

1976,7

IN THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL

No.7 of 1975

---

O N A P P E A L

FROM THE FEDERAL COURT OF MALAYSIA HOLDEN AT KUALA LUMPUR  
(APPELLATE JURISDICTION)

---

B E T W E E N:

NAJAR SINGH

Appellant

- and -

1. THE GOVERNMENT OF MALAYSIA
2. THE CHAIRMAN, POLICE PUBLIC SERVICES  
COMMISSION

Respondents

---

CASE FOR THE APPELLANT

---

Record

1. This is an appeal from a Judgment and Order of the Federal Court of Malaysia holden at Kuala Lumpur (agmi, L.P., Suffian, C.J., H.S. Ong, F.J) dated the 15th day of February, 1974 dismissing an appeal by the Appellant herein from a Judgment of the High Court in Malaya at Kuala Lumpur (Abdul Hamid J) dated the 25th September, 1973 dismissing the Appellant's claim for :-

pp.15-27

- 20 (i) a declaration that his dismissal from the Police Force purported to be effected by Police Service Commission was void;
- (ii) arrears of pay; and
- (iii) that the Appellant be re-instated to the said Police Force.

2. The Appellant's Petition was presented in pursuance of a conditional leave Order of the Federal Court, Malaysia dated 19th day of August, 1974 granting him leave to do so. This appeal from the said Judgment and Order of the Federal Court, dated 15th day of February, 1974 is presented in pursuance of Final Leave to appeal to His Majesty the Yang di - Pertuan Agong which was granted to the Appellant by the Order of the Federal Court dated 6th January, 1975.

pp.64

pp.65-66

30

Record

3. The brief undisputed facts of the matter were summarised by the learned trial Judge as follows :-

pp.15-L31

"The facts are not in dispute. The Plaintiff joined the Police Force as a police constable. In February, 1968 he was confirmed in the rank of Sergeant Major, a junior police officer and emplaced on the pensionable establishment.

On May 31st, 1971 The Minister of Home Affairs acting under Section 8(1)(a) of The Internal Security Act, 1969 served upon the Plaintiff an Order for detention for a period of two years commencing from June 7th, 1971 at the Batu Gajah Special Detention Camp.

10

On representation made by the Plaintiff to the Chairman of the Advisory Board on June 6th, 1971, the Plaintiff was unconditionally released from detention on January 25th, 1972.

In July, 1971, whilst in detention the Plaintiff received from the Inspector General of Police a letter dated July 5th, 1971 requesting him to show cause why he should not be dismissed from the Police Force. The Plaintiff forthwith sent a reply showing cause why he should not be dismissed.

20

The Plaintiff was dismissed from the Police Force by the Police Force Commission on August 18th, 1971.

30

At the hearing before me Mr. Marjoribanks, Counsel for the Plaintiff and Encik Mokhtar Sidin, Senior Federal Counsel appearing for the Government of Malaysia and Chairman of the Police Force Commission estimated that no evidence was to be adduced by either party. It was agreed between the parties that -

(a) Plaintiff received a Statement in writing sent by the Disciplinary Authority (which is the Police Force Commission as defined under Regulation 2) pursuant to General Order 30(2) of the Public Officers (Conduct and Discipline) (General Orders, Chapter D) Regulations, 1969 - (herein-

40

after referred to as "the 1969 General Orders"); Record

- (b) The Police Force Commission received a written reply from the Plaintiff;
- (c) There was no formal enquiry held; and
- (d) The Police Force Commission was the proper authority with power to dismiss."

4. The issues arising in this Appeal are as follows :-

- 10 (a) Whether the Respondents could have proceeded against the Appellant under Cap. D Public Officers (Conduct and Discipline) (General Orders, Chapter D) Regulation, 1969 instead of the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970.
- (b) Whether the Appellant was given an opportunity of being heard either under provisions of Cap. D or the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations 1970 without denial of natural justice.
- 20 (c) Whether the Respondent failed to observe the principles of natural justice insofar as inter alia
  - (i) They did not afford the Appellant a reasonable opportunity of being heard in his own defence
  - (ii) They did not hold a formal enquiry.
- (d) Whether the Appellant having been released by the Advisory Board unconditionally from detention on 25th January, 1972 was fully exonerated from the Charges brought against him under the Internal Security Act.

