Sardool Singh Mann (S.) vs State Of Uttar Pradesh And Ors. on 25 July, 1955

Equivalent citations: (1957)IILLJ9ALL

JUDGMENT

Mehrotra, J.

1. This is an application under Article 226 of the Constitution praying that a writ in the nature of certiorari be issued quashing the order of the applicant's removal from service, dated 25 March 1953 passed by the Deputy Inspector General of Police, Western Range, Meerut. It was farther prayed that the subsequent orders passed by the Inspector-General of Police on appeal and the State Government on revision be also quashed, and that the opposite parties be directed to treat the applicant as continuing in service.

2. The applicant was working in the police department as an inspector of police at Multan before partition. After partition he came over to India and on 21 December 1947 he was appointed as circle inspector of police in the State of Uttar Pradesh under the orders of the State Government. He was posted at Mainpuri district and while he was working at Shikohabad as circle inspector he was reverted to the post of a sub-inspector of police in April 1950 and transferred to Bulandshahr. In April 1952, while he was serving as station officer at police station Nohjhil in the district of Mathura he was suspended with effect from 29 April 1952 by the superintendent of police, Mathura, and ordered to live in the police lineS at Mathura. Thereafter proceedings under Section 7 of the Police Act were started against the applicant and on 21 May 1952 he was handed over a chargesheet. On 26 May 1952 the prosecution evidence was started at the residence of the superintendent of police and the statements of some of the witnesses were recorded. 29 May 1952 was then fixed as the next date of hearing. On 26 May 1952 the petitioner alleges that he got a severe attack of sciatica and was treated by the civil surgeon, Mathura. On 29 May 1952 when the case was fixed for hearing he was feeling completely exhausted and he applied for the adjournment of the case. But the application was rejected. The applicant could not on account of week state of health properly cross-examine the two important witnesses Nathi and Dhan Raj. On 6 October 1952 the superintendent of police, Mathura, recorded his findings holding charges 1 and 2 proved against him but found that charge 3 was not established against him. Thereafter the report of the superintendent of police was sent to the Deputy Inspector-General of police and towards the end of January 1953, according to the applicant the Deputy Inspector-General of police, Western Range, sent for the applicant to appear before him in connexion with his inquiry. When he appeared before him certain questions were put to him by the Deputy Inspector-general of police and he was asked to explain his conduct. On the 7 April 1953 the applicant received the order of removal passed by the Deputy Inspector-General of police, Western Range, Meerut, dated 25 March 1953 and an appeal was filed to the Inspector-General of police but by his order, dated 15 September 1953 he dismissed it. A revision

was then filed to the State Government which was also rejected on 22 June 1955 and the present petition is filed in this Court. Notices were issued to the opposite parties who are State of Uttar Pradesh, the Inspector-General of police, the Deputy Inspector-General of police, Western Range, and the superintendent of police, Mathura. A counter affidavit has been filed on behalf of the State controverting some of the facts mentioned in the affidavit filed in support of the petition.

3. A number of points have been urged by the applicant. It was contended that the superintendent of police and the Deputy Inspector-general of police, Western Range, had no magisterial powers under Section 35 of the police Act and as such the trial under Section 7 of the Police Act held by them was without jurisdiction. It is not necessary to deal with this point at length because in view of a Full Bench decision of this Court the point was not pressed at the time of argument.

4. It was then contended that no proper opportunity to show cause against the action proposed was given to the applicant and thus there was an infringement of the provisions Article 311 of the Constitution as well as the provisions of the Police Regulations and in any event no reasonable opportunity was given to the applicant to show cause against the proposed action within the meaning of Article 311 of the Constitution. It was then urged that no reasonable opportunity was given to the applicant to produce his defence and to cross-examine the prosecution witnesses by the superintendent of police, It was also contended that in the preliminary inquiry by the circle inspector the applicant was afforded no opportunity to be present. It was lastly contended that as the charge against the applicant was of ft cognizable offence no trial under Section 7 of the Act could proceed without complying with the provisions of Para. 486 (d) of the Police Regulations. In the present case according to the applicant there was no compliance with the provisions of the said paragraph, and consequently the subsequent proceedings were ultra vires.

5. It was also urged that as the applicant had been appointed under the orders of the State Government he could not be dismissed by any authority inferior to the State Government. But it is not necessary to deal with this point as it was not pressed at the time of argument.

