
(1995) 03 RAJ CK 0065
In the Rajasthan High Court
Case No : Civil Writ Petition No. 1680 of 1985

Dr. Ravi Dutt Sharma

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 24-03-1995

Acts Referred:

Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 — Rule 16

Citation : (1995) 2 RLW 135 : (1995) 2 WLC 560 : (1995) 2 WLN 1

Hon'ble Judges : Gyan Sudha Misra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Gyan Sudha Misra, J.—The petitioner in this writ petition has challenged the order dated 5/8/1985, passed by the State of Rajasthan through the Special Secretary, Government of Rajasthan, Department of Personnel and Administrative Reforms, Jaipur by which a penalty of stoppage of two grade increments with cumulative effect has been imposed on the petitioners and, in addition to this penalty, denial of salary for the period of suspension except the subsistence allowance already paid, has also been imposed on the petitioner by the said order.

2. The circumstances which led to the passing the aforesaid order are enumerated here in as follows: While the petitioner was holding the post of Incharge, Government Hospital, Badnagar, he conducted post-mortem examination on the dead body of one Smt. Kiran Devi and gave a report that the cause of death of Smt. Kiran Devi was suffocation due to smoke. During the investigation of death of Smt. Kiran Devi, the Superintendent of Police, Jaipur considered it necessary to obtain the opinion of the Medical Board about the cause of death of Smt. Kiran Devi and on the request of the Superintendent of Police, Jaipur the Superintendent of SMS, Jaipur constituted a Medical Board of three Doctors who found fault with the post-mortem examination conducted by the petitioner, who gave its report on 6/3/1982. As result of this report, the

petitioner was placed under suspension by an order of the Secretary to the Government, Medical and Health Services, Government of Rajasthan, Jaipur on 11/3/1982, which was confirmed by the Department of Personnel and Administrative Reforms vide the order dated 7/5/1982. Accordingly memorandum under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (hereinafter referred to as "CCA Rules") was issued against the petitioner proposing disciplinary enquiry against him under the aforesaid Rules. The Memorandum incorporated two charges against the petitioner, wherein it was stated that the petitioner while working as Medical officer Incharge, Government Hospital, Badnagar on-6/1/1982 conducted a post-mortem on the dead body of one Smt. Kiran Devi at his own level and, while conducting such post-mortem indulged into serious irregularities and also violated the orders of his superior officer. The second charge in the memorandum was that the petitioner, Dr. Sharma while working at Badnagar seized viscera of the deceased Smt. Kiran Devi and did not send the clothes of the deceased for chemical examination and, thus, kept the cause of death under suspicion. The charge-sheet was supplemented with the statement of allegations relating to the two charges.

3. The petitioner filed a detailed reply to the charges levelled against him, wherein he stated that in so far as the allegation regarding conducting of the post-mortem alone without the assistance of the second Doctor is concerned the Department failed to prove the existence of the Circular dated 1/8/1980, which required conducting of post-mortem by two Medical officers, The Department also failed to prove that the petitioner had any knowledge about this Circular on 6/1/1982. This Circular according to the defence witness, who was working as a Male Nurse, was received in the Government Dispensary, Badnagar on 15/3/1982, much after the post-mortem on the body of deceased Smt. Kiran Devi was conducted by the petitioner i.e on 6/1/1982. It was further explained by the petitioner that the Department withheld the material witness Gheesa Lal who received the dead body of Smt. Kiran Devi after the post-mortem examination, who alone could bring out the true facts regarding the duration of conducting the post-mortem. It was further averred that there was no evidence on record to prove that the petitioner completed the post-mortem examination on the dead body in one hour, and even if it was one hour, the post-mortem report does not disclose any haste or negligence on the part of the petitioner. The petitioner had also given these explanations by way of representations in the. Department, which was ultimately rejected. Thereafter departmental enquiry was initiated against the petitioner which was entrusted to the Additional Commissioner (I), Departmental Enquiries.

