

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1489 OF 2004

TARSEM SINGH

Appellant (s)

VERSUS

STATE OF PUNJAB & ORS.

Respondent(s)

O R D E R

This appeal is directed against a judgment and order dated 20.01.2003 passed

by a Division Bench of the High Court of Punjab & Haryana disposing of the Writ

Petition filed by the appellant herein questioning the order of punishment dated

6.11.1997.

The basic fact of matter is not in dispute.

The appellant herein was charge-sheeted for commission of the following

misconduct:-

"(1) On 11.10.1997 at about 10 pm he along with his above said accomplices entered the house of one Dara Singh s/o Madan Singh resident of Mohalla Ram Bagh City, Barnala and outraged the modesty of his wife by inflicting pinches on her body. They forcefully extracted Rupees One hundred from Dara Singh. They threatened him of dire consequences if he made any complaint

against them or deposed against them or helped in any criminal or departmental proceedings against them.

(2) Constable Tarsem Singh No. 4C/371 on 11.10.1997 in between about 10/11 p.m. along with his other two above colleagues caught hold of one Ravinder Kumar s/o Kamaleshwary Yadav r/o Bharai District Purnia, Bihar a migrant labourer, stuffed cloth in

his

2

mouth and had carnal intercourse with him against the law of nature. FIR No. 228 dated 13.10.1997 U/s 377, 34 IPC P.S. Kotwali Barnala has been registered him. This incident took place at grain market, Barnala.

(3) He along with his other two accomplices further caused threats of dire consequences to anyone deposing against him in an enquiry/investigation which has further caused a scare amongst colleagues and citizens. That in the public and administrative interest the retention of above said constable Tarsem Singh 4C/371 is considered wholly undesirable."

On the basis of the said allegations alone and without any further material, the PPS, Commandant, 4th Commando Battalion, Bahadurgarh, Patiala, on arriving at a purported satisfaction that the appellant could win over aggrieved people as well as witnesses from giving evidence by threatening and other means, a formal departmental proceeding need not be initiated. The said authority further took into consideration report of a preliminary enquiry conducted through Mr. Gurbachan Singh, DSP, Adjutant 4th Commando Battalion, Bahadurgarh, Patiala and, on that basis opined, "There seems no need of a regular departmental enquiry against

Tarsem Singh No. 4C/371".

The appellant was dismissed from service. An appeal thereagainst was

preferred by the appellant. The appellate authority held :-

"I have carefully examined the pleas of the representation along with relevant record and find the same without any substance. Case FIR No. 228 dated 13.10.1997 U/s 377/34 IPC Police Station, Kotwali Barnala stands registered against the appellant and his companions which is under investigation and will be sent to court for judicial verdict in due course. The appellant is guilty of gravest acts of misconduct proving complete unfitness for police service and the punishment awarded to him is commensurate with the misconduct. I find no reasons to interfere with the orders already

3

passed by the punishing authority and the appeal is rejected."

The appellant thereafter moved the Inspector General of Police, Commando Battalion, Bahadurgarh, Patiala, but he was not favoured with any response thereto. The appellant thereafter filed a Writ Petition being Civil Writ

Petition No. 14467 of 1999 in the Punjab and Haryana High Court. By an order

dated 12.10.1999, the High Court directed the said authority to pass an appropriate

order and preferably a speaking order within one month from the production of the

certified copy thereof. Pursuant to or in furtherance of the said direction, the

Inspector General of Police, upon hearing the appellant in person, passed an order

dated 26.11.1999 dismissing the said representation stating that :

"From a perusal of the record of the case, I am satisfied that the nature of the misconducts committed by the petitioner which are proved from the statements of various persons recorded by Sh. Gurbachan Singh DSP/Adjutant during the preliminary enquiry conducted by him under the orders of the Commandant are of very grave and heinous nature and brings a bad name to the police force of the State on the whole, and there is every likelihood that none of the said witnesses may come forward to depose against the petitioner, in a regular enquiry due to the fear of injury to his life. Thus, I am of the considered view that in view of the above said facts, it was not reasonably practical to hold a regular enquiry before passing the dismissal order by the commandant and that the dismissal order dated 6.11.1997 passed by the Commandant, 4th Commando Battalion, Baharudgarh, Patiala is perfectly in order and has been passed on the basis of the record available on the file and also by keeping in view that image of whole of police force of the State shall be tarnished in a regular enquiry and also that the witnesses may not come forward to depose against the petitioner for fear of any injury or danger to their lives. The said order has been correctly passed under exception (b) to 2nd proviso to Article 311(2) of the Constitution of India. Vide order dated 24.6.1998, the appellate authority has rightly dismissed the appeal. Hence, finding no force in the revision

4

petition, I dismiss the same being without merit."

The writ petition filed by the appellant herein against the said order, as

stated hereinbefore, was dismissed by the High Court.

In a counter affidavit filed by the respondent before us it is alleged :

"Further, the misconduct/heinous crime committed by the petitioner was proved by the statements of various persons which were recorded by Shri Gurbachan Singh DSP/Adjutant during the preliminary enquiry conducted by him. The charges are of a very grave and heinous nature and bring a bad name to the Police Force of the State on the whole. Further, it was also noted that in every likelihood none of the said witnesses may come forward to depose against the petitioner, if a regular enquiry were to be conducted, due to fear of injury to their lives."

