KULDIP SINGH

v.

STATE OF PUNJAB AND OTHERS

SEPTEMBER 16, 1996

[B.P. JEEVAN REDDY AND K.S. PARIPOORANAN, JJ.]

Service Law—Punjab Police Act 1861 :

Punjab Police Rules, 1934—Section 7—Rules 16.1 and 16.24—Power of dismissal and enquiry.

Constitution of India, 1950—Article 311(2)(b)(3)—Condition precedent to dispensing with the enquiry—Satisfaction of the disciplinary authority recorded on proper assessment of facts and circumstances—The decision of the disciplinary authority is final but subject to judicial review—The decision of the disciplinary authority, confirmed by the appellate authority not to hold enquiry against the appellant, helping the terrorists—High Court satisfied with the view—Supreme Court would not interfere and take a different view.

Evidence Act, 1872—Sections 25 and 26—Confessions made to the police officer—Relevancy in departmental enquiry—If accepted as voluntary and true by disciplinary authority and the appellate authority—Supreme Court would not go into the question—Strict rules of evidence not applicable to departmental enquiry—Principles of natural justice and rules governing the enquiry must be followed.

The Senior Superintendent of Police, invoking proviso(b) of Article 311(2) of the Constitution and the Punjab Police Rule 16.1 read with Section 7 of the Punjab Police Act, 1861, dismissed the appellant, a Head Constable, who was helping the terrorists. The satisfaction of the Senior Superintendent of Police for not holding the enquiry was that the circumstances were such that it was not reasonably practicable to hold an enquiry against the appellant, as no witness was likely to depose against him due to fear of life. The appeal preferred by the appellant was rejected by the Inspector General of Police. The High Court also rejected his appeal holding that there were sufficient materials before the disciplinary authority for not holding the enquiry. The appellant moved this court

A challenging that except the confession made to the police during interrogation, there was no other material against him warranting his dismissal and that he was acquitted by the Designated Court.

Dismissing the appeal, this Court

B HELD : 1. Though according to sections 25 and 26 of the Evidence Act, the confession made before or while in custody of a police officer is not admissible, it is well-settled that these rules do not apply to departmental enquiry. Even the evidence recovered or discovered as a result of illegal search is relevant in India departing from the law of United C States. The fact that the confession was made to the police, may not be of much consequence for the reason that strict rules of evidence do not apply to the departmental enquiry and as such the appellant's confession is relevant. In departmental enquiry, it would perhaps be permissible for the authorities to prove that the appellant did make such a confession during the course of interrogation and it would be for the disciplinary authority D to decide whether it was voluntary or not. The disciplinary authority is entitled to act upon such statement if it is voluntary and true. Once the disciplinary authority as well as the appellate authority conclude that the confession made by the appellant is voluntary, this court would not go into the question of its being voluntary or not. [345-H]

E

2. Undoubtedly, there is no other material except the confesion of the appellant. There is also the fact that the appellant was acquitted by the designated court, however, the High Court has opined that there were enough materials before the appropriate authority upon which it could come to a reasonable conclusion that it was not reasonable practicable to F hold an enquiry as contemplated by clause (2) of Article 311 of the constitution. Nothing has been shown to justify the taking of a contrary view at this stage. Once proviso(b) of Article 311(2) is held to have been validly invoked, the only ground left with the concerned Govt. servant is to impugn the punishment actually awarded as being unwarranted. In the G instant case, the punishment awarded to the appellant cannot be said to be excessive. [346-B-E]

Kuruma v. *The Queen*, (1955) A.C. 197, referred to.

Union of India v. *Tulsi Ram Patel*, [1985] Suppl. 2 SCR 131; *Pooran* H *Mal v. Director of Inspection*, [1974] 1 SCC 345; *State of Mysore* v. *S.S.*

Makapur, **AIR (1963) SC 375 and** *The State of Assam* **v.** *S.K. Dass,* **AIR (1970) SC 255, relied on.** A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 12313 of 1996.