4. The Additional Commissioner who conducted the enquiry on scrutiny of the charges and evidence led, exonerated the petitioner of all the charges levelled against him, as indicated in the order of the Disciplinary Authority. The petitioner was, however, not served with the copy of the enquiry report. When the matter was referred to the Disciplinary Authority, he accepted the enquiry report and

upheld the exoneration of the petitioner in regard to the charge that the post-mortem was required to be conducted by two Doctors. The Disciplinary Authority upheld that this charge has not been proved against the petitioner and had accepted the plea Of the petitioner that he was not aware of the existence of any Circular that the post-mortem was required to be conducted by two Doctors. The Disciplinary Authority also absolved the petitioner of the charge that he committed any illegality in conducting the post-mortem within one hour only for it held that unless there is any definite evidence that he conducted the post-mortem within less than the usual hours required for such post mortem, the charge cannot be held to be proved.

5. The Disciplinary Authority, however, although accepted the report of the Enquiry officer in substance, it disagreed with the Enquiry officer regarding some of the statement of allegations in so far as the technical aspect of the post-mortem report is concerned. The Disciplinary Authority held that the Enquiry officer did not find any illegality in the post-mortem by relying upon Modi's Medical Jurisprudence and held that the post-mortem report given by the petitioner wherein he stated that the colour of the blood of the deceased was bright red and did not find any difference between cherry red and bright red, for which he relied on Modi's Medical Jurisprudence, ought to have summoned the expert's opinion on this point and should not have given a finding in his favour. It was, therefore, inferred that the petitioner did not conduct the post-mortem in a proper manner, due to which the cause of death of the deceased was shrouded in mystery. The Disciplinary Authority also felt that when the Doctor conducting the post-mortem found the uterus of the deceased to be swollen, the same should have been preserved and sent for histo-pathological examination. This opinion was based on the report of the Medical Board. The petitioner, however, explained this fact that in a case of burn, it was not essential to preserve the uterus. But the Disciplinary Authority held that the petitioner committed a grave error by not sending the parts of the body of the deceased for chemical examination and also did not preserve the clothes of the deceased. The Disciplinary Authority, thus, held that the charges against the petitioner are "partially proved to the extent of its analysis." It was commented upon by the Disciplinary Authority that in cases of burns only after some months, or after few years of marriage if a woman dies, then these kinds of cases come under the category of special vigilance. But the petitioner failed in his duty by not taking into consideration this fact and, thus, held that the charge against him is partially proved to the extent of its analysis. Therefore, although, the suspension of the petitioner was quashed, he was awarded a penalty of stoppage of two grade increments with cumulative effect and also ordered for withholding of his salary for the suspension period.

6. The petitioner feeling aggrieved with the aforesaid order dated 5/8/1985, filed this writ petition for quashing of the aforesaid order, wherein it was contended that the petitioner having been exonerated of the allegations levelled against him by the Enquiry officer and the Disciplinary Authority having disagreed with the

findings of some of the off-shoot of the principal charge ought to have given notice to the petitioner before recording a finding of disagreement. This was a condition precedent before any action could be taken against the petitioner as envisaged in Rule 12(9) read with Rule 16(12) of the CCA Rules. The Disciplinary Authority, thus, did not act in accordance with Rule 16(9). In addition to these submissions, it was submitted that the petitioner was not furnished with the copy of the enquiry report due to which he has been deprived of the valuable opportunity of making his submissions in respect of the reasons given by the Disciplinary Authority with reference to the findings of the Enquiry Officer. The Disciplinary Authority also did not refer the matter to the Rajasthan public Service Commission before passing the order of punishment, although, this was a condition precedent because it is a case of major penalty and major penalty could only be imposed against the petitioner after making a reference to the Rajasthan Public Service Commission. It was also submitted that in arriving at the finding against the petitioner, the Disciplinary Authority has not advanced sufficient and good reasons for differing with the findings of the Enquiry Officer.

