

# DELHI HIGH COURT

Iqbal Singh

Vs.

I. G. of Police (Delhi)

Civil Writ No.781 of 1969  
(S. N. Andley and P. S. Safeer, JJ.)

16.2.1970

## JUDGEMENT

**P. S. Safeer, J.**

1. This petition challenges the order dated 15-11-1968 by which the petitioner was dismissed from service.
2. The petitioner was appointed as a Constable by the Commandant, Delhi Armed Police, on 6-4-1953. He was promoted as Head Constable on 27-2-1957 by the Senior Superintendent of Police and was confirmed as such on 7-3-1963 by the Assistant Inspector-General of Police.
3. The petitioner's case is that in August 1966, he had gone on leave to his village where the occurrence which resulted in his trial under Sections 336/337 of the Indian Penal Code took place. He was convicted only under Section 337 of the Indian Penal Code on 28-2-1967 but was given the benefit of the provisions of Section 4 of the Probation of Offenders Act, 1958 (hereinafter referred as "the Act"). While releasing him on probation, the petitioner was ordered to pay the amount of Rs. 500/- to the injured persons by way of compensation. The payment of the amount was to be made within a month from the date of the said order.
4. The petitioner's appeal to the Sessions Judge, Gurdaspur, was dismissed on 7-9-1967 and the revision filed by him under Section 439 of the Code of Criminal Procedure was dismissed by the High Court of Punjab and Haryana on 2-2-1968.
5. The petitioner, upon his prosecution, was suspended from service on 30-9-1966. He was, however, reinstated by an order dated 6-9-1967, which is in these terms:-

"Head Constable Iqbal Singh No. 287/L, who was suspended vide this office order No. PRO. 14113-119/AC-IV dated 30-9-1968 is hereby reinstated from suspension with effect from 28-2-1967, the date of order of the Court of Judicial Magistrate, Class I, Gurdaspur."

6. While still under suspension, he was permitted in July-August, 1967, to appear in the test for admission to the training in Intermediate School Course at Police Training College, Phillaur, but his name did not appear in the list of successful candidates. The petitioner, thereupon, submitted an application to the Deputy Inspector-General of Police (A) stating certain facts and circumstances on the basis of which he urged that his eligibility for joining the above-mentioned training course be reconsidered. That application was rejected vide Memo No. 61/CB dated 3-1-1968. Against that order he made a representation dated 23-1-1968 to the Inspector-General of Police, Kashmere Gate, Delhi (Respondent No. 1) and in response to the same he received a call for appearing before the Deputy Inspector-General (A) for an interview on 30-4-1968. As a result an order dated 11-6-1968 was passed selecting him for the said course. He joined the course at Phillaur and it was there that he received the impugned order dated 15-11-1968 dismissing him from service. That order is as follows:-

"On having been convicted in Case F. I. R. No. 186 dated 26-8-1966 under Section 336/337 Indian Penal Code, P. S. Sri Hargovind Pur, District Gurdaspur, Head Constable Iqbal Singh No. 287/L (now under training at P. T. C. Phillaur) is hereby dismissed from the Force with effect from 15-11-1968."

It may be emphasized that the order of dismissal was passed after the order of reinstatement and the ground of dismissal stated was the conviction of the petitioner under Sections 336/337, Indian Penal Code while, in fact the petitioner had not been convicted under Section 336, Indian Penal Code. The order of dismissal does not show that the consequences of the release of the petitioner on probation under Section 4 of the Act were considered by the dismissing authority, i.e., the Superintendent of Police, Old Police Lines, Delhi.

7. The respondents have placed reliance on sub-rule (2) of Rule 16.2 of the Punjab Police Rules, 1934. The submission is that the dismissal under that rule is valid and unassailable. The petitioner had filed an appeal under Rule 16.29 of the aforementioned Rules against the order of dismissal. The appellate order rejecting the said appeal relies upon the amended sub-rule (2) of Rule 16.2 of the said Rules. The unamended sub-rule (2) is as under:-

"(2) An enrolled officer sentenced judicially to rigorous imprisonment

exceeding one month or to any other punishment not less severe, shall, if such sentence is not quashed on appeal or revision be dismissed. An enrolled police officer sentenced by a criminal Court to a punishment of fine or simple imprisonment or both, or to rigorous imprisonment not exceeding one month, or which having been proclaimed under Section 87 of the Code of Criminal Procedure fails to appear within the statutory period of thirty days may be dismissed or otherwise dealt with at the discretion of the officer empowered to appoint him. Final departmental orders in such cases shall be postponed until the appeal or revision proceedings have been decided, or until the period allowed for filing an appeal has lapsed without appellate or revisionary proceedings have been instituted. Departmental punishments under this rule shall be awarded in accordance with the powers conferred by Rule 16.1."

