

Before Sukhdev Singh Kang, J.

JOGINDER SINGH,—Petitioner.

versus

THE STATE OF PUNJAB AND OTHERS,—Respondents.

Civil Writ Petition No. 2137 of 1977.

September 22, 1983.

Punjab Police Rules, 1934—Rule 16.28—Police official charge sheeted and an inquiry held—Deputy Inspector General imposing a punishment of forfeiture of two years service—Appeal preferred to the Inspector General—Inspector General quashing the order of punishment and directing the second inquiry—Second inquiry—Whether could be ordered.

Held, that disciplinary proceedings against a delinquent public servant are quasi judicial in nature. It is equally well settled that once a Government servant is absolved of culpability in a departmental inquiry, a second inquiry on those very allegations and charges cannot be held unless the service or other statutory rules provide for the same. Judicial or quasi judicial authorities or Tribunals draw their power and authority from a statute. They do not have any inherent powers. Right of appeal, review and revision are creatures of statutes and unless the statutory rules so provide the Inspector General of Police could not entertain the appeal as a necessary corollary. Rule 16.28 of the Punjab Police Rules, 1934 has authorised the Inspector General of Police and other officers mentioned therein to re-examine the orders passed by their subordinates and confirm, vary or quash them. Rule 16.28 does not in terms or by inevitable implication confer on the Inspector General of Police any power to order a second inquiry after quashing the award of the Deputy Inspector General of Police. There is no other provision in the Police Rules or any other statutory rules conferring powers on the Inspector General of Police to order a second inquiry.

(Paras 4 and 5)

Petition Under Art. 226 of the Constitution of India praying that a writ of Certiorari, Mandamus or any other suitable writ, Direction or Order be issued, directing the respondents:—

- (i) to produce the complete records of the case;
- (ii) the charge sheet at Annexure 'P-5' be quashed;

Joginder Singh v. The State of Punjab and others (S. S. Kang, J.)

- (iii) *the order at Annexure 'P-3' only in so far as it relates to de-novo proceedings against the petitioner be set aside;*
- (iv) *a writ of Mandamus be issued directing the respondents to consider the petitioner's case for promotion to the rank of Head Constable with effect from the date the person junior to him had been promoted;*
- (v) *this Hon'ble Court may also pass any other order which it may deem just and fit in the circumstances of the case;*
- (vi) *this Hon'ble Court may also grant all the consequential reliefs in the nature of arrears of salary, seniority etc;*
- (vii) *the requirement regarding the service of notice of motion be dispensed with ;*
- (viii) *it is further prayed that pending the disposal of the writ petition, further proceedings in pursuance to Annexure 'P-5' be stayed;*
- (ix) *the costs of this petition may also be awarded to the petitioner.*

J. L. Gupta, Senior Advocate (Mr. Rakesh Khanna, Advocate with him), for the Petitioner.

H. S. Riar, D.A.G. (Punjab), for the Respondent.

JUDGMENT

S. S. Kang, J.—

By this writ petition, Joginder Singh, petitioner, seeks the issuance of writ of *certiorari* quashing the orders, initiating a fresh disciplinary inquiry against him and a writ of *mandamus* prohibiting the respondents from proceeding with the inquiry.

(2) The petitioner joined the Punjab Police as a Constable in 1961. In 1973, he was posted in the Accounts Branch of the 82nd Battalion of the Punjab Armed Police situated at Bahadurgarh. The petitioner was served with a charge-sheet that he had fraudulently drawn six months house rent allowance in the name of Constable Swaran Dass but paid him only three months house rent and thus mis-appropriated Rs. 60.90. The Inquiry Officer held him guilty. The Commandant, who is the punishing authority, however,

exonerated him. The matter was re-examined by Deputy Inspector General Police-respondent No. 2. He disagreed with the order of the Commandant and called upon the petitioner to show cause as to why the latter should not be dismissed from service. The petitioner submitted a reply and after considering the same, respondent No. 2 imposed a penalty of forfeiture of two years of approved service with permanent effect entailing forfeiture of two future increments. Aggrieved by this order, the petitioner filed an appeal before the Inspector General of Police. He thoroughly examined the matter and came to the conclusion that Head Constable Jaswant Singh and Banwari Lal were the main culprits. It was their responsibility to see that the correct amount of money was withdrawn and payment made to the right person. He held that the petitioner had been made a scape goat. He quashed the orders of respondent No. 2 but ordered a fresh departmental inquiry against Head Constable Jaswant Singh and Banwari Lal, above-mentioned and the petitioner. The petitioner has approached this Court against the orders of holding second inquiry.

