
(2001) 02 RAJ CK 0114
In the Rajasthan High Court
Case No : Civil Writ Petition No. 6116 of 1990

Bhanwar Lal Pareek

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 13-02-2001

Acts Referred:

Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 — Rule 16

Citation : (2002) 1 RLW 292 : (2001) 4 WLN 87

Hon'ble Judges : J.C. Verma, J

Bench : Single Bench

Advocate : M.M. Mehrishi, for the Appellant; S.C. Purohit, for the Respondent

Final Decision : Allowed

Judgement

Verma, J.—An ex parte enquiry was held against petitioner on the charge sheet issued under Rule 16 of Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 by the Collector, Jaipur, as per charge sheet and statement of allegation dated 28.12.83 (annexures 1, 2 & 3). The SDO, Sambhar was appointed as Enquiry Officer under the Rules. The ex parte findings have been submitted by Enquiry Officer on 30.5.84. The Disciplinary Authority, respondent No. 3, the Collector awarded the punishment of withholding of 2 Grade Increments with future effect vide order dated 28.9.84 (annexure-6). The appeal was filed against the order of punishment to the Chairman Board of Revenue, which was rejected vide order dated 31.7.86 (annexure- 7). The review application was also dismissed vide order dated 8.6.90 (annexure-8). Being aggrieved against the orders annexures 6, 7 and 8, the petitioner has preferred the writ petition.

2. Apart from other grounds challenging the enquiry proceeding, punishment and dismissal of appeal and review application, it has been submitted that no misconduct has been made out against the petitioner. Primarily the petitioner submits for challenging the ex parte enquiry, by saying that the ex parte enquiry was held in violation of principles of natural justice as the date so fixed by

Enquiry Officer, the petitioner was not informed of the hearing of enquiry, but still the Enquiry Officer had proceeded the enquiry ex parte; This ground has been taken in sub para No. (H) of para No. 9, that is, in grounds of the writ petition.

3. It is submitted that on the first date of hearing i.e. 14.3.84 the next date of enquiry was fixed as 5.4.84 at Mozmabad. The petitioner attended at Mozmabad on 5.4.84, but neither the Enquiry Officer, nor his reader reached at Mozmabad, with the result the petitioner had to come back. After 5.4.84, the petitioner was expecting for the date of enquiry to be intimated to petitioner, however, he was never informed of any date of hearing. Even though the petitioner had come to know later on that the Enquiry Officer had fixed the date 20.4.84 and 5.5.84 and ultimately on 24.5.84 the ex parte order was passed. The prosecution witnesses were examined ex parte and without following the provisions of the Rules the Enquiry Report has been submitted.

4. The petitioner had challenged the ex parte enquiry on the ground that he was not intimated of any date after 5.4.84, when the petitioner presented himself at Mozmabad, but the Enquiry Officer or any other person had not reached there. In the reply, the contents of ground "H" of the writ petition are not admitted. It is submitted that notice was given to petitioner and he was present. It is further submitted that initially 5.4.84 was fixed and thereafter, the next date was fixed as 20.4.84 and 24.5.84. The respondent has filed very vague reply and has not stated anything about the date of 5.4.84 when the petitioner was present at Mozmabad but no one on behalf of prosecution was present. It is also not mentioned in the reply that any intimation was given to petitioner or not about the subsequent dates.

5. Faced with the situation, learned Dy. Govt. Advocate was directed on 12.2.2001 to produce the original record of the enquiry proceeding, which has been produced today.

6. I have gone through the proceeding of enquiry of the date of 24.2.84, 9.3.84, 14.3.84, which have been signed by the Enquiry Officer. The proceeding of 5.4.84 is not signed by the Enquiry Officer, but somebody else had signed the same. The proceeding of 20.4.84, 5.5.84 and 24.5.84 have been signed by Enquiry Officer, which clearly shows that for the proceeding of 5.4.84 the Enquiry Officer was not present as it has been signed by somebody else.

7. On the proceeding of 20.4.84 and 5.5.84 it has been noted that the delinquent officer was not present. On 24.5.84, it has been noted that the delinquent was not present inspite of intimation of the date on 7.5.84. The photo copy of the proceedings of 5.4.84, 20.4.84, 5.5.84 and 24.5.84 is taken on record and is also reproduced here under:-

"5.4.84

i=koyh is" k gqbZ ,IMhvks lkgc ehVhax esa i/kkjs gSaA i=koyh iwoZ vuqlkj 20-4-84 dks eq- ekstekckn esa is" k gksA lwpuK VsyhQksu ij 4-4-84 dks ns nh

xbZ gSA

20-4-84

i=koyh is"kh gqbZA nks"kh deZpkjh mifLFkr ugha gSA D;ksafd fnukad 5-4-84 dks ekstekckn mifLFkr ugha gqvK FkKA blfy, vkt dh lwpuk ugha gks ldhA fnukad 5-5-84 eq- ekstekckn ryc gksA foHkkxh; izfrfu/kh rg- mifLFkr gSA xokgku dh lwph is"kh dh xbZ] tks "kk- QkbZy gSA budh Hkh ryoh dh tkosaA

