

(1981) 07 CAL CK 0039

Calcutta High Court

Case No: C.R. No. 3872 (W) of 1978

Basudeb Pal Chowdhury

APPELLANT

Vs

Dy. Inspector General of Police
and Others

RESPONDENT

Date of Decision: July 20, 1981

Citation: 85 CWN 1039

Hon'ble Judges: G.N. Ray, J

Bench: Single Bench

Advocate: Sardar Amjad Ali, for the Appellant; Ambica Bhattacharjee, for the Respondent

Judgement

G.N. Ray, J.

This Rule is directed against an exparte order passed by the Deputy Inspector General of Police Burdwan Range as contained in his Memo dated June 6. 1978 addressed to the Superintendent of Police, Bankura whereby the Deputy Inspector General of Police set aside the order of punishment passed by the Superintendent of Police, Bankura. This Rule is also directed against the initiation of the revisional proceeding by the said Deputy Inspector General of Police, Burdwan Range and the consequential order passed by the Superintendent of Police, Bankura in placing the petitioner under suspension retrospectively with effect from May 23, 1978. It appears that the petitioner was an Assistant Inspector of Police and was serving under the Superintendent of Police, Bankura at the relevant time. The said Assistant Sub-Inspector of Police was placed under suspension and a departmental proceeding was initiated against him. The Enquiring Officer recommended for his dismissal on the finding that the petitioner was guilty of the charges levelled against him. The Disciplinary authority namely the Superintendent of Police, however, considered the said finding of the Enquiring Officer and his recommendation, but instead of passing the order of dismissal as proposed, the Superintendent of Police reverted the petitioner from the post of Assistant Sub-Inspector of Police to the rank of a Constable for a period of one year with effect from May 23, 1978. It was further

directed that the Officer would not get anything more than what he had already drawn during the period of suspension and it was further directed that the period of rank reversion would have to be spent on active duty. It was, however, noted in the order of punishment passed by the Superintendent of Police that the said order of rank reversion would not affect the future service of the petitioner. It appears that the petitioner had been undergoing the said order of reversion and before the expiry of the period to prefer an appeal against the said order of reversion, the Deputy Inspector General of Police, Burdwan Range, who is also the appellate authority, in the purported exercise of his power as a revisional authority under Rule 884 of the Police Regulations Bengal, set aside the said order of punishment passed by the Superintendent of Police as he was of the view that the punishment inflicted on the petitioner was too lenient. The Deputy Inspector General of Police by his provisional finding against the petitioner asked the petitioner to show cause why he should not be dismissed from service. In view of the fact that the said Deputy Inspector General of Police had set aside the order of reversion passed by the Supdt. of Police, the Supdt. of Police as a consequential measure again placed the petitioner as Assistant Sub-Inspector of Police, but placed him under suspension with retrospective effect from May 24, 1978. The learned Counsel for the petitioner contends that the Deputy Inspector General of Police had no authority to exercise the power of revision under Police Regulation 884 in view of the fact that an appeal lay against the order of punishment passed by the Superintendent of Police reverting the petitioner from Assistant Sub-Inspector to a Constable and the period to prefer the said appeal had not expired when the Deputy Inspector General Of Police ex parte set aside the said order of punishment in purported exercise of revisional power under Regulation 884. The learned Counsel contends that on a reasonable construction of the provisions of Regulations 882, 883 and 884 of the Police Regulations it must be held that the power of revision lies only when there is no provision for preferring an appeal against an order of punishment. He contends that under Regulation 882 the authorities inflicting punishment and the authorities exercising appellate power have been specified and it has been provided in clause (b) of Regulation 882 that no appeal shall lie against an order imposing any one of the following punishments-censure (except in the case of Inspectors) reprimand, confinement to quarters, punishment drill extra guard or other duty and under clause (c) of Regulation 882 it is provided that against an order of dismissal, removal, reduction, black mark, deprivation of approved service increment, or removal from any office of distinction or special emolument and in the case of Inspectors, censure, there shall be appeal to the authorities mentioned below. It appears that against an order passed by the Supdt. of Police an appeal will lie to the Deputy Inspector General of Police. It appears from Regulation 883 that petitions of appeal or for revision shall be presented to officer against whose order the appeal is preferred, within 37 days of the date of receipt of the order by the petitioner. Every petition of appeal or for revision shall be accompanied by certified copies of the charges made, of the written statement of the defence, if any, and of the order

appealed against.

