

Longmal and ors. Vs. Superintendent of Police and ors.

Longmal and ors. Vs. Superintendent of Police and ors.

SooperKanoon Citation : sooperkanoon.com/752645

Court : Rajasthan

Decided On : Apr-22-1966

Reported in : AIR1967Raj214; (1969)IILLJ266Raj

Judge : I.N. Modi and; B.P. Beri, JJ.

Acts : [Police Act, 1861](#) - Sections 2, 7 and 12; Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 - Rules 3(1), 34 and 35; [Constitution of India](#) - Articles 20(2), 166(3) and 309

Appeal No. : Civil Misc. Writ Petn. Nos. 1645 of 1964 and 33, 35, 36, 65 and 66 of 1965

Appellant : Longmal and ors.

Respondent : Superintendent of Police and ors.

Advocate for Def. : M.M. Vyas, Govt. Adv.

Advocate for Pet/Ap. : M. Mridul, Adv. for (Karansingh and Bhawanishanker) and; U.M. Trivedi, Adv. for (Randhirsingh and Lo

Judgement :

Beri, J.

1. These six writ petitions of the members of the police service of the State of Rajasthan raise some common questions and, therefore, they could be conveniently disposed of by one judgment.

Petition No. 1645 of 1964

2. Bhawanishanker Verma, after receiving his training at Kishangarh, joined the Rajasthan Police Service as Sub-Inspector in January, 1956. When he was working in Kota on 27th August, 1962 the Superintendent of Police, Kota (respondent No. 3) by his notice (Ex. 1) asked him to show cause why his grade increments for two years be not stopped for ever because in the course of a departmental enquiry against him he had put an offensive question to Circle Inspector Chhagan Lal alleging that he had taken a bribe of Rs. 200/- from constable Khatola in a departmental enquiry against him. Bhawani Shanker Verma replied this charge but he was awarded the punishment of stoppage of two yearly grade increments with its effect on future (Ex. 2).

An appeal was preferred by him to the Deputy Inspector General of Police, Kota Udaipur Range, which was dismissed in May, 1963 (Ex. 3). A review was preferred before the Governor of Rajasthan but without any success. He has now filed this petition under Article 226 of the [Constitution of India](#) on the ground that Section 7 of the [Police Act, 1861](#) empowers the authorities named therein to inflict only those penalties which are specified in that section. Language of Rule 3(1)(f) of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter called 'the Rules') makes the said rules inapplicable to the petitioner because special provision under the Police Act applies to him. Stoppage of grade increments is no punishment under the Police Act and, therefore, the punishing authorities acted without jurisdiction. Even if the Rules applied, then too, the punishment of stoppage of increment with future effect is not contemplated by Rule 14 and the order of punishment (Ex. 2) dated 13-12-62 is unauthorised by law.

The imposition of punishment has also been challenged on the ground that the right of cross-examination in departmental proceedings would stand impaired if employees were to be punished on that account. He prayed that the order dated

13-12-62 (Ex. 2) be quashed. The non-petitioners, namely, the Inspector General of Police, Rajasthan, the Deputy Inspector General of Police, Udaipur Kota Range, the Superintendent of Police, Kota and the State of Rajasthan have filed an answer to the aforesaid petition. The facts stated by the petitioner are largely admitted but it is asserted that the rules apply as much to the petitioner as the Police Act does. It is also contended that Rule 14 of the Rules includes the punishment imposed on the petitioner. On the question of cross-examination of Circle Inspector Chhagan Lal, it is submitted that the question was unduly offensive and the right of cross-examination does not go to that extent.

Writ Petition No. 33 of -1965.

3. Bhawanishanker Verma, the petitioner in writ petition No. 1645 of 1964, has presented this petition under Article 226 of the Constitution praying that the punishment awarded to him by the Superintendent of Police on 3-11-62 stopping his three grade increments because of his alleged neglect to co-operate with an Excise Inspector and later attempt to falsely implicate him in a case be quashed. After the Superintendent of Police had awarded this punishment the petitioner preferred an appeal before the Deputy Inspector General of Police and a review petition before the Governor but without success. This punishment is also assailed on the same grounds which the petitioner has taken in his petition No. 1645 of 1964 and the reply of the State is also in similar terms.

