

Kapur Chand Vs. Inspector-general of Police and anr.

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Court : Himachal Pradesh

Decided On : Dec-19-1961

Reported in : AIR1962HP35

Judge : C.B. Capoor, J.C.

Acts : [Constitution of India](#) - Articles 226 and 311(2); ;Himachal Pradesh Punjab Police Rules, 1934 - Rules 13.18 and 16.4; ;Indian Penal Code (IPC) - Section 302

Appeal No. : Civil Writ Petn. No. 14 of 1961

Appellant : Kapur Chand

Respondent : inspector-general of Police and anr.

Advocate for Def. : Prithvi Raj, Adv.

Advocate for Pet/Ap. : Ramji Das, Adv.

Disposition : Petition partly accepted

Judgement :

C.B. Capoor, J.C.

1. This is a petition under Article 226 of the [Constitution of India](#).

2. The petitioner was a Sub-Inspector of Police under the Himachal Pradesh Administration. On 1-1-1960 he was promoted to the fourth selection grade. During the period from 2-11-1960 and 27-11-1960 he was posted as S. H. O. Arki. By an order of the Deputy Superintendent of Police Headquarters dated 27-11-1960 he was placed under suspension as a departmental inquiry was contemplated against him for grave misconduct in the investigation of the case F. I. R. No. 21 dated 19-11-1960 under sections 457 and 380, I. P. C., P.S. Arki in which case the deceased Jagar Nath was a suspect vide Annexure 'A' to the petition. During the course of investigation of that case the petitioner was alleged to have interrogated and in conjunction with constables Ganga Ram and Bal Kishan to have tortured the aforesaid Jagar Nath who succumbed to his injuries on 20-11-1960. By a subsequent Order of the InspectorGeneral of Police Himachal Pradesh dated 22-12-1960, the petitioner was reverted to the time scale with effect from 1-12-1960 vide Annexure 'B'. On 27-3-1961 the Superintendent of Police Mahasu served on the petitioner summary of allegations Annexure 'C' and required him to show cause why suitable action be not taken against him.

Prior to the initiation of the departmental inquiry a case under Section 302, I. P. C., based on the same allegations which form the subject-matter of the departmental inquiry was registered against the petitioner and the two constables Ganga Ram and Bal Kishan and investigation of that case was entrusted to the Deputy Superintendent of Police Headquarters. Under orders of the District Magistrate Mahasu a magisterial inquiry under section 176, Cri. P. C., into the allegations about torture was held by Shri Prakash Chand, the then Magistrate first class, Kasumpti. When the summary of the allegations referred to above was served upon the petitioner he represented that a departmental inquiry should not be instituted in view of the fact that a case under Section 302, I. P. C., had already been registered against him and was pending investigation. The request was, however, turned down and thereafter the petitioner filed the present petition.

3. The petitioner's prayers are that the orders made by the respondent No. 1 reverting him to the time scale be quashed and the holding of departmental inquiry be stayed. The main grounds on which the first prayer is based are that the order of reversion was tantamount to punishment and as no opportunity was afforded to

the petitioner to show cause against the proposed order of reversion it was void and ineffective. The stay of the holding of the departmental inquiry has been sought on the following grounds:-- (1) That the petitioner has already been punished by being reverted to the time scale and a double punishment will be inflicted on him if he is punished as a result of departmental inquiry (2) that a departmental inquiry could not be held without the specific order of the District Magistrate which order was wanting and (3) that departmental inquiry should not be held during the pendency of investigation of a case registered against him when both were based on the same allegations.

4. The first question that arises for consideration is as to whether the order of reversion was tantamount to punishment and was void in view of Article 311(2) of the Constitution.

