

Ramnetra Vs. District Superintendent of Police and ors.

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Court : Madhya Pradesh

Decided On : Apr-21-1965

Reported in : AIR1966MP58; (1966)ILLJ363MP; 1965MPLJ699

Judge : P.V. Dixit, C.J. and ;K.L. Pandey, J.

Acts : [Constitution of India](#) - Articles 311(1) and 311(2)

Appeal No. : Misc. Petn. No. 376 of 1964

Appellant : Ramnetra

Respondent : District Superintendent of Police and ors.

Advocate for Def. : R.J. Bhave, Govt. Adv.

Advocate for Pet/Ap. : R.K. Tankha, Adv.

Disposition : Petition allowed

Judgement :

Pandey, J.

1. This is a petition under Articles 226 and 227 of the Constitution to call up and quash by certiorari-

- (i) an order dated 16th July 1963 whereby the Superintendent of Police, Chhindwara, dismissed the petitioner from service;
- (ii) an order dated 24th October 1963 by which the Deputy Inspector General of Police, Jabalpur, dismissed the petitioner's appeal against the earlier order; and
- (iii) an order dated 24 February 1964 by which the Inspector General of Police rejected the petitioner's further representation against the action taken in regard to him.

2. The facts giving rise to this petition are these. At the material time, the petitioner was employed as a Head Constable attached to the Police Station House at Amarwara, on 25th December 1962, Abdul Mobin, Circle Inspector, received from one Maganlal a complaint against the petitioner. The Circle Inspector held a preliminary enquiry and submitted his report to the Superintendent of Police who, on 24th January 1963, directed that a departmental enquiry be held against the petitioner on the following charges:

- (i) For not taking cognizance of an offence when, in his presence, Mihilal was obstructing Jhanaklal Patwari in the discharge of his duties.
- (ii) For accepting Rs. 100/- and Rs. 60/- from Mihilal and Mansaram respectively and taking, out of which, Rs. 80/- dishonestly.
- (iii) For examining one Mst. Tajbi, wife of Slier Ali when she was not involved in any cognizable offence and accepting in the course of the same transaction Rs. 2/- as bribe from Sher Ali.
- (iv) For extorting Rs. 10/- as bribe from Vishwanath by charging him of complicity in the elopment of Chhiddi Chamar's wife.
- (v) For abusing filthily H. C. Gajanand in the police station house and behaving in an indisciplined and unworthy manner. A charge sheet, together with a statement of allegations, was duly served on the petitioner, who was, at his request, given a translation of those documents in Hindi. The departmental enquiry was held by the Deputy Superintendent of Police, Chhindwara, from 6th March 1963 to 2nd May

1963. On the last mentioned date, the Deputy Superintendent proceeded on leave and the enquiry was taken over by Circle Inspector Mishra. He completed the enquiry and submitted his report dated 2nd June 1963 to the effect that the charges were not proved. The Superintendent of Police, however, took a different view, provisionally held on 25th June 1963 that the charges were proved and issued on the same date the usual show cause notice. After the petitioner submitted his reply dated 11th July 1963, the Superintendent of Police passed the impugned order dated 16th July 1963, which as already indicated, was affirmed in appeal. The petitioner has challenged the enquiry held against him and the orders therein passed on several grounds enumerated in paragraph 24 of the petition. Only three of these grounds were pressed before us and, as we would show immediately, they are well founded.

