Sate Of Punjab And Ors vs Chaman Lal Goyal on 31 January, 1995

Equivalent citations: 1995 SCC (2) 570, JT 1995 (2) 18

Author: B.P. Jeevan Reddy

Bench: B.P. Jeevan Reddy

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           PETITIONER:
SATE OF PUNJAB AND ORS.

        Vs.

RESPONDENT:
CHAMAN LAL GOYAL

DATE OF JUDGMENT31/01/1995

BENCH:
JEEVAN REDDY, B.P. (J)
BENCH:
JEEVAN REDDY, B.P. (J)
MANOHAR SUJATA V. (J)

CITATION:
 1995 SCC  (2) 570        JT 1995 (2)    18
 1995 SCALE  (1)390


ACT:



HEADNOTE:



JUDGMENT:
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1. Leave granted. Heard counsel for the parties.

2.Under the order impugned herein, the High Court of Punjab and Haryana has quashed the memo of charges communicated to the respondent-writ petitioner as well as the order appointing the enquiry officer to enquire into those charges. A further direction has been given to the ap- pellants, viz., the State of Punjab and its authorities (respondents in the writ petition) to consider the case of the respondent for promotion according to law. The correctness of the said order is questioned by the State of Punjab and its authorities in this appeal.

3.The respondent-writ petitioner was the Superintendent of Nabha High Security Jail in the year 1986, On his transfer from the said post, he gave charge of his office on December 26, 1986. On the night intervening 1st/2nd January, 1987, certain inmates, said to be terrorists, made an attempt to escape. In that connection, two of the inmates attempting to escape and one jail official died in the shooting which took place,. Six terrorists made good their escape. The Inspector General of Prisons immediately inspected the prison and made a report to the Government on January 9, 1987. He reported inter alia that the said incident was the cumulative result of lax administration, indiscipline and lack of control over the prisoners. He reported further that the respondent "followed the policy of appeasement towards the extremists. He yielded to each and every illegal demand of the extremists. As a result, detenue Gurdev Singh, assumed the leadership of the prison population and dictated terms to the administration. There was a total breakdown of the classification of the inmates in the different wards of the jail. It is quite evident from the fact that three escapees Balwinder Singh, Major Singh and another Balwinder Singh were permitted to stay together alonwith detenue Kulwant Singh life prisoner Major Singh and three adolescent undertrials Ram Singh, Kulwant Singh and Surinder Singh in a single cell in utter disregard of the Punjab Jail Manual..... It has been told by the members of the staff that the Superintendent Jail, Shri Chamal Lal Goyal, did not inspect the barracks/wards of the jail during the month of December as he was expecting, the promotion orders shortly..... Shri Chaman Lal Goyal accepted a farewell party from the most dreadful terrorist viz., Tarsem Singh Gill, Col.Kahlon, Giani Roshan Singh and others on the receipt of his promotion orders which is against the conduct rules and the provisions of the Punjab Jail Manual. The injured terrorists were interrogated by the police and they have confessed that they had been planning this escape for about a month. He recommended that "the Deputy Superintendent, Shri Surinder Singh and Shri Chaman Lal Goyal, Superintendent Jail, who are responsible for the loose ad- ministration and laxity in the control of the inmates may please be placed under suspension at the Government level".

4. It appears that the District Magistrate also ordered the Sub-divisional Magistrate to enquire into the said incident. The latter submitted his report to the District Magistrate on January 26, 1987. In this report' a copy of which has been included in the material paper books in this appeal, there are no observations or comments either for or against the respondent.

5. No action was taken against the respondent until 1992. He continued in service as usual. For the first time, he wag called to the office of the Secretary to the Home Department on March 25, 1992 for questioning and thereafter the memo of charges was issued on July 9, 1992. The respondent submitted his explanation on January 4, 1993 denying the charges. After obtaining the comments of the Inspector General of Prisons on his explanation, the Government appointed an enquiry officer on July 20, 1993. Soon thereafter, the respondent approached the High Court - on August 24, 1993 - by way of a writ petition seeking the quashing of the charges and the orders appointing the enquiry officer. It appears that though the writ petition was entertained by the High Court, the enquiry was not stayed, with the result that it commenced in September, 1993 and proceeded apace. On July 26, 1994, the evidence on behalf of the government was completed. The respondent was to adduce his defence evidence, if any. At that stage, the writ petition was allowed (on August 25, 1994) as a result of which the enquiry could not and did not proceed further.