6. In order to appreciate the points raised By the applicant it is necessary to refer to the charges framed against him. The first charge was that he recovered two spears from the house of one Pooran Lohar, resident of village Shal, police station Nojhil, after his house search and obtained Rs. 300 from him as illegal gratification with a promise that he will not prosecute him. No case was registered against him and he was not prosecuted. Secondly, he was charged that he deliberately cancealed crime and registered case, criminal case No. 6 under Section 379 Indian Penal Code, dated 24 March 1952 under wrong section of law since the report made by chunni Lal Jat, resident of Parsoli, police station Nojhil, about the abduction of his son's wife Chanda by Poorna Girraj and Bhajanlal Jats and Saroopi wife of Bhajan Lal and their relieving her of her ornaments in village Kankargarhi falls clearly under the purview of Sections 366, 368 and 379, Indian Penal Code and he further obtained Rs. 500 as illegal gratification from the complainant Chunni Lal holding out the promise that he will challan the accused and recover the stolen ornaments. Thirdly, he was charged that he deliberately concealed. crime by not registering and investigating cases of burglaries that took place in the house of Nanua Chowkidar, Arjun Lal son of Tota Brahman, Chameli Prasad son of Hoti Lal and Loka Khatik son Of sita Ram, all residents of Nojhil. This superintendent of police gave

a finding that charges 1 and 2 mentioned above had been proved against the applicant but he did not find charge 3 established against him. The Deputy Inspector-General of police, Western Range, Meerut, further held that charge 1 was also not proved. The removal therefore of the applicant was based on charge 2 relating to the acceptance of Rs. 500 as illegal gratification from the complainant Chunni Lal.

7. As regards the point that no sufficient or reasonable opportunity was given to the applicant to produce hip defence evidence and to cross-examine the prosecution witnesses, it will suffice to point out that the prosecution witnesses were examined in the presence of the applicant, he did cross-examine the prosecution witnesses and that an opportunity was given to the applicant to produce (sic) his severe attack of sciatica which had made him weak and he was not in a fit state of health to cross-examine the witnesses the superintendent of police rejected his prayer for adjournment and compelled him to cross-examine the witnesses in that state of health. As will appear from the counter affidavit filed on behalf of the State and by the admission of the applicant in his own affidavit the superintendent ff police before compelling him to be present at the time of the inquiry called for a report from the civil surgeon under whose treatment the applicant was and the civil surgeon had certified that he was in a fit state of health to move out. The grievance of the applicant is that the superintendent of police contended himself by enquiring from the civil surgeon whether the applicant could walk or not to which the civil surgeon replied he could, although he should have taken the permission of the civil surgeon for the applicant's leaving the hospital and to have enquired from him about the physical and general condition of the applicant. The question to be considered is whether his prayer for adjournment was rightly rejected. According to the petitioner's own case the civil surgeon had certified that he was in a fit state to move out of the hospital and he was therefore able to attend the trial at the residence of the superintendent of police. It has not been established by the applicant that he was not mentally fit enough to cross examine the witnesses properly.

8. The next grievance of the applicant was that without sufficient reason the number of the defence witnesses which the applicant desired to produce had been cut down by the superintendent of police. Under the provisions of the Police Regulations it is open to the inquiring authority to permit the employee to produce defence witnesses whom for the reasons given in writing the inquiring authority considers necessary. An application had been given by the applicant for permission to produce 32 witnesses. He had specified in his application the purpose for which he intended to examine each of the defence witnesses. The superintendent of police however for reasons given by him reduced the number to eight. On a subsequent application by the applicant he however permitted some other witnesses to be examined on his behalf. It was within the discretion of the inquiring authority to consider whether the evidence of all the witnesses intended to be produced by the applicant was relevant to the inquiry or not. After having considered the whole matter the inquiring authority thought that for the purposes of the proper defence of the case it was sufficient for the applicant to produce eight witnesses. Under the circumstances it cannot be said that no reasonable opportunity was given to the applicant to produce his defence.

