

Union Of India vs Jagjit Singh on 1 April, 1969

Equivalent citations: 1970 AIR 122, 1970 SCR (1) 163, AIR 1970 SUPREME COURT 122

Author: G.K. Mitter

Bench: G.K. Mitter, M. Hidayatullah, J.C. Shah, V. Ramaswami, A.N. Grover

PETITIONER:
UNION OF INDIA

Vs.

RESPONDENT:
JAGJIT SINGH

DATE OF JUDGMENT:
01/04/1969

BENCH:
MITTER, G.K.
BENCH:
MITTER, G.K.
HIDAYATULLAH, M. (CJ)
SHAH, J.C.
RAMASWAMI, V.
GROVER, A.N.

CITATION:
1970 AIR 122 1970 SCR (1) 163
1969 SCC (2) 108
CITATOR INFO :
R 1971 SC1402 (4)

ACT:
Police Act (5 of 1861), s. 4 and Punjab Police Rules, 1934 rr. 1.8, 16.24 (1)(1) and 16.38 (1) and (2)-Whether 'Superintendent of Police' and 'District Superintendent of Police' same-Scope of r. 16.24 (1)(1).

HEADNOTE:
The respondent, who was appointed a Sub-Inspector of Police, was posted in Delhi in 1949. A Deputy Superintendent of Police, in the City of Delhi who had already retired from service was directed to conduct a departmental inquiry against the respondent. The enquiring Officer was

reemployed from the date of retirement as a Deputy Superintendent of Police (Enforcement Department), and after such reemployment, had conducted the enquiry against the respondent and found him guilty. Thereupon the Superintendent of Police, Delhi Police Force, ordered the dismissal of the respondent. The respondent's suit challenging the dismissal was decreed and the decree was confirmed by the High Court.

In appeal to this Court, on the questions : (1) Whether an officer functioning as a Superintendent of Police but was not designated as a District Superintendent of Police was competent to pass the order of dismissal; (2) Whether the officer, entrusted with the enquiry was a police officer competent to hold the inquiry; and (3) Whether the procedure prescribed by Rule 16.38 (1) and (2) of the Punjab Police Rules, 1934, was followed before holding the departmental enquiry.

HELD : (1) Though the Police Act, 1861, uses the expression 'District Superintendent of Police' and the Punjab Police Rules use the expression 'Superintendent of Police' the two expressions refer to one and the same authority. Under R. 1.8 of the Punjab Police Rules, there could be more than one Superintendent of Police in a district. Since the police force expanded considerably between 1861 when the Act was passed and 1934 when the Punjab Police Rules, were framed, a Magisterial district was divided into smaller areas for the better enforcement of law and order and a Superintendent was placed in charge of each such area. In the Delhi area there were two Superintendents of Police one for the city of Delhi and the other for New Delhi. The Superintendent of Police; City of Delhi, would therefore be the District Superintendent of Police for the purposes of the Police Act with jurisdiction over the police station where the plaintiff was posted, and he was competent to pass the order of dismissal. [167 E-, 168 B-C, F]

(2) Under R. 16.24 (1)(1) the officer conducting the enquiry must be an officer empowered to punish or such superior officer whom the superintendent might direct to conduct the enquiry. [168 H]

In the present case, the officer who conducted the enquiry had been re-employed as a Deputy Superintendent of Police in the Enforcement Department of the police force and had taken over charge from another Deputy Superintendent of Police. Therefore, he was a police officer superior to the respondent. [168 B, C-D, E]

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(3) The file relating to the departmental enquiry against the plaintiff had been destroyed under the relevant police rule, long before the institution of the suit. There is thus no documentary evidence, but the oral evidence showed that the procedure, prescribed by R. 16.38 (1) and (2) had been followed. [171 B-C]

State of U.P. v. Babu Ram, [1961] 2 S.C.R. 679 and Delhi

Administration v. Chanan Shah, [1969] 3 S.C.R. 653, referred to.

JUDGMENT :

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1111 of 1965.

Appeal by special leave from the judgment and order dated April 11, 1963 of the Punjab High Court, Circuit Bench at Delhi in Letters Patent Appeal No. 36-D of 1963. B. Sen and R. N. Sachthey, for the appellant. Frank Anthony, D. R. Sehgal and D. D. Sharma, for the respondent.

The Judgment of the Court was delivered by Mitter, J. This is an appeal by special leave from a judgment and order dated April 11, 1963 of the Punjab High Court (Circuit Bench at Delhi) in a Letters Patent Appeal which summarily dismissed the appeal preferred by the appellant from a judgment and order in a Second Appeal upholding the decree in favour of the respondent passed by the Additional District Judge, Delhi.

