

STATE OF PUNJAB

v.

DEWAN CHUNI LAL

February 16, 1970

[J. M. SHELAT AND G. K. MITTER, JJ.]

Constitution of India, Art. 311—Opportunity to show cause against dismissal—Departmental enquiry is vitiated if officer concerned is not given reasonable opportunity of conducting his defence.

Punjab Police Rules—Officer charged with inefficiency within meaning of R. 16. 25(2)—Adverse reports relating to 1941 and 1942 not relevant when officer allowed to cross efficiency bar in 1944.

The respondent was a Sub-Inspector of Police and had served as such in various places which are now in Pakistan before being posted to Gurgaon in 1948. His confidential service reports upto 1940 were satisfactory. In 1941 and 1942 he got bad reports. However he was allowed to cross the efficiency bar in 1944. The reports relating to 1945 and 1946 were again adverse. In 1948 the report charged him with having taken bribe in a particular case, but the charge was on enquiry found to be false. On October 12, 1949 he was served with a charge sheet setting forth extracts from his confidential character roll imputing inefficiency and lack of probity while in service from 1941 to 1948. He was asked to answer to the *prima facie* charge of inefficiency as envisaged in paragraph 16.25(2) of the Punjab Police Rules. A departmental enquiry was held and the enquiry officer in 1950 recommended his dismissal. After a further show cause notice the respondent was dismissed from service. He thereupon filed a suit in which he challenged his dismissal as wrongful on the grounds *inter alia* that (i) Reports relating to the years 1941 & 1942 should not have been taken into consideration against him; (ii) that the enquiry officer did not allow him to examine in defence the officers who had written adverse reports against him and other witnesses who could have thrown light on these reports. The trial court decreed the suit and the High Court also held in the appellant's favour mainly on the ground that Art. 311 of the Constitution had not been complied with. In appeal to this Court by the State of Punjab.

HELD : (i) Reports earlier than 1944 should not have been considered at all inasmuch as the respondent was allowed to cross the efficiency bar in that year. It was unthinkable that if the authorities took any serious view of the charge of dishonesty and inefficiency contained in the confidential reports for 1941 and 1942 they could have overlooked the same and recommended the case of the officer as one fit for crossing the efficiency bar in 1944. Moreover there was no specific complaint in either of the two years and at best there was only room for suspicion regarding his behaviour. [699 H]

(ii) On the facts of this case it was impossible to hold that the respondent had been given reasonable opportunity of conducting his defence before the enquiry officer. It was clear that if the enquiry officer had summoned at least those witnesses who were available and who could have thrown some light on the reports made against the respondent the report might will have been different. Refusal of the right to examine witnesses who had made general remarks against the respondent's character and were available for examination at the enquiry amounted to denial of a reasonable opportunity of showing cause against the action proposed. Although the case was governed by Art. 311 as it stood prior to its

A amendment in 1963 the respondent could not be deprived of an effective right to make representation against the action of dismissal. [701 F-G; 703 C-D]

In this view the appeal by the State of Punjab must fail.

B *Sadananda Mohapatra v. State*, A.I.R. 1967 Orissa 49 and *State of Jammu & Kashmir v. Bakshi Ghulam Mohammed*, [1966] Supp. S.C.R. 401, distinguished.

State of Orissa v. Sailabehari, A.I.R. 1963 Orissa 73, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2348 of 1966.

C Appeal from the judgment and decree dated September 6, 1962, of the Punjab High Court in Regular First Appeal No. 53 of 1956.

V. C. Mahajan, for the appellant.

N. S. Bindra and *B. Datta*, for the respondent.

The Judgment of the Court was delivered by

D **Mitter, J.** By this appeal the State of Punjab challenges the judgment and order of the Punjab High Court upholding the decree of the Subordinate Judge, Gurgaon declaring that the dismissal of the respondent from service was illegal and inoperative. The respondent, a Sub Inspector of Police was called upon to answer a charge framed on October 12, 1949 setting forth extracts from his confidential character roll showing his inefficiency and lack of probity while in service from 1941 to 1948 and to submit his answer to the *prima facie* charge of inefficiency as envisaged in paragraph 16.25(2) of the Punjab Police Rules.