7. Learned Counsel for the respondent, Shri N.K. Maloo, countered She arguments advanced on behalf of the petitioner and made detailed submissions, which in substance are to the effect that the Disciplinary Authority committed no error by disagreeing with the report of the Enquiry Officer which was based on the advice of the Medical Board. have, however, refrained myself from entering into analysis of the arguments and counter arguments advanced on behalf of the parties in so far as the merit of the findings given on the charges are concerned and I propose to start with the finding arrived at by the Enquiry Officer and the Disciplinary Authority in so far as the charges are concerned. A perusal of the order of the Disciplinary Authority clearly indicates that the petitioner has been exonerated of the principal charges which were levelled against him and, even the Disciplinary Authority agreed with the enquiry report on the same. The Disciplinary Authority, however, went into the scrutiny of the off-shoot of the charges and held that the petitioner ought to have preserved the clothes of the deceased and also should have preserved the uterus of the deceased, which ought to have been sent for chemical examination and, further went to the extent of recording that in the cases of burns regarding a lady who has died only after a few months or a few years of marriage, should have been taken special care to conduct the post-mortem. But even so, the Disciplinary Authority did not come out with the categorical findings on these questions and inferred that these charges are only partially proved to the extent of analysis of the evidence.

8. The Disciplinary Authority, thus, has not come out with the categorical or conclusive finding against the petitioner in this regard and held the charges proved only partially, due to which the petitioner's reinstatement was ordered and the order of suspension was quashed. Therefore, the petitioner has substantially been exonerated of the charges even by the order of the Disciplinary Authority and, it cannot be said that the Disciplinary Authority found the charges to have been proved against the petitioner, in which case the

question of withdrawal of suspension order of the petitioner would have been out of question.

9. Apart from the finding of the Disciplinary Authority it may be relevant to consider as to whether the petitioner can be held guilty of misconduct under the facts of the instant case and in this context it may be equally relevant to consider as to what constitutes misconduct and whether lack of efficiency, failure to attain highest standard of administrative ability while holding a post itself be held to be constituting misconduct. The case of Union of India (UOI) and Others Vs. J. Ahmed, is a relevant case to consider, where the learned Judges took into consideration the definition of "misconduct" as laid down in Stroud's Judicial Dictionary, which is as under:

Misconduct means, misconduct arising from ill motive; acts of negligence, errors of judgment or innocent mistake, do not constitute such misconduct.

After scrutiny of several examples constituting misconduct, the learned Judges D.A. Desai and O.C. Reddy were of the opinion that the failure to attain highest standard of efficiency in performance of duties permitting inference of negligence would itself not constitute misconduct. The learned Judge had recorded as under:

It is, however, difficult to believe that lack of efficiency or attainment of highest standards in discharge of duty attached to public office would ipso facto constitute misconduct. There may be negligence in performance of duty and a lapse in performance of duty or error of judgment in evaluating the developing situation may be negligence in discharge of duty but would not constitute misconduct unless the consequences directly attributable to negligence would be such as to be irreparable or the resultant damage would be so heavy that the degree of culpability would be very high. An error can be indicative of negligence and the degree of culpability may indicate the grossness of the negligence.

But in any view, failure to attain the highest standard of efficiency in performance of duty permitting an inference of negligence would not constitute misconduct.

10. Looking to the facts of this case, it is clear that the petitioner gave his definite opinion that the deceased died due to suffocation of smoke, meaning thereby that she died due to burning. Therefore, to record a definite finding regarding the cause of death of the deceased Smt. Kiran Devi as to whether she died due to suicide by burning herself or her murder was committed by any one who burnt her, in my opinion, lay in the domain of the criminal trial because the post-mortem report, even as it stands, conclusively held that the deceased died due to suffocation of smoke, meaning thereby burning. In my opinion, even if the clothes had been sent for chemical examination and viscera had been sent for histo-pathological examination, the finding of the post-mortem report that the deceased died of burn could not have been affected. Therefore, while preparing the post-mortem report, even if the highest standard of technicalities had been maintained by the petitioner, the finding of the petitioner, who conducted the

post-mortem, still supported the prosecution case that the deceased died due to burn injuries which was also the apprehension of the police and the Medical Board. Therefore, it does not stand to reason how the petitioner can be said to have kept the cause of death of the deceased shrouded in mystery. Perhaps, for this reason, the Enquiry Officer fully exonerated the petitioner of the charges and the Disciplinary Authority also substantially exonerated him, but held him partially guilty of dereliction of duty by not preserving the clothes of the deceased and the viscera of the deceased which according to the Medical Board should have been sent for histo-pathological examination. This, in my opinion, would hardly have explained whether the deceased died of accidental burn or he was deliberately burnt by some one else.