The questions canvassed in this appeal were: whether the dismissal of the respondent from service in the police force was illegal on the ground that the officer entrusted with the departmental enquiry against the respondent was not a police officer; secondly, whether the order of dismissal passed by Shri Jagannath was invalid because he was not a District Superintendent of Police; and thirdly, whether the dismissal was void on account of noncompliance with the provisions of Rule 16.38 of the Punjab Police Rules. In order to appreciate the points raised, it is necessary to state the following relevant facts. The respondent had been appointed a Sub-Inspector of Police by the Inspector-General of Police in Sind before the partition of India and was thereafter posted in Delhi by the Deputy Inspector-General of Police Delhi after his migration to India. In the year 1949 he was posted as Sub Inspector of Police in Police Station Daryaganj, Delhi. A departmental enquiry was launched against him on the charge of acceptance of bribe in connection with a criminal case in the same year. The officer entrusted with the enquiry was one Diwanchand Dhatia who was employed up to April 1949 as a Deputy Supe-

rintendent of Police in the City of Delhi. He retired from service in that month but was re-employed from the date of retirement as a Deputy Superintendent of Police (Enforcement Department). The enquiry against the respondent had taken place after the retirement of the said Diwanchand but during the -period of his reemployment. The respondent was found guilty of the charge and was dismissed from service by the order dated December 8, 1949 , passed by one Jagannath, a Superintendent of Police in the Delhi Police Force. The appellant filed a suit challenging his dismissal on the grounds already mentioned in the court of the Subordinate Judge Delhi on January 12, 1954. The defendant-Union of India filed its written statement disputing the contentions of the plaintiff. The Subordinate Judge framed several issues; -the principal ones relate to the competency of Jagannath to pass the order of dismissal and of Diwanchand Bhatia to conduct the enquiry against the plaintiff. Finding in favour of the plaintiff on both the issues, he decreed the suit. This decree was upheld in appeal by the Additional District Judge, Delhi and in Second Appeal by a

single Judge of the Punjab High Court who modified the decree by an alteration in the figure of the salary claimed by the plaintiff but upholding his claim on the main issues. The Letters Patent Appeal, as already stated, was dismissed summarily.

The first contention on behalf of the appellant was that Jagannath who was functioning as a Superintendent of Police but not designated as a District Superintendent of Police was quite competent to pass the order of dismissal against the respondent. Under s. 4 of the Police Act V of 1861, an Act for the regulation of Police, "The administration of the police throughout a general police-district shall be vested in an officer to be styled the Inspector-General of Police, and in such Deputy Inspectors-General and Assistant InspectorsGeneral as to the State Government shall deem fit.

The administration of the police throughout the local jurisdiction of the Magistrate of the district shall, under the general control and direction of such Magistrate, be vested in a District Superintendent and such Assistant District Superintendent as the State Govern. ment shall consider necessary."

Section 3 reads :

"The superintendence of the Police throughout a general police district shall vest in and shall be exercised by the State Government to which such district is subordinate; and except as authorised under the provisions of this Act, no person, officer or Court shall be empowered by the State Government to supersede or control any police functionary"

Section 7 provides for the appointment, dismissal etc., of inferior officers. The relevant portion thereof reads :

"Subject to the provisions of article 3 1 1 of the Constitution, and to such rules as the State Government may from time to time make under this Act, the InspectorGeneral, Deputy Inspectors-General, Assistant Inspectors- 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....."

The difference between the texts of the sections, after the coming into force of the Constitution and that before January 1950 is immaterial for our purpose. The interpretation clause is section 1 under which (a) 'police' shall include all persons who shall be enrolled under this Act; (b) the words 'general police-district' shall embrace any presidency (State) or place, or any part of any presidency (State) or place, in which this Act shall be ordered to take effect; (c) "District Superintendent" and "District Superintendent of Police" shall include any Assistant District Superintendent or other person appointed by general or special order of the State Government to perform all or any of the duties of a District Superintendent of Police under this Act in any district; and

(d) 'Magistrate of the district' shall mean the chief officer charged with the executive administration of a district and exercising the powers of a Magistrate, by- whatever designation the Chief officer charged with such executive administration is styled. Under s. 2 of the Act 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.