Writ Petition No. 36 of 1965.

4. The same petitioner Bhawanishanker Verma has challenged in this petition the punishment awarded to him by the Superintendent of Police reducing him by one grade annual increment on the ground that he refused to take orders; that he irregularly obtained casual leave; that he wrote his daily diary illegibly and that he advanced false grounds for taking leave. The petitioner appealed against the order of punishment before the Deputy Inspector General of Police and preferred a review petition before the Governor but without success. He, therefore, prays by this petition under Article 226 of the Constitution that the order of the Deputy Inspector General of Police, Udaipur Kota Range (Ex. 8) be quashed for the reasons and on the grounds raised in petition No. 1645 of 1964. The respondents

resist this petition as well on grounds similar to those in writ petition No. 1645 of 1964,

Writ Petition No 35 of 1965.

5. Karansingh was appointed as a Constable in Special Armed Force on 6-12-52. In 1961, he was posted as Sub Inspector of Police in Police Station, Kheroda, district Udaipur. A F.I.R. was lodged by one Chena in the Police Station and after investigation, the petitioner submitted a challan. The learned Additional Sessions Judge, Udaipur, vide his judgment dated 26-4-62 in sessions case No. 47/30 of 1961 while acquitting the accused made certain observations against Karansingh. A charge-sheet was accordingly served on him on 17-11-62. The Deputy Superintendent of Police enquired into the charge but held that he lacked experience and, therefore, committed the mistake. For some of the omissions he was merely censured and he was warned not to repeat them in his investigations. A show cause notice was however issued to him under Article 311 of the [Constitution of India](#) on 17-2-64 by the Deputy Secretary to the Government of Rajasthan proposing to reduce him to the rank of a Head Constable for a period of three years. Personal hearing was granted to Karansingh by the Deputy Secretary to the Government and pursuant to the orders of the Government contained in Ex. 12 of October, 1964, the Governor enhanced the punishment of censure and reduced the petitioner to the rank of a Head Constable for a period of 3 years from the date of the receipt of the order by him.

The petitioner has challenged the action of the State of Rajasthan on the ground that the petitioner is governed by the Police Act; that the Rules do not apply to him; that the only authorities mentioned in Section 7 of the Police Act could have reduced him in rank; that enhancement of punishment is not permissible under the Police Act and even if the Rules applied and the enhancement was permissible, it was the Governor personally in his discretion who could do so and he could not have delegated this function. It is submitted by the State that Section 7 of the Police Act is not exhaustive and questions on which the provisions of the Police Act are silent the Rules have the effect of supplementing the Act and, therefore, the enhancement of punishment could be done. It was also submitted that the

Governor could delegate his powers and the Government could have reviewed and enhanced the sentence.

Writ Petition No. 66 of 1965.

6. Petitioner Longumal joined as a constable in the Police Force of the erstwhile State of Ajmer on 8-12-51. The Deputy Inspector General of Police, Ajmer Range by his order of 19/20th December, 1962 (Annexure A) declared the petitioner amongst others as surplus from the district and he was called to report to the Police Lines by 5-1-63 from where he will be sent to the Jaipur District for absorption as per orders of the Deputy Inspector General of Police, Ajmer Range, Jaipur. The District Superintendent of Police, Ajmer, by his order dated 2-1-63 (Annexure C) directed the petitioner to proceed to Bharatpur. The petitioner served a notice upon the Secretary, Home Department, State of Rajasthan, Ajmer, which is marked Annexure D. The petitioner was permitted to leave Bharatpur by 4-1-68 and this was recorded in the Daily Diary. The train for Bharatpur leaves Ajmer at 8.30 P.M. On 4-1-63 the petitioner was taken by the G. O. and R. I. Lines to the office of the District Superintendent of Police and there without being given any hearing or any opportunity of a hearing or an explanation, respondent No. 1 the District Superintendent of Police sentenced the petitioner along with 8 others to confinement into the Police Barracks for 14 days with punishment of drill and fatigue duty vide order contained in Annexure E dated 4-1-63.

