

(1996) 02 RAJ CK 0007

In the Rajasthan High Court

Case No : Civil Writ Petition No. 3818 of 1994

Bhupinder Singh

APPELLANT

Vs

The State of Rajasthan and Others

RESPONDENT

Date of Decision : 28-02-1996

Acts Referred:

Penal Code, 1860 (IPC) — Section 306

Citation : (1996) 3 WLC 177 : (1996) 1 WLN 555

Hon'ble Judges : Arun Madan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Arun Madan, J.—Heard the learned counsel for the parties. The facts giving rise to the filing of this writ petition, briefly stated, are that the petitioner is serving as Junior Engineer in the Irrigation, Department Rajasthan, under the Chief Engineer, Command Area Development, Bikaner. It has been contended in the writ petition that the petitioner is one of the senior most Junior Engineers working in the Irrigation Department and is placed at serial No. 30 in the last seniority list dated 28.11.92 published by the Irrigation. The next promotional post in, the Department is that of Assistant Engineer from the quota of Junior Engineers (Diploma Holders) and the grievance of the petitioner is that vide order dated 25.9.91 he was served with a charge sheet containing the memo of charges and the statement of allegations leveled therein vide Annex?2. It has been contended by the petitioner in this regard that the charge?sheet which was" served on him did not contain the documents which had been relied upon by the respondents for framing the charges and as a result of which the defence of the petitioner has been seriously prejudiced. As a consequence of this the petitioner has been deprived of the opportunity to make effective representation to the Department. Subsequently vide order dated 25.9.91 departmental enquiry was directed to be initiated by the respondents against the petitioner by having resort to Rule 18 of the Rajasthan Civil Services (Classification, Control & Appeal)

Rules, 1958 (For short "the Rules") vide Annex?3. It has been further contended in this regard that the joint enquiry was directed to be initiated by the respondents against the petitioner as well as one Shri R.S. Gupta who has since already retired from the service in the year 1991 itself and notwithstanding the fact that an enquiry officer was appointed no steps have been taken by the said enquiry officer to conduct and complete the enquiry against the petitioner.

2. During the course of hearing it has been contended by the learned counsel for the petitioner that the respondents have in gross violation of the Rules had issued the charge--sheet to the petitioner belatedly on 25th September, 1991 and 5th July, 1993 in respect of the allegations which pertain to the period from 1974 to 1982 and the respondents were not justified in issuing the same in absence of any satisfactory explanation on the record. It was further contended by the learned counsel that the impugned charge--sheet is not sustainable in law and deserves to be quashed and set aside. In support of his contentions advanced at the bar, learned counsel for the petitioner has placed reliance upon the judgment of this Court in the matter of Dr. B.M. Bohra v. State of Rajasthan, reported in 1991 (1) RLR 383, wherein this Court while dealing with an identical question had deal with the interpretation of a Departmental Circular dated 17th March, 1986 which provides for expeditious disposal of disciplinary proceedings initiated against the delinquent. Specific procedure has been envisaged in the said circular in respect of departmental enquiries. The said circular envisages that if departmental enquiry is ordered, the following time schedule shall be strictly adhered to--

(a) One week for preparing a formal charge sheet and statement of allegations and appointment of enquiry officer.

(b) Two weeks for submission of reply by delinquent officer in response to the charge--sheet.

(c) One month for departmental enquiry.

(d) Two weeks for examination of the enquiry report.

(e) Two weeks for issue of show cause notice alongwith a copy of the Enquiry Officer's report.

(f) Two weeks for reply to the show cause notice. The same instructions will apply as indicated under (ii) of item 3 above.

(g) One week for examination of reply to the show cause notice and issue of final orders.

It was held by this Court that every government action including purely administrative acts have to be free from arbitrariness. Wherever the order is made by a public authority affecting a member of public, it must be made bonafide, in good faith and in public interest. Fairness in State action is part and parcel of the rule of law, on the edifice of which our Constitution rests. It is no

doubt true that the public employer including the Government has a right to suspend its employee at any time in contemplation or during the pendency or inquiry or during investigation or trial of criminal case, in which an employee is involved. But such power of suspension has to be exercised sparingly and after due case. It is necessary that the competent authority must objectively apply its mind to the nature of the allegation made against the employee, its gravity and seriousness, the record of the Government servant and the likely impact on service or the public interest of the alleged act of delinquency of the employee. The power of suspension cannot be exercised as a matter of course. No unfettered discretion is vested with the competent authority to pass order of suspension of an employee according to its sweet will, whim and fancy. The suspension of an employee results in serious adverse consequence to him because his image is shattered in the eyes of public and the society in which he moves. Not only he but his whole family has to bear the brunt and the entire family is looked with contempt by the fellow employees and the members of the society. It is, therefore, necessary that this power of suspension must be exercised after thorough consideration of the matter from different angles. The guidelines contained in the various circulars of the Department of Personnel of the Government of Rajasthan no doubt, do not have the force of law and it also cannot be said that they must be followed in strict sense, but nonetheless these guidelines cannot be ignored in totality.