5. The following Statutory provisions are relevant to the Case of the Appellant.

- 30 (i) Regulations 3,4,5 and 6 of Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulations, 1970.
- (ii) Regulation 27 of Cap D :-

"In all disciplinary proceedings under this Part no Officer shall be dismissed or reduced in rank unless he has been informed in writing of the grounds on which it is proposed to take action against him and has been afforded a reasonable opportunity of being heard".

Record

## Regulation 30 of Cap. D :-

30 (1) Where it is represented to, or is found by, the appropriate Disciplinary Authority (in this case the Police Force Commission) or the Director-General of Public Service that an officer is guilty of unsatisfactory work or misconduct and such work or misconduct, in the opinion of the Disciplinary Authority, merits dismissal, or reduction in rank, the following provisions shall apply. 10

(2) The Disciplinary Authority shall after considering all the available information in its possession that there is a prima facie case for dismissal or reduction in rank, cause to be sent to the officer a statement in writing, prepared, if necessary, with the aid of the Legal Department, of the ground or grounds on which it is proposed to dismiss the officer or reduce him in rank and shall call upon him to state in writing (within) a period of not less than fourteen days a representation containing grounds upon which he relies to exculpate himself. 20

(3) If after consideration of the said representation furnished by the officer that Disciplinary Authority is of the opinion that the unsatisfactory work or conduct of the officer is not serious enough to warrant dismissal or reduction in rank, the Disciplinary Authority may impose upon the officer such punishment as it may deem fit. 30

(4) If the officer does not furnish any representation within the time fixed, or if he furnishes a representation which fails to exculpate himself to the satisfaction of the Disciplinary Authority, the Disciplinary Authority shall then proceed to consider and decide on the dismissal or reduction in rank of the officer. 40

(5) Where the Disciplinary Authority considers that the case against the officer requires further clarification, it may appoint a Committee of Inquiry consisting of not less than two senior Government officers who shall be selected with due regard to the standing of the officer concerned and to the nature and gravity of the

complaints which are the subject of the inquiry, provided that an officer lower in rank than the officer who is the subject of the inquiry or the Officer's Head of Department shall not be selected to be a member of the Committee.

10 (6) The Officer shall be informed that, on a specified day, the question of his dismissal or reduction in rank will be brought before the Committee and that he will be allowed and, if the Committee shall so determine, shall be required to appear before the Committee and exculpate himself.

(7) If witnesses are examined by the Committee, the officer shall be given an opportunity of being present and of putting questions to the witnesses on his own behalf and no documentary evidence shall be used against him unless he has previously been supplied with a copy thereof or given access thereto.

20 (8) The Committee may, in its discretion, permit the Government or the officer to be represented by an officer in the Public Service or, in exceptional cases, by an advocate and solicitor and may at any time, subject to such adjournment as is reasonably necessary to enable the officer to present his case in person, withdraw such permission: Provided that where the Committee permits the Government to be represented, it shall also permit the officer to be similarly represented.

30 (9) If, during the course of the inquiry, further grounds of dismissal are disclosed, and the Disciplinary Authority thinks fit to proceed against the officer upon such grounds, the officer shall be furnished with a written statement thereof and the same steps shall be taken as are above prescribed in respect of the original grounds.

40 (10) The Committee having inquired into the matter, shall make a report to the Disciplinary Authority. If the Disciplinary Authority considers that the report should be amplified in any respect or that further inquiry is desirable, the matter may be referred back to the Committee for further inquiry and report.