After the expiry of the period of punishment the petitioner went to Bharatpur on 18th January, 1963. While the petitioner was undergoing the punishment on 7-1-63 at 9 P.M. fresh charges were framed against the petitioner for refusing to comply with the order of transfer and for acting in a most insubordinate and impertinent manner as indicated in Annexure F. An enquiry on the said charge-sheet was then held at Bharatpur by Shri V.D. Sharma, Deputy Superintendent of Police under the Rules. The petitioner submitted an explanation on 1-4-63 inter alia alleging that he could not be punished twice over for the same offence. The petitioner committed no offence after 11 A.M. on 4-1-63, and he could not proceed on that date because he was already confined to quarter guard.

The District Superintendent of Police, Ajmer, vide his order Annexure H dated 21-8-63 examined the defence of the petitioner and came to the conclusion, that because the petitioner intentionally and categorically exhibited gross insubordination, misconduct and faltered at the time of the need when his services were needed most in the anti-dacoity operations and even propagated amongst others not to comply with the orders, exhibiting an incorrigible, reprehensible strain of indiscipline in the default, he had no option but to dismiss him and did so. The petitioner, therefore, prays that this order be quashed. The State has entered a reply to this petition upholding and justifying the action or the respondent. The petitioner also amended his petition and added a ground that the Rules did not apply to the Police Force of Rajasthan and, therefore, the enquiry under the Rules was ultra vires. The State has also contested this contention.

Writ Petition No. 65 of 1965.

7. Randhirsingh petitioner joined the Ajmer Police Force on 11th October, 1947 and was one of the constables who was declared surplus like Longmal. He was also asked to join the Force at Bharatpur for anti-dacoity operations but he did not leave on 3-1-63. On the 4-1-63 he was taken by the General Officer and Reserve Inspector Lines to the office of the respondent District Superintendent of Police, who without giving him any opportunity to explain or answer sentenced him to be confined to police barracks for a period of 14 days with punishment of drill and fatigue duty for appearing in Mufti and for insubordination, insolence and indiscipline.

Thereafter on 18-1-63 a charge-sheet was delivered to the petitioner to the effect that he categorically refused to comply with the order of transfer and acted in a most insubordinate and impertinent manner. An enquiry was held by Shri V.D. Sharma, Deputy Superintendent of Police attached to the Ajmer Police under the provisions of the Rules. The petitioner submitted an explanation inter alia pleading that he could not be punished twice for the same offence and for doing of the same thing. His further submission was that he was medically unfit to carry on duties which were assigned to him. Ultimately, the petitioner was dismissed from service by the order contained in Annexure I dated 7th October, 1963. He has

challenged the same on the ground of being mala fide and without jurisdiction as the Rules did not apply. He has further challenged it on the ground that he could not be punished twice for the same offence. The State of Rajasthan has filed a reply and has endeavoured to support the actions taken against the petitioner.

8. The common questions which emerge in these writ petitions are:

1. Whether the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 apply to the Police Officers serving in the State of Rajasthan and if so to what extent?

2. If the answer is in the affirmative whether the Governor can delegate his powers of review under Rule 34 to the Government?

3. Have petitioners Longmal and Randhirsingh been punished twice over on the ground of their not having proceeded on transfer to Bharatpur once under Section 7 of the Police Act and then under the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958, and if so what is its effect?

First Question:

9. The learned counsel for the petitioners contended that having regard to the language of Section 7 of the Police Act it is only the officers named therein who are empowered to inflict punishment specified in the said section. Any punishment inflicted beyond the four corners of the said section by the authorities not mentioned therein is without jurisdiction. The Police servants to whom this section applies the Rules do not apply and, therefore, the punishment not authorised under Section 7 could not be inflicted. Strong reliance was placed on *Mewa Ram Ram Charan v. United Provinces*, AIR 1954 All 487 and *Mukhtar Singh v. State*, AIR 1959 All 569. The Indian [Police Act, 1861](#) (No. V of 1861) (hereinafter called 'the Police Act') was brought into force in Rajasthan for the first time on 19-7-1950, by a notification dated 10-7-1950, which was issued under Section 4 of the Rajasthan Adaptation of Central Laws Ordinance (No. V of 1950) (Cf. *Poonamram v. State of Rajasthan*, AIR 1960 Raj 56).

