

Ram Pal Singh Vs. the Inspector General of Police, Delhi and ors.

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Court : Delhi

Decided On : May-02-1975

Reported in : ILR1975Delhi563

Judge : S.N. Shankar and; H.L. Anand, JJ.

Acts : Punjab Police Rules, 1934 - Rule 16.38, 16.38(1) and 16.38(2)

Appeal No. : Letter Patent Appeal No. 98 of 1969

Appellant : Ram Pal Singh

Respondent : The Inspector General of Police, Delhi and ors.

Advocate for Def. : Shri. Tiwari

Advocate for Pet/Ap. : D.R. Sehgal and; P.N. Tiwari, Advs

Judgement :

H.L. Anand, J.

(1) This Letters Patent Appeal is directed against a judgment of Deshpande J. dismissing the appellant's petition under Article 226 of the Constitution of India challenging the order of his removal from police service and the proceedings leading thereto.

(2) It is alleged that on September 21, 1964, Inspector Sardar Singh, while on patrol duty to check smuggling on the Delhi-U.P. border, found three persons one of whom was carrying a bag of wheat on a bicycle ; that on seeing the Inspector, the person who was carrying the wheat ran away leaving the wheat and the bicycle behind ; that on enquiry, his two companions told the Inspector that the afore- said wheat had been seized by the petitioner, a constable in the Delhi Police force, who was then on anti-smuggling duty, and another constable, from their companion as it was being smuggled and that the same had been sold by the petitioner and the other constable to them for Rs. 40.00 . Pursuant to the aforesaid disclosure, the Inspector made enquiries from a number of persons including the two constables, both of whom are alleged to have made a confession but declined to admit it in writing. The Inspector recorded the statements of the various persons including that of the constables and made a report on September 22, 1964 setting out the aforesaid facts, the result of his enquiry and a recommendation that the appellant and the other constable were guilty 'of serious misconduct' and 'severe action may kindly be taken against them'. By his communication of September 25, 1964, Annexure 'N', the then Superintendent of Police, North District, Delhi informed the District Magistrate that a complaint had been received against the appellant and another which indicated the commission of an offence by police officers in connection with their official relations with the public and a direction was sought from the District Magistrate under sub-rule (1) of Rule 16.38 of the Punjab Police Rules if 'enquiry be instituted by a police officer or made over to a selected Magistrate 1st Class'. A copy of the aforesaid report of Inspector Sardar Singh was enclosed with the said communication. By his communication of September 29, 1964, Annexure 'C', the District Magistrate informed the Superintendent of Police aforesaid that 'the allegations contained in the report of ASP/Civil Lines against constables Shamsoon Mashri No. 1258 and Ram Pal Singh No. 817 of Anti Smuggling Staff, Shahdara may please be investigated by a police officer, as required under P.P.R. 16.38 (1)'. It, however, appears from the original record placed before us at the hearing that the investigation was entrusted to Sardar Singh, Inspector, aforesaid, who obtained from the various persons, whose statements had been recorded by him on September 21, 1964, an affirmation of the correctness of the aforesaid statements. The Inspector then recorded a note of

October 9, 1964 to the following effects :

'THE enquiry has been conducted by me against constables No. 1258 Shamsoon Mashi and No. 817 Ram Pal Singh. The detailed report dated 22-9-1964 was submitted by me and the same may be considered as my final report and orders may kindly be passed to hold the departmental proceedings against both the constables PI'.

PURSUANT to this, the Superintendent of Police, North District, informed the District Magistrate by his communication of October 12, 1964, Annexure 'P', that the enquiry made by the Inspector revealed that the allegations against the said two constables were correct and that they had committed offences in their official relation with the public. It was further pointed out that 'It is for you to decide under the Punjab Police Rule 16.38(2) whether they may be dealt with u/s 7 of the Police Act or otherwise'. The District Magistrate was accordingly requested for a direction if the defaulters should be dealt with under Section 7 of the Police Act and 'necessary orders with detailed reasons may kindly be sent for further necessary action'. A copy of the report of the Inspector, that is, the report made by him on September 22, 1964, was also enclosed with the said communication. This was followed by the communication of October 19, 1964, Annexure 'Q', from the District Magistrate which is to the following effect:

'I have gone through the enquiry report and the facts revealed justify the initiation of departmental proceedings against constables Shamsoon Mashi No. 1258 and Ram Pal Singh No. 817 permission for which under P.P.R. 16.38 (2) is hereby accorded.'

