

Jai Narain Vs. Delhi Administration and ors.

Jai Narain Vs. Delhi Administration and ors.

SooperKanoon Citation : sooperkanoon.com/692645

Court : Delhi

Decided On : May-31-1985

Reported in : ILR1986Delhi272

Judge : Charanjit Talwar, J.

Acts : Police Act, 1961 - Sections 7; Punjab Police Rules - Rules 12.8(1) and 13.18; Central Civil Services (Temporary Service) Rules, 1949 - Rule 5

Appeal No. : Civil Writ Appeal No. 974 of 1972

Appellant : Jai Narain

Respondent : Delhi Administration and ors.

Advocate for Pet/Ap. : R.P. Kathuria and; A. Ahlawat, Advs

Judgement :

Charanjit Talwar, J.

(1) The petitioner, Shri Jai Narain joined Delhi Police as Constable on February 21, 1955. He was promoted to the post of Head Constable on March 19, 1962. He was reverted with effect from June 5, 1971. His name was removed from the promotion list from the same date. While functioning as Head Constable a charge for gross misconduct and contravention of the Conduct Rules was framed against him. After due inquiry that charge was found to have been proved. The disciplinary

authority after agreeing with the findings of the Inquiry Officer directed forfeiture of one year's approved service which entailed in reduction, of the petitioner's pay from Rs. 128 to Rs. 115. By this petition the petitioner has challenged the forfeiture of the approved service, reversion from the post of Head Constable to the substantive rank of Constable and removal of his name from the promotion list 'C' with effect from June 5, 1971.

(2) At the outset I may notice that the petitioner sought premature retirement during the pendency of the writ petition. It is stated at the Bar that he retired in November, 1970 as a Constable. The petition has been pressed as according to the learned counsel for the petitioner the impugned orders being illegal and improper are liable to be set aside which would result in the petitioner getting enhanced pension apart from some other monetary benefits. I may at this stage quote the charge which was framed by the Inquiry Officer against the petitioner:

'I. Jaswant Singly Inspector Station House Officer, Srinivas Puri charge you Head Constable Jui Narain No. 9750 that you being in police service purchased a plot measuring .67 square yards for Rs. 600, from one Hansa Gujar of Tri Nagar on 21-1-1963 without obtaining prior permission from any competent authority. You raised a construction on this plot worth Rs. 2000 and made a false statement to the Vigilance Branch that the plot stood in the name of your brother's wife, whereas it stood in the name of your wife Angoori Devi. You also did not inform the department about the acquisition of land and construction thereon. For the above misdeeds you have committed a gross misconduct and the contravention of the Conduct Rules which render you liable for action under section 7 of the Police Act V of 1961.'

(3) The first submission of Mr. Kathuria in support of his contention that the inquiry held against the petitioner was bad was that the Memorandum dated June 28, 1970 proposing to hold departmental inquiry against the petitioner required him to be present before the Inquiry Officer on that very date at 10 a.m. therefore, it is urged that he had no time to prepare his defense and was taken unawares. From the official record produced by the respondent it appears that the inquiry was adjourned to July 4, 1970 on which date the petitioner bought time to reply to the

allegations. The time was granted. There after on the adjourned hearing the proceedings commenced In this view of the matter it cannot be said that the petitioner was taken unawares and he had not enough time to prepare his defense.

(4) The second submission was that the Inquiry Officer in his finding had solely relied upon the admission made by the petitioner without there being any evidence to prove that the petitioner had in fact either bought the plot or had made construction thereupon. In my view this submission is also misconceived. The admission made by the petitioner in the inquiry could be set upon as it was unambiguous. On this aspect the Inquiry officer has said H. C. Jai Narain No. 9750 has submitted his reply to the charge of 31st August, 1970. I have carefully gone through his statement. The H. C. has again admitted the allegation in his statement and asked for pardon.'

(5) Thus the challenge to the inquiry is not sustainable. Accordingly the punishment imposed, that is, forfeiture of one year's approved service entailing in reduction in his pay from Rs. 118 to Rs. 115 per month is to be upheld. .

(6) As noticed above the petitioner has also challenged the reversion from the post of Head Constable., It is an admitted case that he was promoted as an officiating Head Constable on March 19, 1962 and continued function as such till June 5, 1971. The plea is that by virtue of provisions of Punjab Police Rule 13.18 he stood automatically confirmed in that rank after having served continuously for those years as a Head Constable.

(7) The petitioner has annexed a copy of notice dated April 26, 1971 whereby he was asked to show cause why he should not be reverted to his substantive post of a Constable. It is annexure to the writ petition It appears from that show cause notice that throughout the period he was officiating as a Head Constable, his 'work and conduct was considered to be not satisfactory. In one of his confidential reports it was observed:- . . .

'HE is very careless and unreliable Head Constable. He is over cunning and can make a false story to suit him. He is an habitual absentee and deserts his post . . .

.....'