(11) If, upon considering the report of the Committee, the Disciplinary Authority is of opinion -

(a) that the officer should be dismissed or reduced in rank, it shall forthwith direct accordingly;

Record

(b) that the officer does not deserve to be dismissed or reduced in rank, but deserves some lesser punishment, it may inflict upon the officer such lesser punishment as it may deem fit; or

(c) that the proceedings disclose sufficient grounds for requiring him to retire in the public interest, it shall recommend to the Government accordingly. The question will be dealt with under the Pensions legislation." 10

pp.24 L.8

6. In his judgment, the learned trial judge agreed "I think it is manifestly clear that General order 27 must not be read in isolation but must be considered subject to General order 30(2), a special procedure to be followed in a case where the Police Force Commission found an officer guilty of unsatisfactory work or misconduct and such unsatisfactory work or misconduct in the opinion of the Police Force Commission merits dismissal." 20  
He went on to hold, however, it is submitted wrongly as follows :-

pp.26 L.36

"Hence law made during the Emergency (Essential Powers) Ordinances although the effect may be to deprive an officer of the guarantee embodied under Articles 135(2) so long as the dismissal is made by the appropriate Commission empowered under the constitution, even though no enquiry is held, is perfectly valid and effective." 30

The learned Chief Justice did not agree with the trial judge and states :-

pp.52 L.22

"It will be noted that Cap D was made by the Director of Operations under emergency powers and it was open to the Director to make any provision of Cap D inconsistent with clause 2 of article 135 of the Constitution, but he did not do that; instead he repeated that clause in paragraph 27." He went on to give an interpretation of the word "heard" it is submitted wrongly as follows:- 40

pp.53 P.27

"The word "heard" in clause (2) of Article 135 of the Constitution and in paragraph 27 of Cap D is derived from the word "hear" which is not defined in the constitution

which governs this matter; in view of that we think that it should be given its ordinary everyday meaning. In the present case it is submitted the proper construction should have been the meaning in relation to natural justice.

Record

7. The Appellant respectfully submits that the Judgments of the High Court and the Federal Court are wrong and that this appeal should be allowed with costs for the following among other reasons :-

10

REASONS

(1) BECAUSE the Appellant was dismissed without a proper hearing

(2) BECAUSE the Orderly Room procedure under Regulations 3, 4, 5 and 6 of the Police (Conduct and Discipline) (Junior Police Officers and Constables) Regulation were not followed

(3) BECAUSE the procedure under Cap D Public Officer (Conduct and Discipline) (General Orders Chapter D) Regulation 1969 was not followed

20

(4) BECAUSE the Appellant was released by the Advisory Board unconditionally in respect of the detention by the Minister for Home Affairs under section 8(1)(a) of the Internal Security Act, 1962.

(5) BECAUSE the Appellant's initial detention was for a period of two years he was released unconditionally after six months.

(6) BECAUSE the procedural provisions in the said Regulations are mandatory

30

(7) BECAUSE the Federal Court held that clause 2 of article 135 of the Constitution was repeated in paragraph 27 of Cap D

(8) BECAUSE of the failure of audi alterem partem rule resulting in violation of natural justice

(9) BECAUSE subsequent to the dismissal the appellant obtained release unconditionally by the Advisory Board

(10) BECAUSE the Judgments of the Courts below are wrong.

DINGLE FOOT

K.S. NATHAN

NO. 7 of 1975

IN THE JUDICIAL COMMITTEE OF THE  
PRIVY COUNCIL

ON APPEAL FROM THE FEDERAL COURT OF  
MALAYSIA HOLDEN AT KUALA LUMPUR  
(APPELLATE JURISDICTION)

B E T W E E N :

NAJAR SINGH            Appellant

- and -

1. THE GOVERNMENT OF  
MALAYSIA
2. THE CHAIRMAN, POLICE  
PUBLIC SERVICES  
COMMISSION                    Respondents

---

C A S E    F O R    T H E    A P P E L L A N T

---

Bulcraig & Davis,  
Solicitors,  
6, Henrietta Street,  
Strand,  
London WC2E 8QS

Solicitors for the Appellant