
(2016) 07 RAJ CK 0033
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3735 of 2002

Dr. K.C. Laddha

APPELLANT

Vs

State of Rajasthan

RESPONDENT

Date of Decision : 05-07-2016

Acts Referred:

Constitution of India, 1950 — Article 226, 309

Citation : (2016) LIC 3757

Hon'ble Judges : Sandeep Mehata, J.

Bench : Single Bench

Advocate : Dr. Sachin Acharya, Advocate, for the Petitioner; Ms.Kusum Rao, AGC, for the Respondents

Final Decision : Dismissed

Judgement

Sandeep Mehata, J.— Heard learned counsel for the parties.

2. By way of the instant writ petition, the petitioner Dr.K.C. Laddha has approached this Court assailing the charge-sheet dated 22.9.1998 (Annex.7) issued to him under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (for short, CCA Rules), the order dated 24.10.2000 (Annex.11) imposing penalty, the order dated 1.3.2001 (Annex.13) dismissing the appeal and the order dated 4.12.2001 (Annex.14) dismissing the review petition.

3. The petitioner was posted as Senior Medical Officer in Mahatma Gandhi Hospital, Bhilwara in the year 1992. A Government accommodation was allotted to the petitioner with his posting at Bhilwara. The petitioner was transferred from Bhilwara in the year 1995 and as per the conditions of the residence allotment order, the petitioner was obliged to vacate the official accommodation within a period of one month from the date of relieving. However, he failed to do so within the scheduled time period. Upon this, repeated notices were issued to the petitioner to vacate the premises. However, the petitioner deliberately did not

vacate the premises even thereafter. A charge-sheet dated 22.9.1998 came to be served upon the petitioner under Rule 16 of the CCA Rules. Later on, the charge-sheet was altered to one under Rule 17 of the CCA Rules and after taking the petitioner's explanation, the disciplinary authority being the State Government passed the order dated 24.10.2000 imposing upon the petitioner penalty of withholding of two grade increments without cumulative effect. The said order was challenged by the petitioner by filing an appeal under Rule 33 of the CCA Rules which was rejected by Hon'ble the Governor by order dated 1.3.2001 (Annex.13). Thereafter, the petitioner submitted a review petition which too was dismissed vide order dated 4.12.2001 (Annex.14). Hence, the petitioner has approached this Court by way of the instant writ petition assailing the charge-sheet and the three orders mentioned above.

Dr.Sachin Acharya, learned counsel for the petitioner vehemently contended that the petitioner paid the penal rent for use of the Government accommodation after his transfer. He urged that the petitioner's mother was suffering from cancer and paraplegic. As per the medical certificates issued by competent authority, she was suffering from 70% permanent disability. The petitioner had been transferred to Nasirabad where facility of physiotherapy was not available. The petitioner thus had no option but to keep his mother at Bhilwara. Thus, as per the learned counsel, the action of the petitioner in not vacating the Government accommodation was bona fide and a sympathetic view should have been taken looking to the humanitarian aspect of the matter. He further urged that the Collector, Bhilwara has given explicit permission to the petitioner for continuing the retention of the Government accommodation upto 10.8.1998 and, therefore, the petitioner was wrongly held liable for illegal retention of the Government accommodation. He thus urges that the writ petition deserves to be accepted and the impugned orders should be quashed.

4. Per contra, Ms.Kusum Rao, learned counsel for the respondents drew the attention of this Court to the letter dated 19.8.1998 issued by the Collector, Bhilwara as per which, the petitioner did not vacate the Government permission till 10.8.1998 despite last opportunity being given. Thereupon, the Collector directed the S.H.O., P.S. Kotwali, Bhilwara to get the Government accommodation vacated. Referring to the panchnama Annex.R/1, she submitted that the petitioner put a lock on the Government accommodation after taking out all his belongings and deliberately avoided to appear for handing over the peaceful possession of the premises. Hence, the lock had to be broken and the possession of the Government accommodation was reclaimed thereby. She urged that the petitioner was rightly held guilty for the misconduct and the punishment imposed is rather on the lenient side. She thus prayed that no interference is called for in the impugned orders which are just and legal and the writ petition deserves to be dismissed.

5. I have considered the arguments advanced at the Bar and perused the material available on record.

6. The fact that the petitioner illegally retained the Government accommodation after his transfer from Bhilwara in clear violation of the terms of the allotment order, is evident from the record. The Government accommodation was allotted to the petitioner vide letter dated 6.3.1992 wherein it was clearly stipulated that in the event of transfer, the premises had to be vacated within a month from the date of being relieved. The petitioner was transferred from Bhilwara on 6.7.1995. As per the charge sheet, no less than 10 notices were issued to the petitioner for vacating the Government accommodation but he deliberately avoided to do so under the pretext that his mother was ailing. The petitioner took a plea that he had deposited the penal rent for the continued possession of the Government accommodation. That by itself could not have been a ground for the petitioner to have illegally retained the Government accommodation. If at all, there was a constraint on the petitioner to keep his mother at Bhilwara, he could have taken a house on rent. It is evident that the petitioner was adamant on not vacating the Government accommodation by any means. The petitioner has relied upon the so-called tacit consent of the Collector for justifying his illegal action. However, no order passed by the Collector to this effect was filed on record by the petitioner. On the contrary, the respondents have placed on record a copy of the order dated 19.8.1998 Annex.R/1 as per which, the Collector feeling constrained by the petitioner's deliberate avoidance to vacate the Government accommodation, gave him a final notice to vacate the premises but despite that, the Government accommodation was not vacated. The Collector directed the S.H.O., P.S. Kotwali, Bhilwara to get the Government accommodation vacated. The S.H.O. proceeded to the Government accommodation on 24.9.1998 and took possession of the Government accommodation after breaking the lock appended by the petitioner thereupon vide the panchnama Annex.R/2 dated 24.8.1998.

7. In this background, this Court is of the opinion that no justification can be perceived in the action of the petitioner in illegally retaining the Government accommodation for the period in excess of three years from the date of his transfer from Bhilwara. Merely the fact that the petitioner's mother was ailing, could not be a ground for him to retain illegal possession of the Government accommodation. So far as quantum of punishment is concerned, suffice is to say that initially the charge-sheet was issued under Rule 16 of the CCA Rules; however, later on the disciplinary authority took a pragmatic view and altered the charge sheet to one under Rule 17 of the CCA Rules and after following due procedure of law, imposed a minor penalty of withholding two grade increments without cumulative effect upon the petitioner. The penalty imposed is totally commensurate with the alleged misconduct and cannot be said to be unduly harsh by any stretch of imagination. The competent authority as well as appellate authority have given due consideration to the facts available on record and imposed passed the well reasoned orders for imposing the penalty, rejecting the appeal as well as the review petition. This Court is of the opinion that the orders impugned ex-facie do not suffer from any illegality, perversity or irregularity so as to call for any interference in exercise of this Court's

extraordinary writ jurisdiction.

8. In view of the above discussion, the instant writ petition being devoid of any merit, is hereby dismissed.

9. No order as to cost.