

P L D 2003 Supreme Court 921

Present: Sh. Riaz Ahmad, C.J., Mian Muhammad Ajmal and Muhammad Nawaz Abbasi, JJ

MUHAMMAD SAJID BUTT---Petitioner

Versus

D.I.-G. TRAFFIC, PUNJAB, LAHORE and another---Respondents

Civil Petition No.3360-L of 2001, decided on 20th June, 2003.

(On appeal from the judgment of the Punjab Service Tribunal, Lahore dated 5-9-2001, passed in Appeal No.3237 of 1999).

(a) Punjab Police (Efficiency and Discipline) Rules, 1975---

----R. 6---Punishment proceedings---Kinds---Holding of departmental inquiry--Competence of Authority to decide---Principles.

Rule 6 of the Punjab Police (Efficiency and Discipline) Rules, 1975 provides three kinds of punishment proceedings i.e. Summary Police Proceedings, General Police Proceedings, and Special Police Proceedings and it is for the authority to decide, keeping in view the facts and circumstances of each case, as to which kind of proceedings be adopted in a given case. In Summary Police Proceedings, the accused officer has to be brought before the authority in an orderly room, where he has to be apprised orally by the authority, of the nature of the allegations against him and after recording the substance of his explanation, if the authority finds the same unsatisfactory, it may award one of the minor punishments. If the authority decides to hold General Police Proceedings, it shall determine whether in view of the facts and circumstances of the case a departmental inquiry through an Inquiry Officer is necessary and if it deems appropriate not to hold an inquiry, it shall inform the accused of the action proposed to be taken with regard to him and the grounds of that action and shall afford a reasonable opportunity to the accused to show cause against that action and this provision can be dispensed with where the authority is satisfied that in the interest of the security of the country it would not be expedient. On receipt of the finding of the Inquiry Officer and where no Inquiry Officer is appointed, on the receipt of the explanation, the authority can impose one or more of the punishments if it is satisfied that the charge is proved against the accused. Under rule 6(3)(1) of the Rules, the authority has to determine whether in the light of facts of the case or in the interest of justice, a departmental inquiry through the Inquiry Officer is necessary and if it decides it is not necessary, it can proceed against the accused informing him in writing the action proposed to be taken and the grounds of action against him and provide him a reasonable opportunity of showing cause against that action. The power has been conferred under the said rule, upon the authority to decide as to whether in the facts and circumstances of the case a departmental inquiry would be necessary, and if it decides otherwise, it can proceed against the accused under clauses (a) and (b) of sub-rule (3) of rule 5 of the Rules.

(b) Punjab Police (Efficiency and Discipline) Rules, 1975---

----Rr. 6 & 4---Misconduct---General Police Proceedings---Judgment of acquittal of civil servant in the criminal case---Extent of relevance---Charges of malversation and misconduct---Not co-extensive and interconnected-- Criminal proceedings and Departmental proceedings are different and distinct from each other and have different objects, both are regulated and controlled by different laws, therefore, proceedings

under one would have neither any bearing on the other nor such proceedings would serve as substitute for the other---Acquittal of the accused in criminal proceedings would not entitle him to be reinstated in service, if he had been dismissed or removed from service after proper Departmental Proceedings---Principles.

As far as the relevancy of judgment of acquittal of the civil servant in the criminal case is concerned, the same would be relevant to the extent that the criminal charge, *stricto sensu*, could not be proved against him for one or the other reason and any other opinion or observation made in the judgment would neither be relevant for other proceedings nor the acquittal order passed on the grounds of lack of prosecution evidence, its inferior quality, inadequacy or insufficiency, benefit of doubt or any other technical reason, would have any bearing on the departmental action.

The charges of malversation and misconduct have nothing to do directly with- the criminal charge as the former are relatable to the functionary and the service discipline within which he works.

The two charges i.e. malversation and misconduct and the criminal charges; are not co-extensive and inter-connected.

The scope and the law applicable to the criminal trial was different from that applicable to the departmental inquiry. The charges in the two were neither identical nor substantially the same. The competent authority was, therefore, not duty bound under any provision or principle of law to await and follow the judicial verdict in the case. Criminal proceedings and departmental proceedings are different and distinct from each other and have different objects, both are regulated and controlled by different laws, therefore, proceedings under one would have neither any bearing on the other nor such proceedings would serve as substitute for the other.