3. The first of these grounds is that the enquiry was, in part, held by Circle Inspector Mishra to whom the power to hold the enquiry had not been delegated. In regard to this, all that could be brought to our notice was that, on 2 May 1963, the Deputy Superintendent recorded, while proceeding on leave, that, in accordance with the directions of the Superintendent of Police, he handed over the 'D. E. File' to C. I. R. N. Mishra. No. written order of the Superintendent of Police was produced before us. It is unlikely that he had given only a verbal order. In any event, his affidavit to the effect that he had given such an order is not before us. In this situation, we find it difficult to accept that the Superintendent of Police had entrusted the holding of the enquiry to C. I. Mishra. As pointed out by the Supreme Court in *Mohammad Ghouse v. State of Andhra*, 1957 SCR 414 : (S) AIR 1957 SC 246), it is the appropriate authority under Article 311 of the Constitution which proposes to take action against a civil servant and it is for that authority to pass the ultimate order in the matter. It is open to it to depute a responsible and competent official to enquire and report: *Pradyat Kumar Bose v. The Hon' ble the Chief Justice of Calcutta High Court*, (1955 2 SCR 1331 : (S) AIR 1956 SC 285). In our opinion, a departmental enquiry cannot be taken up by any one to whom it has not been duly entrusted. We were referred to our observations in *Anand v. State of Madhya Pradesh*, 1964 MP LJ 493 : (AIR 1964 Madh Pra 318) and it was contended that this was, at the most, an irregularity. We consider it sufficient to say that those observations, which relate to an unauthorised sub-delegation, are

not strictly in point. Here there is no case of sub-delegation and C. I. Mishra dealt with the enquiry, as shown without any authority.

4. The second ground pressed before us is that the Deputy Superintendent, who held the enquiry upto 2 May 1963, was imbued with bias against the petitioner, that he used to put leading questions and also to give hints to the witnesses examined against the petitioner and, that, when the latter objected, this is what the Deputy Superintendent stated:

'D.E. is a quasi-judicial proceeding in which it is the duty of the presiding officer to act as judge as well as prosecutor. I must find the truth'. (Annexure B)

It is plain enough that the Deputy Superintendent did not dispute the truth of the petitioner's grievance against him. We must, therefore, regard his attitude towards the matters under enquiry as sufficiently contra-indicative of impartiality. It is well established that impartiality is one of the essential characteristics of natural justice. So, in *Kanda v. Govt. of Malaya* 1962 AC 322 at p. 337 Lord Denning observed as follows:

'The rule against bias is one thing, The right to be heard is another. Those two rules are the essential characteristics of what is often called natural justice. They are the twin pillars supporting it. The Romans put them in the two maxims: *Nemo Judex in causa sua* and *Audi-alteram partem*. They have recently been put in the two words, Impartiality and Fairness. But they are separate concepts and are governed by separate considerations.'

In our opinion, the Enquiry Officer exhibited in this case what was, to put it mildly, lack of impartiality and, therefore, the enquiry is vitiated by a disregard of one of the essential elements of natural justice.

5. The last ground is that the petitioner was denied a reasonable opportunity of examining witnesses in his defence. It appears from the list of witnesses filed by the petitioner that he desired to examine in his defence a large number of witnesses. Only three of these witnesses were examined on 22nd May 1963 and notices were issued to others. Three more witnesses were examined on 25th May

1963 and, perhaps, another witness on the following day. But, on 27 May 1963, the Enquiry Officer declined to examine any other witness because, as directed, the petitioner had not produced his witnesses by 3-30 p.m. It would thus appear that the petitioner was not given more than five days' time, that is, from 22 May 1963 to 27 May 1963, for producing his defence witnesses. Following the receipt of the show-cause notice, the petitioner again requested for an opportunity to examine his witnesses, but his request was refused. Considering that examination of witnesses tendered against the petitioner had continued for about two months but the petitioner was given only five days' time to produce his numerous witnesses, we are of opinion that he was denied a reasonable opportunity of adducing evidence in his defence. As pointed out by the Supreme Court in *State of Madhya Pradesh v. Chintaman*, AIR 1961 SC 1623 whenever it is urged before the High Court that, as a result of an order passed in a departmental enquiry, a civil servant has been deprived of a reasonable opportunity, it is for the High Court to examine the matter and decide whether the requirements of Article 311(2) have been satisfied or not. In our opinion, having regard to the facts and circumstances of this case, the petitioner was denied such a reasonable opportunity.

6. Although the other points urged in the petition were not pressed before us the infirmities which we have already noticed are sufficient to vitiate the action taken in regard to the petitioner. The result is that the petition succeeds and is allowed. The orders dated 16 July 1963, 24 October 1963 and 24 February 1964 are quashed. The respondents shall bear their own costs and pay those incurred by the petitioner to whom the security amount shall also be refunded. Hearing fee Rs. 75/-.