

(2022) 04 RAJ CK 0001

In the Rajasthan High Court

Case No : S.B. Civil Writ Petition No. 1676 Of 2009

Binod Kumar Singh

APPELLANT

Vs

Rajasthan Rajya Vidyut Prasaran Nigam

RESPONDENT

Date of Decision : 01-04-2022

Acts Referred:

Constitution Of India, 1950 — Article 226
Rajasthan State Electricity Board Employees (Classification, Control And Appeal)
Regulations, 1962 — Regulation 5(e) 5(f), 5(g), (5h), 7, 7(1)(v), 28(a), 28(d)
Rajasthan State Electricity Board Employees Service Regulations, 1964 — Regulation
18(3)

Citation : (2022) 04 RAJ CK 0001

Hon'ble Judges : Sameer Jain, J

Bench : Single Bench

Advocate : Ajeet Kumar Sharma, Rachit Sharma, Alok Garg

Final Decision : Disposed Of

Judgement

Sameer Jain, J

1. Instant writ petition under Article 226 of the Constitution of India has been filed by the petitioner with the following prayers:-

"It is, therefore, respectfully prayed that this writ petition be kindly allowed and this Hon'ble Court may be pleased to-

(a) issue and appropriate writ, order or direction quashing the impugned orders dated 23.11.2007 (Annex. 19) and 11.09.2008 (Annex. 22) passed by the respondent with all consequential benefits.

(b) issue and appropriate writ, order or direction declaring the action of the respondent in not allowing the petitioner to voluntary retire from service of the respondent to be illegal, unconstitutional, arbitrary and unjustified and the respondent be directed to treat the petitioner as having voluntarily retired from service w.e.f. 15.03.2007 or from such other date as this Hon'ble Court may

deem proper and reasonable in the circumstances of the case and the respondents be further directed to give all consequential benefits to the petitioner within such time as may be fixed by this Hon'ble Court alongwith interest @ 18% per annum.

(c) any other appropriate order or direction as may be deemed expedient in the facts and circumstances of the case be passed in favour of the humble petitioners.

(d) Award cost of the petition in favour of the petitioner.

2. Facts of the case as per the petitioner are that the petitioner was appointed on the post of Junior Engineer (J.En.) in Rajasthan State Electricity Board on 06/04/1989. He was promoted to the post of Assistant Engineer (A.En.) on 01/12/2001 after approximately 12 years of service and had an unblemished service record. The cause and controversy in the matter arose when on 28/08/2006 he applied for Privileged Leave (PL) from 15/09/2006 to 19/10/2006 for a period of 35 days when he was posted at Beawar. The petitioner thereafter applied for another PL on 11/09/2006, from 03/10/2006 to 01/11/2006 for 30 days and earlier request for PL was requested to be cancelled. The PL from 15/09/2006 to 19/10/2006 were sanctioned on the request of the petitioner on 13/09/2006 and PL from 03/10/2006 to 01/11/2006 were sanctioned by the respondents on the application of the petitioner dated 11/09/2006 vide order dated 28/09/2006 and earlier requested PL were cancelled.

3. On 25/10/2006, the petitioner applied for extension of leave from 02/11/2006 to 01/12/2006 but the same was rejected on the ground that the petitioner has not enclosed the prescription, medical records sustaining the reason/s of his mother not being well and letter of recommendation of doctor. On 24/11/2006, the petitioner again applied for extension of leave from 02/12/2006 to 31/12/2006. On 24/12/2006, the petitioner again applied for extension of PL from 01/01/2007 to 31/01/2007. The respondents did not sanction the extension of leave and on 18/01/2007 directed the petitioner to attend duties within 15 days. In spite of the letter dated 18/01/2007, the petitioner again vide his application dated 25/01/2007 sought extension of leave from 01/02/2007 to 28/02/2007 and also submitted his reply vide letter dated 31/01/2007 in response to the letter of the respondent dated 18/01/2007.