As a result of the departmental proceedings taken against the appellant pursuant to the aforesaid direction of the District Magistrate, the appellant was found to be guilty of the charge and by an order of April 7, 1965, the Superintendent of Police dismissed him from service. The order was upheld in appeal and subsequently in revision.

(3) Before Deshpande J., the order of removal from service, as indeed the proceedings leading to it were challenged on the following three grounds :

(I) That the initiation of the departmental enquiry was not in accordance with the Punjab Police Rule 16.38.

(II) Copies of the statements of the prosecution witnesses recorded in the regular departmental inquiry were not supplied to the appellant to reply to the show cause notice as to why the punishment of dismissal should not be imposed on him;

(III) the order of dismissal was not supported by any evidence at all and was, therefore, liable to be quashed.

(4) By the judgment in appeal, Deshpande J. repelled all the three grounds, upheld the order of removal and consequently dismissed the petition of the appellant.

(5) In support of the first ground, three contentions were urged, before the learned judge viz.

(1) Rule 16.38 of the Punjab Police Rules was mandatory;

(2) there was non-compliance of sub-rule

(1) of Rule 16.38 in as much as the information of the commission by the appellant on September 21, 1964 of the offence alleged against him, was not given to the District Magistrate immediately to seek his permission as to the channel of investigation under sub-rule

(1) of Rule 16.38 but was transmitted on September 25, 1964 and a preliminary investigation was conducted by Inspector Sardar Singh prior to the direction of the District Magistrate under sub-rule

(1) of Rule 16.38;

(3) the order of a District Magistrate under sub-rule

(2) of Rule 16.38 authorising the initiation of departmental proceedings against the petitioner did not comply with the requirements of the said sub-rule because the District Magistrate neither applied his mind to the matter nor recorded his reasons for it. On the first contention, Deshpande J. impliedly held that the Rule was

merely directory when his Lordship upheld the contention of the respondent that the Rule had been 'substantially' complied with. On the second contention his Lordship held that information envisaged by sub-rule

(1) of Rule 16.38 could not be the bare information but an information which 'would enable the District Magistrate to make a proper decision under Rule 16.38'; that it was consistent with the requirement of the Rules as well as the practice followed in that behalf in Delhi that a preliminary enquiry was held into the complaint before the information was forwarded to the District Magistrate; that the expression 'immediate' in the sub-rule

(1) of the Rule merely indicated that this should be done as far as practicable and that there was, therefore, substantial compliance with the provisions of sub-rule

(1) of the Rule. On the third contention, it was held that although the order of the District Magistrate sectioning departmental proceedings did not by itself indicate the reasons on which it was based, the order, when read along with the enquiry report, indicates that there were sufficient reasons for the order because the report makes out 'a prima facie case against the petitioner in view of Inspector Sardar Singh's evidence, but at the same time, the case is not strong enough to succeed by way of a prosecution in a criminal court'. The learned Judge added that 'clearly, this is why the District Magistrate ordered a departmental inquiry against the petitioner and there was, therefore, substantial compliance with the provisions of sub-rule

(2) of the Rule'. The learned Judge referred to the decision of the Supreme Court in the case of Bhagat Raja

(1) and applied the analogy to the present case and came to the conclusion that when the District Magistrate said in his order, that he had gone through the enquiry report and expressed the opinion that departmental enquiry should be held against the appellant, this was the formation of a positive opinion by him implying that the facts were not such as would justify a prosecution. It was further observed that 'while, it would be ideal if the District Magistrate could write a self-contained order under the Punjab Police Rule 18,38(2) giving reasons in his own words, it

has to be appreciated that the District Magistrate has to discharge numerous duties under various statutes in the course of general administration.