6. The High Court quashed the memo of charges on the following grounds:

> (1) the delay of five and a half years inservingthe memo of charges, for which there isno acceptable explanation, is itself a ground for quashing the charges. On account of lapse of time, it has become more difficult for the respondent to adduce evidence or to prove his innocence.

Number of witnesses whom he could have examined are either dead or no longer available. Some of them have either re- tired or transferred elsewhere. The jail has also been repaired with the result that the evidence of negligence, if any, is missing. Holding an enquiry at this distance of time cannot but prejudice the respondent.

(2) The Sub-divisional Magistrate had exonerated the respondent of any responsibility for or culpability in the said incident in his report dated January 26, 1987. Evidently, the government kept quiet for a number of years in view of the said report. Only much later, when the respondent's case was to come up for promotion to the post of Deputy Inspector General of Prisons that the matter was raked up and charges served. The government had practically decided not to proceed against the respondent. It was raked up after several years only with a view to deny promotion to the respondent. The action of the appellants is thus clearly vitiated by malafides.

(3) The respondent was not the Superintendent of the jail at the time the incident took place. It also appears that other officials who were said to be responsible along with the respondent (writ petitioner) have been exonerated. The enquiry cannot proceed only against the respondent.

7. The charges communicated to the respondent are the following:

> "Shri Chaman Lal Goyal, Superintendent, Central jail (On leave) who was working as Superintendent, Distt.Jail-Cum-Security Jail, Nabha till 25.12.1986 is presumed to be guilty of escape of prisoners from the said jail on the night of 1st/ 2nd. 1. 1987.
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> 1. That inside the jail, there was loose administration with regard to supervision of prisoners and physical verification of cells.
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> 2. That the prisoners had been given spe- cial concessions against rules/ instructions.
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> 3. That the building of the jail was in dilapidated condition. No special attention was even given for its repair.
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> 4.That on 20th November, 1986, 4 dangerous prisoners who were most safe in Barrack No.6 were transferred to less safe Barrack no.7 as per the wishes of the prisoners. Barrack No.6 consists of 20 cells. The prisoners were kept in the said Barrack separately. On their request, they were transfeffed to Barrack No.7. There they planned for escape. Even keeping separately in Barrack no.7 of the said prisoners, they were allowed to remain to- gether in one room. They broke down the

wall. On 6th December, 1986 one more prisoner who had come there after his transfer from Central Jail, Ferozepur was kept in Barrack no.7 as per his wish. There all these prisoners planned from escaping the prison. As per the result of' this carelessness 3 persons were killed.

5. That barrack close register had not been maintained/was not maintained.

6. That officials of the prisons were fre- quently mixing the prisoners and were exchanging the items and took intoxicating articles. This was result of loose administration."

8. Along with the charges, statement of allegations was also furnished giving the full particulars of the aforesaid charges.