(3) It has been contended by Shri J. L. Gupta, Senior Advocate, learned counsel for the petitioner, that the powers of the Inspector General of Police and other officers mentioned therein are clearly and succinctly defined in Rule 16.28 of the Punjab Police Rules (for short 'the Rules'). The powers conferred are not absolute. They are confined to matters specifically incorporated therein. The Inspector General of Police could confirm, enhance, modify or annul the awards or the orders made by the subordinate officers, if he was not satisfied with the manner and conduct of the inquiry or the orders passed or award made. He could make further investigation in the matter himself or direct such investigation to be made by some subordinate officer before passing the final orders. It is manifest from the language employed in the rules that the Inspector General of Police could not order a second inquiry. He could well-nigh quash the orders passed by the Deputy Inspector General of Police or the Commandant.

(4) There is merit in this contention. Before dealing with the submission made by the learned counsel for the parties, it will be appropriate to set down the provisions of Rule 16.28 at this stage. It reads as under:—

"16.28—Powers to review proceedings:

(1) The Inspector-General, a Deputy Inspector-General and a Superintendent of Police may call for the

Joginder Singh v. The State of Punjab and others (S. S. Kang, J.)

records of awards made by their subordinates and confirm, enhance, modify, or annul the same, or make further investigation or direct such to be made before passing orders.

- (2) If an award of dismissal is annulled, the officer annulling it shall state whether it is to be regarded as suspension followed by reinstatement or not. The order should also state whether service previous to dismissal should count for pension or not.
- (3) In all cases in which officers propose to enhance an award they shall, before passing final orders, give the defaulter concerned an opportunity of showing cause, either personally or in writing, why this punishment should not be enhanced."

It is now beyond the pale of controversy that the disciplinary proceedings against a delinquent public servant are *quasi* judicial in nature. A Constitution Bench in *Bachitar Singh v. State of Punjab*, (1), observed that :—

"There is just one continuous proceeding though there are two stages in it. The first is coming to a conclusion on the evidence as to whether the charges alleged against the Government servant are established or not and the second is reached only if it is found that they are so established. That stage deals with the action to be taken against the Government servant concerned. Both these stages are equally judicial."

It has further been observed that :—

".....It is thus wholly erroneous to characterise the taking of action against a person found guilty of any charge at a departmental enquiry as an administrative order....."

To the same effect is the ratio of the decisions in *Vijay Singh Yadava v. State of Haryana* (2) and *R. R. Verma and others v. Union of India and others*, (3). It is equally well-settled that once

(1) AIR 1963 S.C. 395.

(2) 1971 (1) S.L.R. 720.

(3) A.I.R. 1980 S.C. 1461.

a Government servant is absolved of culpability in a departmental inquiry, a second inquiry on those very allegations and charges cannot be held unless the service or other statutory rules provide for the same. Reference in this connection may be made to the decision of the Apex Court in the *State of Assam and another v. J. N. Roy Biswas*, (4) wherein it was observed that:—

“No rule of double jeopardy bars but absence of power under a rule inhibits a second inquiry by the Disciplinary authority after the delinquent had once been absolved. Once a disciplinary case has closed and the official re-instated, presumably on full exoneration, a chagrined Government cannot re-start the exercise in the absence of specific power to review or revise, vested by rules in some authority. The basics of the rule of law cannot be breached without legal provision or other vitiating factor invalidating the earlier enquiry.”

(7) Judicial or Quasi Judicial authorities or Tribunals draw their power and authority from statutes. They do not have any inherent powers. Right of appeal, review and revision are creatures of statutes. Unless the statutory Rules so provide, the Inspector-General of Police could not entertain the appeal of the petitioner as a necessary corollary. But Rule 16.28 has authorised the Inspector-General of Police and other officers mentioned therein to re-examine the orders passed by their subordinates and confirm, vary or quash them. Rule 16.28 does not in terms or by inevitable implication confer on the Inspector-General of Police any power to order a second inquiry after quashing the award of the Deputy Inspector-General of Police. There is no other provision in the Police Rules or any other statutory Rules applicable to the petitioner conferring powers on the Inspector-General of Police to order a second inquiry. While deciding the appeal, he was performing quasi judicial functions. The contention of Mr. Riar that the power to order second enquiry is inherent in the relationship of Master and servant, cannot be accepted. What to say of ordering a second enquiry, even the power to review his own judgment does not vest with the Inspector-General of Police. A Full Bench of this Court in *Deep Chand and others v. Additional Director*,

(4) A.I.R. 1975 S.C. 2277.

Joginder Singh v. The State of Punjab and others (S. S. Kang, J.)