4. It is contended by the petitioner that due to compelling circumstances of his mother being unwell and in critical position, under unavoidable circumstances, the petitioner applied for voluntary retirement from service w.e.f. 15/03/2007 vide application dated 05/02/2007 as he had completed 15 years of service as per rules and in addition, he also applied for leave from 01/03/2007 to 14/03/2007. The petitioner was under bonafide belief and presumption that as no disciplinary proceedings are pending against him, nor was he under suspension, he was enjoying an unblemished service record as and the leave applications were also filed from time to time, his application for voluntary

retirement would be accepted. But to his shock and surprise, vide letter dated 15/05/2007, the petitioner was asked to join again as per directions of the higher authorities. On 21/06/2007 show cause notice for not attending duties from 01/11/2006 and for initiation of disciplinary action was received by the petitioner. In response to the said show cause notice, the petitioner submitted a detailed reply on 29/06/2007 and he submitted that he is not in a position to continue the job on account of his family compulsions, critical position of his mother and his request for voluntary retirement from service. In spite of the said submission, on 21/07/2007, a memorandum with charges & statement of allegations was served upon the petitioner giving 30 days time to submit written statement of defence, which was duly replied on 21/08/2007. On 23/11/2007, the petitioner was removed from service w.e.f. 03/10/2006 alleging that he was absconding and not carrying out his duty in the desired manner. On 14/02/2008 with sufficient explanation for filing delayed appeal as he was out of Ranchi, he filed an appeal but the same was rejected vide order dated 11/09/2008 only on the ground of being barred by limitation and not on merits. Hence, the present writ petition.

5. Learned Sr. Counsel for the petitioner submitted that on account of his mother's illness, the petitioner submitted an application for leave which was initially granted and sanctioned for the period from 03/10/2006 to 01/11/2006 and for the period from 15/09/2006 to 19/10/2006, therefore, removal from service from 03/10/2006 is per se illegal. It is also submitted that the petitioner has an unblemished service record and he was even promoted to the post of A.En. from the post of J.En. and carried out services of 15 years in a very fruitful and peaceful manner. It was only on account of the family compulsions and his mother's illness that the petitioner applied for leave through proper channel in accordance with law which was initially sanctioned. It is further submitted that the show cause notice issued to the petitioner on account of absconding, for misconduct and for not joining office is contrary to his voluntary retirement application as well as is based on incorrect facts and shows arbitrariness on the part of the respondents. Learned Sr. Counsel further submitted that removal of the petitioner from service is in violation of principles of natural justice as well as contrary to the RSEB Employees (Classification, Control & Appeal) Regulations, 1962 as well as the RSEB Employees Conduct Regulations of 1976 in as much as neither principles of natural justice were followed nor the provisions of Regulation 7 of the Regulations of 1962 were followed in the required manner. No regular enquiry was ever conducted. Even the appellate order rejecting the appeal only on the ground of delay shows arbitrariness and unfair play on the part of the respondents.

6. Per contra, learned counsel for the respondents submitted that the leave cannot be taken as a matter of right and the voluntary retirement also cannot be taken as a matter of right. In spite of directions issued by the respondents to the petitioner for joining duties, he willfully remained absent and despite shortage of staff, he did not join his official duties, neither did he support the claim of illness of his mother even on asking at appropriate time. The petitioner did not submit

medical prescription and recommendation of doctor in time. It is further submitted that the leave cannot be taken without sanction from the competent authority and therefore, the action of the petitioner falls under the definition of misconduct as prescribed under Regulation 28 (a) and (d) of the RSEB Employees Conduct Regulations, 1976. Qua rejection of appeal, as there was no condonation of delay application and the appeal being barred by limitation, the same was dismissed. The respondents have relied upon Apex Court judgments in C.V. Francis Vs. UOI & Ors.: (Civil Appeal No.31250/2011), decided on 03/07/2013 as well as State of Punjab & Ors. Vs. Dr. Sanjay Kr. Bansal (Civil Appeal No.4532/2009), decided on 16/07/2009. He also relied upon judgment of Delhi High Court in Smt. Mitali Chakrabarty Dutta Vs. Chairman, Rajya Sabha & Ors. (Writ Petition No.1503/2017), decided on 20/02/2017; judgment of Madras High Court in M. Ayyappan Vs. The Secretary to Govt. (WA No.1240/2015), decided on 14/12/2015 as well as judgment of Bombay High Court (DB) in Pandurang Vithal Kevne Vs. Bharat Sanchar Nigam Ltd. (WP No. 2584/2007), decided on 05/12/2009.