(6) The second ground of attack to the validity of the order and the proceedings was repelled by the learned Judge on the ground that during the pendency of the original proceedings, the appellant was not entitled to a copy of the complete record or any part thereof because the departmental enquiry was conducted in the presence of the appellant. The administrative instructions, on which reliance was placed on behalf of the appellant, was held to be contrary to Rule 16.29 of the Rules. The plea that Rule 16.28(4) of the Rules was ultra virus was also dispelled. The third ground of attack was dispelled by the learned Judge on the ground that in the face of the evidence of Inspector Sardar Singh given in the departmental enquiry proving the oral confession of the appellant, it could not be said that the finding against the appellant was based on no evidence.

(7) Shri D. R. Sehgal, learned counsel for the appellant reiterated the aforesaid three grounds before us at the hearing of the appeal.

(8) In support of the first ground, learned counsel contended that the provision of Punjab Police Rule 16.38, was mandatory, that noncompliance with the provision of the said Rule would vitiate the proceedings and the order that may be made as a consequence of it; that the impugned order of removal of the appellant from service and the proceedings leading thereto were vitiated on account of noncompliance with the provision of sub-rule (1) of Rule 16.38 in that 'immediate information' of the alleged complaint of the commission of an offence by the appellant in connection with his official relations with the public on September 21, 1964 was not given to the District Magistrate as required by sub-rule (1) of Rule 16.38 in as much as the said information was sent only on September 25, 1964; that there was further non-compliance with the provisions of the aforesaid sub-rule, in that instead of giving the information of the complaint to the District Magistrate for a direction whether the investigation of it shall be conducted by a police officer or was to be made over to a Magistrate, the police held a preliminary investigation before giving the information of the complaint to the District Magistrate ; that on the report of the investigation of the complaint by the police

pursuant to the order of the District Magistrate under sub-rule (1) of the aforesaid Rule, the District Magistrate directed that the matter may be disposed of departmentally pursuant to sub-rule (2) of the said Rule without applying his mind and without recording his reasons for it.

(9) On the other hand, Shri Tiwari, learned counsel for the respondents contended that the aforesaid Rule was merely directory and its non-compliance could not vitiate either the proceedings or the order that may be made on the conclusion thereof, that by giving the information to the District Magistrate on September 25, 1964, of the commission of the offence by the appellant on September 21, 1964 after a preliminary inquiry, there has been a substantial compliance with the requirement of sub-rule (1) of the said Rule; that the decision of the District Magistrate that the appellant be dealt with departmentally pursuant to sub-rule (2) of the said Rule was made on a perusal of the report of investigation and there was a substantial compliance with the requirement of sub-rule (2) of the said Rule because, read in the context of the report to which it referred, it would not only indicate the application of mind by the District Magistrate but also make the reasons for the order obvious.

(10) The first question that, therefore, requires consideration is whether Rule 16.38 is mandatory so that the non-compliance of it would vitiate the order and the proceedings or is it merely directory so that a substantial compliance of its requirements would be sufficient.

(11) A question has often arisen whether where a statute required that something shall be done, or shall be done in a particular manner or in a particular form but without expressly declaring the consequence of its non-compliance, the requirement should be regarded as imperative or mandatory or merely as directory or permissive. In certain cases the conditions or forms prescribed by the statute have been regarded as essential to the act or thing regulated by it and their omission has been held fatal to their validity while in others they are considered as merely directory and the neglect of these would merely attract the liability of a penalty, if any. As was observed by Lord Coleridge C. J. in *Woodward* 'an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory

enactment be obeyed or fulfilled substantially'. In *Normandin*, the Privy Council laid down the test thus :

'THE question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at. The cases on the subject will be found collected in *Maxwell on Statutes*, 5th ed., p. 596 and following pages. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the Legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done.'

THE above test has been followed by the Federal Court in *Biswanath Khemka* and has since been approved by the Supreme Court in a number of cases. While it is not possible to lay down any general rule for determining whether a provision has to be considered mandatory or merely directory and Courts have cautioned against the formulation of any such general rule, it is the duty of the Court to try to get at the real intention of the Legislature by 'carefully attending to the whole scope of the statute to be construed'. In the words of Lord Penzance, 'you cannot safely go further than that in each case you must look to the subject-matter consider the importance of the provision that has been disregarded, and the relation of that provision to the general object intended to be secured by the Act and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory'.

