

Lachman Dass Constable v. The State of Punjab etc. (Sodhi, J.)

disposition of land by the Panchayat for the benefit of the inhabitants of the village concerned. It is the common case of the parties that the challenged sale was made under the provisions of this Act. Rule 12, the infraction of which was relied upon both on behalf of the petitioner and also by the Collector would show that it is expressly framed under section 5 read with section 15(2)(f) of the Act, the latter section merely giving the rule making power for the purpose. As the Commissioner has duly noticed, there was a slight irregularity in compliance with rule 12 though it is not in dispute that the sale was made for the purpose of constructing the building of a High School in the village which purpose would be well covered by sub-clause (i) of rule 12. Once it is held that the sale or disposition of the land was made under section 5 of the Act it is evident from section 6 that it expressly provides for a remedy for any person aggrieved by any act or a decision under section 5 to file an appeal within a limited period of 30 days. The remedy under this section is the specific remedy provided for the infraction of section 5. On ordinary canons of interpretation therefore where a special provision has been made under section 6, resort cannot possibly be made to the general provision of section 10A.

(7) It is evident, therefore, that the view of the learned Commissioner that no application under section 10-A on the present facts was competent is correct and consequently there is no merit in this petition which must fail and is dismissed, however, without any order as to costs.

B. S. G.

CIVIL MISCELLANEOUS

Before H. R. Sodhi, J.

LACHMAN DASS CONSTABLE,—Petitioner.

versus

THE STATE OF PUNJAB ETC.,—Respondents.

Civil Writ No. 3725 of 1971.

March 30, 1972.

Punjab Police Rules (1934)—Rules 13.7 and 13.8A—Removal of the name of a constable from list B-1 during trial on criminal charge—Trial

ending in acquittal—Departmental inquiry held thereafter and the constable exonerated—Such constable—Whether entitled to have his name put back on the list.

Held. that a plain reading of rule 13.8A of Punjab Police Rules leaves no room for doubt that it is the infliction of any major punishment that is a bar to admission to a list or retention therein. It is open, however, to the Superintendent of Police for special reasons, to be recorded and subject to confirmation by the Deputy Inspector-General to waive even the disqualification regarding the infliction of the major punishment for admission of the person to the list or to let him continue. Removal of the name from any such list cannot be treated in a routine manner as it entails serious consequences jeopardising the future chances of promotion of the person whose name is sought to be removed therefrom. Hence a constable whose name has been removed from list B-1 is acquitted of the criminal charge levelled against him and is also exonerated in the departmental enquiry held thereafter, is entitled to have his name put back on the list. (Para 2).

Petition under Articles 226 and 227 of the Constitution of India praying that a writ in the nature of certiorari, mandamus or any other appropriate writ order or direction be issued, quashing the impugned order dated 28th September, 1970 of respondent No. 4, (which was not communicated to the petitioner) and also directing the respondents Nos. 2 and 3 to depute the petitioner to Phillaur Training School for undergoing training of the Lower School Course.

R. K. Verma, Advocate, for the petitioner.

J. S. Wasu, Advocate-General (Punjab), for the respondents.

JUDGMENT

Sodhi, J.—Lachhman Dass petitioner is a Foot Constable with number 306 and serving in the District of Ferozepur in the State of Punjab. He joined Police service as a Constable on December 14, 1965 and while he was posted at Moga case under Section 451 of the Indian Penal Code was registered against him. The petitioner was placed under suspension on September 6, 1969 and later on was tried by a criminal Court by which he was acquitted on August 11, 1970. The acquittal was based on a compromise between the parties which was not objected to by the Prosecuting Sub-Inspector appearing for the State. It may be mentioned that in the month of January, 1970 name of the petitioner was placed on list B-1 which list is required to be maintained in the prescribed form as envisaged under Rule 13.7 of the Punjab Police Rules (hereinafter to be referred to as Rules). This list, required to be maintained by a Superintendent of