5. The following observations were made by S. R Das, C. J., in delivering 'he majority view in the well known case of Parshotam Lal Dingra v. Union of India, reported in AIR 1958 SC 36:

'A reduction in rank likewise may be by way of punishment or it may be an innocuous thing. If the Government servant has a right to a particular rank, then the very reduction from that rank will operate as a penalty, for he will then lose the emoluments and privileges of that rank. If, however he has no right to the particular rank, his reduction from an officiating higher rank to his Substantive lower rank will not ordinarily be a punishment. But the mere fact that the servant has no title to the post or the rank and the Government has, by contract, express or implied, or under the rules, the right to reduce him to a lower post does not mean that an order of reduction of a servant to a lower post or rank cannot in any circumstances be a punishment. The real test for determining whether the reduction in such cases is or is not by way of punishment is to find out if the order for the reduction also visits the servant with any penal consequences. Thus if the order entails or provides for the forfeiture of his pay or allowances or the loss of his seniority in his substantive rank or the stoppage or postponement of his future chances of promotion, then that circumstance may indicate that although in form the Government had purported to exercise its right to terminate the employment or

to reduce the servant to a lower rank under the terms of the contract of employment or under the rules, in truth and reality the Government has terminated the employment as and ,by way of penalty. The use of the expression 'terminate' or 'discharge' is not conclusive. In spite of the use of such innocuous expressions, the Court has to apply the two tests mentioned above, namely, (1) whether the servant had a right to the post or the rank or (2) whether he has been visited with evil consequences of the kind hereinbefore referred to. If the case satisfies either of the two tests then it must be held that the servant has been punished and the termination of his service must be taken as a dismissal or removal from service or the reversion to his substantive rank must be regarded as a reduction in rank and if the requirements of rules and Article 311, which give protection to Government servant have not been complied with, the termination of the service or the reduction in rank must be held to be wrongful and in violation of the constitutional right of the servant'

6. Prima facie, the petitioner was not reverted to the time scale as a punishment. It has been contended on behalf of the petitioner that he had substantively been promoted to the selection grade and as such he had a right to hold that grade and that as a result of the order of reversion he cannot again be considered for promotion to the selection grade and as such both the two tests laid down in the majority decision of the Hon'ble Supreme Court referred to above were satisfied. Copy of the order promoting the petitioner to the selection grade is not on record. It has, however, not been disputed on behalf of the petitioner that his promotion to the selection grade did not specifically purport to be in a substantive capacity. His contention is that by implication the promotion must be held to have been in a substantive capacity as it could not have been and did not purport to be on probation.

7. The relevant Rule of the Punjab Police Rules 1934 which are applicable to Himachal Pradesh is 13.14. It runs as below:

'(1) Promotions to the 4th selection grade of sub-inspectors shall be made by Deputy Inspectors-General as vacancies in the sanctioned establishment of such appointments occur. Recommendation rolls in Form 13.14(1) of sub-inspectors

who are considered fit for promotion to the selection grade shall be submitted by Superintendents to the Deputy Inspector-General annually in September and shall be placed with the officer's personal file. Promotions from one selection grade to another shall be made by Deputy Inspectors-General as vacancies occur in accordance with the principle laid down in Rule 13-1.'

(2) 'No sub-inspector shall be considered eligible for promotion to a selection grade unless he has at least eight years' approved service as an upper subordinate, of which at least five shall have been in the rank of sub-inspector, and unless he is thoroughly efficient and competent to hold charge of a police station of first class importance. No sub-inspector who has been punished by reduction, stoppage of increment, or forfeiture of approved service for increment, shall be eligible for promotion to a selection grade. Exceptions to this Rule may be made only with the sanction of the Inspector-General in recognition of distinguished service and exemplary conduct.'

8. It will have been noticed that the Rule merely provides that promotion to the selection grade shall be made as vacancies in the sanctioned establishment of such appointments occur. A Vacancy in the sanctioned establishment may occur even temporarily. For instance, if an officer holding the selection grade in a substantive capacity is temporarily deputed to another State a vacancy would occur but not substantively and if an officer is promoted to the selection grade in such a vacancy he is liable to be reverted when the deputation of the holder of the selection grade in a substantive capacity ceases. It is, therefore, not correct to say that whenever an appointment is made to the selection grade of Sub-Inspectors it is invariably in a substantive capacity. The contention advanced on behalf of the petitioner that appointment to the selection grade of Sub-Inspectors is always in a substantive capacity cannot be accepted.