(12) In *Babu Ram 6 Subba Rao J* as he then was and who spoke for the Court, observed that when a statute uses the word 'shall' prima facie it was mandatory but the Court may ascertain the real intention of the Legislature by carefully attending to the whole scope of the statute and that in ascertaining the real intention of the legislature, the Court may consider, inter alia, the nature and the design of the statute and the consequences which would follow from construing it

one way or the other, the impact of the other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstances that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provision is not visited by some penalty, the serious or trivial consequences that flow there from, and, above all, whether the object of the legislation will be defeated or furthered. The Supreme Court was concerned in that case with the question whether Rule 1 of para 486 of the U.P. Police Regulations was mandatory or directory. The material Part of para 486 of the U.P. Police Regulations with which the Supreme Court was concerned is in the following terms :

'WHEN the offence alleged against a police officer amounts to an offence only under S. 7 of the Police Act, there can be no magisterial inquiry under the Criminal Procedure Code. In such cases, and in other cases until and unless a magisterial inquiry is ordered, inquiry will be made under the direction of the Superintendent of police in according with the following rules : 1. Every information received by the police relating to the commission of a cognizable offence by a police officer shall be dealt with in the first place under Chapter XIV, Criminal Procedure Code, according to law, a case under the appropriate section being registered in the police station concerned.....'

A question was raised if the aforesaid Rule was mandatory or directory and it was held that Rule I of the para was conceived not only to enable the Superintendent of Police to gather information but also to protect the interest of the subordinate officers against whom departmental trial is sought to be held. It was further held that as the Rule provided that a departmental trial can be held only after a police investigation, it was not permissible to hold that it can be held without such investigation. It was consequently held that para 486 of the Regulation was mandatory and if the investigation had not been held in accordance with the aforesaid para, the subsequent inquiry and the order of dismissal would be illegal. The dictum of the Privy Council in *Normandin* (supra) incorporating the observations of Maxwell was quoted with approval.

(13) The relevant portion of Rule 16.38 is in the following terms :

'16.38(1) Immediate information shall be given to the District Magistrate of any complaint received by the Superintendent of Police which indicates the commission- by a police officer of a criminal offence in connection with his official relations with the public. The District Magistrate will decide whether the investigation of the complaint shall be conducted by a police officer, or made over to a selected magistrate having 1st class powers.

(2) When the investigation of such a complaint establishes a prima facie case, a judicial prosecution shall normally follow; the matter shall be disposed of departmentally only if the District Magistrate so orders for reasons to be recorded. When it is decided to proceed departmentally the procedure in rule 16.24 shall be followed. An officer found guilty on a charge of the nature referred to in this rule shall ordinarily be dismissed.'

(14) There has been some controversy in the past if the aforesaid Rule was mandatory or directory. The Punjab & Haryana High Court was consistently held the view that the Rule was mandatory and its non-compliance would vitiate the proceedings and the order that may be eventually made. Reference may be made to the cases of Jagan Nath 7, Chanan Shah, 8 Ram Krishan, 9 Nand Nandan Sarup 10 In Jagannath (supra) which was the earliest of the aforesaid cases, Grover J., as he then was, observed thus :

'THE apparent purpose and object of entrusting the District Magistrate with the discretion to have the investigation, made either by a police officer or a Magistrate and then to depart from the normal of judicial prosecution if a prima facie case is disclosed as a result of the investigation seem to be that he should be able to apply his independent mind to the facts of a particular case, free from any atmosphere which may not be favorable to a police officer in his own department. As sub-rule (2) contemplates that a judicial prosecution shall normally follow where investigation under sub-rule (1) against a police officer establishes a prima facie case, rule 16.3 police down that on acquittal he shall not be punished departmentally except in certain cases. Rule 16.38 employs language, which is essentially mandatory, and before a departmental enquiry can be ordered, there must be strict compliance with sub-rule (1) of that rule.'