(8) The petitioner's Explanation to the show cause notice was not considered satisfactory. According to the disciplinary authority directed that he be reverted and also his name be removed from the promotion list from June 5, 1971.

(9) Before noticing the case law cited by the learned counsel for the parties in support of that rival contentions I may note that the petitioner is now a practicing lawyer at Delhi. In view of the serious allegations contained in the show cause notice (annexure 'F') especially the allegation that he was cunning and unreliable, I asked Mr. Kathuria, learned counsel for the petitioner, whether he would like the Court to go into this aspect of the case in view of the fact that the petitioner is now holding a position of trust and is obviously a useful member of the society. I must record that Mr. Kathuria was rather reluctant to press the petition. But after receiving instructions from his client, who was present in Court, stated that for decision on the applicability of provisions of Punjab Police Rule 13.18 it was not necessary for the court to go into the merits of this aspect of the case. According to him whatever the allegations in the show cause notice issued to the petitioner intaglio show or portray, the notice itself could be held to be bad as before its issuance the petitioner put in continuous officiating service of more than 2 years and accordingly was deemed to have been confirmed as a Head Constable. In support of his contention he relied on two decisions by two different division benches in *Sat Pal and others v. Delhi Administration*, 1974 (1) S.L.R. 733 (Delhi)(1) and unreported decision in *Naut Ram, S. I. v. Union of India and others*, L.P.A..106 of 1974 decided on August 14, 1981(2) In those two cases, police officers who had been admittedly promoted in officiating capacity were declared to have been deemed to be confirmed after the expiry of the probation period of two years by virtue of Punjab Police Rule 13.18. Mrs. Avnish Ahlawat, learned counsel for the respondent however, submitted that in view of the decision of a full bench in *Ram Chander v. Delhi Administration, Delhi*, . 1975 (1) S. L. R. 216 the law laid in the said two cases cannot be considered to be good law. According to her in view of the observations in *Ram Chander's* case the petitioner herein, who was promoted in officiating capacity, cannot be said to have been promoted on probation and, therefore, the provisions of Punjab Police Rule 13.18 do not

come into play at all She has brought to my notice that G. C. Jain, J. in *Balwant Singh v. Union of India and others*, C.W-No. 402 of 1972 decided on October 7, 1983(4) has distinguished the case of *Sat Pal* (supra) and had. upheld the non-confirmation of an officiating Assistant Sub Inspector on the expiry of two years, period as provided in Rule 13.18 on the ground that there was no. difference in a temporary appointment and an officiating appointment and till such time a promotee in officiating capacity is specifically put on probation, he cannot be deemed to be confirmed as envisaged in the said rule.

(10) The two questions which fell for consideration in *Rain Chander's case* (supra) were-whether a temporary police officer in Delhi is governed exclusively by the Punjab Police Rules framed under the Police-Act, 1861- and whether his services can be terminated under Rule 5 of the Central Civil Services (Temporary Service) Rules, 1949. The petitioner in that case was directly appointed as a Head Constable in Delhi Police Force on July 16, 1959. He along with other Head Constables was appointed as a temporary Assistant Sub Inspector with effect from March 31, 1960. In the letter of appointment to the promoted Assistant Sub Inspectors it was stated that 'the' provisions of Ppr 12.8(1) will not apply to them and they will be just like other temporary Central Civil Servants.' The petitioner's case was that Central Civil Services (Temporary Services) Rules were repugnant to the scheme of the Punjab Police Rules; the latter being special rules and the applicability, of the former which are general. The argument was that the direction to exclude the application of Punjab Police Rule 12.8(1) as stated in the letter of appointment and thereby treating the petitioner as a temporary Government servant was without jurisdiction. This plea was negatived, it was held that the Police Act and the Rules made there under permit the making of temporary appointment and since they are silent as to the termination of such an appointment, the Central Civil Services (Temporary Services) Rules apply to such termination.

(11) In *Sat Pal's, case* (supra) the plea raised in the 'petition regarding the petitioner's reversion from the post of Assistant 'Sub inspector to' that of Head Constable was 'not decided as during the pendency of the Writ petition the order of reversion had been cancelled and the petitioner confirmed as an Assistant Sub

Inspector. As a result his writ petition became infructuous except with regard to his seniority as an Assistant Sub inspector. which Sat Pal was claiming from an earlier date. The contention was that the Assistant Sub Inspectors junior to him had been confirmed while he had been ignored without there being anything against him. It was in these facts that on analysis of the Punjab Police Rules, particularly Punjab Police Rule 13.18, it was observed that that rule in substance lays down that all police officers promoted to the higher rank shall be on probation for two years on completion of which the officer must either be reverted or confirmed,, but the period of probation cannot be extended. B. C. Misra J. speaking for the division bench held that,