7. This Court has gone through the respective arguments advanced by learned counsel for the parties, scanned record of the writ petition as well as considered the judgments cited at bar.

8. It is admitted that show cause notice dated 21/06/2007 was issued to the petitioner for not attending the duties for the period from 02/11/2006 to 21/06/2007 and it was specifically mentioned that from 03/10/2006 to 01/11/2006, PL on account of illness of his mother were allowed. It was also admitted that voluntary retirement application was also submitted by the petitioner. The show cause notice was issued merely for not attending duties post 02/11/2006. on 21/07/2007, enquiry was initiated under Regulation 7 of the RSEB (CC&A) Regulations, 1962 and a time of 30 days was given for attending the enquiry proceedings. The allegation levelled against the petitioner was that he has not attended duties in spite of directions of the Controlling Officer, rather he has sent an application for voluntary retirement and has filed application for extension of leave which was rejected and not allowed. Vide order dated 23/11/2007 (Annexure-19), the disciplinary authority terminated the petitioner from service w.e.f. 03/10/2006 i.e. the date from which the petitioner was alleged to be absconded from duty willfully. On perusal of the order of termination dated 23/11/2009, it appears to be beyond the scope of show cause notice wherein there was no charge levelled qua absconding. It was also admitted that PL were allowed by the appropriate authority w.e.f. 03/10/2006 to 01/11/2006 and the facts of filing of application for extension of leave on account of mother's illness and voluntary retirement application were admitted. It is analyzed that due to compelling circumstances, the petitioner has applied to the appropriate authority through proper channel for leave. On not getting sanction after appropriate time on account of shortage of staff, the petitioner applied for voluntary retirement from service in accordance with Regulation 18(3) of the RSEB Employees Service Regulations, 1964. The petitioner was neither under

suspension nor any enquiry was contemplated or pending against him on 05/02/2007 i.e. the date of submission of application for voluntary retirement. So, it was legitimate understanding of the petitioner that once voluntary retirement application has been filed, as per the practice, customs and as per provisions of Regulation 18(3) of the RSEB Employees Service Regulations, 1964, the voluntary retirement application would be approved by the competent authority and on account of revocation of the same till the period of issuance of show cause notice, the action of the petitioner for not-attending and filing leave application for extension as per the petitioner was justified. Even on perusal of the RSEB Employees (CC&A) Regulations, 1962, it was incumbent upon the respondents to hold regular enquiry in the manner detailed therein and the Regulation 7 of the CC&A Regulations of 1962 in this regard, which is relevant, is reproduced below:-

"7 (1) Imposition of major penalties.--

(i) Without prejudice to the provisions of any law for the time being in force no order imposing on an employee any of the penalties specified at items No.

(e) to (h) of Regulation 5 shall be passed, except after an enquiry held, as far as possible, in the manner detailed hereafter.

(ii) The Disciplinary Authority shall frame definite charges on the basis of the allegation on which the enquiry is proposed to be held. Such charges together with a statement of allegations, On which they are based, shall be communicated, in writing, to the employee concerned and he shall be required to submit, within the period specified by the Authority, a written statement indicating whether he admits the truth of all or any of the charges, what explanation or defence if any, he has to offer and whether he desires to be heard in person.

(iii) The employee shall, for the purposes of preparing his defence, be permitted to inspect and take extracts from such records of the Board, as he may specify provided that the disciplinary authority may refuse such permission in discretion for sufficient reasons, which should be recorded, but need not be communicated.