9.Now coming to the grounds given by the High Court, it may be pointed out at the very outset that the High Court was factually in error in holding - or in proceeding on the assumption, as the case may be - that the report of the Sub- divisional Magistrate had exonerated the respondent of any responsibility or culpability. The report, as stated above, neither exonerates the respondent nor does it hold him re sponsible or guilty. It looks probable that the High Court was misled into believing that the said report has exonerated the respondent. Not only that. There is the earlier report of the Inspector General of Prisons, which was submitted within one week of the incident. It holds the respondent responsible for the said incident, no doubt, along with other prison officials. Indeed, the Inspector General of Prisons had recommended the suspension of the respondent and a few other officials. In this state of facts It may not be correct to assume that the Government had dropped the idea of proceeding against the respondent and that it changed its mind later. It is one thing to say that the Government was guilty of inaction and an altogether different thing to say that it had dropped the matter in view of the Sub-divisional Magistrate's report - but then revised its opinion later, for reasons which are suggested to be not fair. Now coming to the charge of malafides also, it must be stated that the said charge was made in a vague manner in the writ petition. It was not specified which officer was ill-disposed towards the respondent and how and in what manner did he manage to see that, the charges are served upon the respondent when the respondent's case was to come up for consideration for promotion. The appellants say that the respondent's case was not to come up for consideration for promotion in the year 1992 at all - not even in 1993. It is also stated by the learned counsel for the appellants that pursuant to the impugned order, the respondent's case was considered by the DPC but it found him not fit for promotion. Be that as it may, in the absence of any clear allegation against any particular official and in the absence of impleading such person eo nominee so as to enable him to answer the charge against him, the charge of malafides cannot be sustained. It is significant to notice that the respondent has not attributed any malafides to the Inspector General of Prisons who made his report dated January 9, 1987. In this report, the Inspector General of Prisons had found the respondent responsible for the incident - relevant portions extracted hereinbefore - and recommended his suspension pending enquiry.

10. Now remains the question of delay. There is undoubtedly a delay of five and a half years in serving the charges. The question is whether the said delay warranted the quashing of charges in

this case. It is trite to say that such disciplinary proceeding must be conducted soon after the irregularities are committed or soon after discovering the irregularities. They cannot be initiated after lapse of considerable time. It would not be fair to the delinquent officer. Such delay also makes the task of proving the charges difficult and is thus not also in the interest of administration. Delayed initiation of proceedings is bound to give room for allegations of bias, malafides and misuse of power. If the delay is too long and is unexplained, the court may well interfere and quash the charges. But how long a delay is too long always depends upon the fact-, of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the court has to indulge in a process of balancing. Now, let us see what are the factors in favour of the respondent. They are:

> (a) That he was transferred from the post of Superintendent of Nabha Jail and had given charge of the post about six days prior to the incident. While the incident took place on the night intervening 1st/ 2nd of January, 1987, the respondent had relinquished the charge of the said office.

on December 26, 1986. He was not there-. at the time of incident.

(b) The explanation offered by the government for the delay in serving the charges is unacceptable. There was no reason for the government to wait for the Sub-divisional Magistrate's report when it had with it the report of the Inspector General of Prisons which report was not only earlier in point of time but was made by the highest official of the prison administration, Head of the Department, itself The Inspector General of Prisons was the superior of the respondent and was directly concerned with the prison administration whereas the Sub- divisional Magistrate was not so connected. In the circumstances, the explanation that the government was waiting for the report of the Sub-divisional Magistrate is unacceptable. Even otherwise they waited for two more years after obtaining a copy of the said report. Since no action was taken within a reasonable time after the incident, he was entitled to and he must have presumed that no action would be taken against him. After a lapse of five and a half years, he was being asked to face an enquiry.

(c) If not in 1992, his case for promotion was bound to come up for consideration in 1993 or at any rate in 1994. The pendency of a disciplinary enquiry was bound to cause him prejudice in that matter apart from subjecting him to the worry and inconvenience involved in facing such an enquiry.

11. Now what are the factors agaist the respondents. (1) That the respondent was never suspended nor was he served with a memo of charges nor even with a questionnaire in that behalf till March, 1992 when he was questioned by the Secretary to the Home department and charges served in july, 1992. He had suffered no discomfort or inconvenience on account of delay.

(ii) The charges are very grave. The charges are not only that he was lax in discharge of his duties but that he acceded to every demand of theirs and that in violation of the prison rules, had allowed a

number of terrorists to gather in one cell. He is said to be responsible for creating of the atmosphere which led to the said attempt. His sympathies towards them are said to be evident from the fact that he accepted a farewell party from them on his transfer from the post of Superintendent of the said jail. In the attempted escape, one prison official lost his life besides two terrorists. The earliest report of the incident

- the report of Inspector General of Prisons dated January 9, 1987 does specifically find the respondent responsible for the incident. It is prima facie evidence against the respondent. In the interest of administration and of jus- tice, it is necessary to find out the truth in the matter.