9. Rule 13.18 of the aforesaid Rules reads as below:

'All police officers promoted in rank shall be on probation for one year and may be reverted within that period without departmental proceedings, except in the case of constables promoted to the selection grade who may be reverted upto three years from the date of their such promotion, vide Rules 13.5(7). The reversion of

an officer shall not be considered reduction for the purpose of Rule 16.4. Confirmation will be subject to a favourable report rendered to the authority empowered to make the promotion prior to the expiry of the period during which reversion is possible.'

10. According to the aforesaid Rule all police officers promoted in rank are to be on probation for one year and are liable to be reverted within that period without departmental proceedings being initiated against them. Such reversion again does not amount to a reduction in rank for the purposes of Rule 164.

11. On behalf of the petitioner it has been contended that the aforesaid Rule cannot apply to his case as his promotion to the selection grade was not a promotion in rank, rather it was promotion from one grade to another in the same rank and in support of that contention my attention has been invited to Rule 13.1 of the aforesaid Punjab Rules in which mention has been made of both promotion from one rank to another and from one grade to another in the same rank. Differently stated the contention is that the words promotion in rank as used in Rule 13.18 connote promotion from one rank to another and not from one grade to another in the same rank.

12. It is significant that the words used in Rule 13.18 are not 'promoted from one rank to another'. The word 'rank' according to the Concise Oxford Dictionary Fourth Edition inter alia means order, array, distinct social class, grade of dignity, station, high station, place in a scale and the words 'promoted in rank' are wide enough to include promotion from one grade to another in the same rank. Reference in this connection may usefully be made to the phraseology used in Article 311 of the Constitution. Therein the words used are 'reduction in rank' and I have no doubt that those words cover not only reduction from one rank to another but also reduction from one grade to another in the same rank. Indeed, if the petitioner were to contend that the words 'reduction in rank' as used in Article 311 do not include reduction from one grade to another in the same rank his case would be out of the purview of the aforesaid article. Although it is not of much consequence but it will not be out of place to mention that even in the petition under consideration it has been stated that respondent No. 1 passed an order

reducing the petitioner in rank by directing his reversion from the selection grade to the time scale. If the words 'reduction in rank' be wide enough to include reduction from one grade to another in the same rank the words promoted in rank should likewise comprehend not only promotion from one rank to another but also promotion from one grade to another in the same rank. The aforesaid consideration apart there is inherent evidence in the aforesaid Rule (13-18) that the Rule was intended to apply to promotion from one grade ,to another hi the same rank also.

13. It will have been noticed that the case of constables promoted to the selection grade has been specifically excepted from the aforesaid rule. If the Rule were not intended to apply to promotion from one grade to another in the same rank it should not have been necessary to make the exception referred to above. The fact that the case of constables promoted to the selection grade was excepted from the operation of the Rule makes it abundantly clear that the Rule was intended to cover the ease of promotion to or reduction, from one grade to another in the same rank.

14. The Punjab Police Rules 1934 were subsequently amended and a specific provision has been made in Sub-rule (3) of Rule 13.14 that sub-inspectors promoted to the 4th selection grade, shall be on probation for one year and may be reverted without formal departmental proceedings during or on the expiry of the period of their probation if they fail to maintain an exemplary standard of conduct and efficiency and even though the aforesaid amended Rule may not be applicable to Himachal Pradesh it may reasonably be interred that the intention of the rule-making body even previously was that sub-inspectors promoted to the 4th selection grade would be on probation for one year and during the period of probation could be reverted without the initiation of departmental proceedings against them.

15. I am, therefore, of the opinion that the promotion of the petitioner to the selection grade was on probation for one year and was not a substantive one. The petitioner, therefore, had no right or lien to the selection grade. The first of the two tests laid down in the majority decision in the Supreme Court case supra is not

satisfied.