From the Judgment and Order dated 10.12.93 of the Punjab & Haryana High Court in C.W.P. No. 14895 of 1993. B

R.S. Sodhi for the Appellant.

Manoj Swarup for the Respondents.

C

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY, J. Leave granted.

This appeal arises from the judgment of the Punjab and Haryana High Court dismissing the writ petition filed by the appellant. The appellant was a Head Constable of Police in the service of the Punjab Government. He has been dismissed from service without holding an enquiry as contemplated by clause (2) of Article 311 of the Constitution of India. The Senior Superintendent of Police (S.S.P.), Tarn Taran has invoked proviso (b) appended to the said clause (2), dispensing with the enquiry on the ground that it is not reasonably practicable to hold such an enquiry in the case of the appellant. The order of dismissal is dated February 21, 1992. The appeal preferred by the appellant was dismissed by the Inspector General of Police, Border Range, Amritsar on June 22, 1993. The order or dismissal and the appellate order affirming it were questioned by the appellant by way of a writ petition in the punjab and Haryana High Court which too has failed, as stated above. The order of dismissal passed by the S.S.P., Tarn Taran, reads: D E F

> "Whereas Head Constable Kuldip Singh No. 2874/TT of this district has been found indulging in activities prejudicial to the efficient functioning of the Police force. He has very close links with extremists and helping them by providing information of the Police Department. G
>
> And whereas it is established that Head Constable Kuldip Singh No. 2874/TT is mixed up with the extremists and had been H

found responsible for supplying information relating to the Police Department.

And whereas in the interest of maintenance of law and general administration and retention of Head Constable Kuldip Singh No. 2874/TT of Police District Tarn Taran is considered undesirable.

And whereas I am satisfied that the circumstances of the case such that if is not reasonably practicable to hold an enquiry in the manner provided in Punjab Police Rules 16.24 because no witness is likely to depose against him due to fear of injury of his life.

Now, therefore, I Ajit Singh, Senior Superintendent of Police, Tarn in exercise of the powers vested in me by virtue of the provisions of the Punjab Police Rules 16.1 read with Section 7 of the Police Act, 1861 and Article 311(2) of the Constitution of India, do hereby dismiss from service the Head Constable Kuldip Singh No. 2874/TT with effect from 21.2.1992."

On Appeal, the appellate authority found that the appellant did have links with the terrorists and was mixed up with them and he was supplying secret information of the police department to terrorists which was creating hindrance in the smooth functioning of the police department. The appellate authority also found that it was impossible to conduct an enquiry against the appellant because nobody would come forward to depose against such "militant police official". The appellate authority also referred to the fact that the appellant was interrogated in a case, FIR No. 210/90, and that during interrogation he admitted that he was having links with Major Singh Shahid and Sital Singh Jakhar and was working for them. It further stated in its order that the appellant was preparing to murder some senior police officers while taking advantage of his position.

The High Court found that the reasons given by the S.S.P. for dispensing with the enquiry were acceptable and that the satisfaction recorded by him cannot be said to be unjustified or unwarranted. The High Court was also of the opinion that there was sufficient material before the disciplinary authority to conclude that it was not expedient to hold a regular enquiry against the appellant.

In this appeal, it is contended by Sri R.S. Sodhi, learned counsel for the

appellant, that except the alleged admission/confession of the appellant made before the police officers during interrogation in FIR No. 219/90, there is no other material upon which the disciplinary authority could have concluded that the dismissal of the appellant was warranted. He submitted that such an admission/confession is inadmissible in law and, therefore, cannot constitute the basis of an order of dismissal. The learned counsel also submitted that no material has been placed by the disciplinary authority before the court upon which it was satisfied that it was not expedient to hold a disciplinary enquiry against the appellant as contemplated by clause (2) of Article 311. The learned counsel also brought to our notice that though the appellant was prosecuted and tried before the designated court, Amritsar under Terrorists and Disruptive Activities Act in connection with the crime in FIR No. 219/90, he has been acquitted by the said court.