The relevant provisions of that Act for answering the question aforesaid are Sections 2 and 7, which read as follows:--

Section 2 :-- 'The entire police establishment under a State Government shall, for the purposes of this Act, be deemed to be one police force, and shall be formally enrolled, and shall consist of such number of officers, and men, and shall be constituted in such manner, as shall from time to time be ordered by the State Government.

Subject to the provisions of this Act the pay and all other conditions of service of members of the subordinate ranks of any police force shall be such as may be determined by the State Government.

Section 7 :-- 'Subject to provisions of Article 311 of the Constitution and to such rules as the State Government may from time to time make under this Act, the Inspector General, Deputy Inspectors General, Assistant Inspector General and District Superintendents of Police may at any time dismiss, suspend or reduce any police officer of the subordinate ranks whom they shall think remiss or negligent in the discharge of his duty or unfit for the same; or may award any one or more of the following punishments to any police officer of the subordinate ranks who shall discharge his duty in a careless or negligent manner, or who by any act of his own shall render himself unfit for the discharge thereof, namely, --

- a. fine to any amount not exceeding one month's pay;
- b. confinement to quarters for a term not exceeding fifteen days, with or without punishment drill, extra guard, fatigue or other duty;
- c. deprivation of good-conduct pay;
- d. removal from any office of distinction or special emolument.'

The relevant rule on which reliance has been placed by the learned counsel for the petitioners seeking to exclude the applicability of the said Rules is Rule 3. The relevant portion thereof reads as follows. -

'Rule 3--These rules shall apply to all Government servant's except:--

.... (f) persons for whose appointment and other matters covered by these rules special provision is made by or under any law for the time being in force, in regard to the matters covered by such law.'

In Mewaram's case, AIR 1954 All 487 the learned Judges were called upon to consider the effect of dismissal of a Police Sub-Inspector in U. P. The Civil Judge in that case had held that the dismissal was irregular because it was not in accordance with Rule 55 of the U. P. Civil Services Rules. The learned Judges observed that Rule 3 of the said Rules excluded the applicability of the U. P. Civil Services (Classification, Control and Appeal) Rules to police officials and, therefore, any departure from Rule 55 of the U. P. Civil Services (Classification, Control and Appeal) Rules did not vitiate the dismissal. In this Allahabad case, AIR 1954 All 487 the learned Judges examined the procedure of a departmental trial under Section 7 of the Police Act as provided in regulations 487 to 491 of the Police Regulations, and observed that they were different from the procedure prescribed under Rule 55.

The Rajasthan Police Regulations, 1948 came to be examined in Poonamram's case, AIR 1960 Raj 56, to which one of us was a party and it was held that they had no statutory force as they were issued by the Chief Secretary to the Government of Rajasthan without the sanction of the Raj Pramukh. The Allahabad case, AIR 1954 All 487, therefore, is distinguishable because they had a valid set of regulations in which a procedure for dismissal was prescribed and since such special provision was made under the Police Regulations, the U. P. Civil Services (Classification, Control and Appeal) Rules were held to be inapplicable.

In Mukhtar Singh's case, AIR 1959 All 569 the learned Judge construed the opening words of Section 7 of the Police Act and held that the Rules that will be applicable to the case of a police personnel are the rules framed under the Police Act and that there was nothing in the U. P. Civil Services Rules which made them applicable to the members of the Subordinate Police Force. This conclusion was reached on account of the proviso to Rule 3 of the Civil Services Rules. Here again the Police Regulation 477 was considered. The plea in the Allahabad case, AIR 1959 All 569 was that the procedure prescribed for the police servants being

different from those of other civil servants was discriminatory. The U. P. Police Regulation 477 opens with the words that the rules in that Chapter were made under Section 7 of the Police Act and apply only to officers appointed under Section 2 of the Police Act (V of 1861) and further provided that no officer appointed under that section shall be punished by executive order otherwise than in the manner provided in that chapter. For this reason where the Police Regulations clearly excluded the applicability of any other procedure makes this case distinguishable from the situation as obtaining in Rajasthan.