RELIANCE was placed on the decision of the Supreme Court in Babu Ram (supra) Chanan Shah's case ultimately went to the Supreme Court and the judgment of the Punjab High Court was affirmed although the question whether the provision of the Rule was mandatory or directory was left open IOA. The case of Ram Krishan (supra) also went to the Supreme Court and while the decision of the Punjab High Court was confirmed, following the decision in Chanan Shah's case in the Supreme Court, the question whether the Rule was mandatory was not decided I OB. In another case of Ram Kishan,¹¹ permission as to the channel of investigation was not sought from the District Magistrate under sub-rule

(1) but permission of the District Magistrate was sought and given under sub-rule (2). The Supreme Court held that as the first part of the Rule having not been complied with, 'the departmental inquiry is vitiated and the order of dismissal must be declared illegal'. The argument that by giving permission under sub-rule

(2) the District Magistrate would be deemed to have given post facto sanction to the course of investigation was repelled. In Suraj Bhan,¹² however, a Full Bench of this Court had impliedly held that the Rule was directory when it held that even though the permission of the District Magistrate had not been sought under sub-rule

(1) but was sought and given under sub-rule (2), 'infraction of sub-rule

(1) of Rule 16.38 appears to be merely technical and not real' and that 'in substance, all that happened was that the District Magistrate instead of ordering a preliminary inquiry by the Police before preliminary inquiry took place, impliedly approved the making of the preliminary enquiry by the Police after the preliminary enquiry had been already completed. The discretion of the District Magistrate was, therefore, exercised at the end of the preliminary enquiring. The decision in Suraj Bhan's case was earlier than the decision of the Supreme Court in the case of Ram Krishan (supra) where in somewhat similar situation, the Supreme Court held that the order and the proceedings were illegal. The decision of the Full Bench in Suraj Bhan, with respect, would appear to have lost its vitality in view of the clear verdict of the Supreme Court even though the Supreme Court has not as yet expressly ruled that the said Rule is mandatory, although it is possible to argue

that it has by implication held the Rule to be mandatory while holding that the compliance with sub-rule

(2) did not amount to *ex post facto* sanction as to the channel of investigation under sub-rule

(1) of the Rule. Division Bench of this Court in *Ravi Dutt* 13 considered the question and while expressing the view that in view of the decision of the Supreme Court in the cases of *Ram Kishan*, the decision of the Full Bench in *Suraj Bhan*, seemed to require reconsideration, based its decision ultimately on the assumption that the Rule was merely directory and did not feel called upon to decide the question as to the nature of the rule. In the present state of the law, therefore, I would be, free to consider and decide the question if the Rule is mandatory.

(15) Ordinarily, under the Code of Criminal Procedure the police is entitled to investigate any cognisable offence. The permission of the District Magistrate, is however, necessary for the police to take cognizance of a non-cognizable offence. Similarly, ordinarily, it is open to a department to deal with a delinquent public servant departmentally or to approach the police or a Court for prosecution as the case may be. Rule 16.38, however, represents a departure from the normal law when it requires that 'immediate information shall' be given to the District Magistrate of a complaint against a police officer involving an offence in connection with his official relations with the public and it is the District Magistrate alone who will decide whether the investigation shall be conducted by a police officer, that is, by a normal mode known to law, or be made over for magisterial investigation. In case, the investigation establishes a *prima facie* case, it further provides that a judicial prosecution 'shall normally follow' but the matter may be departmentally dealt with 'only if the District Magistrate so orders'. The use of the expression 'shall' throughout in the Rule would *prima facie* indicate that it is intended to be mandatory in character and an enquiry as to the object of the Rule would reinforce its conclusion. The object of the Rule appears to be not to treat a complaint against a police officer of a criminal offence in connection with official relations with public at par with the complaint of an offence by an ordinary citizen

obviously because having regard to the nature of the duty of the police, a more serious view has to be taken of the commission by any police officer of an offence in connection with his official duties. The further intention of the Rule appears to be to not only inspire public confidence in the manner in which such a complaint has been investigated but also to protect the police officer concerned and that is why the Rule enjoins the application of mind by an independent officer like the District Magistrate, unaffected by the influence of the police administration. The permission of the District Magistrate at the two stages, therefore, appears to be essential and the whole object of the Rule would be frustrated if the requirement of the Rule is not strictly complied with. Applying therefore, the test laid by the Privy Council in the case of Normandin (supra) and by the Supreme Court in the case of Babu Ram (supra), it appears to me that the Rule is mandatory and must be strictly complied with.