On the other hand, the learned counsel for respondents supported the reasoning and conclusion of the High Court as also the action of the authorities.

At our direction made on April 22, 1996 in this matter, the learned counsel for the State has produced the original record relating to the appellant's dismissal along with translated copies of the relevant document. The first document placed before us by the learned counsel for the State is the copy of the FIR No. 219/90 dated November 24, 1990. It is based upon the statement of Head constable Hardev Singh, who was posted as gunman with Sri Harjit Singh, Superintendent of Police (S.P.) (Operations). The F.I.R. speaks of the jeep (in which the said S.P. was travelling along with certain police personnel) being blown up killing the said S.P. and few other police officials. The next document placed before us is the case diary pertaining to the said crime containing the statement of the appellant, Kuldip Singh. In his statement, Kuldip Singh, did clearly state about his association with certain named militants, the plot laid by them to kill Sri Harjit Singh, Superintendent of Police, Tarn Taran by placing a bomb and the manner in which they carried out the said plot. He also stated that he and his militant companions planned to plant a bomb in the office of S.S.P, Tarn Taran but that the police officers came to know of the said plan, thus foiling their plan. The learned counsel for the State of Punjab did concede that except the aforesaid statement of admission/confession of the appellant, there was no other material on which the appellant could be held guilty of conduct warranting dismissal from service.

A Proviso (b) to Article 311(2) says that the enquiry contemplated by clause (2) need not be held "where the authority empowered to dismiss or remove a person 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 enquiry". Clause (3) of Article 311 expressly provides that "if, in respect B of any such person as aforesaid, the question arises whether it is reasonably practicable to hold such enquiry as is referred to in clause (2), the decision thereon of the authority empowered to dismiss or remove such person or to reduce him in rank shall be final". These provisions have been the subject-matter of consideration by a Constitution Bench of this Court in *Union of India* v. *Tulsi Ram Patel,* [1985] Suppl. 2 S.C.R 131. It would be appropriate C to notice a few relevant holdings in the said judgment:

> "Before denying a government servant his constitutional right to an enquiry, the first consideration would be whether the conduct of the concerned government servant is such as justifies the penalty D of dismissal, removal or reduction in rank. Once that conclusion is reached and the condition specified in the relevant clause of the second proviso is satisfied, that proviso becomes applicable and the government servant is not entitled to an enquiry (p.205)..... It would also not be reasonably practicable to hold the enquiry where an atmosphere of violence or of general indiscipline and insubor- E dination prevails, and it is immaterial whether the concerned government servant is or is not a party to bringing about such an atmosphere..... The reasonable practicability of holding an inquiry is a matter of assessment to be made by the disciplinary authority. Such authority is generally on the spot and knows what is happen- F ing. It is because the disciplinary authority is the best Judge of this That clause (3) of Article 311 makes the decision of the disciplinary authority on this question final..... The finality given to the decision of the disciplinary authority by Article 311(3) is not binding upon the court so far as its power of judicial review is concerned (p.270)..... Where a government servant is dismissed, removed or G reduced in rank by applying clause (b) or an analogous provision of the service rules and he approaches either the High Court under Article 226 or this Court under Article 32, the court will interfere on grounds well established in law for the exercise of power of judicial review in matters where administrative discretion is exer- H cised. It will consider whether clause (b) or an analogous provision in the service rules was properly applied or not..... In examining

A

> the relevancy of the reasons, the court will consider the situation which according to the disciplinary authority made it come to the conclusion that it was not reasonably practicable to hold the inquiry..... In considering the relevancy of the reasons given by the disciplinary authority, the court will not, however, sit in judgment over them like a court of first appeal; (p.273-274)."