It is not disputed before us that in awarding the punishment of dismissal

from service upon the appellant no formal enquiry was held purportedly on the

ground that the same enquiry could be dispensed with, under proviso (b) appended

to clause (2) of Article 311 of the Constitution of India, which reads as under :

"Article 311. Dismissal, removal or reduction in rank of persons employed in civil capacities under the Union or a State.--

(2) No such person as aforesaid shall be dismissed or removed or reduced in rank except after an inquiry in which he has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges.

Xxx xxx xxx

Provided further that this clause shall not apply-

(b) where the authority empowered to dismiss or remove a person

5

or to reduce him in rank is satisfied that for some reason, to be recorded by that authority in writing, it is not reasonably practicable to hold such inquiry;"

It is now a well settled principle of law that a constitutional right conferred upon a delinquent cannot be dispensed with lightly or arbitrarily or out of ulterior motive or merely in order to avoid the holding of an enquiry. The learned counsel appearing on behalf of the appellant has taken us through certain documents for the purpose of showing that ultimately the police on investigation did not find any case against the appellant in respect of the purported FIR lodged against him under Section 377 IPC. However, it may not be necessary for us to go into the said question.

We have noticed hereinbefore that the formal enquiry was dispensed with

only on the ground that the appellant could win over aggrieved people as well as

witnesses from giving evidence by threatening and other means. No material has

been placed or disclosed either in the said order or before us to show that subjective

satisfaction arrived at by the statutory authority was based upon objective criteria.

The purported reason for dispensing with the departmental proceedings is not

supported by any document. It is further evident that the said order of dismissal was

passed, inter alia, on the ground that there was no need for a regular departmental

enquiry relying on or on the basis of a preliminary enquiry. However, if a

preliminary enquiry could be conducted, we fail to see any reason as to why a formal departmental enquiry could not have been initiated against the appellant. Reliance placed upon such a preliminary enquiry without complying with the minimal requirements of the principle of natural justice is against all canon of fair play and justice. The appellate authority, as noticed hereinbefore, in its order dated 24.6.1998

6

jumped to the conclusion that he was guilty of grave acts of misconduct proving

complete unfitness for police service and the punishment awarded to him is

commensurate with the misconduct although no material therefor was available on record. It is further evident that the appellate authority also mis-directed himself in passing the said order in so far as he failed to take into consideration the relevant facts and based his decision on irrelevant factors.

Even the Inspector General of Police in passing his order dated 26.11.1999, despite having been asked by the High Court to pass a speaking order, did not assign sufficient or cogent reason. He, like the appellate authority, also proceeded on the

basis that the appellant was guilty of commission of offences which are grave and

heinous in nature and bring a bad name to the police force of the State on the whole.

None of the authorities mentioned hereinbefore proceeded on the relevant material

for the purpose of arriving at the conclusion that in the facts and circumstances of

the case sufficient cause existed for dispensing with the formal enquiry. This aspect

of the matter has been considered by this Court in Jaswant Singh vs. State of

Punjab & Ors., AIR 1991 SC 385, wherein relying upon the judgment of the

Constitution Bench of this Court, inter alia, in Union of India & Anr. vs. Tulsiram

Patel & Ors., 1985 (Supp) 2 SCR 131, it was held :

" Although clause (3) of that Article makes the decision of the disciplinary authority in this behalf final such finality can certainly be tested in a Court of law and interfered with if the action is found to be arbitrary or male fide or motivated by extraneous consideration s or merely a ruse to dispense with the inquiry."

In that case also like the present one, the attention of the Court was not

7

drawn to any material existing on the date of passing of the impugned order in support of the allegations contained in the order dispensing with the departmental enquiry.

In view of the fact that no material had been placed by the respondents

herein to satisfy the Court that it was necessary to dispense with a formal enquiry in terms of proviso (b) appended to clause (2) of Article 311 of the Constitution of India, we are of the opinion that the impugned orders cannot be sustained and they are set aside accordingly. The appellant is directed to be reinstated in service. However, in view of our aforementioned findings, it would be open to the respondents to initiate a departmental enquiry against the appellant if they so desire. Payment of back wages shall abide by the result of such enquiry. Such an enquiry, if any, must be initiated as expeditiously as possible and not later than two months from the date of

communication of this order.

The appeal is allowed with aforesaid directions. No costs.

.....J.

(S.B. SINHA)

.....J.

(P.P. NAOLEKAR)

NEW DELHI;

JANUARY 25, 2006.

8

ITEM NO.104

COURT NO.9

SECTION IV

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 1489 OF 2004

TARSEM SINGH

Appellant (s)

VERSUS

STATE OF PUNJAB & ORS.

Respondent(s)

(With office report)

Date: 25/01/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE P.P. NAOLEKAR

For Appellant(s)

Mr. R.K. Talwar, adv.

Mr. Amit Talwar, Adv.

Mr. S.L. Aneja, Adv.

For Respondent(s)

Mr. Arun K. Sinha, Adv.

Mr. A.S. Sohal, Adv.

UPON hearing counsel the Court made the following

O R D E R

The appeal is allowed in terms of the signed order. No costs.

(Rajesh Dham)

(Pushap Lata Bhardwaj)

Court Master

Court Master

(signed order is placed on the file)