

(1989) 11 RAJ CK 0054

In the Rajasthan High Court

Case No : Civil Writ Petition No. 2119 of 1989

Doongar Chand Dangi

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 16-11-1989

Acts Referred:

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

Citation : (1990) 1 RLW 227 : (1990) 1 WLN 247

Hon'ble Judges : Jasraj Chopra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

J.R. Chopra, J.—The grievance of the petitioner is that a charge-sheet was served on him by respondent No. 3 the Deputy Inspector General of Police, Jodhpur (for short the D I.G.P. here in) on 13-6-1984 alleging that he did not give timely information about the procession of the Bhartiya Janta Party which proceeded to Court on 9-4-1984 and he also failed to give information about the incident which took place in Kamla Nehru College on 2-4-1984. An enquiry was held under Rule 17 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules and the DIGP vide order Annex. 1 dated 31-8-1984 held the petitioner guilty of the above charges and punished him with stoppage of one grade increment without cumulative effect. Act appeal was preferred to the Director General of Police and that too came to be dismissed vide Annexure 2 dated 5-6-1985. A review petition was filed before his excellency the Governor of Rajasthan and that also came to be dismissed vide Annexure-3 dated 9-3-1989.

2. The contention of the petitioner that initiation of enquiry proceedings against the petitioner by the DIGP was totally unauthorised because the DIG is not his Head of the Department. It is true that the Inspector General of Police, the Head of the Department, has delegated his powers to impose all penalties under Rule 17 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules to the DIGP vide his Order dt. 21/23-12-85 and those powers have been delegated

with effect from 16-8-1982. The delegation of these powers with retrospective effect came under challenge before this Court in Gopi Krishna v. State s1987 (I) RLR 889 where it has been observed that such administrative/executive orders cannot be made effective retrospectively. This decision of the learned Single Judge came up for consideration before a Division Bench of this Court in Madan Khan v. State of Rajasthan D B. Civil Writ Petition No. 882 of 1989, wherein their lordships have observed that they are whole heartedly in agreement with the view expressed by the learned Single Judge. Thus, the law is now settled that delegation of the powers to the DIGP by this Inspector General of Police vide his order dated 21/23-12-1985 with retrospective effect i.e. from 16-8-1982 is illegal, and void and on the basis of the illegal and void delegation of powers, the punishment imposed by the DIG is totally unauthorised and, therefore, the order imposing the punishment on the petitioner and for that matter, the appellate order of the review order can not be sustained.

3. Mr. R.P. Dave, the learned Addl. Govt. Advocate has submitted that the question of retrospective delegation being illegal and void has not been raised by the petitioner either before the Disciplinary Authority or before the appellate authority. I find myself unable to agree with Mr. Dave. In my opinion, such a question can be raised at any time even in this writ petition. I also do not find substance in the argument of Mr. Dave that when the initial order has merged in the appellate order, the initial order cannot be challenged. When the initial order has been passed by an incompetent authority and even if the initial order has merged in the appellate or the Review order the initial order can be challenged on the ground of incompetency of the alleged disciplinary authority to initiate the enquiry or to award punishment in pursuance of that enquiry.

4. Mr. Dave has next submitted it may be left open to the competent authority to initiate fresh enquiry against the petitioner. In the facts and circumstances of this case, looking to the trivial nature of the allegations and further looking to the fact that the petitioner is facing this enquiry for the past about five years, I do not feel inclined to grant such a relief.

5. In the result, this writ petition is alleged and the orders Annexure-1 dated 31-8-1984, Annexure-2 dated 5-6-1985 and Annexure 3 dated 5-6-1989 are quashed. The parties are left to bear their own costs of this writ petition