B

The judgment also stresses that very often a person dealt with under any of the three clauses in the second proviso to Article 311(2) has a right of appeal where the correctness of the decision taken by the appropriate authority will be subject to review - apart, of course, from the remedy of judicial review provided in the Constitution.

C

Now coming to the main contention of the learned counsel for the appellant, it is true that a confession or admission of guilt made by a person accused of an offence before, or while in the custody of, a police officer is not admissible in a court of law according to Sections 25 and 26 of Evidence Act but it is equally well settled that these rules of evidence do not apply to departmental enquiries - See *State of Mysore* v. *S.S. Makapur,* A.I.R. (1963) S.C. 375 and *State of Assam* v. *S.K. Das,* A.I.R. (1970) S.C. 1255 - wherein the only test is compliance with the principles of natural justice - and, of course, compliance with the rules governing the enquiries, if any. In this context, it is well to remember that in India, evidence recovered or discovered as a result of an illegal search is held relevant departing from the law in the United States. We may refer to the following observations of the Judicial Committee of the Privy Council in *Kuruma* v. *The Queen,* (1955) A.C. 197, quoted approvingly by the Constitution Bench of this Court in *Pooran Mal* v. *Director of Inspection,* [1974] 1 S.C.C. 345 at 256 :

D

E

F

> "The test to be applied, both in civil and in criminal cases, in considering whether evidence is admissible *is whether it is relevant* to the matters in issue. If it is, it admissible, *and the Court is not concerned with how it was obtained.*"

G

In this sense, if the appellant's confession is relevant, the fact that it was made to the police or while in the custody of the police may not be of much consequence for the reason that strict rules of Evidence Act do not apply to departmental/disciplinary enquiries. In a departmental enquiry, it would perhaps be permissible for the authorities to prove that the appellant did make such a confession admission during the course of interrogation

H

A and it would be for the disciplinary authority to decide whether it is a voluntary confession/admission or not. If the disciplinary authority comes to the conclusion that the statement was indeed voluntary and true, he may well be entitled to act upon the said statement. Here, the authorities say that they were satisfied about the truth of the appellant's confession. There is undoubtedly no other material. There is also the fact that the appellant
B has been acquitted by the designated court. We must say that the facts of this case did present us with a difficult choice. The fact, however, remains that the High Court has opined that there was enough material before the appropriate authority upon which it could come to a reasonable conclusion that it was not reasonably practicable to hold an enquiry as contemplated
C by clause (2) of Article 311. Nothing has been brought to our notice to persuade us not to accept the said finding of the High Court. Even a copy of the counter filed by the respondents in the High Court is not placed before us. Once proviso (b) is held to have been validly invoked, the government servant concerned is left with no legitimate ground to impugn the action except perhaps to say that the facts said to have been found
D against him do not warrant the punishment actually awarded. So far as the present case is concerned, if one believes that the confession made by the appellant was voluntary and true, the punishment awarded cannot be said to be excessive. The appellant along with some others caused the death of the Superintendent of Police and a few other police officials. It must be remembered that we are dealing with a situation obtaining in Punjab during
E the years 1990-91. Moreover, the appellate authority has also agreed with the disciplinary authority that there were good grounds for coming to the conclusion that it was not reasonably practicable to hold a disciplinary enquiry against the appellant and that the appellant was guilty of the crime confessed by him. There is no allegation of *malafides* levelled against the
F appellate authority. The disciplinary and the appellate authorities are the men on the spot and we have no reason to believe that their decision has not been arrived at fairly. The High Court is also satisfied with the reasons for which the disiciplinary enquiry was dispensed with. In the face of all these circumstances, it is not possible for us to take a different view at this stage. It is not permissible for us to go into the question whether the
G confession made by the appellant is voluntary or not, once it has been accepted as voluntary by the disciplinary authority and the appellate authority.

The appeal accordingly fails and is dismissed. No costs.

H H.K. Appeal dismissed.