The amended sub-rule (2) is as under:-

"(b) When a report is received from an official source, e.g., a Court or the prosecuting agency, that an enrolled police officer has been convicted of an offence in a Criminal Court, the authority competent under Rule 16.1 to award the punishment of dismissal (hereinafter referred to in this rule as "disciplinary authority") shall consider the nature and gravity of the offence and if it is of the view that the offence is such as to render further retention of the convicted police officer in service *prima facie* undesirable it shall make an order in form 16.2 (2) dismissing him from service after the period for filing the appeal has elapsed or, if an appeal has been filed as soon as the first appeal is decided against him and before the second appeal is filed.

Provided that where the dismissal of the convicted police officer is not considered necessary, the disciplinary authority shall call for and examine a copy of the judgment and take such departmental action as it may deem proper.

8. The learned Counsel for the petitioner has urged three points.

9. In the first instance he submits that having been given the benefit of the provisions of Section 4 of the Act, the disqualification attaching to his conviction could not be made the basis of his dismissal. It is an admitted case between the parties that the petitioner's conviction was dealt with by the Court convicting him in terms of the provisions of Section 4 of the Act. That having been done, it is pleased that the benefit of Section 12 of the Act immediately became available to him. The controversy centers around the interpretation of the provisions of Section 12 of the Act which provides a statutory protection to the convict against his suffering any disqualification

attached to his conviction. It is submitted that on account of his conviction the petitioner could not suffer the disqualification of incurring dismissal under the Punjab Police Rules. Opposing that submission the learned counsel for the respondents contends that the impugned dismissal order has no connection with any disqualification attached to the conviction of the petitioner.

10. Section 12 of the Act is as under : "12. Notwithstanding anything contained in any other law, a person found guilty of an offence and dealt with under the provisions of Section 3 or Section 4 shall not suffer disqualification, if any, attaching to a conviction of an offence under such law:

Provided that nothing in this section shall apply to a person who after his release under Section 4, is subsequently sentenced for the original offence.

\*Note:- Person against whom action is taken either under Section 3 or Section 4, is not disqualified by reason of such action, from standing for election to any of the Houses of Parliament or to any State Legislature."

\* The note quoted here is not a part of the section-Ed.

11. The second submission made by the learned counsel for the petitioner is that having once been reinstated in service after the conviction the impugned order of dismissal could not have been based upon it. It is also urged that no action by way of dismissal could have been taken against the petitioner without affording to him an adequate opportunity of showing cause and that he has been condemned unheard. The principles of natural justice are invoked without reference to Article 311 of the Constitution.

12. The third submission is that the order of dismissal is by an authority lower in rank to the appointing authority.

13. The last submission has no merit because it was a Senior Superintendent of Police who had promoted the petitioner to the rank of Head Constable by the order dated 27-2-1957 and the order of dismissal is by an officer holding the rank of Superintendent of Police. We cannot accept the contention that the dismissing authority was below the rank of the appointing authority. In both cases the authority was a Superintendent of Police. Seniority in service did not cause any disparity in rank. We find support from the observations contained in a Full Bench judgment of this Court in *Union of India v. Surajbhan* <sup>1</sup> was disposed of. It was noticed in that judgment that in terms of Rule 16.1(2) of the Punjab Police Rules, 1934, a Superintendent of Police was expressly

empowered to dismiss even an Assistant Sub-Inspector. The Full Bench had relied upon a decision of the Supreme Court in *Union of India v. Jagjit Singh*,<sup>2</sup> In our view, the Superintendent of Police was competent to pass the impugned order of dismissal because he was not subordinate to the authority, namely, the Senior Superintendent of Police, by whom the petitioner had been appointed.

14. Returning to the first contention, it is clear from the order of dismissal that it is based upon the conviction of the petitioner. Placing reliance upon the provisions of the unlamented sub-rule (2) of Rule 16.2 the authorities concerned considered that the petitioner had become disqualified for being retained in service because of his having suffered the conviction mentioned in the impugned order. In that view of the matter it is not possible to hold that in terms of the unlamented Rule 16.2 the order of dismissal will not be against the provisions of Section 12 of the Act.

15. The learned Central Government counsel did not confine himself to the unlamented rule. He argued in the alternative that the dismissal was sustainable in terms of the amended sub-rule and it was not the conviction of the petitioner which gave rise to the disqualification resulting in his dismissal. The argument was that on being informed of the conviction the authority competent to award the punishment was not to dismiss the employee concerned straight off and was under an obligation to consider the nature and gravity of the offence and was to take action only if it formed the view that the offence was such as to render further retention of the convicted police officer in service *prima facie* undesirable. It was submitted that it was open to the competent authority to form the view that the convicted police officer was a person who could be retained in service. Our attention was also drawn to the proviso which is to the effect that in case dismissal is not considered necessary the disciplinary authority could call for and examine a copy of the judgment (affecting the concerned police officer) and take such departmental action as it may deem proper. We are of the view that reliance on the amended sub-rule is without merit. The order of dismissal does not show that it was not based merely on the conviction and that the competent authority had ever by itself considered the nature and gravity of the offence and had recorded its own conclusion that the retention of the petitioner in service was *prima facie* undesirable. In view of the clear language of the impugned order of dismissal the respondents cannot place any reliance on the amended sub-rule (2) of Rule 16.2.

