

PATNA HIGH COURT

Makeshwar Nath Shrivastava

Vs

State of Bihar

Misc. Judicial Case No. 219 of 1960

(V. Ramaswami, C.J., and R.K. Chaudhary, J.)

18.01.1962

ORDER

V. Ramaswami, C.J.

1. In this case the petitioner Sri Makeshwar Nath Shrivastava has obtained a rule from the High Court calling upon the respondents to show cause why a writ in the nature of certiorari under Article 226 of the Constitution should not be issued for quashing the order of the State Government dated the 7th November, 1959, dismissing the petitioner from the post of Officiating Inspector of Police.

2. Cause has been shown by the Additional Government Pleader on behalf of the respondents to whom notice of the rule was ordered to be given.

3. It appears that in July, 1955, a proceeding was initiated against the petitioner, who was at that time an Inspector of Police at Saharsa, for misappropriation of property recovered in Katihar Government Railway Police station case No.14, dated the 17th April, 1955, under Sections 379 and 414 of the Indian Penal Code. The petitioner had showed cause and an inquiry was held by respondent No.5, Sri M.B. Haque, who was Wing Commander of the Railway Protection Police of Samastipur.

4. On the 25th April, 1956, and on the 7th May, 1957, respondent No.5 submitted his report to the Deputy Inspector General of police, holding that the charges against the petitioner were established. The Deputy Inspector General of police agreed to the finding of respondent No.5 and submitted the proceedings to the Inspector General of Police. A notice was given to the petitioner by the Inspector General of Police to show cause why he should not be dismissed from service. The petitioner submitted his explanation and he was also granted personal interview by the Inspector General of police on the 29th September, 1958. On the 30th September, 1958, the Inspector General of Police held that the charge of misappropriation of property was not established against the petitioner beyond reasonable doubt. At the same time, the Inspector General of Police considered that the petitioner should be reverted to the rank of Sub-Inspector for one year in view of his unsatisfactory record of service. The petitioner thereafter filed a

memorandum of appeal to the State Government. On the 7th November, 1959, the State Government set aside the order of the Inspector General of Police reverting the petitioner to the rank of Sub Inspector of Police for one year. The State Government took this action since it was of the view that the petitioner was not given an opportunity to explain his conduct with regard to the adverse remark recorded in his confidential character roll. But the Government was of the view that the findings of the Deputy Inspector of Railway Police with regard to the charge of misappropriation of cloth in Katihar Government, Railway Police Station case No.14, dated the 17th April, 1955, were proved beyond reasonable doubt against the petitioner. The Government accordingly ordered that the petitioner should be dismissed from Government service. The order of the State Government is annexure-14 to the writ application and reads as follows:

"No. II/MI-3021/59-PP.

Government of Bihar, Political Department.

(Police Branch).

From,

Shri K.B. Sharma,

Deputy Secretary to Government,

To,

The Inspector General of Police,

Bihar, Patna.

Patna, the 7th November, 1959.

Subject : Appeal from S.I. of Police Shri M.N. Shrivastava against orders of Inspector General of Police, Bihar, reverting him to the rank of S.I. of Police.

Sir,

I am directed to refer to Memo No.1305-A/VII - 10-2-59, dated the 23rd March, 1959, from Assistant to the Inspector General of Police, Bihar, forwarding therewith an appeal filed by Shri M.N. Shrivastava, S.I. of Police, against the order of reversion passed by the Inspector General of Police Bihar.

Government have carefully considered the appeal and the proceedings No.19/55 drawn up against the S.I. Shri M.N. Shrivastava and consider that the orders passed by the Inspector General of Police Bihar, to revert him from the rank of officiating Inspector of Police to the rank of S.I. of Police on grounds other than the charges served on him was not proper. As the said punishment was based on the adverse remarks recorded in his confidential character roll and he was not given an opportunity of explaining his conduct in regard to these adverse remarks the punishment inflicted upon him was in violation of the constitutional right conferred upon him by Article 311 of the Constitution. Government have, therefore, been pleased to set aside the said order of the Inspector General of Police. Government, however, agree with the findings of the conducting officer and of the Superintendent of Railway, Police, Samastipur, that the charge of misappropriation of clothes in Katihar G.R.P.S. case No.14 dated 17-5-55 under Section 379/414 I.P.C. has been proved beyond doubt against the officer. Therefore, Government have been pleased to order that Shri Shrivastava be dismissed from the force with immediate effect. Proceeding No.19/55 is returned herewith,

its receipt may kindly be acknowledged.

Yours faithfully,

Sd/ K.B. Sharma,

Deputy Secretary to Government".