(iv) On receipt of the written statement of defence, or if no such statement is received within the time specified, the disciplinary authority may itself enquire into such of the charges as are not admitted or if it considers it necessary to do so, appoint a Committee of Inquiry or an Inquiry Officer for the purpose. Provided that where the Board is the disciplinary authority or in case of joint enquiry including any officer/official in whose case Board is the disciplinary authority, the Chairman shall be authorised to appoint inquiry Officer/Presenting Officer to conduct regular departmental enquiry.

(v) The disciplinary authority may nominate any person to present the case in support of the charge before the Inquiring authority. 3[The employee may present his case with the assistance of another employee appointed by the

disciplinary authority/Secretary,(where the Board/Chairman/Member of the Board is the disciplinary authority) but may not engage a legal practitioner for the purpose unless the person nominated by the disciplinary authority/Secretary, as the case may be, is a legal practitioner, or unless the disciplinary authority/Secretary, as the case may be, having regard to the circumstances of the case, so permits provided that the Board employee shall not be allowed to be appointed as Assisting Officer in more than one departmental enquiry. For so long as he continues to be the Assisting Officer in one enquiry, he should not be allowed to become the Assisting Officer in another enquiry.

Board's Instruction :

On the request of a delinquent when an Officer/Official wishes to give consent to assist the delinquent in a departmental enquiry as prescribed-in Regulation 7(1) (v) he may seek prior approval from the disciplinary authority or from the Secretary where the Board or the Chairman or Member of the Board is the disciplinary authority before giving his consent to act as Assisting Officer. The Disciplinary Authority/Secretary,as the case may be, before according approval, shall take into consideration the following:-

- (a) the work of such Officer/Official will not suffer.
- (b) as far as possible such Assisting Officer/Official is posted at the place where the enquiry is held, and
- (c) the enquiry will not be effected prejudicially due to his being higher officer in rank which may adversely effect the witnesses who have been summoned to give evidence.
- (vi) The Inquiring Authority shall, in the course of the inquiry consider such documentary evidence and take such oral evidence as may be relevant or material in regard to the charges. The employee shall be entitled to cross examine witnesses examined in support of the charges and to give evidence in person. The person presenting the case in support of the charges shall be entitled to cross examine the employee and the witness examinee in his defence. The inquiring Authority may decline to examine any witness on the ground that his evidence is not relevant or material.
- (vii) If it shall appear necessary before the close of the case on behalf of the disciplinary authority, the inquiry Authority may, in its discretion, allow the Presenting Officer to produce evidence not included in the list given to the Board employee or may itself call for new evidence or recall or re-examine any witness and in such case the Board employee shall be entitled to have, if he demands it, a copy of the list of further evidence proposed to be produced and an adjournment of the enquiry for three clear days before the production of such new evidence, exclusive of the days of adjournment and the day to which enquiry is adjourned. The Inquiring Authority shall give the Board employee an opportunity of inspecting such documents before they are taken on the record. The Inquiring

Authority may also allow the Board employee to produce new evidence, if it is of the opinion that production of such evidence is necessary in the interest of justice.

Note- "The Inquiry Authority may further at its discretion call for additional evidence/relevant record/any other material to probe into the matter where the Presenting Officer/Charge- sheeted employee fails to produce the same which the Inquiry Authority considers it necessary for finding the truth."

(viii) At the conclusion of the inquiry , the Inquiring Authority shall prepare a report of the inquiry recording its findings on each of the charges together with the reasons therefore and shall send the report to the Disciplinary Authority, alongwith the record of inquiry, consisting of statement of charges and statement of allegations given to the employee, his written defence, evidence, oral and documentary, in the course of inquiry.

(viii) (a) A copy of the report of the Enquiry Officer with the recommendations, if any, as to punishment in the matter of proposed punishment to be inflicted, shall be supplied to the employee to make his representation, if he likes to do so, against the conclusions and recommendations of the Enquiry Officer.