E The respondent had joined the police service and had served as a Sub Inspector in various places which are now in Pakistan before he was posted to Gurgaon in the year 1948. It appears that the view taken of his conduct and reputation by his superior officers over the years was not consistent. In some years he got what is known as a 'B' certificate and in others an 'A' certificate.

F According to rule 13.17 of the Punjab Police Rules, Superintendents of Police had to prepare personally and submit annually to the Deputy Inspector-General of Police confidential reports in the form prescribed on the working of all Assistant Sub Inspectors and Sub Inspectors serving under them. The reports were to be of two kinds 'A' and 'B' and to be marked as such. An 'A' report was for recommending that incremental promotions should not be withheld while a 'B' report was to contain a recommendation,

G for reasons to be fully stated, that incremental promotions should be withheld. The rule further shows that the purport of all 'B' reports was to be formally communicated to the officer

concerned and his written acknowledgment to be taken. It also prescribed that the submission of two successive 'B' reports regarding an officer would result, automatically in the institution of departmental proceedings against him with a view to stoppage of increment. A

The punishments which could be awarded departmentally are set out in rule 16.1 and under rule 16.2(1) dismissal is to be awarded only for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service. Rule 16.24 sets out the procedure to be followed in departmental enquiries. The sum and substance of rule 16.24 is that in case the police officer did not admit the misconduct B

"the officer conducting the enquiry shall proceed to record such evidence, oral and documentary, in proof of the accusation as is available and necessary to support the charge. Whenever possible, witnesses shall be examined direct, and in the presence of the accused, who shall be given opportunity to take notes of their statements and cross-examine them. The officer conducting the enquiry is empowered, however, to bring on to the record the statement of any witness whose presence cannot, in the opinion of such officer, be procured without undue delay and expense or inconvenience, if he considers such statement necessary, and provided that it has been recorded and attested by a police officer superior in rank to the accused officer or by a magistrate, and is signed by the person making it." C

Further the accused officer was required to state the defence witnesses whom he wished to call together with a summary of the facts as to which they would testify. The enquiring officer was empowered to refuse to hear any witnesses whose evidence he considered would be irrelevant or unnecessary in regard to the specific charge framed. D

Under rule 16.25(1) a police officer called upon to answer a charge of misconduct must be given every opportunity of proving his innocence. Under sub-rule (2) of this rule, charges need not be framed in relation only to a specific incident or act of misconduct and when reports received against an officer or a preliminary enquiry show that his general behaviour has been such as to be unfitting his position or that he has failed to reach or maintain a reasonable standard of efficiency he may and should be charged accordingly, and a finding of guilty on such a E

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A charge would be valid ground for the infliction of any authorised departmental punishment which might be considered suitable in the circumstances of the case.

B The confidential reports extracts whereof were contained in the charge sheet make it clear that the respondent was being accused of laziness and ineffectiveness and as having a doubtful reputation as to his honesty. Excepting for the year 1948 wherein a specific instance of corruption was charged against him the other reports only contained generally adverse remarks. For instance the remarks against him for the year 1941 were to the effect that he was "lazy and ineffective and that he had been warned for dishonesty, laziness and lack of control." In the year 1942 when C he was posted at Dera Gazi Khan his annual confidential report showed that although there were no definite complaints he had not shown any outstanding ability or energy. The Superintendent of Police was not certain about his honesty but had no special complaints against him. The respondent was not allowed to cross the efficiency bar in that year in view of his past reports.

D It is the common case of the parties that the respondent was allowed to cross the efficiency bar in 1944. In 1945 he was transferred to Montgomery and got a 'B' report and his honesty was characterised as doubtful. He got another warning in that year. In 1946 the Superintendent of Police remarked that he was a failure as a Station House Officer and was slow to carry out orders and had no grip on his staff. The Deputy Inspector E General of Police, Multan Range, summed up his 16 years' service with the note :

F "From all accounts he is one of the worst Sub Inspectors in the Range and the department will be well rid of him, if action under r. 16.25(2) can be successfully taken against him. Action under r. 16.25 cannot succeed at present but his past record is such that any further complaint should warrant his dismissal."