It is to be noted that the words "Superintendent of Police"

do not occur anywhere in the Act. In the Act this expression is always prefixed by the words "District" or "Assistant District". Under Rule 11 of the Punjab Police Rules, 1934 framed under the Police Act, the Punjab was divided into general police districts, viz., the Provincial Police District and Railway Police district and all ranks of police employed in the province were appointed or enrolled under s. 2 of the Act. Rule 12 shows that the responsibility for the command of the police force, its recruitment, discipline, internal economy and administration throughout the general police districts vested in the Inspector-General of Police who was to be assisted in the control and administration of the police force by such number of Deputy Inspectors-General and Assistant Inspectors-General as the Provincial Government might from time to time appoint. Rule 14 gave the administrative divi- sion of the police force. Rule 16 gives the functions of the Deputy Inspectors-General of Police and lays down that in the exercise of such responsibility they were to interfere as little as possible with the executive authority of the Superintendents under them. Under R. 13.

"The Superintendent of Police is the executive head of the district police force. He is directly responsible for the matters relating to its internal economy, training and management, and for the maintenance of its discipline and the efficient performance of all its duties.

In every district there shall be one or more Superintendents and such number of Assistant Superintendents, Deputy Superintendents, inspectors, sergeants, sub-inspectors, assistant sub-inspectors, head constables and constables as the Provincial Government may direct."

The important thing to note in this connection is that the expression "District Superintendent of Police" is not used in the rules and the last mentioned rule shows that it was possible to have more than one Superintendent of Police in a district.

Chapter XII of the Rules deals with appointments and enrol- ments in the police force. Rule 12.1 contains -a table summarising the directions given by the Provincial Government under cl. (b) of sub-s. (1) of s. 241 of the Government of India Act, 1935 in regard to the authorities competent to make appointments to the non-gazetted ranks. In respect of sub-inspectors the authority to whom

the power of appointment is delegated is "Superintendents of Police and Deputy Superintendent (Administrative), Government Railway Police and Assistant Superintendent, Government Railway Police."

This authority is given full powers subject to rules governing the conditions of service as defined in the Police Rules.

Chapter XVI deals with punishments and sub-r. (1) of R.16.1 of this Chapter lays down that no police officer shall be departmentally punished otherwise than as provided in these rules. Subr. (2) of R.16.1 gives a table showing the departmental punishments which can be inflicted and the authorities competent to inflict the same. The table shows that the order of dismissal of a Sub Inspector can be passed by a Superintendent of Police and Deputy superintendent (Administrative), Government Railway Police.

The question therefore arises whether the words "Superintendent of Police" in the Rules and the words "District Superintendent of Police" in the Act refer to one and the same authority, or whether there is any distinction or difference between the two. In our opinion, there is none. Section 4 of the Police Act shows that the administration of police throughout the local jurisdiction of the Magistrate of the district under the general control and direction of such Magistrate -is to be vested in a District Superintendent. It is common knowledge that the police force expanded very considerably in between the year 1861 when the Act was passed and the year 1934 when the Rules were framed and a Magisterial district was divided into smaller areas for the purpose of better enforcement of law and order and a Superintendent of Police was placed in charge of each such area. This finds support from the testimony of Abdul Rehman, D.W. 1, Superintendent of Police, C.I.D. Lucknow. He said that he was posted as Superintendent of Police at the headquarters at Delhi in 1950. According to him, the District Magistrate was in charge of the entire Delhi area including New Delhi, Old Delhi and rural areas. Further, the police officer in charge of the entire area was the Inspector-General of Police and there were two Superintendents of Police, one for Delhi City and the other for New Delhi. Shri Jagannath was the Superintendent of Police, City and all the police stations of the city were under his charge. It is nobody's case that a Superintendent of Police is an authority inferior to that of a District Superintendent of Police, each Magisterial district having in many cases more than one Superintendent of Police. There is thus no incongruity between the Act and the Rules which have to be read together and as Jagannath, Superintendent of Police, was undoubtedly the Superintendent of Police, City of Delhi with jurisdiction over the police station Faiz Bazar where the plaintiff was posted, he was competent to pass the order of dismissal on him.

On the question of the competence of Diwanchand Bhatia, the relevant rule is R. 16-24 in chapter XVI of the Punjab Police Rules which lays down the procedure to be followed in departmental enquiries. Sub-r. (1) of R.16.24(1) provides that:

"The police officer accused of misconduct shall be brought before an officer empowered to punish him, or such superior officer as the Superintendent may direct to conduct the enquiry."