We have no Police Regulations prescribing any different procedure much less excluding the applicability of any other procedure. Similar question again came for consideration before the Allahabad High Court in *Asha Ram v. G.C. Saxena*, AIR 1962 All 507. The learned Judge observed,--

'The contention is that the rules 'made by competent authority' mentioned in this section mean only the rules made by the Inspector General of Police under Section 12 of the Police Act or by the State Government under Section 46. I can see no justification, however for interpreting the words used in Section 29 in this narrow restricted fashion. If it had been intended that only the breach of rules made under Sections 12 and 46 of the Act was to be punishable under Section 29, one would have expected the section to use the words 'any rule made under this Act by competent authority'; but the section merely refers to rules and regulations is general, without restriction, and in the circumstances there seems to be no reason why rules made by a competent authority otherwise than under the Act should not also come within the scope of the section.'

This case, therefore, takes the view that under Section 29 of the Police Act if there is a violation of a rule validly made by any authority the section is attracted.

Section 2 of the Police Act inter alia provides that subject to the provisions of the Act the pay and all other conditions of service of members of the subordinate ranks of any police force shall be such as may be determined by the State Government. This section, in our opinion, clearly authorises the State Government to formulate rules relating to the conditions of service of members of the subordinate ranks of any police force provided they are not inconsistent with the

provisions of the Police Act. Rules framed under Article 309 of the [Constitution of India](#) by the Governor of Rajasthan are applicable to the members of the subordinate rank of Rajasthan Police Force on questions relating to the conditions of service but subject to the provisions of the Police Act. All matters, therefore, which are not specifically covered by the Police Act in regard to the conditions of service including the question of punishment for which no provision is made by the Police Act and which are not inconsistent with that Act, in our opinion, should govern the police officers of subordinate rank on the authority of Section 2 of the Police Act and also having due regard to the language of Rule 3 (1) (f) which excludes the applicability of the rules only when special provision has been made by or under any law. The rules are, therefore, supplementary to the Police Act.

10. The next question which flows from the answer aforesaid and on which the fate of the three petitions of Bhawani Shanker rests is whether he could be punished with the penalty of stoppage of increments when no such punishment is envisaged by Section 7 of the Police Act. The learned Counsel for the petitioner argued that the only punishments provided by the said section are (a) dismissal, (b) suspension, (c) reduction, if a police officer is remiss or negligent in the discharge of his duties or unfit for the same. The other punishments provided in the section for carelessness or negligent discharge of duties are fine to an amount not exceeding one month's pay; confinement to quarters for a term not exceeding 15 days with or without punishment drill, extra guard, fatigue or other duty; deprivation of good-conduct pay; removal from any office of distinction or special emolument.

In other words, the argument is that stoppage of increment with future effect is not a punishment envisaged by Section 7. It is correct that withholding of increments is not a punishment provided as such in Section 7 of the Police Act. The argument of the learned Government Advocate, however, is that the word 'reduce' in Section 7 is comprehensive enough to include the punishment of with-holding of increments. The language employed in Section 7 is 'not reduction of rank' as employed in Article 311 of the Constitution but the only word used is 'reduce'. The grammatical meaning of the word 'reduce' inter alia is to lessen in any way as in size, weight, amount, value, price, etc., to diminish, to lower as in rank or position, to decrease.

(See Webster's New 20th Century Dictionary).

When the increments of an incumbent are stopped his future progress is brought to a stand-still for a particular length of time. It is the stoppage of his increase which results in a sense in a decrease of his emoluments. In our opinion, therefore, the word 'reduce' is wide enough to include the punishment of stoppage of increments. Stoppage of increments with future effect is a permanent reduction in the speed of progress so far as emoluments of an employee are concerned. Bhawani Shanker, therefore, could be punished by stoppage of increment under Section 7 of the Police Act. In this view of the matter, Bhawani Shankar's writ petitions Nos. 645/64, 33/65 and 36/65 have no force and are dismissed. There will be no order as to costs. Second Question:

11. The second question which concerns the writ petition of Karan Singh being writ petition No. 35 of 1965 is that the petitioner who was a Sub Inspector was merely censured but the Deputy Secretary to the State of Rajasthan exercising the powers of review reduced him to the rank of a Head Constable for a period of three years. We have already held that the rules are supplementary to the Police Act. In this view of the matter, we are clearly of the opinion that the provisions relating to review of punishment awarded to a subordinate police official as provided in Rules 32, 33 and 34 apply to them. Rule 32, broadly speaking, relates to an appellate authority, who has a power to review the penalty imposed on a government employee if no appeal has been preferred therefrom.

