

(1980) 01 RAJ CK 0047
In the Rajasthan High Court
Case No : Civil Writ Petition No. 2055 of 1975

D.C. Jain

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 29-01-1980

Acts Referred:

Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 — Rule 17

Citation : (1980) WLN 241

Hon'ble Judges : G.M. Lodha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

G.M. Mal Lodha, J.—The petitioner was appointed as a Lower Division clerk under the provisions of the Rajasthan Panchayat Samitis and Zila Parishads Service, Rules, 1960. He was confirmed on 15-10-60 on this post.

2. The petitioner was directed to discharge the service of Cashier after he was promoted as an Upper Division Clerk.

3. In September, 1966, an incident happened which was alleged as a case of theft on account of which, an amount of Rs. 4139,59 was found missing from the Panchayat Samitis where the petitioner was in-charge of it. A report was made by the Chowkidar on 5-9-66 that the lock of the cashier room and almirah in the room was brokeon and Iron chest was missing. A case was registered but ultimately a final report was given.

4. Thereafter, on 29-9-70, an order dated 30-7-70 was served on the petitioner in which direction was given to Vikas Adhikari to recover Rs.425 1.98 P. from the petitioner. This order is Anx. and reads as under:

fo"k; % iapk;r lfefr lywEcj es pksjh gqbZ ml ckcr A

izlax % bl dk;Zky; i= dzekad fodkl 1@18@6@68 fnukad 30&12&69 ,oa "kj.k i= ekpZ 70 ,oa 3 viSzy 70 ,oa 26 ebZ 70 A

mijkasDr lUnZHK es ys[k gS fd vki us Jh nhipan dSf''k;j ds fo:) vc rd foHkkxh;
dk;Zokgh ugh dh gSA

lEcU/kr izdj.k dks voyksdu djus ,oa iwoZ dh tkWp ls ;g Li''V fofnr gksrk gS fd
iapk;r lfeFr lywEcj es ftl jkf''k :Ik;s 4251&98 iSlS dk vigj.k gks x;k vkSj og jkf''k
pksjh tkuk crk;k x;k tcfd iqfyl us rQrhl ls vne iRrs eku eqyfteku jgus dk urhtk
crk;k pwfd bruh cM+h jde Jh nhipUn fd rQlhy es Fkh AMcy yksd rglhy es vkidk
tqnk gks ogka Jh nhipUnus u j[k vlqjf{kr ,d ydM+s dh vkyekjh es ykijokgh ls
j[kk ?kj pys x;s tcfd nrj dLcs dh vkcknh ls nwj tgka jde pqjkus dh laHkkouk lkQ
utj vkrh Fkh ,slh lwjr es bl vigj.k lq/kk jde dk vnk djus dk nkf;Ro Jh nhipUn iwoZ
dSf''k;j ls vfoYEc olwy dh tdkj ikyuk izfrosnu izLrqr djs A

An appeal was filed by petitioner against this order. One of the ground taken in this appeal was that recovery of the amount on the ground of negligence Is one of the punishments which could be given under rule 14 of the Rajasthan Civil Service (Classification, Control and Appeal) Rules (hereinafter referred to as "the CCA Rules) and this can be done only after holding an enquiry as contemplated by the Rules, On 21-1-71, a letter was addressed by the Deputy Commissioner, Development, Rajas than Jaipur to the Commissioner, Local Audit Funds, in which it was mentioned, inter alia that the order for recovery as punishment can be given after holding enquiry under the CCA Rules by the appointing authority only and the impugned order appears to be unlawful It was also pointed out that full enquiry should be conducted to ascertain haw many employees are liable and responsible for this and only after that, the disciplinary proceedings should be taken according to the rules Inspire of this, no enquiry was either instituted & the proceedings for recovery only continued as is evident from various other orders passed. The additional District Development Officer, Udaipur, by letter dated 1-8-74 mentioned that the advice given by the District Development Officer is not correct and, therefore, recovery proceedings should be continued. It is precisely in the above circumstances that the petitioner hat filed this writ application.

5. The respondents have filed reply and denied the allegations but on the crucial question about the holding of tie enquiry under the CCA Rules, there is no allegation that any such enquiry was conducted either under rule 16 or any other rules relevant thereto.

6. Mr. Mathur's contention is that the question whether any theft was committed or whether the petitioner was responsible for the missing of the iron safe and the amount could not have been decided without informing him of the charge against him and providing him an opportunity to defend himself.

7. I have considered the submissions of Mr. Mathur and Mr. Mardia.

8. It is true that as pert the admitted fact after the first information was lodged of the alleged theft of the amount of Rs. 4251. 98 no enquiry was conducted to find out whether this particular loss was caused to the Government on account of any misconduct or negligence of the petitioner. The petitioner was holding the

post of an Accounts Clerk at the relevant time and he was an officer within the meaning of Section 26 of the Act of 1959, by virtue of Section 89, the officers referred to in Sections 25 and 26 are governed and regulated by the Rules made by the Government in this behalf. Unless specific rules are made under the Panchayat Samities and Zila Parishads Act, the provisions of CCA Rules apply.

9. Even according to the disciplinary rules framed u/s 79 read with Sections 88 and 89 of the Rajasthan Panchayat Samitis and Zila Parishads Act, 1959, recovery for any pecuniary loss caused to a Panchayat Samitis by negligence of branch of any law or order can only be made under Sub-rule (3) of Rule 6 Rule 7 provides for procedure for inflicting major punishment specified in Sub-rules (4) to (7) and rule 8 provides for procedure to take action to be intimated to the employee in writing along with the allegation upon which, it is proposed and then providing an opportunity to make representation. This is equivalent to rule 17 of the CCA Rules.

10. Whether the impugned order for realization of the amount of Rs. 4251, 98 from the petitioner is treated as major or minor penalty, the basic requirement of mentioning the allegation to the petitioner and providing him an opportunity of showing cause or making representation cannot be dented. This is the purport of rule 8 of the Disciplinary Appeal Rules and rule 17 of the CCA Rules. In case of major penalty enquiry is contemplated by rule 16 of the CCA Rules.

11. Since it is not in dispute that in the instant case, not statement of allegations or charge sheet was given to the Petitioner and no opportunity what so ever even for permitting him to show cause or submitting explanation or representation was given to him, the impugned order cannot be sustained under any law what so ever. It is even violative of principles of natural Justice, although it is not necessary to invoke them because specific rules for taking disciplinary proceedings are available. In view of the consequential orders for recovery of Rs. 4351, 98 from the petitioner are unlawful and liable to be quashed. It would of course, be open to the respondents to take any appropriate proceeding either under the Disciplinary Appeal Rules framed under the Panchayat Samitis and Zila Parishads Act or the CCA Rules as the case may be, against the petitioner for the alleged negligence and In case the misconduct or negligence is proved, to realize the amount according to law.

12. The application therefore, succeeds as indicated above. The impugned order Anx. 2 dated 30-7-70 is quashed. There will be no order as to costs.