstances of the case, I am satisfied that he has indulged in gross misuse of official power.

And further, I, Sumedh Singh Saini, Senior Superintendent of Police, Union Territory, Chandigarh, after considering all the facts and circumstances of the case, am satisfied under sub-clause (b) of the

proviso to sub-section (2) of Article 311 of the Constitution of India, that it is not reasonably practicable to hold an enquiry against SI Mohinder Singh No. CHG/1 for the reasons that the witnesses cannot come forward freely to depose against him in a regular departmental enquiry.

Now therefore, I Sumedh Singh Saini, Senior Superintendent of Police, Union Territory, Chandigarh, appointing authority of SI Mohinder Singh No. CHG/1, hereby dismiss him from government service with immediate effect.

sd/- Senior Superintendent of Police UT, ChandigarhSI Mohinder Singh, No. CHG/1,PS North, Chandigarh."##

4. The order of dismissal refers to and is based upon the report of Shri Baldev Singh, Superintendent of Police, Intelligence, Union Territory, Chandigarh. It is, therefore, necessary to notice the main features of the said Report. The Report says that the respondent arrested one Ranjit Singh from his house at about 11.45 p.m. on the night intervening 3-7-1991/4-7-1991 along with two friends of Ranjit Singh who happened to be in his house at that time, brought Ranjit Singh to the police station and tortured him mercilessly on the plea that he was harbouring terrorists. It is reported that the respondent was in a drunken condition at that time and that he was repeatedly asking Ranjit Singh about the whereabouts of a particular terrorist. The respondent also told Ranjit Singh that he was torturing him at the instance of his superior officers. He demanded a sum of Rupees sixty thousand from Ranjit Singh as a condition for releasing him. Ultimately, a sum of Rupees twenty thousand was paid to the respondent whereafter Ranjit Singh was released. The Report submits that the ground on which Ranjit Singh was arrested and tortured was wholly baseless and that it was done with a view to extort money from him. The last paragraph of the Report is relevant for the present purpose and reads thus :

"I may mention that this SI is a terror in the area and in a regular departmental enquiry no policeman or private man is likely to depose against him. In my presence he intimidated the complainant, Shri Ranjit Singh who appeared to be visibly terrified of this Sub-Inspector. Also, the 2 guests of Shri Ranjit Singh, who were also victims of the harassment caused by SI Mohinder Singh, left Chandigarh immediately on being released as they were terrified of the Sub-Inspector. Before going they told Shri Ranjit Singh that they would not testify against SI Mohinder Singh because they were scared of him. As such I am of the opinion that no useful purpose would be served by initiating any departmental proceeding against him and would recommend that stern disciplinary action be taken against him.

sd/- Superintendent of Police Intelligence, U.T. Chandigarh Dt. 5-7-1991"##

5. We are unable to understand the reasoning of the Tribunal when it says that the reason given by the Senior Superintendent of Police is not 311(2). The order of dismissal recites that "it is not reasonably practicable to hold an enquiry against SI Mohinder Singh CHG/1 for the reason that the witnesses cannot come forward freely to depose against him in a regular departmental enquiry". Clauses (2) and (3) of Article 311, insofar as they are relevant read thus :

"311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State. -

#(1) * * *##

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges :

Provided that where it is proposed after such inquiry, to impose upon him any such penalty, such penalty may be imposed on the basis of the evidence adduced during such inquiry and it shall not be necessary to give such person any opportunity of making representation on the penalty proposed :

Provided further that this shall not apply -

#(a) * * *##

(b) where the authority empowered to dismiss or remove a person or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry; or

#(c) * * *##

(3) If, in respect of any such person as aforesaid, a question arises whether it is reasonably practicable to hold such inquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final."

6. Clause (3) Article 311, it may be noticed, declares that where a question arises whether it is reasonably practicable to hold an inquiry as contemplated by clause (2), the decision of the authority empowered to dismiss such person shall be final on that question. The Tribunal has not referred to clause (3) at all in its order. We are not suggesting that because of clause (3), the court or the Tribunal could completely shut its eyes. Nor are we suggesting that in every case the court should blindly accept the recital in terms of the said proviso contained in the order of dismissal. Be that as it may, without going into the question of extent and scope of judicial review in such a matter, we may look to the facts of this case. The Superintendent of Police, Intelligence, has reported that the respondent "is a terror in the area" and, more important, in his very presence, the respondent "intimidated the complainant Shri Ranjit Singh who appeared to be visibly terrified of this Sub-Inspector". It is also reported that the other persons who were arrested with Ranjit Singh, and who were present there, immediately left his office terrified by the threats held out by the respondent. In such a situation - and keeping in view that all this was happening in the year 1991 in the State of Punjab - the Senior Superintendent of Police cannot be said to be not justified in holding that it is not reasonably practicable to hold an inquiry against the respondent.

7. Shri M. L. Verma, learned counsel for the respondent, submitted that a similar allegation was made against the Inspector of Police (superior of the respondent) but that in his case, proviso (b) to Article 311(2) was not invoked. We have seen the Report against the Inspector. We find that the allegation against him is entirely different. Above all, there is no allegation that the Inspector held out any threat to Ranjit Singh in the presence of the Superintendent of Police or any other superior officer. The said plea has no substance whatsoever.

8. Accordingly, this appeal is allowed and the Judgment of the Tribunal is set aside. No costs.