The relevant portions of Rules 33 and 34 read as follows:--

'Rule 33.--Reviews of orders in disciplinary cases against members of the State Service--The Government may, of its own motion or otherwise, call for the records of the case in which an order imposing any of the penalties specified in Rule 14 has been made against a member of the State Services, review any order passed in such a case and after consultation with the Commission where such consultation is necessary, pass such orders as it deems fit:

Provided that an order enhancing a penalty shall not be passed unless the person concerned has been given an opportunity of making any representation which he

may wish to make against such enhanced penalty:

Provided further that no action under this rule shall be intimated more than three months after the date of the order to be reviewed.' 'Rule 34.--Governor's power to review--Notwithstanding anything contained in these rules, the Governor may, on his own motion or otherwise, after calling for the records of the case, review any order which is made or is appealable under these rules or the rules repealed by Rule 35 and, after consultation with the Commission where such consultation is necessary-

(a) confirm, modify or set aside the order;

(b) impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by the order;

(c) remit the case to the authority which made the order or to any other authority directing such further action or inquiry as he considers proper in the circumstances of the case; or

(d) pass such other orders as he deems fit Provided that - (i) an order imposing or enhancing a penalty shall not be passed unless the person concerned has been given an opportunity of making any representation which he may wish to make against such enhanced penalty;'

Exhibit 12 is the order of the Government of Rajasthan, Home 'E' Department. In the body of that order, it is said that the record of the departmental enquiry was called for and examined by the government along with the observations of the Additional Sessions Judge, Udaipur and 'the Government decided to review the case in exercise of the powers under Rule 34 (b) of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958.' The Government provisionally decided that Shri Karamsingh should be reduced to the rank of a Head Constable, and the delinquent officer was also given an opportunity of personal hearing on 25-6-64. But the operative part of the order says that the Governor has, therefore, been pleased to enhance the punishment of censure. This order is assailed, firstly, on the ground that assuming that the Rules applies to the petitioner, the

Government under its powers of review, could have enhanced the punishment provided it took action under Rule 34 within 3 months after the date of the order to be reviewed. The Superintendent of Police, Udaipur, had punished the petitioner on 12-4-63 and the show cause notice for review was issued against him on 3-2-64 clearly more than three months after the date of his punishment.

Further, it is challenged on the ground that while it was provisionally decided to reduce him to the rank of a Head Constable for a period of three years but when he came to be punished not only was he reduced for a period of three years, but a further punishment was imposed upon him to the effect that he would not earn increments as a Sub-Inspector for a period of 3 years on his re-instatement. No notice of this punishment was given to him. The learned Government Advocate met the challenge by submitting that the Government of Rajasthan as a delegate of the Governor of Rajasthan was clearly entitled to review the case of the petitioner without any period of limitation. In the order of reduction in rank passed by the Governor, (Ex. 12) it is said that the Governor was pleased to enhance the punishment of the petitioner's censure to that of reduction in rank and, therefore, no question of limitation arose. On the point of depriving of the increment to the petitioner, it was submitted that the penalty was included in the penalty of reduction in rank itself.

12. In regard to the latter objection we may at once observe that this objection is without substance. The notice of show-cause clearly indicated the penalty and this is merely one of the consequences.

13. The Rules, as we have already noticed, make clear cut provision for review by (a) an appellate authority before whom no appeal has been preferred; (b) by the Government; and (c) by the Governor. Article 166 of the [Constitution of India](#) inter alia provides,--

'Article 166 (3).--The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.'