5-5-84 i=koy eq- ekstekckn is"kh gqbZA iVokjh xkSj gkftjA foHkkxh; izfrfu/kh gkftjA xokg ryc gksdj eq- fcpu rk- 24-5-84 dks is"kh gksA

iVokjh dks Hkh lwfpr fd;k tkosaA

24-5-84

i=koyh ceqdke fcpwu is"kh gqbZA foHkkxh; izfrfu/kh rglhynkj nwnw mifLFkrA nks"kh deZpkjh JH Hkaojyky iVokjh cktwn lwpuk ds mifLFkr ughaA iVokjh dks fnukad 7-5-84 dks iVokjh ehVhax rglhy lkaHkj esa rkjh[k is"kh fnukad 24-5-84 eq- fcpwu ds ckjs esa uksV djK fn;k x;k FkKA cktwn lwpuk vuqifLFkr jgus ds dkj.k mlds f[kykQ ,drjQk ds vkns"kh fn;s x;sA

foHkkxh; izfrfu/kh us vius i{k esa xokgku jkedj.k] HkkoMk] xksih] xksj/ku] cs.kk Hkwjk o gugeku izlkn ds c;kukr djok;sA vkSj lk{; lekIr dh xbZA okLrs tkWp fjiksVZ is"kh gksA**

8. Mr. Purohit counsel for the respondent submits that as per proceeding of 24.5.84 the delinquent" might have been informed by letter dated 7.5.84. The letter dated 7.5.84 is also on the file of enquiry proceeding. The letter No. 483/PA dated 7.5.84 has been looked into, but there is no proof whatsoever brought on record of the file that the delinquent was ever informed or intimated about the date of 24.5.84. The photo copy of the letter dated 7.5.84 is taken on record.

9. For the earlier date that is 5.5.84, a report had been made by serving person that Bhanwar Lal, Patwari has been transferred from Dudu to Phulera. There is no other evidence of serving the notice to the delinquent to appear on 24.5.84. As many as 11 witnesses were called on 24.5.84, whose statements were recorded.

10. The enquiry officer had not cared to see the report trace at the back of the notice sent to the petitioner at page No. 70, which clearly shows that the petitioner was not intimated about the date of 24.5.84. Similarly the Enquiry Officer i.e. SDO Sambhar Lake while writing the proceeding of 24.5.84 has wrongly noted that delinquent was intimated about the date on 7.5.84, which is admittedly beyond the record.

11. From the above narration of the fact as contained in the original file of enquiry proceeding, following aspects have become clear:-

1. Neither the Enquiry Officer, the Collector nor the Appellate Authority had cared to look into the grievance of petitioner that he was not served for the purpose of

enquiry proceeding;

2. wrong proceedings were being noted down about the service of petitioner, which is beyond the record;

3. the specific averment made in this regard in para 9.H of the writ petition, although were denied by respondents but the respondents have not cared to state real facts and that is, in my opinion, is deliberate concealment by the respondents.

12. From the aforesaid facts, it is clear that the Officers of the department had not applied their mind, but rather they have tried to mislead the court by not stating true facts which are borne out from the original file and had the enquiry file not been summoned, there was every likelihood of injustice being perpetuated to the petitioner.

13. Faced with the situation, Mr. Purohit fairly admits that for the effective dates the delinquent was not intimated of the date of hearing in enquiry proceeding and apparently the contention of the petitioner is correct.

14. Without going into other aspects of the matter, in my opinion, the impugned orders are against the principles of natural justice whereby the ex parte enquiry has been conducted and the finding has been recorded on ex parte evidence. It was the bounden duty of respondents to have intimated the delinquent officer properly and also to have applied their mind when the petitioner had been agitating about the illegal action of holding the ex parte enquiry. None of the respondents had cared to look into the matter or even in the record. Even the Officer incharge, who has been deputed by the Authority to prosecute the case in High Court, has acted deliberately or otherwise and has avoided to narrate the true facts. The true facts have come to light only on summoning the original file of enquiry proceeding.

15. In the circumstances, it was a fit case where the contempt proceeding ought to have been initiated against the officers who had not brought the true facts to the notice of the court in the written statement supported with the affidavit, which was beyond the record. In my opinion, it shall be sufficient to direct the Chief Secretary to bring this fact to the notice of concerned Collector, Sub Divisional Officer etc.

16. For the reasons mentioned above, the writ petition is allowed with the cost of Rs. 5,000/-, which shall be borne by the State, but shall be deducted in equal shares from the concerned officers, who acted against the principles of natural justice. The impugned orders annexure-6, 7 and 8 are quashed.

17. With the above said observations, the writ petition is allowed with cost.