9. A grievance has also been made by the applicant that he intended to produce Sri Ram Chandra, the circle inspector who had made the preliminary inquiry as a defence witness. But as it was given

out by the superintendent of police that he was to be examined as a prosecution witness he Sid not insist upon his production as a defence witness. Subsequently however he was not produced as a prosecution witness. Ram Chandra Singh had conducted the preliminary inquiry against the applicant. His report was confidential and it was for the prosecution to consider whether his evidence was essential or not. In the application the petitioner had stated that he intended to examine Sri Ram Chandra Singh to prove the statement of Pooran Lohar recorded by him in the presence of Phool Chand sarpanch which was quite different to his present statement. As I have already pointed out the inquiry which was held by Ram Chandra Singh was a confidential inquiry and the statement made by witnesses before him could not be brought on the record of the trial before the superintendent of police. His statement therefore was not consider by the prosecution relevant to the inquiry. If the petitioner intended to produce him for some other purpose in order to substantiate his defence he could have again asked the superintendent of police for his examination. after the prosecution had failed to produce him. There is therefore no substance in the contention of the applicant that he had no reasonable opportunity to substantiate his defence.

10. The second contention of the applicant is that as he had been charged with a cognizable offence the trial of the applicant without complying with the provisions of paragraph 486 (1) of the Police Regulations was ultra vires. The rules under chapter XXXII of the Police Regulations have been framed under the provisions of Section 7 of the Police Act. Paragraph 478 of the Police Regulations specifies the punishment which can be awarded to police officers. Paragraph 478A provides that the punishment not ed at (a) and (b) in Para. 478 which refer to dismissal or removal from the force and reduction in rank may be awarded only after departmental proceedings vide para. 400 to 494. Paragraph 479 deals with the powers of various officers, paragraph 481 lays down what dismissal and removal imply in these cases. Paragraph 483 provides that the proceedings against a police officer will consist of (a) a magisterial or police inquiry followed by further action, (b) a judicial trial, or (e) a departmental trial or both consecutively. Paragraph 488 then lays down the nature of the inquiry in particular cases. The relevant paragraph on which reliance has been placed by the applicant is Para. 486 which provides that when the offence alleged against a police officer amounts to an offence only under Section 7 of the Police Act there can be magisterial inquiry under the Criminal Procedure Code. In such cases and in other cases until and unless a magisterial inquiry is ordered, inquiry will be made under the direction of the superintendent of police in accordance with the following rules. There are three Sub-sections to this paragraph which lay down the procedure of inquiry under different circumstances. Paragraph 486 (1) deals with the inquiry in cases where information is received by the police relating1 to the commission of a cognizable offence by a police officer. Paragraph 486 (II) deals with the inquiry in cases where the information is received by the police of the commission of a non-cognizable offence (including an offence under Section 29 of the Police Act) by a police officer. In Sub-clause (6) of Sub-section (1) of paragraph 486 it is provided that when the reason for not instituting a prosecution is that the charge is believed to be baseless, no further action will be necessary; if the charge is believed to be true and a prosecution is not undertaken owing to the evidence being considered insufficient or for any other reason the superintendent may, when the final report under Section 173, Criminal Procedure Code has been accepted by the district magistrate, take departmental action as laid down in paragraph.

11. Relying upon this sub-section it was strongly contended by the counsel for the applicant that no departmental trial could be held under Para. 490 of these regulations unless a final report had been submitted by the police and had been accepted by the District, Magistrate as the offence with which the applicant had been charged was cognizable one. This argument ignores Sub-section (III) of this paragraph which is an independent sub-clause by itself.

Sub-section (III) provides that:

> when a Superintendent of Police sees reason to take action on information given to him, or on his own knowledge or suspicion, that a police officer subordinate to him has committed an offence under Section 7 of the Police Act or a non-cognizable offence (including an offence under Section 29 of the Police Act) of which he considers it unnecessary at that stage to forward a report in writing to the District Magistrate under Rule II above, he will make or cause to be made by an officer senior in rank to the officer charged, a departmental inquiry sufficient to test the truth of the charge. On the conclusion of this inquiry he will decide whether further action is necessary, and if so, whether the officer charged should be departmentally tried, or whether the district magistrate should, be moved to take cognizance of the case under the Criminal Procedure Code.
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> This sub-section authorises the superintendent of police when he has reason to take action on information received by him to get a preliminary inquiry made by an officer. In the present case the superintendent of police appears to have acted under Clause III and got an inquiry made by the circle Inspector. The entire scheme of Para. 486 appears to be that in cases of cognizable offences if the police receives information of the commission of an offence by a police officer the procedure under Sub-section (i) is to be followed. In the cases of non-cognizable offences the procedure under Sub-section (II) is to be followed. There is an additional power given to the superintendent of police to direct a preliminary inquiry by an officer if he thinks necessary to take action on his own knowledge or suspicion in respect of the offences under Section 7 or non-cognizable offences including one under Section 29. To my mind on the clear reading of Para. 486 it cannot be interpreted to mean that in cases of cognizable offences which is the subject matter of a departmental trial under Section 7 necessarily the procedure under Para. 486 (I) is to be followed before the departmental trial takes place and independently it is not open to the superintendent of police to act under Sub-Clause III. All these clauses are independent There is therefore no force in this contention of the applicant.

