

(1993) 01 RAJ CK 0011
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1460 of 1990

Bachan Singh

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 08-01-1993

Acts Referred:

Constitution of India, 1950 — Article 311
Official Secrets Act, 1923 — Section 3, 9
Penal Code, 1860 (IPC) — Section 120B

Citation : (1993) WLN 97

Hon'ble Judges : R.P. Saxena, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajendra Saxena, J.—The petitioner has challenged the validity of order dated 22.9.1988 (Anx. 3) passed by the Assistant Engineer, P.W.D. Sub Division-I, Hanumangarh junction (respondent No. 3), whereby, he was dismissed from service for the alleged misconduct of wilful absence from duty and prayed that he be reinstated in service and be given all consequential benefits.

2. Briefly, the relevant facts are that the petitioner was appointed as "Bildar" on 18.7.1972. Thereafter by order dated 24.8.1974 (Anx. 1), he was declared as a semi permanent employee and by office order dated 13.10.1986 (Anx. 2), after completion of ten years service, he was given permanent status w.e.f. 1.4.1985. It appears that on 30.8.1985, the petitioner was arrested by the S.H.O. police station, Hanumangarh and a case was registered against him u/s 3 read with Section 9 of the Official Secrets Act and Section 120B of the Indian Penal Code. After usual investigation, a challan was filed against him. The learned Sessions Judge after conducting the trial, convicted the petitioner of the said offences and sentenced him to 5 years rigorous imprisonment and a fine of Rs. 500/-, in default to further undergo six months rigorous imprisonment. The petitioner filed S.B. Criminal Appeal No. 157 of 1988 before the High Court Bench at Jaipur,

which was accepted and vide judgment dated 26.11.1988 (Annx. 4) he was acquitted of the said offences. The petitioner remained in Jail from 26.4.1988 till 26.11.1988 when he was ultimately acquitted by the High Court. In the meanwhile respondent No. 1 issued notices to the petitioner on 7.5.1988, 1.6.1988, 13.6.1988 28.6.1988 Annexures R/1 to R/4 and published notices in news papers to show cause as to why necessary action be not taken against him for him wilful absence from duty since 17.4.1988. Those notices were not served on the petitioner personally. Thereupon, the respondent No. 3 by his order dated 22.9.1988 (Annx. 3) dismissed the petitioner from service on the ground of his alleged wilful absence from duty and also on the ground that he was probably undergoing sentence under some offences. After the petitioner was acquitted by the High Court, he filed an application (Annx. 5) along with the judgment of the High Court (Annex. 4) and prayed that he be reinstated in service and his arrears of salary be also paid to him. The respondents despite his repeated reminders did not accede to his request. Hence this writ petition.

3. The respondents in their reply have simply asserted that since the petitioner had remained absent from 17.4.1988 without any intimation and without getting his leave sanctioned, notices Annexures R/1 to R/7 were sent to him to show cause as to why action be not taken against him under Rule 86 of the Rajasthan Service Rules, 1951 (in short R.S.R.), but the petitioner did not file any reply, and therefore, the respondent No. 3 dismissed the petitioner from service for his wilful absence from duty. It has also been contended by the respondents that the petitioner's matter has been referred to higher authorities seeking direction as to whether he be allowed to join his duties or not.

4. The petitioner in his rejoinder has asserted that after Sessions Judge had convicted him, he was serving the sentence in the jail from 26.4.1988 till 26.11.1988 when he was acquitted by the High Court and that no notice was ever served upon him. He has averred that neither any enquiry under Rule 16 of the Rajasthan Civil Services (CC & A) Rules, 1958 was conducted against him nor the provisions of Article 311 of the Constitution of India were complied with and as such the impugned dismissal order is illegal and unjustified.

5. I have heard the learned Counsel for the petitioner and the learned Dy. Govt. Advocate at length and carefully perused the relevant record.

6. This is an admitted fact that the petitioner was given permanent status in the government service w.e.f. 1.4.1985. From the judgment dated 26.11.1988 (Annex. 4) it also stands well established that the petitioner was arrested by the police on 30.8.1985 and a charge sheet was filed against him for the offences u/s 3 read with 9 of the Official Secrets Act read with 120-B I.P.C. and that after trial the Sessions Judge, Jaipur City, Jaipur by his judgment dated 26.4.1988 found him guilty of the afore mentioned offences and sentenced him to 5 years rigorous imprisonment and a fine of Rs. 500/-. However the High Court vide its judgment (Annx. 4) dated 26.11.1988 allowed petitioner's appeal and acquitted him of the aforesaid offences. Thus, it stands firmly established that the

petitioner was in jail from 26.4.1988 to 26.11.1988. From the perusal of Annexures R/1 to R/7, it is abundantly apparent that none of those notices issued by the respondent No. 3 to the petitioner to show cause for initiating proceedings against him under Rule 86(1)(3) of the R.S.R. was served on him personally. It is significant to note that no such notice was sent to the petitioner through the jail authorities under whose custody he was serving the sentence. Thus, no opportunity of bearing was given to the petitioner. The respondents No. 3, without conducting any enquiry, presumed that the petitioner had wilfully remained absent from duty. He also specifically mentioned in the impugned order Annex. 3 that the petitioner was probably serving sentence under some offences and dismissed him from service. Apparently dismissal from service is a major penalty and no such major penalty can be imposed without following the mandatory provisions of Rule 16 of the C.C.A. Rules. Even no sufficient opportunity was given to the petitioner before imposing any penalty. Apart from it since the petitioner has been acquitted by the Rajasthan High Court by its judgment Annexures-4 the petitioner was entitled for reinstatement in service. But the respondent's despite his repeated representations did not accede to his request. In such circumstances, it is manifest that mandatory provisions of Rule 16 of the C.C.A. Rules and Article 311 of the Constitution of India have been violated and no reasonable opportunity was given to the petitioner to explain about his absence since 17.4.1988. In such circumstances, the impugned order Annexure-3 appears to be improper, unjustified and illegal and the same deserves to be quashed.

7. Hence, for the reasons mentioned above, I allow this writ petition and set aside the order dated 22.9.1988 (Annex. 3) and direct the respondents to reinstate petitioner Bachan Singh in service and pay all arrears of his salary alongwith all other consequential benefits to him. However, the respondents shall be at liberty to initiate departmental enquiry against the petitioner for his alleged absence from 17.4.1988 to 25.4.1988 and pass necessary orders in accordance with law.