Where the charge of misconduct against a civil servant relates to a criminal accusation, he can be prosecuted for the offence as well as proceeded against departmentally for misconduct. If prosecution fails on technical reasons and the accused is acquitted, it would not absolve him from the charge of misconduct despite technical acquittal and in departmental proceedings if he is found guilty of misconduct, he can be awarded any of the punishments provided by rule 4 of the Rules. The acquittal of the accused in Criminal proceedings would not entitle him to reinstatement in service, if he has been dismissed or removed from service after proper Departmental Proceedings.

Misconduct is an act which is against the service discipline and good order of the police force and contrary to Government Servants (Conduct) Rules, 1964 or conduct unbecoming of a Police Officer and a gentleman or any commission or omission which violates any provision of law and rules regulating the function and duty of a Police Officer and bringing or attempting to bring political or other outside influence directly or indirectly on the Government or any Government Officer regarding terms and conditions of service of a Police Officer.

In the present case, the civil servant who, besides his traffic duty, was to protect the honour and dignity of the citizens, himself indulged in immoral activities which were against all the norms and his conduct was unworthy of a Police Officer and a gentleman, as such, gross misconduct was committed by him and such like officers have no place in disciplined force of Police. The procedure adopted by the D.I.-G. was proper and in accordance with the Rules and there was no legal flaw in it, therefore, the dismissal order passed by him after holding General Police Proceedings was rightly upheld by the Service Tribunal.

Ahmad Saeed Kirmani, Advocate Supreme Court and Ch. Mehdi Khan Mehtab, Advocate-on-Record (absent) for Petitioner.

Ch. Arshad Ali, Advocate Supreme Court for A.-G., Punjab and Ms. Naheeda Mehboob Elahi, Advocate Supreme Court for Respondents.

Date of hearing: 2nd April, 2003.

JUDGMENT

MIAN MUHAMMAD AJMAL, J.---Leave to appeal is sought against the judgment of the Punjab Service Tribunal, Lahore dated 5-9-2001, whereby Appeal No.3237 of 1999 of the petitioner challenging his dismissal from service, was dismissed.

2. Background of the case is that the petitioner was posted as Inspector/Traffic Sergeant at Gujranwala. He made an entry in the daily diary on 2-5-1998 at 5-30 a.m. that he was indisposed and was going to see a private doctor. The Superintendent of Police, Traffic, Gujranwala noted his absence from duty at 8-15 a.m. and made an entry in the daily diary to that effect. On the same day, on the receipt of information that a couple was merrymaking in Room No.2 of Sajawal Hotel, Gujranwala, a raiding party comprising of Ahmad Zaki Tirmizi, DSP Saddar, Wallayat Hussian Shah, DSP Traffic and Shahid Mehboob, S.H.O. Police Station Saddar, Gujranwala headed by Malik Mushtaq Ahmad, Traffic Magistrate was constituted, who raided Room No.2 of the said Hotel and found the petitioner and Mst. Sadia in objectionable position. They failed to justify their presence in the room of the hotel and thus were booked in case F.I.R. No.474 of 1998 dated 2-5-1998 under section 10(2) and 18 of the Offence of Zina (Enforcement of Hudood) Ordinance, 1979 (hereinafter to be called Ordinance). A show-cause notice dated 4-5-1998 was issued to the petitioner by respondent No.1 on the grounds, firstly that he made Entry No.15 in the daily diary at 5-30 a.m. that he was suffering from pain in the stomach and cholera and as such, could not perform his duties on that day and was going to see a private doctor and on the same day at 8-15 a.m., S.P. Traffic, Gujranwala got noted his absence from duty in the daily diary vide Entry No.3, secondly, after raid on Room No.2 of Sajawal Hotel by a team of Traffic Magistrate, two Deputy Superintendents of Police and Inspector/S.H.O. he was found with Mst. Sadia in the said room of the hotel in objectionable condition regarding which F.I.R. No.474/1998 dated 2-5-1998 was registered and thirdly, that an unregistered Pajero inter-cooler was being used by him which was taken in possession from him and he failed to give any plausible explanation for having unregistered Pajero in his possession and use. It was stated in the notice that by reasons of the aforesaid he appeared to be guilty of misconduct and reasonably be considered corrupt having assumed a style of living beyond his ostensible means within the meaning of Rule 3 of the Punjab Police (Efficiency and Discipline) Rules, 1975 (hereinafter to be called the Rules). It was further stated that on consideration of the facts of the case, it was concluded that there was sufficient material to prove the allegations, therefore, regular enquiry through an Enquiry Officer was not necessary and the petitioner was directed to submit his reply within 7 days. In reply to the show-cause notice, he submitted that on 2-5-1998 after making Entry No. 15 in the daily diary at 5-30 a.m. he visited Dr, Shahid Munir, got himself examined, thereafter resumed his duty and after performing duty he was taking rest in Sajawal Hotel in routine, where at about 2-30 p.m. his superior officers Syed Walayat Hussain, D.S.P. Traffic alongwith Mr. Muhammad Zaki, D.S.P., Saddar Circle, Gujranwala, closely related inter se, came there and asked him to accompany, them. When he came out of the hotel he saw a lady standing near the policy party, whose name he subsequently came to know as "Sadia". He was brought to Police Station Saddar, Gujranwala and was informed that a case under section 10 of the Ordinance has been registered against him. In his reply, he further submitted that the case was registered against him at the behest of D.S.P. Traffic, Gujranwala who had a grudge against him on account of not fulfilling his illegal demand of payment of "Monthly" as such, he manipulated to get the case registered against him. He added that the falsity of the case has been proved from the medical report of the alleged victim of Zina whereby it was reported that no sexual