(ix) The Disciplinary Authority shall consider the record and findings of the Enquiry Officer and may agree with the report or may differ, either wholly or partially from the conclusions recorded by the Enquiry Officer in his report. The disciplinary authority shall record its finding on each charge, if it finds the employee guilty whether he agrees with the findings of the Enquiry Officer wholly or partially or differs from these findings.

(ix) (a) If the report of the Enquiry Officer records findings in favour of the employee with which the disciplinary authority agrees the disciplinary authority may make an order exonerating the employee of the charges framed against the employee.

(x) If the Disciplinary Authority is of the opinion that any of the penalties specified at numbers (a) to (d) in Regulation 5, should be imposed, it shall pass orders accordingly and if the Disciplinary Authority having regard to its findings on the charge, is of the opinion that any of the penalties specified at serial numbers (e) to (h) should be imposed, it shall make an order imposing such penalty and it shall not be necessary to give the employee any opportunity of making representation on the penalty proposed to be imposed.

(x)(a) Save as otherwise provided in Clause (viii) (a) nothing contained in the principles of natural justice, shall require the Disciplinary Authority to give to the employee a copy of the grounds on which he has disagreed wholly or partially with the findings of the Enquiry Officer.

Note :- The above amendments have been made in the light of the decision of the Supreme Court in Union of India Vs. Mohd. Ramjan Khan

7.(2) The procedure detailed above need not be followed or any of its provisions waived in the following cases:

- (a) When the person charged admits the charge or charges.
- (b) When the order of punishment such as dismissal, removal or reduction is based on facts, which have led to the conviction of the person in a criminal court, on a charge involving moral turpitude.
- (c) When the person charged has absconded or when it is for other reasons impracticable or difficult to communicate with the person concerned.
- (d) When the Disciplinary Authority is satisfied that it is not practical to follow the procedure prescribed in these regulations or to follow such procedure is not in the interest of the Board."

9. On perusal of the said Regulations, it is mandatory to hold a detailed regular enquiry. Framing of charges and communicating it to the concerned employee, giving him/her an opportunity to submit his/her defence are also mandatory before imposing any punishment. Rather a shortcut method was adopted by the respondents in terminating services of the petitioner going beyond the alleged charges in the show cause notice that was extended contrary to the leave applications, extension applications and voluntary retirement application. Therefore, this Court is of the view that the impugned order of termination on the charges of absconding is not only violative of the principles of natural justice but also beyond the allegations levelled in the show cause notice as well as illegal and contrary to Regulation 7 of the CC&A Regulations, 1962. The petitioner has also alleged to have committed misconduct in terms of the provisions of Regulation 28(a) and 28(d) of the RSEB Employees Conduct Regulations, 1976 which read as under:-

28. Acts and Omissions constituting misconduct :-

Following acts and omissions shall be treated as misconduct, for which penalties as mentioned in Regulations 5 of the RSEB Employees (CC&A) Regulation 1962 may be imposed by the competent authority in accordance with the procedure prescribed therein.

28 (a) Absence from duty.

28(b)....

28(c).....

28(d) In-subordination or disobedience, whether alone or in combination with others, to any lawful or reasonable order of a superior.

(ii) Violation/non-compliance/of rules/orders in regard to deputation for training."

10. In the facts and circumstances of the case, it is not the case of absence of duty, rather the petitioner applied for PL w.e.f. 03/10/2006 much in advance,

which was initially sanctioned on two occasions and thereafter when the same was not permitted to be extended, on account of compelling and emergent circumstances, the voluntary retirement application was filed being eligible under Regulation 18(3) of the Service Regulations of 1964. In the facts and circumstances, declaring the action of the petitioner by the respondents as being absent from duty and disobedient is not appropriate and will not fall within the definition of misconduct.