2. Regulation 884 provides as follows :--

The Inspector General or the Deputy Inspector General may call for the proceedings of any case, even where no appeal lies, and pass such orders as may seem fit provided that no order under this regulation shall be made to the prejudice of any person unless he has had an opportunity of showing cause against the proposed order. If he so desires he shall be granted a personal hearing and this fact should be recorded in the proceedings.

3. The learned Counsel for the petitioner contends that reading Regulations 882, 883 and 884 it is quite apparent that against an order of major punishment inflicted by the Supdt. of Police a delinquent Officer has a right to prefer an appeal and such appeal can be preferred before the Deputy Inspector General of Police within 37 days from the date of the receipt of the order of punishment. He contends that Regulation 884 provides that the Inspector General or the Deputy Inspector General has the power of revision of the order of punishment inflicted on a Police personnel and for exercising the power of revision, the said authorities may call for the proceedings of any case, even where no appeal lies and pass such order as may seem fit provided that no order under the said Regulation shall be made to the prejudice of any person unless he was given an opportunity of being heard. Mr. Ali contends that if an appeal lies against the order, the question of exercising power under revision does not lie. Regulation 884 only empowers the Inspector General of Police or the Deputy Inspector General to exercise revisional powers although there is no provision of appeal. Regulation 883 provides that if a party intends to prefer an appeal where appeal lies he must present the appeal within 37 days from the date of communication and where no appeal lies, if he intends to get the order passed against him revised by the said authorities having revisional power, he will make the revisional application also within 37 days. Mr. Ali submits that Regulation 883 thus makes it quite clear that presentation of a revisional application can be made only when no appeal lies and despite the fact that no appeal lies the Deputy Inspector General of Police can exercise revisional powers provided such revisional application is presented within 37 days from the date of communication of the order. Mr. Ali contends that read with Regulation 883 Regulation 884 clearly suggests that revisional power can be exercised suo motu and this can only be exercised if there is no provision for appeal and the delinquent officer has also not presented an application for revision within the prescribed time. But he contends that in the instant case, the Deputy Inspector General of Police purported to initiate a revisional proceeding suo motu and that also before the expiry of the period of limitation for preferring an appeal. Mr. Ali contends that in the circumstances, the said proceeding initiated by the Deputy Inspector General of Police and the order passed therein are illegal and should be set aside. Mr. Ali next contends that even assuming that the Deputy Inspector General of Police can initiate a revisional proceeding suo

motu and that also before the expiry of the period of limitation to prefer an appeal under Regulation 883, the ex parte order of setting aside the punishment passed by the Supdt. of Police is illegal and without jurisdiction because under Regulation 884, an ex parte order can be passed only when the said order is not prejudicial to the interest of the affected party. In the instant case, the Deputy Inspector General of Police has initiated the revisional proceeding clearly with a view to inflict the harsher punishment namely a punishment for dismissal in lieu of punishment for reversion passed by the Supdt. of Police. In the circumstances, no ex parte order setting aside the lesser punishment could have been passed by the Deputy Inspector General of Police and if he intended to pass a harsher punishment by way of revision, he should have given the petitioner an opportunity of being heard before passing any order by way of revision.

4. Mr. Bhattacharjee, the learned Counsel appearing for the State Respondents, however, contends that Regulation 884 is not limited by the provision of Regulation 883. Under Regulation 884 the Inspector General or the Deputy Inspector General of Police has the power to initiate a suo motu proceeding for revision if the said authority is satisfied that such initiation of a revisional proceeding is called for. He also submits that such revisional proceeding can be initiated even before the expiry of the period of limitation to prefer an appeal under Rule 883. He contends that under Regulation 884, no time limit for exercising suo motu revisional power has been prescribed. But it must be held on a reasonable construction of the said Regulation 884 that such power of revision should be exercised within reasonable time and within 37 days which is the period prescribed for presenting a revisional application by a delinquent officer. For this contention, Mr. Bhattacharjee refers to a decision of this Court made in the case of [Sachindra Nath Mahapatra Vs. The State of West Bengal and Others](#), . In the said case, against an order of punishment passed on a Police Officer a suo motu revisional power was exercised by the Deputy Inspector General of Police after about 2 years. It was contended before this Court in the said case that the power of revision could not have been exercised after the completion of the Departmental proceeding against the delinquent officer and the said provision of Regulation 884 was ultra vires the Constitution and in any event the said revisional power could not have been exercised after the lapse of two years. This Court negated the contention that the revisional power could be exercised only during the pendency of the proceeding and not after the completion and it was held by this Court that the power of revision could be exercised only after the completion of the Departmental proceeding namely after the original order and after the appellate order when an appeal would lie. It was held in the said decision that power of revision should be exercised within reasonable time and even in the case of suo motu revision time limit for presenting a revisional application as mentioned in Regulation 883 should be followed. It appears that in the said decision, the question raised in the instant proceeding namely whether revisional power can at all be exercised when there is a provision for appeal was not necessary