intercourse has been committed with her and from the negative report of the Chemical Examiner regarding the swabs, With regard to unregistered Pajero he, in his reply, submitted that it was purchased by his father through a dealer from Mst. Maqbool Begum and he was only using it, and that his father was a well-known businessman of Gujranwala, running lot of factories.

3. The Deputy Inspector General of Police, Traffic, Punjab, Lahore, on considering the reply and after giving personal hearing to the petitioner, observed that there was sufficient evidence against the petitioner to prove his guilt of misconduct, therefore, there was no necessity to get the matter enquired into through a regular inquiry, and finding the reply of the petitioner to the show-cause notice and his oral explanation given in personal hearing unsatisfactory, dismissed him from service under Rule 4(b) (iv) of the Rules vide his order dated 17-7-1998. Feeling aggrieved by the said order, the petitioner filed an appeal before the Inspector-General of Police, Punjab Lahore which was rejected by the Additional Inspector-General of Police, Punjab, Lahore vide his order dated 19-10-1999. Feeling dissatisfied with the said order, he filed Appeal No.3237 of 1999 which was also dismissed by the Punjab Service Tribunal, Lahore vide its judgment dated 5-9-2001, impugned herein.

4. Learned counsel for the petitioner contended that on Summary Police Proceedings the petitioner could not be awarded major punishment and the alleged charges required departmental inquiry through an Inquiry Officer. He further urged that after the acquittal of the petitioner in Criminal Case F.I.R. No.474 of 1998, under sections 10(2) and 18 of the Ordinance, on the basis of which he was departmentally proceeded against and dismissed from service, the dismissal order is not sustainable and the petitioner be reinstated in service.

5. We do not find any force in the aforesaid contentions, for, Rule 6 of the Rules provides three kinds of punishment proceedings i.e. Summary Police Proceedings, General Police Proceedings, and Special Police Proceedings and it is for the authority to decide, keeping in view the facts and circumstances of each case, as to which kind of proceedings be adopted in a given case. In Summary Police Proceedings, the accused officer has to be brought before the authority in an orderly room, has to be apprised orally by the authority, of the nature of the allegations against him and after recording the substance of his explanation, if the authority finds the same unsatisfactory, it may award one of the minor punishments. If the authority decides to hold General Police Proceedings, it shall determine whether in view of the facts and circumstances of the case a departmental inquiry through an Inquiry Officer is necessary and if it deems appropriate not to hold an inquiry, it shall inform the accused of the action proposed to be taken with regard to him and the grounds of that action and shall afford a reasonable opportunity to the accused to show-cause against that action and this provision can be dispensed with where the authority is satisfied that in the interest of the security of the country it would not be expedient. On receipt of the finding of the Inquiry Officer and where no Inquiry Officer is appointed, on the receipt of the explanation, the authority can impose one or more of the punishments if it is satisfied that the charge is proved against the accused. Under rule 6(3)(i) of the Rules, the authority has to determine whether in the light of facts of the case or in the interest of justice, a departmental inquiry through the Inquiry Officer is necessary and if it decides it is not necessary, it can proceed against the accused informing him in writing the action proposed to be taken and the grounds of action against him and provide him a reasonable opportunity of showing cause against that action. The power has been conferred under the said rule, upon the authority to decide as to whether in the facts and circumstances of the case a departmental inquiry would be necessary, and if it decides otherwise, it can proceed against the accused under clauses (a) and (b) of sub-rule (3) of rule 6 of the Rules. In the present case, the petitioner was proceeded against under General Police Proceedings as provided in Rule 6(3) of the Rules as there was sufficient justification for dispensing with the departmental inquiry through an Inquiry Officer. A raiding party of superior Police Officers headed by a Magistrate, raided the