12. Lastly, it was urged that no notice to show cause against the order proposed was given to the applicant by the Deputy Inspector-General of Police, Western Range, and as such there was no proper compliance with Article 311 of the constitution. The law on the point need not be reiterated. Prior to the coming in force of the constitution under the old Government of India Act, 1935 there was Section 240 in which it was provided that any civil servant could not be dismissed, removed or reduced in rank unless he had been given an opportunity to show cause against the order proposed.

In the case of The High Commissioner v. I.M. Lall 1948 A.L.J. 266 it was laid down by their lordships of the Privy Council that Section 240 laid down a statutory safe guard against the order or dismissal or removal or reduction in rank of a civil servant. It contemplated two distinct opportunities to be afforded to the applicant, The authority had at first to give an opportunity to the civil servant to show cause against the charges and when the authority had come to a conclusion about the guilt of the civil servant he had to give second opportunity to the civil servant to show cause against the proposed punishment. The Supreme Court has also laid down that Article 311 contemplates two distinct opportunities to be given to a civil servant before he is dismissed from service. The question however to be examined in the present case is whether two opportunities had been given to the applicant as contemplated under Article 311 of the constitution, It is not denied that when the inquiry was held by the superintendent of police, Mathura, a copy of the charges was handed over to applicant. He was given an opportunity to produce his defence and after consideration of the entire evidence the Superintendent of Police found certain charges established against the applicant and he recommended to the Deputy Inspector General of Police that the applicant should be removed from service. Notice was given by the Deputy Inspector General of Police to the applicant to show cause against the charges. The grievance of the applicant is that no notice was given to him to show cause against the proposed action. Reliance was placed on the questions put to the applicant by the Deputy Inspector-General of Police when he appeared before him in response to a notice for appearance. No question was put to him whether he had anything to pay against the proposed punishment of dismissal. All the questions related to the merits of the charges against him and it was strongly contended that no written notice to show cause against the proposed punishment was given to the applicant. I gave an opportunity to the standing counsel to produce any written notice and an affidavit was filed by him to the effect that the applicant was informed through the superintendent of police by means of a wireless message that he had to appear before the Deputy Inspector-General of Police to show cause against the proposed punishment. A copy of the wireless message was produced with the endorsement that the message had been communicated to the applicant. The applicant was given an opportunity to file a supplementary affidavit in reply to the affidavit filed by the State Government along with the copy of the wireless message and in that affidavit the petitioner had not denied the receipt of the wireless message but he has again reiterated his stand that it did not amount to the show cause notice as contemplated by the provisions of Article 311. To my mind the wireless message fully establishes the fact that the petitioner had received notice not only to show cause against the charges but further to show cause against the order of dismissal proposed by the Deputy Inspector-General of Police on the recommendation of the superintendent of police. The fact that no question was put to him to that effect does not necessarily mean that he had no sufficient opportunity to show cause against the proposed action. Reliance was placed on the following observations of their lordships in the case of I.M. Lall:

> Their lordships agree with the view taken by the majority of the Federal Court. In their opinion Sub-section (3) of Section 240 was not intended to be and was not, a reproduction of Rule 55, which was left unaffected as an administrative rule. Rule 55 is concerned that the civil servant shall be informed of the grounds on which it is proposed to take action," and to afford him an adequate opportunity of defending himself against charges which have to be reduced to writing; this is in marked

contracts to the statutory, provision of a reasonable opportunity of showing cause against the action proposed to be taken in regard to him.