The power conferred by Rule 35 of the Rules, in our opinion, is a power to be exercised by the Governor in his discretion. This is clear from the distinction that the rules themselves make between the powers of the Government and the powers of the Governor. Any act which is to be performed by the Governor in his discretion by or under the Constitution has to be performed by him alone and we do not accept the contention of the learned Government Advocate that the powers under Rule 35 of the Rules could be exercised by the Government as Governor's delegate. The Governor gave no opportunity of representation to the petitioner. The opportunity was given by the Government. Therefore, the order Ex. 12 in Karan Singh's case passed by the Government of Rajasthan is clearly without authority and we have no option but to quash it, and his writ petition No. 35 of 1965 is allowed. Third Question:

14. Writ Petitions Nos. 66 of 1964 and 86 of 1965 raise this common question. Those two petitioners amongst others refused to proceed on transfer to Bharatpur in connection with anti-dacoity operations. Originally they were required to proceed on 3rd January, 1963. Since they did not proceed on that date they were ordered to proceed on the next day. While the case of the petitioners is that they could have left by the evening train of the 4th January, 1963, the case set out by the State is that they were required to leave by the morning train of 4th January, 1963. As they had not left on the morning of the 4th January 1963 the Superintendent of Police called them in his Office on 4th January, 1963. They arrived in 'mufti' and wore an insolent look and they wilfully refused compliance. This the Superintendent of Police considered was gross indiscipline and he ordered them to be confined to police barracks for a period of 14 days with punishment drill and fatigue duty.

Then again for not proceeding to Bharatpur on 4th January, 1963 the petitioners were dismissed. The grievance of the petitioners is that they have been punished twice over for the same default. Two charges were framed under Section 16 of the Rules read with Section 7 of the Police Act on 6th January, 1963, and the Superintendent of Police did not give any punishment for the insubordinate behaviour on 4th January, 1963, but dismissed the petitioners on the ground of their non-compliance of the order of transfer.

The petitioners contend that they were permitted to leave for Bharatpur by the evening train of the 4th January, 1963. The case set up by the State is that the petitioners amongst others were only given the night between the 3rd and the 4th to reflect and obey by proceeding on transfer to Bharatpur on the morning of the 4th January, 1963. From the record, as it stands, we find from Annexure I with the petition that in his evidence P. W. 7 Shri Virendra Singh, Deputy Superintendent of Police, G. O. Lines stated that 'he obtained permission from the Superintendent of Police for one more night and informed them to leave on 4-1-1963 morning. On 4-1-1963 when they totally refused to proceed to Bharatpur he again went to Police Lines talked to them and found them behaving in a most indisciplined manner', etc. The affidavit of Mr. M.K. Saxena, Superintendent of Police verifying para 6 of the reply is also to the effect that the petitioners, the defaulting constables, had to proceed on the morning of the 4th January, 1963.

The petitioners' affidavit is to the contrary. We sent for and examined the General Diary of the Police Lines, Ajmer. The relevant entry is No. 156 of 3-1-1963. It fully supports the respondent's stand that only a nights further time was given to these employees to comply with the orders of transfer. They had, therefore, to leave on the morning of the 4th January, 1963. We see no good reason to disbelieve the affidavit of Mr. Saxena or the deposition of the Deputy Superintendent of Police as contained in Annexure I to the petition and it seems reasonable to hold that when on the morning of 4th January, 1963 these petitioners did not proceed to Bharatpur they were sent for and when interviewed in the Superintendent of Police's office besides the dis-obedience in complying the order by proceeding on transfer to Bharatpur they refused to don their uniform appeared in Mufti and behaved insolently. For the latter lapse they were given 14 days' quarter guard with heavy drill and fatigue duty under Section 7 of the Police Act. This was in independent punishment from the one which was imposed on them on account of their failure to proceed on transfer. In the circumstances we are unable to hold that the petitioners have been punished twice over the same default.

15. The petitions accordingly fail and are dismissed. There will be no order as to costs.

16. The result is that the petitions of Bhawani Shankar, being petitions Nos. 1645 of 1964, 33 of 1965 and 36 of 1965 are dismissed and there will be no order as to costs. The writ petition of Karan Singh bearing No. 35 of 1965 is allowed and the order Ex. 12 in his petition passed by the Government of Rajasthan is quashed, being without authority. The petitions Nos. 66 of 1964 (Longmal v. The S. P. Ajmer) and 65 of 1965 (Randheer Singh v. The Superintendent of Police, Ajmer) are dismissed, and there will be no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com