to be decided. It was, however, observed in paragraph 6 of the said decision to the following effect :

It is nowhere stated that the Revisional authority may call for the proceedings only where the case is pending. The contention raised by Mr. Maitra cannot be accepted as a sound proposition for it is only after the completion of the original proceeding before the Disciplinary Authority or disposal of appeal from the order passed in such an original proceeding or where no appeal lies against original order of disciplinary authority, the question of revision of such order can arise and this regulation clearly contemplates interference by the revisional authority only where the final orders have been passed in a disciplinary proceeding.

5. In my view the said observation indicates that the power of revision can be exercised only after the completion of the original proceeding and also the appeal proceeding where appeal lies and appeal has been preferred. I am also of the view that Regulations 883 and 884 if read together makes it clear that the power of revision can only be exercised when the appeal preferred by a party has come to an end and the Appellate authority has passed an order. So long the time for preferring an appeal does not expire, the revisional power cannot be exercised because a party cannot be deprived of his statutory right to prefer an appeal. Regulation 884, in my view, speaks that a revision can be made although no appeal lies and the expression "even if no appeal lies" indicate that such revisional power can be exercised although there is no provision for appeal. In my view, the expression "even if" has been used in the sense "even when" in Regulation 884. Hence, no revisional power can be exercised under Regulation 884 depriving a party to prefer an appeal under Regulation 883. In the instant case, an appeal against the order of the Superintendent of Police lies before the Deputy Inspector General of Police. Under Regulation 884, against the appellate order of the Deputy Inspector General, a revision may be made by the Inspector General. Hence, exercise of revisional power by the Deputy Inspector General before expiry of the period to prefer an appeal will not only amount to deprivation of the statutory right to prefer an appeal but also deprivation of an opportunity to get the appellate order revised by the Inspector General of Police because once a revisional power is exercised by the Deputy Inspector General, there can not be any further revision of the revisional order.

Mr. Bhattacharjee the learned Counsel for the respondents has also contended that as the ex parte order setting aside the punishment awarded by the Superintendent of Police is to the benefit of the petitioner, the Deputy Inspector General of Police is justified in passing the said ex parte order but since he proposes to pass a harsher punishment he has asked the petitioner to show cause. Hence there has not been any violation of the provision of Regulation 884. I am, however, unable to accept this contention of Mr. Bhattacharjee. In this proceeding the revisional order setting aside the punishment inflicted on the petitioner by the Superintendent of Police has been passed ex parte not for giving any benefit to the petitioner but for inflicting a

harsher punishment. In the said circumstances, the Deputy Inspector General of Police could not set aside the order of punishment inflicted by the Superintendent of Police without hearing the petitioner. When the Deputy Inspector General of Police had intended to pass a harsher punishment, he ought to have initiated a show cause proceeding and after hearing the delinquent could set aside the order and pass the proposed harsher punishment. In the circumstances, the orders passed by the Deputy Inspector General of Police in setting aside the punishment and initiating the said show cause memo are bad and are therefore quashed. The consequential order passed by the Superintendent of Police placing the petitioner as Assistant Inspector of Police and thereafter placing him under suspension with retrospective effect is also bad and the said order is also quashed. It is, therefore, directed that the original order of punishment inflicted on the petitioner should remain operative and the petitioner will be entitled to prefer any appeal, if he so desires against the said order of punishment, within a period of 27 days from today.

6. The Rule is, accordingly, disposed of. There will be no order as to costs.