(16) The further question if there was strict compliance of the requirement of the Rule in the present case hardly presents any difficulty because it has been the common case of the parties both before the learned Judge, as indeed before us, that the Rule had not been strictly complied with and the learned Judge had to invoke the doctrine of 'substantial compliance' to save the impugned order. It was not disputed that the theory of 'substantial compliance' would have no place if the Rule was of a mandatory nature and having held above that it was so, the impugned order and the proceedings leading to it, must be quashed.

(17) However, even if it be assumed, as has impliedly been held by the learned Judge, and was contended on behalf of the respondent that the Rule was merely directory and the impugned order and the proceedings could be saved if it had been substantially complied with, the result would not be any different because, to my mind, the Rule has not even been substantially complied with.

(18) A bare reading of sub-rule (1) leaves no manner of doubt that the sub-rule requires that 'immediate information' of any complaint received by the Superintendent of police which may indicate the commission by a police officer of an offence in connection with his official relations with the public 'shall be given to the District Magistrate' to enable the District Magistrate to 'decide whether the

investigation of the complaint' shall be conducted by 'police officer or made over to a selected magistrate having 1st class powers'. The sub-rule is obviously intended to ensure that a complaint of the commission of an offence by a police officer in connection with his official relations with the police is to be treated unlike a complaint of the commission of an offence by an ordinary person. The sub-rule is intended to ensure that the investigation of such a complaint is not left to be investigated in a normal routine by the police and since the question as to the mode of investigation has to be decided by the District Magistrate the sub-rule enjoins that the information of such complaint should be made to the District Magistrate immediately so that the investigation, whether to be conducted by the police or by a Magistrate, is not delayed. The sub-rule, therefore, clearly provides that the District Magistrate has to decide as to the channel of investigation and the decision has to be on the basis of the information with regard to the complaint. It, therefore, obviously excludes any preliminary investigation by the police before the information is forwarded to the District Magistrate. The District Magistrate at this stage is not concerned with the correctness or otherwise of the complaint, but only if the complaint 'indicates the commission by a police officer of a criminal offence in connection with his official relations with the public.' This merely involves an examination of the complaint. It is, therefore, not possible to accept the conclusion of the learned Judge that the subrule contemplates that the police should first embark upon a preliminary investigation into the complaint and forward 'the information only after the conclusion of such investigation so that the District Magistrate has sufficient material before him to be able to apply his mind to the question as to the channel of investigation. It is equally difficult to accept the conclusion of the learned Judge that the expression 'information' used in the sub-rule could not mean bare information because it would not inform the District Magistrate of what the case is and he would, therefore, not be able to pass any order thereon. It is difficult to read into the expression 'information' anything more than a mere intimation of a complaint. It is not information with regard to a complaint nor of any material in support of the allegation or in disproof of it but the information 'of any complaint'. The expressions 'information' and 'complaint' are words which have definite meaning in criminal law. It is, therefore, difficult to read into this sub-rule anything which may justify the conclusion that for the purpose of

compliance with sub-rule (1) it was necessary for the police to hold some sort of a preliminary investigation before giving to the District Magistrate the information of the complaint received by the police involving the appellant. Any preliminary investigation would frustrate the very purpose of the sub-rule and delay the transmission of the information to the District Magistrate as indeed the investigation tton. There can be no investigation unless the channel for it has been decided.

(19) If the non-compliance of the Rule merely consisted in the failure to transmit the information immediately to the District Magistrate either because of official laxity, delay in official routine or because, rightly or wrongly it was thought that the transmission of information must be preceded by some sort of a preliminary investigation to enable the District Magistrate to apply his mind with a view to decide the question as to the channel of investigation, the last of which appears to have weighed with the learned Judge, the impugned order and the proceedings leading to it could perhaps have been bailed out by the application of the doctrine of 'substantial compliance' on the assumption that the Rule was merely directory. This is so because when Subruled) provides for immediate transmission of the information to the District Magistrate, it does not, as it were, introduce an element of automaticity in the provision and the learned Judge was, therefore, right when His Lordship held that it implied that it should be sent as soon as 'practicable' taking into account the requirements, or if I may so, the cobweb of administrative procedures in which the executive action normally gets coiled up. Even the preliminary investigation, even if unauthorised having regard to the provision of the Rule, would not per se vitiate the proceedings because the investigation and the result of it could perhaps be ignored but what made it worse is that there has been no substantial compliance with the requirement of sub-rule(2) in that pursuant to the order under sub-rule(1) there has virtually been no investigation. This is so because all that Inspector Sardar Singh did, after the investigation was entrusted to him pursuant to the order of the District Magistrate, was to record cryptic statements of the various persons, who had been examined by him earlier, affirming their earlier statements. Obviously, he neither examined all these persons afresh nor took any other steps in aid of investigation. He did not even take the trouble of drawing up a detailed report setting out the result of his