In the opinion of their lordships, no action is proposed within the meaning of the sub-section until a definite conclusion has been come to on the charges and the actual punishment to follow is provisionally determined on. Prior to that stage, the charges are unproved and the suggested arrangements are merely hypothetical. It is on that stage being reached that the statute gives the civil servant opportunity for which Sub-section (3) makes provision. Their lordships would only add that they see no difficulty in the statutory opportunity being reasonably afforded at more than one stage. If the civil servant has been through an inquiry under Rule 55 it would not be reasonable that he should ask for a repetition of that stage, if duly carried out, but that would not exhaust his statutory remedy and he would still be entitled to represent against the punishment proposed as the result of the findings of the inquiry.

Relying upon this passage it was contended that in the present case it cannot be said that at any stage the Deputy Inspector-General of Police had come to a definite conclusion as to the charges and had provisionally determined the punishment and thereafter an opportunity had been given to the applicant to show cause against the proposed action. I do not think there is any substance in this argument. In the present case, according to the provisions of Police Regulations, an inquiry had been made by the superintendent of police after giving adequate opportunity to the applicant to explain his conduct. Thereafter the recommendation of the superintendent of police had been sent along with his findings to the Deputy Inspector General of Police and at that stage the Deputy Inspector General of Police had sufficient materials before him to come to his own definite conclusion as regards the charges against the applicant and to make up his mind of the proposed punishment. Having done so when notice was given to the applicant to show cause against the proposed punishment it cannot be said that there was no compliance with provisions of Article 311 of the constitution. As observed by their lordships of the Privy Council there is no difficulty in affording two opportunities to a civil servant, but necessarily the two opportunities do not suggest that when the second opportunity is given to the applicant he will have a right to ask for producing fresh evidence as regards the charges against him Both the opportunities were given in this case to the applicant. He had full opportunity to show cause against the charges and thereafter before the Deputy Inspector-General of Police against the proposed action.

13. It was also urged that there was no compliance with the provisions of Para. 490, Sub-section (8)(b).

This sub-section provides that:

In all cases the Deputy Inspector General must record the statement of the officer before he writes his finding and order. When the Deputy Inspector-General considers that the appropriate punishment is likely to be dismissal, removal or reduction, he shall cause a copy of the inquiring officer's finding to be delivered to the accused officer at least one week before he records his statement, and shall call upon him to show cause against the imposition of these punishments. In other cases he shall not, except for the purposes of appeal, give the officer a copy of the enquiring officer's findings.

The contention is that the statement of the officer concerned is to be recorded before writing out his findings and order; and it is only after the Deputy Inspector-General of police recorded his findings and order as to the charges, that he has to give a show cause notice of the officer concerned against the proposed action and has to supply him with a copy of the enquiring officer's finding. I do not think that under this sub-section the show cause notice is to follow the finding of the Deputy Inspector-General of Police as regards the charges and at the second stage of the proceedings before him. The entire scheme of para. 490 to my mind is that the first stage of inquiry is to be conducted by an officer other than the Deputy Inspector-General of Police and he has got to give his findings but as the Deputy Inspector-General is the officer who has to pass an order of removal he has to give his own findings after considering the materials submitted to him by the superintendent of police, and before he gives an such finding the condition necessary is that the statement of the officer should be recorded. In the present case the findings were given by the superintendent of police after recording the statement of the officer. He has further to give notice to the officer concerned to show cause against the punishment proposed. He can make up his mind as regards the appropriate punishment after the receipt of the recommendation of the superintendent of police and it is for that purpose that a special rule has been laid down that a copy of the enquiry officer's finding is to be delivered to the officer concerned at least one week before he records his statement. In the present case it is not contended by the applicant that the copy of the enquiring officer's finding had not been given to the applicant one week before the recording of the statement. The Deputy Inspector-General of Police therefore complied with both the requirements of Sub-section (6) of para. 490 (8). Before giving his finding he recorded the statement of the officer and before recording his statement he gave him a copy of the findings of the superintendent of police. The opportunity to show cause against the proposed action was also given to him. Before giving such a notice on the perusal of the materials submitted to him by the superintendent of police he had come to the conclusion that the charges had been proved against the applicant and that he was in a position to decide the proposed punishment.

14. In my opinion therefore there was no non-compliance either with the provisions of Article 311 of the Constitution or para. 490 (8)(b) of the Police Regulations in this case. There is therefore no force in this petition and it is rejected with costs.