(iii)There is no allegation in the writ petition that any of the witnesses whom the respondent wanted to examine in his defence are since dead or have become unavailable and that the said fact would cause prejudice to his case. Indeed, death or non-availability of terrorists who made the attempt to escape and the repair of the jail may prejudice the ease of the government rather than the defence of the rethe respondent. Similarly, the mere fact that some persons who could have been examined as witnesses have retired or have been transferred cannot be said to cause prejudice to the respondent. It is not stated that they have become unavailable.

(iv) Pending the writ petition, the enquiry was proceeded with and by the date of the impugned judgment, the government had completed its evidence. Only the defence evidence remained to be adduced whereafter the enquiry officer would have made the report.

12. The principles to be borne in mind in this behalf have been set out by a Constitution Bench of this Court in A.R.Antulay v. R.S.Nayak & Anr. (1992 (1) S.C.C.225). Though the said case pertained to criminal prosecution, the principles enunciated therein are broadly applicable to a plea of delay in taking the disciplinary proceedings as well. In paragraph 86 of the judgment, this court mentioned the propositions emerging from the several decisions considered therein and observed that "ultimately the court has to balance and weigh the several relevant factors - balancing test or balancing process - and determine in each case whether the right to speedy trial has been denied in a given case". It has also been held that, ordinarily speaking, where the court comes to the conclusion that right to speedy trial of the accused has been infringed, the charges, or the conviction, as the case may be, will be quashed. At the same time, it has been observed that that is not the only course open to the court and that in a given case, the nature of the offence and other cir- cumstances may be such that quashing of the proceedings may not be in the interest of Justice.. In such a case, it has been observed, it is open to the court to make such other appropriate order as it finds just and equitable in the circumstance of the case.

13. Applying the balancing process, we are of the opinion that the quashing of charges and of the order appointing en- quiry officer was not warranted in the facts and circumstances of the case. It is more appropriate and in the interest of justice as well as in the interest of administration that the enquiry which had proceeded to a large extent be allowed to be completed. At the same time, it is directed that the respondent should be considered forthwith for promotion without reference to and without taking into consideration the charges or the pendency of the said enquiry and if he is found fit for promotion, he should be promoted immediately. Ibis direction is made in the particular facts

and circumstances of the case though we are aware that the Rules and practice normally followed in such cases may be different. The promotion so made, if any, pending the enquiry shall, however, be subject to review after the conclusion of the enquiry and in the light of the findings in the enquiry. It is also directed that the enquiry against the respondent shall be concluded within eight months from today. The respondent shall cooperate in concluding the enquiry. It is obvious that if the respondent does not so cooperate, it shall be open to the enquiry officer to proceed ex-parte. If the enquiry is not concluded and final orders are not passed within the aforesaid period, the enquiry shall be deemed to have been dropped.

14. The High Court has relied upon the decision of this Court in State of Madhya Pradesh v. Bani Singh & Anr. (1990 (Suppl.) S.C.C.738) on the question of delay. That was a case where the charges were served and disciplinary enquiry sought to be initiated after a lapse of twelve years from the alleged irregularities. From the report of the judgment, the nature of the charges concerned therein also do not appear. We do not know whether the charges there were grave as in this case. Probably, they were not. There is another distinguishing feature in the case before us: by the date of the judgment of High Court, the major part of the enquiry was over. This is also a circumstance going into the scales while weighing the factors for and against. As stated hereinabove, wherever delay is put forward as a ground for quashing the charges, the court has to weigh all the factors, both for and against the delinquent officer and come to a conclusion which is just and proper in the circumstances. In the circumstances, the principle of the said decision cannot help the respondent.

15. The appeal is allowed in the above terms. No costs.

16. A copy of this order shall be communicated immediately to the Chief Secretary, Home Secretary and Inspector General of Prisons, Government of Punjab.