G In the confidential reports of the year 1946, the Superintendent of Police, Muzaffargarh, stated that he was not honest and was very poor on parade. The Deputy Inspector General, Multan Range gave him a third warning. The Superintendent of Police, Muzaffargarh, however remarked that although his previous record was unsatisfactory he appeared to be trying to mend himself. In the year 1948 he got a 'C' report and the Superintendent of Police described him as "thoroughly corrupt". The S.P. H further remarked that

"This officer fell to unheard of depths of moral degradation in corrupt practices while posted to City

Rewari inasmuch as he changed the opium recovered by him earlier with Rasaunt for Rs. 1,000/- bribe and then made over the opium for sale in the black market. He was known to have mixed up with bad characters, gamblers and Rishawatdalals.”

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According to the charge sheet the attested copies of these reports were to be used as evidence against him.

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In regard to the year 1948 and the charge above mentioned it is enough to say that an enquiry was held against him and he was held entitled to an honourable acquittal.

The respondent pleaded not guilty to the charge and filed a list of 63 witnesses whom he sought to examine in his defence. He also gave a summary of the facts about which each of the witnesses was to depose. The enquiry officer allowed him to examine 21 witnesses in defence. No witness was examined on behalf of the department. On 25th May 1950 Bishambar Das, Superintendent of Police made a report that the charge had been fully brought home to the respondent and it was suggested that he should be dismissed. The Deputy Inspector General asked him to show cause why he should not be dismissed from service. After receipt of a written representation made by the respondent and recording his statement the Deputy Inspector General passed an order dismissing the respondent from service.

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The respondent then filed his suit in the court of the Subordinate Judge, Gurgaon, wherein his main complaint was that the enquiring officer did not record any evidence in support of the charge nor were the persons making the reports examined direct and in his presence with opportunity to him to cross-examine the persons who had made those reports: he also averred that good reports earned by him during his long period of service had not been taken into account. He also pleaded that he had been allowed to cross the efficiency bar in December 1944 and had been given a selection grade in 1945.

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It was urged before us that the crossing of the efficiency bar must be regarded as giving him a clean bill up to that date and in view of this the reports of 1941 and 1942 should not have been taken into consideration against him.

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As regards the reports for the years 1945 and 1946 the respondent's complaint was that the Superintendent of Police, Montgomery, was for certain communal reasons biased against him. As regards the reports for the period May 27, 1946 to 30th June 1946 and the rest of the year the same had been made by Shamsheer Singh and Sadat Ali, Superintendents of Police of

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- A** Muzaffargarh. Shamsheer Singh had given him no adverse remark and had left the column of honesty in the report "blank". Sadat Ali who was biased against the respondent got the word "no" typed opposite the column of honesty. The report for the year 1948 was based mainly on the opium case and as he had been cleared of the charge in respect of that case, there was no foundation for the report for that year. Further the order of dismissal was in violation of r. 16.2 as this punishment was to be awarded for the gravest acts of misconduct or as the cumulative effect of continued misconduct proving incorrigibility and complete unfitness for police service which facts did not exist in his case. A further complaint was made that the enquiry officer did not care to summon A. L. Chopra, the Rehabilitation Inspector and Captain Chuni Lal, Ex-military man although they had been allowed to be examined previously. The deposition of Ram Chander, Assistant Surgeon, a defence witness was not typed out and made a part of the record although his deposition was noted by the steno-typist in the note book. The order of dismissal was passed by the Deputy Inspector General without considering this evidence. Besides the above, the evidence of well placed officers like Deputy Commissioners, Superintendents of Police, Sub Divisional Magistrates and others who had testified to the respondent's efficiency, honesty and reliability were totally ignored.

- E** The Subordinate Judge held that the charge framed against the respondent was vague and indefinite and the enquiry was unfair and inadequate because some of the authors of the reports adverse to the respondent, though available, were not produced to enable the respondent to cross-examine them, that oral and documentary evidence sought by the respondent was withheld and as such no reasonable opportunity of defence was afforded to him.
- F** In the result he held that the requirements of Art. 311 of the Constitution had been violated and the order of dismissal was inoperative.