11. Even the order in appeal dated 11/09/2008 which was passed in a cryptic manner after approximately seven months of filing appeal shows unfairness, illegality on the part of the respondents in as much as appropriate reasons were mentioned in the memorandum of appeal for the same being not barred but having sufficient cause for not submitting the same in time. As against the order dated 23/11/2007, The petitioner has categorically submitted that due to unavoidable circumstance, as he was out of Ranchi, he was in late receipt of the order, and upon receiving the letters, he immediately filed an appeal in time, on 14/02/2008. Secondly, the appellate authority was competent to condone the delay on the basis of material on record. The petitioner was not even given opportunity of hearing and was not permitted to present his case in appeal, nor was he given opportunity to explain the delayed time taken to file appeal and it was only after sending repeated reminders that after a period of seven months the appeal was decided by one line order of rejection on account of delay and laches and therefore the petitioner's contention that he was denied fair and reasonable opportunity was also not cured by the respondents.

12. This Court after analysis of the case is of the opinion that due to compelling circumstances, the petitioner has applied for PL through proper channel which was sanctioned to him but on rejection of extension applications, the petitioner chose to take VR, on account of his mother's extended illness, as per Regulation 18(3) of the Service Regulations, 1964 as he had completed 15 years of service and he was not able to join office as directed by his seniors on account of his mother's illness. The petitioner was never absconding and it is admitted on record that he was initially sanctioned leave, later on applied for voluntary retirement, reciprocated each and every letter, show cause notice, memorandum of the respondents. The charge of absconding is not only beyond the show cause notice but also beyond the memorandum; The respondents have also not carried out the provisions of Regulation 7 of the CC&A Regulations, 1962.

13. In the case in hand, neither any detailed enquiry was carried out nor the disciplinary authority has appointed enquiry officer to conduct regular departmental enquiry. Therefore, the entire proceedings were vitiated and were not carried out in the intended and specified manner. The invocation of Regulation 28 (a) and 28 (d) of the RSEB Employees Conduct Regulations, 1976 qua the absence from duties and in-subordination or disobedience are also not made out due to the reasons mentioned above. The termination from service vide impugned order was beyond the show cause notice, passing of appellate

order and rejection of appeal in spite of sufficient cause and short delay was also unfair, illegal and violative of the principles of natural justice. The cryptic order passed in appeal on account of delay signifies unfair play and biasness on the part of the respondents.

14. The judgments cited at bar by learned counsel for the respondents, referred above, are on different facts as it is an admitted case that the show cause notice was issued for non-joining of office, but the termination order was passed beyond the same on the ground of absconding w.e.f. 03/10/2006 wherein admittedly the concerned authority who issued the show cause notice is stating that on 03/10/2006 the petitioner was given sanction for leave. Thus, application of Regulation 28 of the RSEB Employees Conduct Regulations, 1976 for misconduct is also not made out.

15. In the light of above, the judgments of the Apex Court and different High Courts as relied upon by the respondents are not application rather the judgment cited by the petitioner of the coordinate Bench at Principal seat of this Court at Jodhpur in Jetho Balani Vs. State of Raj. & Ors. (SB Civil Writ Petition No.4495/2009), decided on 13/02/2015 comes to the rescue of the petitioner wherein in the similar facts and circumstances, the Court held and defined the absconding as under:-

"In this view of the matter and looking to the subsequent developments, this Court is of the opinion that better senses have now prevailed with the respondents who have themselves, vide order dated 11.2.2015 quashed the termination order dated 23.11.2007 and have accepted the prayer of the employee for voluntary retirement w.e.f.16.2.2007. The word "absconding" was used in the order dated 11.2.2015 without any justification and is thus deleted and expunged."

16. For the reasons stated above, this Court deems it appropriate to quash and set aside the termination order dated 23/11/2007 (Annexure-19) as well as the appellate order dated 11/09/2008 (Annexure-22). This Court also holds the action of the respondents in not allowing the petitioner to voluntarily retire from services of the respondents to be illegal, unconstitutional and unjustified. Thus, the petitioner be declared as having voluntarily retired from service w.e.f. 15/03/2007 and be awarded all the consequential benefits accordingly. However, in the facts and circumstances of the case, no order to costs and interest for payment of consequential benefits is decide in favour of the petitioner.

17. The writ petition stands disposed of in above terms. All pending applications also stand disposed of in above terms.