On behalf of the petitioner learned counsel put forward the argument that the State Government have no power to impose the penalty of dismissal from service upon the petitioner in the circumstances of this case. It was submitted that the petitioner had appealed against the order of the Inspector General of Police reverting him temporarily to the rank of the Sub-Inspector of police for a period of one year. The subject-matter of the appeal was the order of the Inspector General of Police reverting the petitioner to an inferior rank for a period of 1 year and the scope of the appeal before the State Government was confined to the correctness of this order and nothing else. It was submitted by learned counsel for the petitioner that it was open to the State Government in such an appeal to confirm the punishment awarded by the Inspector General of Police or to set it aside. It was argued that it was not open to the State Government in such an appeal to impose a different and more severe kind of punishment than the one awarded by the Inspector General of Police. In reply to this argument it was contended by the learned Government Advocate that in an appeal preferred by the petitioner to the State Government under Rule 851 (b) of the Police Manual the State Government has got the power to enhance the punishment imposed upon the petitioner by the Inspector General of Police. Rule 851 is in the following terms :

"851. (a) General rules as to appeals : No appeal shall lie against an order imposing any one of the following punishments; Forfeiture of leave, censure or reprimand, confinement to quarters, punishment drill, extras guard or other duty.

(b) Against an order of dismissal, removal, reduction, withholding of promotion or periodical increment, suspension with loss of pay, removal from any office of distinction or special emolument or against an order awarding one or more black marks, there shall be one appeal in each case as follows;

Against an order passed by a Superintendent, to the Deputy Inspector-General;

Against an original order passed by the Deputy Inspector-General to the Inspector General.

Against an original order passed by the Inspector General to the Local Government.

(c) The order of the appellate authority on any such appeal shall be final.

X X X X

Rule 851 of the Police Manual does not expressly state what are the powers of the State Government as an appellate authority. But it is manifest that the power of hearing the appeal conferred upon the State Government is an unqualified power, and as a matter of principle we see no reason why the appellate authority should not have the same power to inflict the punishment which it was open to the original authority to inflict. In the present case the Inspector General of Police issued notice against the petitioner to show cause why the punishment of dismissal should not be inflicted. After the petitioner had shown cause it was open to the Inspector General of Police to impose the punishment of dismissal upon the petitioner. We see no reason why in an

appeal against the order of the Inspector General of Police the State Government should not have a similar power of punishment with regard to the petitioner. We should like in this connection to refer to the provisions of Order 41, Rule 33 of the code of Civil Procedure, which deals with the power of the court of Appeal. The rule states that

"the Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the court notwithstanding that the appeal is as to part only of the decree and may be exercised in favor of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection". The same principle has been expressed by the Federal Court in *Lachmeshwar Prasad Shukul v. Keshwar Lal*¹, in which it was pointed out by Varadachariar, J. that the hearing of an appeal under the procedural law of India is in the nature of re-hearing and therefore in moulding the relief to be granted in a case on appeal, the appellate court is entitled to take into account even facts and events which have come into existence after the decree appealed against. At p.13 of the report the learned Judge has stated as follows:

"In *Subbanand v. Apurba Krishna*², this court has held that the mere fact that the particular statute in respect of which the constitutional question was originally raised had been since repealed will not put an end to the appeal; and, except on the hypothesis that this court is only a court of error, its power to do justice between the parties cannot be restricted to cases in which it is able to hold that the lower court has gone wrong in its law. The contention that the power of a court of appeal is so limited was distinctly negatived in *Attorney-General v. Birmingham, Tame, and Rea District Drainage Board*³, and *Quilter v. Mapleson*⁴, which are referred to in the judgment in *Shyamkant Lal v. Rambhajan Singh*⁵, As stated in 1939 FCR 193 : (AIR 1939 FC 74) there is no reason to suppose that the powers of this court when acting as a court of appeal are less extensive than those of the High Courts when hearing an appeal, and it has been a principle of legislation in British India at least from 1861 that a court of appeal shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by the Civil Procedure Code on courts of original jurisdiction see Act No.23 of 1861, Section 37, Act No.10 of 1877, S.582; Act No.14 of 1882, Section 582, and Act No.5 of 1908, Section 107 (2). The very words of Order 58, Rule 5 of the Rules of the Supreme Court, on which Bowen L.J. laid stress in (1882) 9 QBD 672 at p.678 and Lord Gorell in 1912 AC 788 at p.801, namely that the court of appeal has power to make such further or other order as the case may require, have been reproduced in Order 41, Rule 33, Civil Procedure Code of 1908, and even before the enactment of that Code, the position was explained by Bhashyam Iyengar J. in *Kristnama Chariar v. Mangammal*⁶, in language which makes it clear that the hearing of an appeal is under the procession law of this country in the nature of a rehearing. The Indian Codes have from 1859 conferred upon a court of appeal the power given by Order 58, Rule 4, Supreme Court Rules to allow further evidence to be adduced, and though the English rule does not in terms

impose the same limitation on this power as the Indian Codes do, these limitations are implied in the reference to "special grounds" in the English rule and have in effect been insisted on even in England as a matter of practice (See *Nash v. Rochford*⁷, In view of these provisions, it seems to me to make no difference that it is not explicitly staged in the Indian statutes (as in Order 58, Supreme Court Rules) that an appeal is by way of re-hearing. It is also on the theory of an appeal being in the nature of a re-hearing that the courts in this country have in numerous cases recognized that in moulding the relief to be granted in a case on appeal, the court of appeal is entitled to take into account even facts and events which have come into existence after the decree appealed against."