room of Sajawal Hotel where the petitioner was found in immoral company of a lady, for which he could not offer any justification. The petitioner in his reply to the show-cause notice has admitted the fact of his presence in a room of the hotel and his apprehension by the raiding party in different words and manner, stating that he was taking rest in the room of Sajawal Hotel in routine, where his senior officers came and asked him to accompany them. When he came out, he saw a lady named Sadia standing near the police party who apprehended him and escorted him to Police Station, Gujranwala and a case under section 10 of the Ordinance was registered. Almost in a similar case of Dy. I.-G. v. Anis-ur -Rehman Khan, PLD 1985 SC 134, this Court while dealing with Rule 6(3) of the Rules observed as under:---

"A discretion has, therefore, been conferred on the competent authority to decide whether a departmental inquiry through an Inquiry Officer is not necessary. The exercise of this discretion is not controlled by any prerequisite or guidelines. All the same as held by the Tribunal, it should appear ex facie from the record to have been resorted to fairly and justly and not oppressively and perversely. In the case in hand there was ample justification for dispensing with the inquiry through an Inquiry Officer. A superior officer of the appellants had conducted the raid in the company of another functionary of the Martial Law Headquarters. The things appearing before the superior officer itself established that there was laxity in observing the discipline and there was breach of it. On the facts, therefore, where a superior who has even otherwise the authority to control and supervise the functioning of his subordinate conducted such a raid, the results whereof were accepted by the appellants themselves, the resort to the show cause procedure without appointing any Inquiry Officer cannot on any principle be objected to as abuse of the discretion or unjustified in law."

The senior officers belonging to the disciplined force of Police are duty bound to check that discipline is maintained in the lower ranks and for this purpose senior officers have the authority to supervise the activities of the subordinate officers and the staff. The two Deputy Superintendents of Police and an Inspector alongwith a Magistrate raided the room of Sajawal Hotel, where the petitioner alongwith Mst. Sadia was found, who could not justify his presence in a room of the hotel with that lady, hence, both of them were arrested and a case under sections 10 and 18 of the Ordinance was registered against them. The petitioner has admitted the fact of his presence in the room of the hotel wherefrom he was apprehended and the registration of a criminal case against them, in his reply to the show-cause notice. Although the petitioner was acquitted by the learned Sessions Judge, Gujranwala from the charge of Zina, on technical grounds, that neither commission of Zina nor attempt to commit Zina was proved and that mere presence of the two accused persons in a room would not amount to an attempt to commit Zina, yet presence of the petitioner alongwith Mst. Sadia in Room No.2 of Sajawal Hotel and their apprehension by the raiding team, was affirmed by the learned Judge. It would be appropriate to reproduce para. 13 of the judgment of the learned Sessions Judge, which thus reads:-

"For what has been stated above, I am of the considered view that the prosecution has proved on record with evidence that Muhammad Sajid Butt and Mst. Sadia, accused persons were present in Room No.2 of Sajawal Hotel and were apprehended. These two accused persons were/are not related to each other within the prohibited degree or as husband and wife. They could not justify their presence in a room of the hotel during the course of investigation and also after the inception of trial. The next important question which requires determination by this Court is as to what offence is made out against the accused persons. I have gone through the Hudood Laws and the Pakistan Penal Code, 1860. Presence of the two accused persons in a room does not come within the mischief of any of the penal provisions of the Hudood Laws. None of witnesses saw the accused persons in a compromising position, therefore, no