investigation but merely recorded a note extracted by me above to the effect that his earlier report may be treated as final report. The investigation pursuant to the order of the District Magistrate, to say the least, was farcical. If what the Inspector had done before the matter came to the District Magistrate under sub-rule(1) was a mere preliminary investigation, which according to the learned Judge was merely intended to furnish information to the District Magistrate which should enable him to apply his mind to decide as to the channel of investigation, I fail to understand how such an investigation became a regular investigation. Either the investigation carried out by Inspector Sardar Singh before the direction of the District Magistrate a preliminary investigation or a regular investigation. If it was former, as the learned Judge found, then obviously there has been no proper investigation after the District Magistrate's direction. If, however, it was regular, it could not be justified as being necessary to merely place the information in a useful form before the District Magistrate and was in any event unauthorised.

(20) What is worse is the mechanical manner in which the District Magistrate discharged his function under sub-rule (2) of the Rule. As has been pointed out above, sub-rule (2) clearly enjoins that if a prima facie case has been found as a result of the investigation, the prosecution in a court of law would ordinarily follow but the delinquent officer may instead be tried departmentally 'only if the District Magistrate so orders for the reasons to be recorded'. When the result of what may be called investigation was forwarded to the District Magistrate, he had to apply his mind to the material and to decide if there was a case for a departure from the ordinary norm laid down in the sub-rule. If he found that there was a case for the departure, he had to indicate his reasons. Whether the sub-rule was mandatory, as has been held by me above, or merely directory, as has been assumed by the learned Judge, it is obvious that the Rule incorporates an essential safeguard for the delinquent officer when it provides 'a judicial prosecution shall normally follow'. This is so because it is well settled that a judicial trial is a more satisfactory form of trial of a person charged with any offence as it affords a better opportunity to the delinquent officer to vindicate his honour as also offers him better chance of an acquittal because of the standard of proof which is insisted upon in a criminal trial. The departure from the ordinary norm constitutes, therefore, an exception which can cause prejudice to the delinquent officer. Apart from this, a departmental

proceeding may be preferred to a criminal trial where disciplinary action could be considered as an adequate mode of punishment. The worst that could happen in departmental proceedings is removal from service. In case of conviction in a criminal trial it could be worse. Whether or not, a matter is fit for judicial prosecution or be merely referred to a departmental action involves a number of considerations particularly whether the evidence available in a given case would stand judicial scrutiny in a court of law and if the action complained of can be adequately punished in departmental proceedings. The requirement of the Rule that the District Magistrate would, therefore, give reasons for the departure is not difficult to understand. The statutory requirement or the requirement of judicial norm that reason must be given for a conclusion by a Court or a quasi-judicial tribunal is not one of mere form but is based on a sound principle. The requirement to give reason is not a mere formality but is intended to be an essential safeguard built into the system to ensure against arbitrary or despotic action. An administrative action is subject to judicial control in any system in which the rule of law obtains. Even in cases where the ambit of judicial control is limited, the Supreme Court as indeed the High Court, would be entitled to see if in arriving at a conclusion which the administrative authority was entitled to, it has considered the material which was irrelevant or has failed to consider the material which was relevant or has otherwise acted in an arbitrator manner or if the conclusion is based on non-existent material, and if there has been an application of mind by the authority. The process of judicial review would become ineffective if the administrative order gave no indication as to what weighed with the authorities because it is the reason alone which would indicate the material which was considered or the consideration which weighed with the authorities.