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Police, contains the names of those Constables, who are considered suitable for drill and other special courses at the Police Training School, Phillaur and is to be approved by the Deputy Inspector-General of the Range. Ordinarily seniority in age is given prior consideration in making such selections, irrespective of the date of admission to the list. No Constable shall, however, be admitted to the list whose age is such that he cannot in the normal course be sent to Training School before he attains the age of 30 years. There are similar lists for promotions to other ranks but it is not necessary to refer to them. The name of a person once brought on the list may be removed under certain circumstances for which it is necessary to reproduce the relevant Rule 13.8-A, which is as under :

- “(1) The infliction of any major punishment shall be a bar to admission to or retention in lists A, B and C, provided that (a) for special reasons to be recorded by the Superintendent in each case and subject to confirmation by the Deputy Inspector-General, this disqualification may be waived and (b) after six months' continuous good conduct in the case of censure or confinement to quarters or on expiry of the period of reduction in the case of reduction for a specified period, a constable may be re-admitted at the discretion of the Superintendent.
- (2) Gazetted officers shall look out for, and encourage their inspectors and sub-inspectors to bring to notice, constables who, by reason of their general character and ability or of special acts, are suited for inclusion in lists A, B or C, and shall after satisfying themselves by necessary enquiries, make suitable recommendations to the Superintendent.”

(2) A plain reading of the aforesaid Rule leaves no room for doubt that it is the infliction of any major punishment that is a bar to admission to a list or retention therein. It is open, however, to the Superintendent of Police for special reasons to be recorded and subject to confirmation by the Deputy Inspector-General to waive even the disqualification regarding the infliction of the major punishment for admission of the person to the list or to let him continue. Removal of the name from any such list cannot be treated in a routine manner as it entails serious consequences jeopardising the future chances of promotion of the person whose name is sought to be removed therefrom. It appears that after the petitioner was acquitted, a departmental enquiry was held against him under Rule

16.3. This enquiry too ended in the exoneration of the petitioner on August 13, 1971. The enquiry papers were filed and the petitioner was ordered to be re-instated from the date of his suspension. In the meantime the name of the petitioner had been removed from the list B-1 on September 18, 1970. The petitioner after his re-instatement was clamouring for being sent to the Police Training School, Phillaur as was his right because of his name having been placed on list B-1, but we have it in the affidavit of the Senior Superintendent of Police, Ferozepur that the petitioner was not sent for Lower School Course on October 1, 1970, as his name had by then been removed from the list. The authorities while removing the name of the petitioner from the list seem to have substituted another Constable Daljeet Singh, who had been kept reserve at No. 18 in the same list. It is stated by the Senior Superintendent of Police (respondent No. 4) in his affidavit in reply that the removal of the name of the petitioner is no bar to his further promotion and that he is again eligible for being brought on list B-1 in terms of the Police Rules, as removal from such list is no punishment according to him. The approach of the Senior Superintendent of Police is rather curious. He has not a word to say against the petitioner nor does he explain why, when the petitioner had been re-instated, his name was not put back on the list to which in the normal course he was entitled. Rule 13.8.A permits removal of a name from the list only on the ground of infliction of a major punishment, but in the instant case what to say of infliction of any punishment, the petitioner was rather exonerated. The respondents on the one hand acknowledged the right of the petitioner to promotion and on the other hand continued denying the same though the enquiry concluded on as early as 13th of August 1971 and he was completely exonerated of the charge. Mr. Joginder Singh Wasu, learned Advocate-General for the State of Punjab does not seriously contest the writ petition as he finds the position of the State indefensible and rightly so.

(3) In the circumstances stated above I am of the considered view that the petitioner is being dealt with arbitrarily and the fundamental guarantee of equal opportunity as enshrined in Articles 14 and 16 of the Constitution is denied to him. In the result the writ petition is allowed with costs and the respondents are directed to put back the name of the petitioner on list B-1 and send him to Lower School Course subject to Rules. Costs are assessed at Rs. 100.

N. K. S.