On behalf of the appellant it was contended before us that all that this rule requires was that the officer conducting the enquiry must be superior in status to the person against whom charges had been levelled and there can be no doubt that Deputy Superintendent of Police was an officer superior to a Sub Inspector of Police. According to counsel it was really not necessary to consider whether he was also a police officer but on the facts of this case there can be no doubt that Diwanchand Bhatia was a police officer. Ex. D-5 is a certificate to the effect that Diwanchand Bhatia had on the forenoon of 28th April 1949 received charge of the office of the Deputy Superintendent of Police, Enforcement, Delhi with the designation "Officiating Deputy Superintendent of Police." Ex. D-4, the order of the Inspector-General of Police, Delhi dated June 6, 1949 shows that Diwanchand Bhatia was "posted to city vice Malik Bodh Raj, Deputy Superintendent of Police, who will take over charge as Deputy Superintendent of Police, Enforcement." There is also the oral testimony of Diwanchand Bhatia to the effect that he had taken over charge as shown in those documents and that he had conducted the enquiry against the respondent. It was sought to be argued before us by counsel for the respondent that Diwanchand Bhatia, when he conducted the enquiry had already retired from the post of police officer and he was only re-employed in the Enforcement Department and this would not make him a police officer. We see no force in this contention as the Enforcement Department was still a police department and a Deputy Superintendent of Police (Enforcement) was still a Deputy Superintendent of Police. The word 'enforcement' merely specifies the department to which he was attached and the order Ex. D-4 shows that he was to take over charge from Malik Bodh Raj who in turn was another Deputy Superintendent of Police. The third point canvassed before us does not seem to have engaged the attention of the courts hearing the matter although it was raised in the plaint. It was the plaintiff's case in paragraph -A of the amended plaint that the departmental enquiry could have been started after the taking of certain essential preliminary steps and that it was necessary for the- police first to give immediate information to the District Magistrate of the alleged commission of a crime by the plaintiff and it was for -that officer to decide whether the enquiry was to be conducted by ;a police officer or by a selected Magistrate First Class and that in his case the departmental enquiry had been started without following the above procedure. Although the plaint does not mention the rule in the Punjab Police Rules referred to by the ,plaintiff in paragraph 6-A there can be no doubt that the reference was to R.16.38 of Chapter XVI, sub-rr. (1) and (2) whereof run as follows "(1) Immediate information shall be given to the District Magistrate of -any complaint received by the SupeL12Sup.CI/69-12 rintendent 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 Ma- gistrate will 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.

(3) to (6)....."

It was the contention of the respondent that there was no evidence to show compliance with the above rule. -It was contended that the evidence on record was not sufficient for the purpose. Diwanchand Bhatia stated in his evidence in chief that he had received an application for making an enquiry against the plaintiff from Jagannath, Superintendent of Police -and that after making a preliminary enquiry when he found a prima facie case against the plaintiff he sent the same to the District Magistrate for approval. Thereupon the District Magistrate wrote that a departmental enquiry be made against the plaintiff and it was only following the direction of the District Magistrate that the enquiry was made. The Superintendent of Police, Jagannath, stated in his evidence in chief that he could not say whether the sanction of the District Magistrate had been obtained for the enquiry by Diwanchand Bhatia.

Mr. Anthony who argued on behalf of the respondent drew our attention to a judgment of this Court in *The State of Uttar Pradesh and others v. Babu Ram*(1) where it was observed that the Police Act and the Rules made thereunder constituted a selfcontained Code providing for the appointment of police officers and prescribing the procedure for their removal. According to him no departure from the rules was possible and in order to justify a dismissal strict compliance of the rules was mandatory. Observations to a similar effect were also quoted from the judgment of this Court in *Delhi Administration v. Chanan Shah* (2) There what was said was:

"It is not necessary to decide whether the provisions of Rule 16.38 of the Punjab Police Rules are (1) [1961] 2 S.C.R.679.

(2) [1969] 3 S.C.R. 653 mandatory or directory. Even assuming that the rule is directory, we find that there has been no substantial compliance with its provisions."

We do not think that the same can be said of the facts of this case. We see no reason to disbelieve the testimony of Diwanchand Bhatia. The learned trial Judge did not frame an issue on this point and Abdul Rehman, the Superintendent of Police, C.I.D. who gave evidence in this case stated that the file relating to the departmental enquiry against the plaintiff had been destroyed under Police Rule 12.35 by his order. He also referred to the document Ex. D-2 which is an extract regarding the destruction of Fauji Missals. The order seems to have been passed on 15th January 1953 long before the institution of the plaintiff's suit. In the circumstances, we see no reason not to- accept the evidence of Diwanchand Bhatia according to which R.16.38 of Chapter XVI had been complied with.

In the result, the appeal is allowed, the judgment and order of the courts below set aside and the suit filed by the respondent dismissed. As the special leave was given 1 in this case on condition that the appellant will in any event pay the costs of the respondent, we make no order as to costs of this appeal and do not think it necessary to disturb the previous order for costs.

V.P.S. Appeal allowed.