3. Likewise in the matter of *Ashok Gaur v. State of Rajasthan* D.B., reported in 1987 (2) RLR 63 : 1987 (5) SLR 547, this Court while analysing Rule 13 of the CCS Rules pertaining to the extent of power of the disciplinary Authority In passing the order of suspension of an employee held as under--

This rule cannot be taken to confer arbitrary powers upon the Appointing Authority to place a Government servant under suspension simply because a petty case of no importance is pending investigation or trial against a Government servant. While exercising power under Rule 13, in our opinion, the Appointing Authority must apply its mind and see whether it would be in the interest of the Government or in the interest of public at large to place the Government servant under suspension and the circumstances so warrant to place the Government servant under suspension. In every case, there should be proper application of mind before an action is taken against the Government servant for placing him under suspension.

The order of suspension was consequently quashed by this Court in respect of the petitioner who was facing trial, in respect of an offence u/s 306 of IPC.

4. In the matter of *State of Punjab and Others Vs. Chaman Lal Goyal*, the question which had arisen for consideration of the Apex Court was whether the delay in filing of a charge-sheet against an employee vitiates the charges and if so whether the Court should apply balancing process i.e. weighing the factors for and against and taking decision on the totality of the circumstances ? In this case the Superintendent of Jail was charge-sheeted by the Department, after

inordinate delay of 5 1/2 years for being responsible for escape of prisoners involved death of a number of persons and there were factors for and against him in the departmental enquiry. Prosecution evidence was completed. It was held by the Apex Court that charges and, the appointment of the Enquiry Officer should not have been quashed but in view of the inordinate delay in initiating the enquiry against the petitioner, the delinquent officer, in this turn should have been considered for promotion and, if found fit, granted promotion subject to the result of the departmental enquiry. Further the Apex Court fixed the time limit of 8 months within which the departmental enquiry was directed to be completed failing which the same would be deemed to have dropped. The Apex Court placed reliance upon its earlier judgment in the matter of Abdul Rehman Antulay Vs. R.S. Nayak and another etc. etc., . On the question of delay in serving the charge memo on the petitioner, it was held by the Apex Court as under--

Delayed initiation of proceedings is bound to give room for allegations of bias, malafides and misuse of power. If the delay is too long and is unexplained the court may well interfere and quash the Charges. But how long a delay is too long always depends upon the facts of the given case. Moreover, if such delay is likely to cause prejudice to the delinquent officer in defending himself, the enquiry has to be interdicted. Wherever such a plea is raised, the court has to weigh the factors appearing for and against the said plea and take a decision on the totality of circumstances. In other words, the court has to indulge in a process of balancing.

5. During the course of hearing Shri Alok Sharma, learned counsel for the respondents has fairly stated at the bar that he has no objection to the departmental enquiry being initiated against the petitioner and concluded within the period as may be fixed by this Court. I am informed by the learned counsel for the petitioner that although the enquiry officer was appointed by the respondents on 23.4.94 but, no steps have been taken by the enquiry officer to initiate and conclude the enquiry till date. The petitioner has also not been intimated any position in this regard. In my considered opinion the attitude adopted by the respondents is grossly violative of Rule 16 of the CCS. Rules of 1958 which has prejudiced the case of the petitioner

6. However, keeping in view the facts and circumstances of the case that although the enquiry officer has already been appointed by the respondents who has not yet initiated the enquiry and no conclusion can be arrived at to adjudge the innocence or guilt of the petitioner in absence of the report of the Enquiry Officer, the respondents are accordingly directed to conduct the enquiry against the petitioner as expeditiously as possible and complete the same in any case not later than 4 months from, the date of the submission of the certified copy of this order in accordance with the Circular dated 17th March, 1960 which is binding on the respondents. The petitioner is also directed to co-operate with the enquiry officer and to appear before him as and when he is required to do so. in case the respondents do riot complete the enquiry within the aforesaid period of

4 months the enquiry proceedings shall automatically stand lapsed without and further reference to this Court.

7. I am informed that the petitioner has been given ad hoc promotion on the post of Assistant Engineer. The respondents are accordingly directed to process the case of the petitioner for regular promotion on the post of Assistant Engineer and if as a result of the enquiry the petitioner is exonerated and found suitable for being promoted then the petitioner should be promoted without reference to and without taking into consideration the charges or the tendency of the said enquiry. It is further directed that the promotion so made, if any, pending the enquiry or on conclusion of the said enquiry shall be subject to review after conclusion of the enquiry and in the light of the findings of the enquiry officer.

8. The writ petition is allowed and stand disposed of with the directions as indicated above. No order as to costs.