
(1992) 03 RAJ CK 0032
In the Rajasthan High Court
Case No : Civil Writ Petition No. 201 of 1988

Faiyaj Mohammed

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 11-03-1992

Acts Referred:

Citation : (1992) WLN 63

Hon'ble Judges : B.R. Arora, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.R. Arora, J.—By this writ petition, the petitioner has prayed for quashing the order dated September 23, 1987, passed by the District and Sessions Judge, Bhilwara, by which the petitioner was compulsorily retired. It has been prayed that the petitioner may be reinstated on the post which he was holding prior to his compulsory retirement.

2. The petitioner was working as a Copyist cum Typist in the Office of the Munsif and Judicial Magistrate, Gangapur. By the order dated August 25, 1986, he was transferred to the post of Copyist. The copy of this order was delivered to the petitioner on August 28, 1986, but the petitioner did not hand-over the charge to Shri Chetan Prakash Trivedi. He was again orally asked by the learned Munsif and Judicial Magistrate, Gangapur, to handover the charge of the post of Shri Chetan Prakash Trivedi, but the petitioner did not comply with the order and ultimately on September 8, 1986, the charge was given to Shri Chetan Prakash Trivedi and the charge report was prepared but the petitioner refused to sign that charge handing and taking over report. Thus, the petitioner has disobeyed the order of the Munsif and Judicial Magistrate, Gangapur, as he refused to comply with the order of the Munsif and Judicial Magistrate, Gangapur and refused to handover the charge. A departmental enquiry against the petitioner under Rule 16 of the Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958, was initiated and the Chief Judicial Magistrate, Bhilwara, was appointed as the

Enquiry Office. The charge-sheet on the petitioner was served on September 10, 1986. The petitioner did not appoint any defence nominee and showed his intention to defend himself during the departmental enquiry. The departmental nominee examined only Shri Om Prakash Singh - the Munsif and Judicial Magistrate, Gangapur, and closed its evidence. The petitioner did not produce any evidence. He even did not examine himself during the enquiry. The learned Enquiry Officer, i.e., the Chief Judicial Magistrate, Bhilwara, after completing the enquiry, submitted its report on July 27, 1987, to the District and Sessions Judge, Bhilwara. The disciplinary authority thereafter, by its order dated September 23, 1987, after considering the report of the Enquiry Officer and other relevant record ordered for the compulsory retirement of the petitioner on proportionate compensation. It is against this order that the petitioner has preferred this writ petition.

3. It is contended by the learned Counsel for the petitioner that the petitioner was not provided the defence nominee, which vitiates the whole enquiry and the punishment imposed upon him. It is further contended that the enquiry was not properly made by the Enquiry Officer in the present case and only the statement of Shri Omprakash Singh - Munsif and Judicial Magistrate, Gangapur, was recorded, while in the list of the witnesses, the names of four witnesses were given. Lastly, it is contended that even Shri Chetan Prakash Trivedi, to whom it is said that the charge was not handed-over by the petitioner, has not been produced and, therefore, the enquiry stands vitiated and the punishment imposed against the petitioner is wholly un-called for.

4. I have considered the submissions made by the learned Counsel for the petitioner.

5. So far as the question of providing the defence nominee is concerned, it is clear from the record that the petitioner himself did not nominate any defence nominee nor he showed his intention for the same. On the contrary, he showed his intention to defend his case personally. The Enquiry Officer, in its report, has specifically mentioned that the delinquent officer did not nominate any person as his defence nominee and showed his intention to defend his case personally. This averment of the Enquiry Officer in the report has not been controverted by the petitioner before this Court. As the petitioner himself showed his intention to defend himself personally and did not nominate any defence nominee, therefore, the question of providing the defence nominee by the Enquiry Officer does not arise. If the petitioner would have shown his intention for the services of the defence nominee and if the defence nominee would not have been provided to him by the Enquiry Officer then the case would have been otherwise, but as the petitioner never asked for providing the defence nominee, therefore, this ground is not available to the petitioner.

6. The next contention, raised by the learned Counsel for the petitioner, is that though in the List of Witnesses, four witnesses have been shown, but only one witness was examined by the Departmental Nominee and the remaining

witnesses were given up. It is not the number of the witnesses, on the basis of which the case can be decided. The case can be decided even on the basis of the evidence of single witness, provided the evidence of that single witness Inspires confidence and proves the case against the delinquent officer. Shri Omprakash Singh-the then Munsif and Judicial Magistrate, Gangapur, who served this transfer order on the petitioner and asked him to hand-over the charge to Shri Chetan Prakash Trivedi, has appeared in the witness-box. He has proved the various documents, including the letter, by which the petitioner refused to hand-over the charge to his Junior Shri Chetan Prakash Trivedi. From the evidence of Shri Om Prakash Singh-the Munsif and Judicial Magistrate, Gangapur, the case against the petitioner stands fully proved. The learned Disciplinary Authority, after careful consideration of the evidence on record, rightly came to the conclusion that the charges against the petitioner stand fully proved. I have gone-through the order, passed by the Disciplinary Authority and the report of the Enquiry Officer and after a careful consideration of these two documents and the relevant record, produced by the petitioner, I am of the opinion that the order passed by the Disciplinary Authority is perfectly just and proper and does not require any interference. The enquiry conducted by the Enquiry Officer, namely, the Chief Judicial Magistrate, Bhilwara, was properly conducted and a proper opportunity of hearing was given to the petitioner, but the petitioner neither asked for the defence nominee nor he produced any evidence in support of his case. From the evidence, produced by the Departmental Nominee, the charges against the petitioner stand fully proved.

7. In a case of compulsory retirement, which does not cast any stigma nor Is it a punishment, the principle of natural justice have no application and if an authority, after careful consideration of the entire past record of the delinquent officer, came to the conclusion that it will be in the public interest to retire a government servant compulsorily then that subjective satisfaction of the Disciplinary Authority is not to be interfered-with unless the order is passed arbitrarily or malafide or on other grounds. In the present case, the order passed by the Disciplinary Authority can neither be said to be malafide nor arbitrary. The order has been passed by the Disciplinary Authority after proper appreciation of the evidence and it does not require any interference.

8. Consequently, I do not find any merit in the writ petition and the same is hereby dismissed.