Consolidation of Holdings, Punjab, and another (5), held that judicial or quasi judicial Tribunal does not possess powers to review its earlier orders unless a statute confers such powers on it. Similarly, the plea of Mr. Riar that Rule 16.28 explicitly grant powers of review to the Inspector-General of Police is equally untenable. In support of his contention he has referred to the Heading of Rule 16.28 which reads—"Powers to Review Proceedings". It is well recognised that the Heading of a statutory provision does not control its meaning. The provision is to be interpreted primarily on the language employed therein. The Heading does not control main provision. At best, it can be taken into account in inferring the main provision if there is some ambiguity therein. So the power to review cannot be spelt from the language of Rule 16.28 merely because it is crowned with a caption 'Powers to Review Proceedings'. It is also difficult to accept that since all the powers like the powers to confirm, enhance, modify or annul the awards which are available with the judicial and quasi judicial Tribunal have been conferred on the Inspector-General of Police, it should be accepted that he has also the power to review. This argument can be dismissed out of hand in view of the authoritative pronouncement in *Deep Chand's case* (supra) that power to review can be conferred only by a statute. It cannot be spelt through some intricate process of induction or deduction. The power to investigate the case or to get it investigated from some subordinate officer cannot be equated with the power to remand the case or order a fresh enquiry. A dispute arose in the context of the East Punjab Urban Rent Restriction Act. Under Section 15 of the East Punjab Urban Rent Restriction Act, the appellate Authority has been empowered to make further enquiry either personally or through the Rent Controller if it is dis-satisfied with the trial of the eviction application by the Rent Controller. Statute does not confer any power of remand. The appellate Authority remanded the case to the Rent Controller for fresh decision. A Division Bench of this Court in *Shri Krishan Lal Sethy, Shrimati Pritam Kumari* (6), observed:—

"When the appellate authority is somehow or other dis-satisfied with the trial of an application for eviction of the tenant, it can make a further enquiry as it thinks fit either personally or through the Rent Controller, but it

(5) A.I.R. 1964 Pb. 249.

(6) 1961 P.L.R. 865.

has no power to set aside an order of the Rent Controller and remand such an application to him for retrial and redecision."

Since a doubt was expressed about the correctness of this decision, the matter was re-examined by another Division Bench in *Raghu Nath Jalota v. Romesh Duggal and another*, (7) and the view taken in 1961 was reaffirmed and it was held that :—

"The history of the legislation, its object and purpose and the specific language of Section 15(3) clearly show that there is no jurisdiction in the Appellate Authority to remand the whole case to the Controller for entirely a fresh decision."

It is manifest from this that Appellate Authority while hearing an appeal can either make a further enquiry personally or through the Rent Controller, but cannot set aside the impugned order and then remand the case to the Rent Controller for retrial and redecision. On the parity of reasoning, Inspector-General of Police could investigate the case himself or get it investigated from some subordinate police officer before passing the final order. But, after quashing the orders of Respondent No. 2, he could not order a fresh enquiry. In fairness to Mr. Riar, I must distinguish some of the judgments cited by him in support of his contention. All that was held in *Dwarkachand v. State of Rajasthan*, (8), was that if there was no rule or law which lays down that an order exonerating a public servant in a departmental enquiry and ordering fresh enquiry, it is not open to a higher authority to order a fresh departmental enquiry ignoring the result of an earlier enquiry exonerating the public servant. This presumably goes against the contention raised by the learned State counsel. It has been clearly laid down that in the absence of a statutory rule no fresh enquiry can be ordered against public servant who has been exonerated in the first enquiry. The decision of the Mysore High Court in *Vijay Singh Yadava's case* (supra) does not help Mr. Riar because the point in issue in that case was not in controversy before that High Court. The only issue raised there was that punishment imposed on a delinquent official on second enquiry amounts to

(7) A.I.R. 1980 Pb. & Haryana 188.

(8) A.I.R. 1958 Rajasthan 38.

Joginder Singh v. The State of Punjab and others (S. S. Kang, J.)

double jeopardy. However, in that case the service rules permitted a second enquiry. This contention was repelled by the Court.

(6) In the result, I allow this petition and quash orders initiating a second departmental enquiry against the petitioner. The rest of the order shall remain operative. I also quash the enquiry proceedings. It is, however, made clear that this judgment will have no effect on the enquiry proceeding against Head Constables Jaswant Singh and Banwari Lal.

N. K. S.

Before S. P. Goyal, J.

SHAMBHU DAYAL,—Appellant.

versus

SMT. TARAWANTI AND OTHERS,—Respondents.

Regular Second Appeal No. 867 of 1975.

September 23, 1983.

Limitation Act (IX of 1908)—Article 148—Redemption of mortgaged property—Stipulation in the mortgage deed enabling redemption within ten years on payment of additional amount—Option to redeem not exercised within ten years—Right to redeem—Whether accrues after the expiry of ten years—Suit for redemption filed after 60 years but before expiry of 70 years from the date of mortgage—Such suit—Whether within limitation.

Held, that the stipulation in the mortgage-deed permitting redemption within ten years on payment of additional amount was only an enabling provision meant for the benefit of the mortgagor. It was open to him to redeem the property within the period of ten years if he had so desired on payment of additional amount. In case he did not exercise that option the condition of the bar of redemption for ten years was in full operation and the right to redeem was to accrue to the mortgagor only after the expiry of ten years. The limitation in a suit for redemption of the mortgaged property would, therefore, commence only after the expiry of the period of ten years fixed in the agreement and if the suit is filed after 60 years but before the expiry of 70 years from the date of mortgage it would be well within time.

(Para 2)