question of their liability on the charge of 'Zina-bil-Raza' would arise. Similarly, there is no evidence to show that the accused persons took effective steps towards the commission of 'Zina'. What to talk of evidence in support of the charge of Zina, there is not an iota of evidence which may show that the accused persons were at the stage of preparation to commit Zina. The mere presence of the accused persons in a room does not amount to an attempt to commit Zina. None of the witnesses saw the accused persons lying naked on one bed and embracing/kissing each other. Learned Prosecutor attempted to argue that the presence of the accused persons in a room of the hotel would attract the penal provisions of section 294, P.P.C. I am not in agreement with this contention. The accused persons did not expose themselves to public view nor their presence in the room was a source of annoyance to the public-at-large. A bare perusal of section 294, P.P.C would show that any obscene act at any public place to the annoyance of others has been made punishable and culpable. For the sake of arguments, if it is admitted that room of the hotel in which the accused persons were found is a public place, even then they are not liable under section 294, P.P.C. as no obscene act has been attributed to them. Their mere presence in a room would not amount to an obscene act. I am, therefore, of the considered view that presence of the accused persons in the room though an immoral act, does not fall within the mischief of any of the penal provisions of Hudood Laws or the P.P.C. I am also supported in my view by the case-law relied upon by the learned defence counsel. "

6. As far as the relevancy of judgment of acquittal of the petitioner in the criminal case is concerned, the same would be relevant to the extent that the criminal charge *stricto sensu* could not be proved against him for one or the other reasons and any other opinion or observation made in the judgment would neither be relevant for other proceedings nor the acquittal order passed on the grounds of lack of prosecution evidence, its inferior quality, inadequacy or insufficiency, benefit of doubt or any other technical reason, would have any bearing on the departmental action. In case of *Dy. I.-G v. Anis-ur-Rehman Khan*, supra, it was held that 'the charges of malversation and misconduct have nothing to do directly with the criminal charge as the former are relatable to the functionary and the service discipline within which he works.' In the said case it was further observed that the Tribunal fell into error in assuming that the two charges i.e. malversation and misconduct and the criminal charges, were co-extensive and inter-connected. It was also held in the said case that "the scope and the law applicable to the criminal trial was different from that applicable to the departmental inquiry. The charges in the two were neither identical nor substantially the same. The competent authority was, therefore, not duty bound under any provision or principle of law to await and follow the judicial verdict in the case". Criminal proceedings and departmental proceedings are different and distinct from each other and have different objects, both are regulated and controlled by different laws, therefore, proceedings under one would have neither any bearing on the other nor such proceedings would serve as substitute for the others.

7. Where the charge of misconduct against a civil servant relates to a criminal charge, he can be prosecuted for the offence as well as proceeded against departmentally for misconduct. As observed above, if prosecution fails for technical reasons and the accused is acquitted, it would not absolve him from the charge of misconduct despite technical acquittal and in departmental proceedings if he is found guilty of misconduct, he can be awarded any of the punishments provided by Rule 4 of the Rules. The acquittal of the accused in criminal proceedings would not entitle him to reinstatement in service, if he has been dismissed or removed from service after proper departmental proceedings. Misconduct has been defined in Rule 2 clause (iii) of the Rules which reads as follows:--

"2. Definitions. ---In these Rules, unless the context otherwise requires--

(i) -----

(ii) -----

(iii) 'misconduct' means conduct prejudicial to good order or discipline in the Police Force, or contrary to Government Servants (Conduct) Rules or unbecoming of a Police Officer and a gentleman, any commission or omission which violates any of the provisions of law and rules regulating the function and duty of a Police Officer to bring or attempt to bring political or other outside influence directly or indirectly to bear on the Government or any Government Officer in respect of any matter relating to the appointment, promotion, transfer, punishment, retirement or other conditions of service of a Police Officer;

(iv) -----

(v) -----"

According to the above definition misconduct is an act which is against the service discipline and good order of the Police Force and contrary to Government Servants (Conduct) Rules, 1964 or conduct unbecoming of a Police Officer and a gentleman or any commission or omission which violates any provision of law and rules regulating the function and duty of a Police Officer and bringing or attempting to bring political or other outside influence directly or indirectly on the Government or any Government officer regarding terms and conditions of service of a Police Officer.

8. In the present case, the petitioner who besides his traffic duty was to protect the honour and dignity of the citizens, himself indulged in immoral activities which were against all the norms and his conduct was unworthy of a Police Officer and a gentleman, as such, gross misconduct was committed by him and such-like officers have no place in disciplined force of Police. The procedure adopted by the D.I.-G. Traffic Police, Punjab, Lahore was proper and in accordance with the Rules and we do not find any legal flaw in it, therefore, the dismissal order passed by him after holding General Police Proceedings was rightly upheld by the Service Tribunal. Consequently, this petition is dismissed and leave refused.

M.B.A./M-873/S Petition dismissed.