16. It has next to be seen if the order of reversion entailed evil consequences and as to whether the second of the test laid down in the aforesaid Supreme Court case has been satisfied. It has been made clear in the majority decision that the mere reduction in emoluments as a result of reduction in rank cannot be considered to be an evil consequence. Relying upon Rule 13.14 it has been contended on behalf of the petitioner that the result of the order of reversion is that normally he has become ineligible for being promoted to the selection grade again. The aforesaid Rule does no doubt inter alia provide, that no sub-inspector who has been punished by reduction, stoppage of increment, or forfeiture of approved service for increment shall be eligible for promotion to a selection grade but the aforesaid provision would come into play when the reduction, stoppage of increment or forfeiture of approved service for increment has been ordered as a punishment. If reduction in rank has not been brought about as a punishment the aforesaid provision of law will not stand as a bar to the promotion to the selection grade of an officer who has been reduced in rank.

17. On behalf of the petitioner reliance has also been placed upon a recent decision of the Hon'ble Supreme Court in the case of Madhav Laxman Vaikunthe v. State of Mysore given on 12-4-1961, (AIR 1962 SC 8). Briefly stated the facts of that case were as below: The appellant was holding a rank of the Mamlatdar in the first grade and was officiating as a District Deputy Collector. A departmental inquiry was held against him for having charged travelling allowance in respect of 59 miles whereas the correct distance covered by him on official duty was 51 miles and as a result of inquiry by an order dated 11-8-1948 he was reverted to the post of Mamlatdar for a period of three years. Subsequently, it was found that he had not overcharged and no fraud was involved in the T.A. bill submitted by him and he was promoted to the selection grade with effect from 1-8-1950. The Hon'ble Supreme Court found that as the order of reversion dated 11-8-1948 affected the seniority of the appellant as a Mamlatdar and as the order of reversion was to be operative for a period of three years the reversion was tantamount to punishment and entailed evil consequences contemplated by the majority decision in P. L. Dhingra's case AIR 1958 SC 36. Unlike the order of reversion in the case of

Madhav Laxman Vaikunthe (AIR 1962 SC 8) the order reverting the petitioner from the selection grade to the time scale is not for any definite period of time and the instant case is clearly distinguishable from that case.

18. On behalf of the petitioner reliance was also placed upon Rule 16-4 of the aforesaid Police Rules in support of the contention that reduction from the selection grade to the time scale of the same rank was tantamount to the punishment of reduction. It is, however, clear from Rule 13-18 itself that reversion of an officer in accordance with that Rule shall not be considered reduction for the purpose of Rule 16.4.

19. The order of reversion, it will have been noticed, was made operative with effect from a back date and it is for consideration if the portion of the order having retrospective effect was in the nature of penalty. This question has not been specifically raised in the pleadings and was not touched in the course of argument. Normally I would have afforded an opportunity to the parties to address their argument thereon but I do not propose to have recourse to that step as the question has previously been considered by this Court in the case of Sarwan Singh v. Union of India, reported in AIR 1960 Him Pra 24, to that case the petitioners had drawn the salary admissible for the higher rank and one of the results of the retrospective order of reversion was that they were required to disgorge the difference between the emoluments admissible for the higher post and those admissible for the post to which they were reduced and it was held that the orders of reversion had entailed forfeiture of pay and was in consequence penal in nature. In the instant case on the date that the order of reversion was made the petitioner had become entitled to draw the salary admissible to a sub-inspector selection grade for the period from 1-12-1960 to 21-12-1960 but had lost that right as a result of the retrospective nature of the order. In my opinion there is no difference in principle between a case in which salary admissible to the holder of the higher post has been drawn by him & a case in which he has become entitled to that salary but has not actually drawn it. In both the cases there is forfeiture of earned emoluments & penal consequences as contemplated in the majority view of Dhingra's case ensue. I, therefore, hold that that portion of the impugned order which made it operative with effect from 1-12-1960 was in the

nature of punishment and in view of Article 311 (2) of the Constitution could not be passed without an opportunity being afforded to the petitioner to show cause against the passing of the order.