16. Section 12 of the Act uses the word "disqualification" and the meaning given to this word in Webster's Third New International Dictionary is:-

"(i) the act of disqualifying or the state of being disqualified" (protesting his disqualification from office under the new law);

(ii) "something that disqualifies or incapacitates"

(A crime conviction is automatically a disqualification for that public office)."

The word "disqualify" is also stated to mean - making someone unfit for something. The further meaning given is that the person may be deprived within the meaning of the word "disqualify" of any right or privilege. We are of the view that the words "disqualification, if any, attaching to a conviction of an offence" as used in Section 12 of the Act would include a person's losing his right or qualification to remain or to be retained in service. Section 12 of the Act, clearly saves the convict from suffering such disqualification attaching to his conviction. In respect of his conviction, the petitioner had the protection of Section 12 and he was saved from suffering any disqualification such as the one which resulted in his dismissal.

17. Without a conviction neither the amended nor the unamended sub-rule (2) would be attracted. It is the conviction to which attaches the disqualification of attracting the provisions of sub-rule (2). In our view the dismissal of the petitioner is unsustainable even in terms of the amended sub-rule (2) of rule 16.2 of the Punjab Police Rules because of the express immunity which is provided by the provisions of Section 12 of the Act.

18. It may be stated that the amended sub-rule (2) of rule 16.2 provides that the competent authority to award the punishment of dismissal shall consider the nature and gravity of the offence and if it is of the view that the offence is such as to render further retention of the convicted police officer in service *prima facie* undesirable it shall make an order in form 16.2(2) dismissing him from service after the period for filing an appeal has elapsed or as soon as the first appeal filed has been decided against the said officer. The competent authority would be acting in terms of the said rule in a quasi-judicial capacity. Even if an executive order were to be passed it would still be incumbent upon the competent authority to act in accordance with the principles of natural justice. No determination could be made that the nature and gravity of the offence was such as to render the further retention of the convicted police officer *prima facie* undesirable without affording him a reasonable opportunity of being heard.

In *M/s. K. G. Khosla and Co. v. Union of India*.<sup>3</sup> we have held that the phrase "equal protection of laws" occurring in Article 14 of the Constitution is not restricted into legislated law and that it imbibes within itself the protection which is available

because of certain principles of natural justice which are necessarily to be complied with before the rights of any person are sought to be adversely affected. The learned counsel for the petitioner has relied upon the observations of the Supreme Court made in *A. K. Kraipak v. Union of India*,<sup>4</sup> The observations made in that case support our view. The orders which may be passed, while exercising quasi-judicial authority and even executive or administrative orders which adversely affect persons can be passed only after complying with the principles of natural justice. In our view the petitioner has not been given any such opportunity. The order of dismissal deserves to be quashed on this ground as well.

19. The only contention which remains to be dealt with is that the petitioner having been reinstated after the conviction the same could not become available to the respondents for dismissing him subsequently. The order reinstating the petitioner contains no reservation of any kind. It is dated 6-9-1967 and reinstates the petitioner with effect from 28-2-1967 and expressly mentions that date as the date of the order of the Magistrate, I Class, Gurdaspur, by which the petitioner had been convicted. The order of reinstatement was passed in full awareness of the conviction.

20. In Stroud's Judicial Dictionary, under the heading "reinstate", it is stated:

"The natural and primary meaning of 'to reinstate', as applied to a man who has been dismissed, is to replace him in the position from which he was dismissed and so restore the status quo ante dismissal."

The learned counsel for the respondents urged that during the period of suspension the relationship of master and servant continued and that the reinstatement merely removed the suspension. The argument really goes against the respondents because, in such a case, reinstatement would result in restoration of status quo ante suspension, i.e., that the petitioner would be placed back in his post in the same way in which he held it before suspension. The result of the order of reinstatement would be to tender the conviction unattainable and the impugned order of dismissal could not be based on the very same conviction.

21. In the result this writ petition is allowed with costs and the impugned order dated 15-11-1968 dismissing the petitioner from service is hereby quashed. Counsel's fee is fixed at Rs. 250/-.

Writ petition allowed.

Cases Referred.

1. dated the 23rd of May 1969 by which LPA No. 86-D of 1965 (FB) (Delhi)
2. 1969 Ser LR 356 : (AIR 1970 SC 122).
3. CWP No. 1166 of 1969, D/- 3-2-1970 (Delhi)
4. 1969 Ser LR 445 : (AIR 1970 SC 150).