

SUPREME COURT OF INDIA

State of U.P.

Vs.

Ram Daras Yadav

C.A.No. 8057 of 2009

(Dalveer Bhandari and A.K. Patnaik JJ.)

04.12.2009

JUDGEMENT

DALVEER BHANDARI, J.

1. Leave granted.

2. Brief facts which are necessary to dispose of this appeal are recapitulated as under:- The respondent, a constable in the 26th Battalion of the Provincial Arms Constabulary (P.A.C.) in Gorakhpur was assigned duty of maintaining law and order in the Faizabad University. While on duty on 18.2.1990, the respondent herein used abusive language against his companion constable Gajendra Kumar Singh.

3. The respondent while on security duty on 19.2.1990 from 0200 hours to 0400 hours aimed rifle at Gajendra Kumar Singh and threatened to eliminate him. A preliminary enquiry was conducted in

the aforesaid incident by the Company Commander who prima facie found that the respondent had behaved in an indisciplined manner and he also made an unsuccessful attempt to harm his colleague constable Gajendra Kumar Singh. It was concluded in the preliminary enquiry that the reputation of the force had also been lowered by the said constable Gajendra Kumar Singh.

Hence, both the respondent and constable Gajendra Kumar Singh were placed under suspension and it was recommended that the proceedings be launched against them under section 7 of the Police Act and departmental proceedings be conducted against the aforesaid persons under para 490 of the U.P. Police Regulations.

4. Explanations were called from the respondent and constable Gajendra Kumar Singh and thereafter the charges against the respondent were found established. The Commandant of the Battalion concluded that the charges of indiscipline and unbecoming conduct were proved against the respondent and hence it was ordered that the respondent be terminated from the police service. The services of the respondent were terminated by an order dated 16.1.1991.

5. The appeal preferred by the respondent before the Deputy Inspector of Police, P.A.C., Varanasi Range was also dismissed. The respondent aggrieved by the said order preferred a writ petition before the Allahabad High Court. In the counter-affidavit, the appellant State of UP justified the action against the respondent. In the writ petition it was alleged that the respondent and Gajendra Kumar Singh filed complaints against each other on the instigation of their superiors to cause harm to both of them. It was further alleged that the respondent and Gajendra Kumar Singh both gave in writing that they were coerced to make complaints and they had no grouse against each other.

6. In the writ petition it was also urged that the respondent was not given sufficient and reasonable opportunity to cross-examine the witnesses and even a copy of the charge-sheet was not provided to him.

7. It was further urged before the High Court that the action against the respondent was not covered under section 7 of the Police Act and as such there was no allegation of negligence against the respondent. Section 7 of the Police Act reads as under:- "7. Appointment, dismissal etc. of inferior officers - Subject to 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, Assistants Inspectors-General and District Superintendent of Police, may at any time dismiss, suspend or reduce any police officer of the subordinate rank whom they shall think fits 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:

- a) Fine to any amount not exceeding one month's pay;
- b) Confinement to quarters for a term not exceeding fifteen days, with or without punishment - drill, extra guards, fatigue or other duty;
- c) Deprivation of good conduct pay;
- d) Removal from any office of distinction or special emoluments;
- e) Withholding of increments or promotion including stoppage at an efficiency bar."

8. According to the impugned judgment, action under section 7 is not unjustified. In the impugned judgment, it is incorporated that when Gajendra Kumar Singh had given in writing that no such incident took place then it was incumbent upon the Enquiry Officer to consider this aspect.

The High Court observed that Gajendra Kumar Singh was the best witness to prove the factum of pointing the gun on him, but he refused that any such incident took place. The respondent admittedly moved an application before the Enquiry Officer to depute Gajendra Kumar Singh as a defence helper but no order was passed on that application. The High Court further held that the best evidence of the incident had been ignored by both the Enquiry Officer and by the Appellate Authority and thus the impugned orders cannot be sustained.

9. We have heard the learned counsel for the State of U.P. and the respondent. Learned counsel for the State of U.P. submitted that the observations of the High Court that no such incident took place is not sustainable in view of the fact that in the complaint filed by Gajendra Kumar Singh it is stated that the incident took place. The appellant is justified in asserting that the incident had in fact taken place and there were exchange of abuses between the two constables. Now we are called upon to determine whether in the facts and circumstances of the case the sentence imposed on the respondent was justified?

10. We are quite conscious of the fact that we are dealing with a disciplined police organization. Discipline is the backbone of the police force. Highest degree of discipline is imperative for the

smooth functioning of a police force. Both the respondent and Gajendra Kumar Singh have stated that infact the incident had not taken place and they were coerced to file complaints at the instance of the superior officials. It is difficult for us to examine the veracity of this allegation by the respondent and Gajendra Kumar Singh. Without arriving at any definite conclusion regarding veracity of allegation and counter-allegations, we are clearly of the opinion that the punishment of dismissal awarded in the facts and circumstances of the case is clearly disproportionate.

11. In our considered view, the impugned order of the High Court requires modification and consequently, the order of termination dated 16.1.1991 is set aside and instead we direct that the respondent's two increments be withheld and the respondent be reinstated in service forthwith with 50% back- wages.

12. The appeal is partly allowed and disposed of. In the facts and circumstances of the case, the parties are directed to bear their own costs.