20. This brings me to the question if the portion of the order of reversion which has been held to be in conflict with Article 311 (2) of the Constitution can be quashed leaving the other portion of the order intact. This question was also considered by this Court in the case of Sarwan Singh AIR 1960 Him Pra 24 (supra) and relying upon the rulings of the Hon'ble Supreme Court reported in (S) AIR 1957 SC 628, R. M. D. Chamarbaugwalla v. Union of India; AIR 1958 SC 845, Sewpujanrai Indrasanrai Ltd. v. Collector of Customs and AIR 1960 SC 321, Mahaboob Sheriff and Sons v. Mysore State Transport Authority, Bangalore, it was held that the infected portion of the order could be severed from the good one provided the latter portion could stand and be operative without the infected portion. In the 1957 Supreme Court case ((S) AIR 1957 SC 628) supra the principles on which any unconstitutional provision can be severed and struck down leaving other parts of a statute untouched were laid down and it was held that what had primarily to be considered was if the legislature would have enacted the valid part if it had known that the rest of the statute was invalid.

21. The aforesaid principle relating to statutes was extended by the Hon'ble Supreme Court to orders sought to be quashed. In the case of Sewpujanrai Indrasanrai Ltd., AIR 1958 SC 845 referred to above the Hon'ble Supreme Court quashed a part only of the order of the Collector of Customs. In the case AIR 1960 SC 321 supra) the majority of the learned Judges constituting the Bench severed the legal from the illegal part of an order made by a State Transport Authority under the Motor Vehicles Act and quashed the illegal part. In the instant case severance of the portion of the order which is bad in law can be brought about without destroying the effectiveness of the good and valid portion of it. An officer who had passed the order of reversion with retrospective effect would certainly have passed the order with prospective effect if he had known that the order of reversion could not be made with retrospective effect and it cannot be said that in maintaining the prospective part of the order this Court will be substituting its discretion for the discretion of the Inspector General of Police.

22. Now I advert to the question as to whether the departmental inquiry initiated against the petitioner should be ordered to be stayed. The main contention that has been urged on behalf of the petitioner in this connection is that a departmental inquiry could not be initiated without a specific order of the District Magistrate as provided in Rule 16.38 of the Police Rules referred to above. The relevant portion of the aforesaid Rule runs as below:

'(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 shall decide whether the investigation of the complaint shall be conducted by a police officer, or made over to a selected magistrate having first class powers'.

“(2) When 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 prescribed 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'.

23. The respondents have brought on record though, at rather a late stage of the case copy of the detailed report submitted by the Superintendent of Police to the District Magistrate requesting for an order to hold a departmental inquiry against the petitioner and copy of the order made by the District Magistrate. It appears from the aforesaid annexures that the District Magistrate did record his approval to the holding of the departmental inquiry against the petitioner. The report submitted by the Superintendent of Police indicates that for want of sufficient evidence it was not considered expedient to prosecute the petitioner in a Court of law and the investigation of the case registered against the petitioner under Section 302, I. P. C., might well be considered to have been closed.

24. Another contention that has been advanced on behalf of the petitioner is that the holding of the departmental inquiry might result in the infliction of some punishment and having been already punished by the order of reversion he would

be doubly punished. The order of reversion except in so far as it purports to be retrospective has not been held to be a punishment. The portion of the order which purports to be retrospective is being quashed and thus there can be no question of the infliction of a double punishment if as a result of the departmental inquiry some punishment is ultimately awarded to the petitioner.

25. The last contention advanced on behalf of the petitioner has been that it would be a violation of the principles of natural justice if a departmental inquiry is held pending the investigation of a case registered against him under Section 302, I. P. C. It has already been noticed that the idea of prosecuting the petitioner for the offence under Section 302, I. P. C., has been given up. Moreover, as was held in the case *Delhi Cloth and General Mills Ltd. v. Kushal Bha*, reported in AIR 1960 SC 806, to hold a departmental inquiry pending decision of a criminal trial Court dealing with the same facts is not a violation of the principles of natural justice.

26. The petitioner has thus not made out a good case for an order restraining the respondents from holding the proposed departmental inquiry.

27. In conclusion, the petition is accepted in part and a writ of certiorari is issued to the respondents quashing that portion of the order dated 22-12-1960 only which makes it operative with effect from 1-12-1960 with the result that the order shall have prospective effect. In other respects the petition is dismissed. The contestants will receive and pay costs in proportion to success and failure. The success and failure of the petitioner is adjudged in the ratio of 1 : 9, i. e. 1/10th and 9/10th.