- G** The High Court did not agree that the charge was vague but focussed its attention mainly on the question as to whether there had been a substantial compliance with the requirements of Art. 311 and whether the enquiry conformed to the principles of fairplay and natural justice. Considering the Service Rules already mentioned the High Court observed that there was no dispute that reports till 1940 were generally favourable to the plaintiff.

- H** In our view reports earlier than 1942 should not have been considered at all inasmuch as he was allowed to cross the efficiency bar in that year. It is unthinkable that if the authorities took any serious view of the charge of dishonesty and inefficiency contained in the confidential reports of 1941 and 1942 they could

have overlooked the same and recommended the case of the officer as one fit for crossing the efficiency bar in 1944. It will be noted that there was no specific complaint in either of the two years and at best there was only room for suspicion regarding his behaviour.

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It further appears from the judgment of the High Court based mainly on the lengthy finding of the Superintendent of Police, Bishambar Das dated 25th May 1950 that from 1942 to April 1945 the respondent got 'A' class reports though his superior officers were not certain as regards his honesty. His integrity was considered to be doubtful in the succeeding reports up to 31st December 1946. As regards the first half of 1947 the Superintendent of Police had noted that he was not in a position to make any remark about his honesty as he had not seen the respondent's work at any police station. The Deputy Commissioner however remarked that his work was quite satisfactory and he was honest. For the remaining part of 1947 he received an 'A' report from the District Superintendent of Police who also stated that the respondent seemed to be honest and competent.

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There can be no doubt that the 1948 report was a very damaging one and if the allegations contained therein had any substratum of truth the respondent could be dismissed from service on the strength of the charges based on those allegations alone. But, as already noted, the respondent was cleared of this charge.

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The High Court opined that the enquiry officer, Bishambar Das, should not have neglected to summon five officers who made reports about the respondent and were available for examination at the enquiry. They were Chunilal Malhotra, Choudhry Roshan Lal, Deputy Commissioner, Shri Ismail, Shri. Holiday and Shri Sant Prakash Singh. According to the High Court the defence of the respondent in the enquiry being that the reports against him were based upon no sufficient data and/or were made partly because of the poisoning of the mind of the District Superintendent of Police by the Deputy Superintendent of Police on communal considerations the only way the respondent could have substantiated his defence version would be by putting questions to the reporting officers if made available during the enquiry. One of the above officers Shamsheer Singh was actually examined as the respondent's witness in the suit and his evidence showed that he had left the column for honesty in the report for 1946 blank as he had not seen the respondent at his work. This evidence was to show that if he had been examined by the enquiry officer a portion of the report taken in consideration against the respondent would have been found to be without substance. Another officer, Chunilal Malhotra though not examined before the enquiry

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A officer was called in defence in the suit. All that he could say was that he had received complaints against the respondent but he did not remember whether they were oral or in writing. The High Court justifiably commented that there was no sufficient reason for the enquiry officer refusing to summon Chunilal Malhotra. On an overall consideration of the facts, the High Court took the view that :

B "The approach of the enquiry officer was such that whatever be the testimony of other witnesses, it could not undo the effect of the reports made by the superior officers about the plaintiff."

C In other words the enquiry officer shut his mind to the testimony afforded by a large number of witnesses including a Deputy Commissioner, Under Secretary, two Superintendents of Police, a few Magistrates and some Deputy Superintendents of Police who had given evidence about the respondent's reputation and work.

D Further the High Court took the view that the remarks of the Deputy Inspector General of Police against the respondent in the year 1948 that he was not worth being retained in service had influenced the entire approach of the enquiry officer who was a subordinate to the Deputy Inspector General of Police. The Deputy Superintendent of Police Lekhraj examined at the hearing of the suit by the respondent and to whom another enquiry against the respondent had been entrusted earlier by Bishambar Das, the inquiry officer, told the court that when he (Lekhraj) exonerated the respondent in the other enquiry, Bishambar Das had sent for him and told him that the higher authorities wanted to take serious action to the extent of dismissal of the respondent.