11. In so far as the strict by legal aspect of the matter is concerned, I find force in the submission of the counsel for the petitioner that the petitioner has been seriously prejudiced as he was not served with the copy of the enquiry report. Learned Counsel for the parties save cited several decisions on the question of effect of non-furnishing of the enquiry report to the delinquent employee; but I find it relevant to refer only to the Constitution Bench judgment of five Judges of the Apex Court reported in JT 1993 (6) in the matter of Managing Director, ECIL, Hyderabad v. B. Karunakaran, which took into consideration all the earlier judgment on the point.

12. Learned Counsel for the respondent had referred to this decision in support of his contention that it is not always essential to furnish copy of the enquiry report and the Court should not make any exercise to quash an order of punishment on the ground that the enquiry report was not furnished. A perusal of this judgment clearly indicates that it has been held by their Lordships that since it is a right of the employee to have the report to defend himself effectively as he would not know in advance whether the report is in his favour or against him, it will not be proper to construe his failure to ask for the report, and whether the employee has asked for the report or not, the report has to be furnished to him. While considering the question regarding the effect of non-furnishing of the report, the learned judges also discussed other cases where non-furnishing of the report may not have prejudiced him gravely while in other cases it may have not led to the ultimate punishment awarded to him. It was, therefore, held that it is ultimately the question whether in fact, prejudice has been caused to the employee or not on account of denial to him of the report which has to be considered on the facts and circumstances of each case and whether therefore, even after furnishing of the report, the same consequence would have followed. It was observed that it would be a perversion of justice to set aside the punishment only due to non-furnishing of the enquiry report and the question regarding the effect of non-furnishing of reports will ultimately depend on the facts of each case. In the instant case, the enquiry report exonerated the petitioner of the charges, but the Disciplinary Authority disagreed with the same on two counts, viz. the clothes of the deceased and viscera should have been preserved to come to the conclusion finally regarding cause of death.

Thus, when the Disciplinary Authority disagreed with the enquiry report, the petitioner, in my view, ought to have been given a copy of the enquiry report and also an opportunity to explain whether non-preservation of clothes and viscera could possibly be held to have kept the cause of death under mystery. This opportunity was clearly denied to the petitioner by not furnishing the copy of the enquiry report, and also prejudicing him by not granting him the opportunity to defend himself from the main charge of which the petitioner has been exonerated even by the Disciplinary Authority.

13. It is relevant to make it clear at this point that this Court is fully aware of its limitation and would not even venture to substitute its own opinion in place of the opinion of the experts. But, a perusal of the opinion of the Medical Board clearly indicates that the opinion has gone to the extent of almost recording a finding on the cause of death of the deceased without in fact having any occasion to conduct the post-mortem. This question, in my considered opinion, was to be decided at the time of trial by a criminal court by examining other allied evidence on record. The Disciplinary Authority therefore, has also not given a categorical finding on the charges levelled against the petitioner and has merely recorded that the charges are partially proved to the extent of its analysis. Therefore, proceeding on the finding of the Disciplinary Authority, the punishment awarded to the petitioner appears to be purely on the basis of conjectural finding. The Disciplinary Authority does not appear to have come to the conclusive finding that the petitioner committed any offence.

14. Even otherwise, the petitioner in the instant case ought to have been served with the copy of the enquiry report when the Disciplinary Authority disagreed with the view of the Enquiry Officer. In such a situation, I am of the view that the petitioner ought to have been granted an opportunity of hearing in order to place his defence and examine the witnesses. Under the circumstances of this case I feel that the petitioner is fully justified in challenging the order of the Disciplinary Authority on the ground of non-furnishing of copy of the enquiry report which has seriously prejudiced him and the ratio of the decision in *Managing Director, ECIL, Hyderabad v. B. Karunakaran* (supra) is certainly attracted when applied to the facts of this case.

15. Due to the reasons discussed hereinabove, I consider it fit to quash the order dated 5/8/1985 and direct that the order be treated as non-existent and ineffective. The punishment of stopping of two grade increments and withholding of his salary during the period of suspension, thus, shall be treated as withdrawn and the petitioner shall be paid full salary with increments for the said period after deducting the amount which he may have received towards subsistence allowance. The amount shall be paid within a period of four months from the date of receipt of this order. The writ petition is allowed accordingly.

16. The parties are directed to bear their own costs.