(21) It appears to me that the District Magistrate did not apply his mind to the question which he was called upon to decide. If he had given reasons it would have at least indicated the application of mind and in the absence of any reason it is very difficult to hold that there has been any application of mind by the District Magistrate. It is interesting that in his communication inviting the direction under sub-rule (2), the Superintendent of Police pointedly invited attention of the District Magistrate to the requirement of sub-rule (2) when his communication, Annexure P, the Superintendent of Police sought the direction of the District Magistrate as to

the channel of trial and requested for 'necessary orders with detailed reasons'. If the District Magistrate had applied his mind and not dealt with the matter in a mechanical manner, he would have perhaps realised that there had been no investigation worth the name after his direction under sub-rule (1) and that what had been forwarded to him was the result of a preliminary investigation conducted prior to his direction. The learned Judge sought to justify the order of the District Magistrate on the ground that, when read in the context of the report of investigation forwarded by the Superintendent of police, the reason for the conclusion of the District Magistrate that the matter be dealt with departmentally became obvious. The learned Judge sought support for this conclusion from the observation of the Supreme Court in Bhagat Raja (supra). The learned Judge further found that having regard to the various commitments of the District Magistrate it was not fair to expect of him to make a detailed order. With great respect to the learned Judge, I am unable to support either of his Lordship's conclusions. In the case of Bhagat Raja (supra), the State Government had given detailed reasons and the Central Government agreed with the order of the State Government and it was, therefore, felt that in such a case, the Central Government having agreed with the reasons given by the State Government no further reasons were necessary. This analogy could have no possible relevance to the matter before the District Magistrate. The report of Inspector Sardar Singh which was the report drawn after the preliminary enquiry before the direction of the District Magistrate under sub rule (1) gave no reason whatever for or against any particular mode of trial. Inspector Sardar Singh was in fact not concerned with that at that stage. The report was forwarded merely to elicit the direction under sub-rule (1) as to the channel of investigation. A reading of the order of the District Magistrate in the context of that report, to my mind, hardly sublimates the order. It appears that the learned Judge went through the 'report of enquiry' and found 'that the report makes out a prima facie case against the petitioner in view of Inspector Sardar Singh's evidence, but at the same time, the case is not strong enough to succeed by way of a prosecution in criminal court.' Such a conclusion could hardly be possible with reference to the report of Inspector Sardar Singh because the report of Inspector Sardar Singh had nothing to do with Inspector Sardar Singh's own 'evidence'. Apparently, what was placed before the learned Judge was not the

report of Inspector Sardar Singh but the report of the departmental enquiry against the appellant, because Inspector Sardar Singh's evidence was recorded only in the course of the departmental enquiry. The order of the District Magistrate could not possibly be justified on a reference to the report of the departmental enquiry because departmental enquiry having been conducted only after the direction of the District Magistrate under sub-rule (2) could not have, therefore, been placed before him. The conclusion that the District Magistrate was a very busy officer and could not be expected to draw detailed reasons is, to say the least, unfortunate. Nobody expects the District Magistrate to draw up a detailed or elaborate judgment. All that the rule requires is that the District Magistrate should not only apply his mind but indicate the considerations which weighed with him so that the judicial review of such action may become real and effective. The various commitments of the District Magistrate cannot be conceived as whittling down the requirement of law, whether mandatory or directory, or relieve him of his statutory obligations. If the law enjoins on him a duty which is absolute in terms, no let off is possible; it must be complied with. One may have all the sympathy for the District Magistrate if he is over-burdened with various duties. But that would not justify the laxity in compliance with the mandatory requirement of law. Such an approach to my mind, with great respect, would degenerate judicial control of administrative action into friendly review of administrative inaction and lapses. It would make the rule of law ineffective and render judicial review of administrative action wholly illusory.

(22) It is, therefore, not possible to hold that there has been any compliance, substantial or otherwise, with the requirement of the Rule and the impugned order of the removal of the appellant and the proceedings leading to it must, therefore, be quashed.

(23) In the view that I have taken of the first ground of attack to the validity of the order and the proceedings, the other two grounds do not survive and need not be considered.

(24) In the result, the appeal succeeds. The judgment of the learned Judge is set aside. The impugned order of the removal of the appellant from service and the

proceedings leading thereto are quashed. The authorities would, however, be at liberty to initiate fresh proceedings on the basis of the information received against the appellant in accordance with law.

(25) The appellant would also have his costs throughout. Counsel's fee for the hearing in the appeal is assessed at Rs. 350/.

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