E In our view the High Court arrived at the correct conclusion and on the facts of this case it is impossible to hold that the respondent had been given reasonable opportunity of conducting his defence before the enquiry officer. From what we have stated it is clear that if the enquiry officer had summoned at least those witnesses who were available and who could have thrown some light on the reports made against the respondent the report might well have been different. We cannot also lose sight of the fact that charges based on the reports for the years 1941 and 1942 should not have been levelled against the respondent.

F Learned counsel for the appellant relied on two decisions of the Orissa High Court in support of his contention that it was not necessary to examine the authors of the confidential reports against the respondent. In *Sadananda Mohapatra v. State*⁽¹⁾ the court considered the question as to whether reasonable opportunity had

(1) A.I.R. 1967 Orissa 49.

in fact been given to the petitioner before the punishing authority had made use of the adverse remarks in the confidential character roll. According to the High Court the petitioner in his examination to the second show cause notice had referred to the good services that he had rendered to the department. The High Court observed that the fact that the petitioner had done good work led the punishing authority to impose a lesser punishment and thus the confidential roll had helped the petitioner. It also appears from the judgment that the punishing authority in that case had during the personal hearing discussed the confidential character with the petitioner and accordingly the High Court was of opinion that even though the adverse remarks in the petitioner's confidential character roll were not included in the second show cause notice inasmuch as the same had been discussed at the personal hearing it could not be said that no reasonable opportunity had been given to the petitioner.

In our view the facts in this case are entirely different. The respondent before us wanted an opportunity by examining the witnesses mentioned by him to explain away the circumstances which had led to the making of the adverse remarks and he was given no such chance.

The second authority relied on for the appellant was *State of Orissa v. Sailabehari*⁽¹⁾. In this case the entry in the diary of a Deputy Collector went to show that the Special Assistant Agent, i.e., the respondent, had no reputation for honesty. The diary mentioned the source of information on which the remarks were based and although none of the informants figured as witnesses in the departmental enquiry the touring officer was examined as a witness and his tour diary proved at the inquiry and the respondent had been given an opportunity to cross-examine him. On those facts the High Court of Orissa, after discussing this position, took the view that although insufficient for the establishment of a criminal charge the position was different in the case of departmental enquiries where punishment could be based merely on general reputation for corrupt conduct.

In our view there was no flaw in the enquiry which the Orissa High Court was called upon to examine in that case and the above dictum of the High Court was not really called for.

Learned counsel also wanted to rely on a decision of this Court in *State of Jammu and Kashmir v. Bakshi Ghulam Mohammed*⁽²⁾ where the Court was dealing with the proceedings of a Commission of Inquiry under the Commission of Inquiry Act.

(1) A.I.R. 1963 Orissa 73.

(2) [1966] Supp. S.C.R. 401.

- A** Section 10 of that Act gave the delinquent a right to be heard but only a restricted right of cross-examination, *i.e.*, it was confined only to the witnesses called to depose against the person demanding the right. It was further observed that as "the Act did not contemplate a right of hearing to include a right to cross-examine" "it will be natural to think that the statute did not intend that in
- B** other cases a party appearing before the Commission should have any further right of cross-examination". On the facts before it the Court came to the conclusion that no case had been made by Bakshi Ghulam Mohammad that rules of natural justice required that he should have a right to cross-examine all the persons who had sworn affidavits supporting the allegations made against him.
- C.** In our opinion the above observation regarding the limit of the right to cross-examine dissociated from the context in which it was made cannot help the appellant. Although the case is governed by Art. 311 as it stood prior to its amendment in 1963 the respondent could not be deprived of an effective right to make representation against the action of dismissal. In our opinion,
- D.** refusal of the right to examine witnesses who had made general remarks against his character and were available for examination at the inquiry amounted to denial of a reasonable opportunity of showing cause against the action.

E In the result we hold that the High Court came to the correct conclusion and the appeal should be dismissed with costs.

G.C.

Appeal dismissed.