'THIS period 'of probation can' be curtailed by the appointing authority by giving the promoted officer credit' of the period he spent on service in officiating capacity. Rule 13.18 does not require an express order for probation, lit fact. -all promotions are subject to the rule and condition of being placed on probation under rule 13.18 and during this period, the authorities have to, on its' expiry, either confirm or revert him. The provision in rule 13.18 empowering the appointing authority to permit periods of officiating service to be counted towards the period of probation, is not intended to confer a right on the appointing authority to pick and choose from amongst the police officers found fit for promotion and give benefit of automatic confirmation under rule 13.18 to some and to deny it others. It is unfortunate that the appellants have been kept in officiating capacity for a number of years .without consideration of their case for substantive promotion and without express determination of their fitness or otherwise for promotion in substantive capacity. The rule requires the higher officers to keep a strict watch on the conduct and efficiency .of the officers and pass definite orders with regard to their fitness within a reasonable time, but it is a legal right of the public servant equally placed to be considered for promotion. If there is nothing against the officers senior. senior qualified officers, must be promoted and confirmed and if there be anything against them which militates against their fitness there must be a definite decision according to law holding unfit for promotion or confirmation every time their juniors are considered for promotion.'

(12) Thus the ratio of his case is that the police officers who have been promoted on probation are to be confirmed if there is nothing against them.

(13) In Naut Ram's case (supra) the respondent was confirmed as an Assistant Sub Inspector on April 1, 1957 and was promoted as a Sub Inspector on April 27, 1957. In April 1960 he was sent for training to Phillore and after training he was reconfirmed as Assistant Sub Inspector on October 1, 1960. It appears that the departmental proceedings were initiated against him and he was given punishment of forfeiture of one year's approved service, on April 10, 1963. At about the same time the respondent was granted an Emergency Commission in the Army. After his release from the Army in November, 1965 he joined his parent department. While he was in the Army service the Deputy Inspector General had issued show cause notice to him for enhancing the penalty of forfeiture of one year's approved service and ultimately by an order, of May 12, 1964, he was reverted to the post of A.S.I. as a result of enhancement of the punishment. This demotion was challenged by him. It appears that he was reconfirmed sometimes in the year 1963 and confirmed as a Sub Inspector on August 15, 1970. The learned single judge set aside the punishment awarded to him. It was further held that having been confirmed as an Assistant Sub Inspector on April 1, 1967 the question of reconfirming him as an A.S.I. on October 1, 1960 did not arise. The further plea that by virtue of Rule 13.18 of Punjab Police Rules Naut Ram must be deemed to have been automatically confirmed after a period of two years from the date he was promoted as a Sub Inspector from December 27, 1957 was upheld. In the writ petition a categorical statement had been made by the writ petitioner that he was promoted as Sub Inspector on the said date in a substantive vacancy on a permanent post and hence he was automatically confirmed on December 27, 1959. It appears from the perusal of the judgment passed in the Letters Patent Appeal filed by the Union of India that those averments in the writ petition were not denied. Hence it was directed that his seniority as Sub Inspector be counted from the date of deemed confirmation.

(14) A resume of above two decided cases shows that the petitioners in those cases had already been confirmed; Sat Pal as an Assistant Sub Inspector on August 19, 1971 and Naut Ram as a Sub Inspector on August 15, 1970. The

question which arose in those two cases was regarding fixation of their seniority : Whether it was to be counted from the date of their confirmation after successful completion of their probationary period of two years as per Punjab Police Rule 13.18 It was decided in favor, of the petitioners as apparently there was nothing against them. As noticed earlier the departmental proceedings which had led to the reversion of Sat Pal from A.S.I, to Head .Constable were, cancelled by the police authorities on their own initiative; the departmental proceedings against Naut Ram were held to be illegal by the court.

(15) In the case decided by G. C. Jain J. also the petitioner had already been confirmed as a head constable. therefore in none of those three cases it can be said that the petitioners therein had not successfully completed their probationary period. They had also been confirmed. In the present case, however, the position is entirely different. The show cause notice issued to the petitioner, as noticed above, shows that throughout the period he was officiating as a Head Constable, his work and conduct was not found to be satisfactory. One of the allegations is that of misconduct resulting in forfeiture of one year's approved service. As noticed above the inquiry into that charge was valid. It is true that the authorities were obliged to pass an order with regard to his fitness within a reasonable time of his promotion but the fact remains that the petitioner has been found to be unfit to hold the post of a Head Constable. The decision of the authorities that he is unfit to hold that post cannot be ignored, In this view of the matter the authorities. cited by Mr.Kathuria are not applicable as in those cases police officers after successfully completing their probation had been confirmed.

(16) It is unnecessary to deal with the question, in the facts and circumstances of the present case, whether the petitioner's officiating promotion is to be deemed to be promotion on probation. Even if it is held so, assuming that he was promoted against a permanent vacancy, yet in view of the serious allegations the case would have to be remanded to the authorities for further action in accordance with law. That course, at any rate, is not warranted as the petitioner is no longer in service and is gainfully self-employed.

(17) The result is that the petition fails and is dismissed, No order as to costs.