The principle of that decision applies to the present case; and in view of the fact that the power of the State Government to hear an appeal under Rule 851 is conferred in unqualified terms, we are of opinion that the State Government has the power to enhance the punishment imposed upon the petitioner even in an appeal preferred by the petitioner against the order of the Inspector General of Police giving a lesser punishment.

5. But as a matter of procedure we consider that it was the duty of the State Government to have given a fresh notice to the petitioner that it proposed to inflict a higher penalty than that awarded by the Inspector General of Police. It is manifest in the present case that the petitioner had taken an appeal to the State Government against the order of the Inspector General of Police reducing him to the rank of the Sub-Inspector of police for a period of one year. The petitioner could not have thought that in dealing with that appeal the State Government had the intention of imposing a higher punishment upon him. The procedure which the State Government should follow in a case where it intends to inflict a higher penalty than that imposed by the Inspector General of police is not expressly stated in the Police Manual Rules. In the absence of any express rule on the point we are of opinion that the general principle of law should apply. The general principle is that the police officer must have a fresh opportunity of being heard before the State Government proceeds to enhance the quantum of punishment. In the absence of any express provision on this point in the police Manual rules, the law implies that a notice should be given to the police officer concerned before the Government enhances the punishment imposed upon him by the inferior authority. We should like in this context to refer to the following passage from the speech of Viscount Haldane, Lord Chancellor, in *Local Government Board v. Arlidge*⁸,

"My Lords, when the duty of deciding an appeal is imposed, those whose duty it is to decide it must act judicially. They must deal with the question referred to them without bias, and they must give to each of the parties the opportunity of adequately presenting the case made.

The decision must be come to in the spirit and with the sense of responsibility of a tribunal whose duty it is to mete out justice. But it does not follow that the procedure of every such tribunal must be the same. In the case of a court of law tradition in this country has prescribed certain principles to which in the main the procedure must conform. But what that procedure is to be in detail must depend on the nature of the tribunal". In the same case Lord Shaw stated as follows in the course of his speech:

"My Lords, when a Central Administrative Board deals with an appeal from a local authority it must do its best to act justly and to reach just ends by just means. If a statute prescribes the means it must employ them. If it is left without express guidance it must still act honestly and by honest means. In regard to these certain ways and methods of judicial procedure may very likely be imitated and lawyer-like methods may find especial favor from lawyers".

In an earlier case, *Spackman v. Plumstead Board of Works*⁹, (Earl of Selbourne, Lord Chancellor, stated as follows :

"No doubt, in the absence of special provisions as to how the person who is to decide is to proceed, the law will imply no more than that the substantial requirements of justice shall not be violated. He is not a judge in the proper sense of the word but he must give the parties an opportunity of being heard before him and stating their case and their view. He must give notice when he will proceed with the matter, and he must act honestly and impartially, and not under the dictation of some other person or persons to whom the authority is not given by law".

The same principle has been laid down by the Supreme Court in *Nagendra Nath Bora v. Commr. of Hills Division and Appeals, Assam*¹⁰, In our opinion the order of the State Government dated the 7th November, 1959, dismissing the petitioner from police service is ultra vires and illegal because the State Government had not given an opportunity to the petitioner to show cause why he should not be punished with the order of dismissal. It is manifest that the order of the State Government dated the 7th November, 1959, is ultra vires because of the failure of the State Government to comply with this procedural requirement.

6. Acting, therefore, in exercise of our authority under Article 227 of the Constitution we set aside the order of the State Government dated the 7th November, 1959, and direct that the appeal of the petitioner should go back to the State Government for being dealt with and disposed of in accordance with law. After the case goes back to the State Government it should give notice to the petitioner to show cause why an order of dismissal should not be passed against him and after the opportunity is given to the petitioner the State Government should proceed to dispose of the appeal in accordance with law.

7. We accordingly allow this application, but there will be no order as to costs.
Application allowed.

Cases Referred.

¹ AIR 1941 FC 5

²1940-3 FLJ 58 : (AIR 1940 FC 7)

³1912 AC 788

⁴(1882) 9 QBD 672

⁵1939 FCR 193 : (AIR 1939 FC 74)

⁶ILR 26 Mad 91 at pp.95, 96 (FB)

⁷(1917) 1 KB 384)

⁸1915 AC 120 at p.132

⁹1885) 10 AC 229 at p.240

¹⁰ AIR 1958 SC 398 at p.406