
(2015) 03 RAJ CK 0057
In the Rajasthan High Court
Case No : Civil Writ Petition No. 3254/2002

Ganga Das Bohra

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 24-03-2015

Acts Referred:

Citation : (2015) 03 RAJ CK 0057

Hon'ble Judges : Sandeep Mehta, J.

Bench : Single Bench

Advocate : M.R. Singhvi, Senior Advocate and Saurabh, for the Appellant; N.K. Mehta, Advocates for the Respondent

Final Decision : Allowed

Judgement

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

2. By way of the instant writ petition, the petitioner has approached this Court assailing the validity of the order dated 18.8.1998 (Annex.5) passed by the petitioner's disciplinary authority imposing upon him penalty of dismissal from service; the order dated 22.11.1999 (Annex.7) passed by the appellate authority dismissing the petitioner's appeal against the order imposing penalty; and the orders dated 2.5.2002 (Annex.9) and 22.7.2002 (Annex.10) whereby the review petition preferred by the petitioner against the aforesaid two orders was dismissed and the result thereof was conveyed to the petitioner.

3. The petitioner Ganga Das Bohra passed away during the pendency of the writ petition and thus, his legal representatives have been permitted to pursue the instant writ petition.

4. Facts in brief are that the petitioner was appointed as a L.D.C. in the Public Health and Engineering Department, Bikaner Circle in the year 1971. Thereafter, he was promoted to the post of U.D.C. in the year 1982. The petitioner was served with a memorandum dated 8.5.1992 along with a charge-sheet and statement of allegations proposing to hold an inquiry under Rule 16 of the

Rajasthan Civil Services (Classification, Control and Appeal) Rules, 1958 (referred to herein after as "the CCA Rules") against him. The basic thrust of the allegations as set out in the charge-sheet/statement of allegations was that the petitioner while working as cashier embezzled huge sums of Government money on different occasions.

5. By order dated 20.2.1997, the Executive Engineer, P.H.E.D. Construction Division-I, Bikaner was appointed as inquiry officer to conduct inquiry against the petitioner. It is asserted in the writ petition that the petitioner was not supplied with the copies of the documents relied upon in the charge-sheet. The request made by the petitioner to the inquiry officer for being supplied with the relevant documents was not responded to appropriately. It is further averred in the writ petition that a number of senior officers were involved in the whole scam. Therefore, in order to hush up the matter, the inquiry officer conducted the inquiry in hot haste and without following the mandatory procedure prescribed under Rule 16 of the CCA Rules. It is averred in the writ petition that it is the duty of the department to first supply to the delinquent a list of documents and a list of witnesses, on the strength whereof charges are sought to be proved, but neither such lists were prepared nor were they made available to the petitioner. It is the specific assertion of the petitioner in para No. 8 of the writ petition that during the course of inquiry, neither any person was produced in the witness box nor any document was tendered and proved by the department. The petitioner was summoned repeatedly by the inquiry officer to appear before him. The petitioner complied with his directions and fully cooperated with the inquiry. It is claimed in the writ petition that the inquiry was not conducted as warranted under Rule 16 of the CCA Rules as no witness was examined by the department nor any document was proved during the course of the inquiry. The inquiry officer acted in a fanciful manner and recorded baseless findings in the inquiry report holding the petitioner guilty of the charges only by relying upon the audit report prepared by the audit party. The inquiry officer also relied upon the fact that the petitioner had admitted his guilt in as much as, even before the inquiry was commenced, he deposited a sum of Rs. 1,25,000/- in the Bank. The letter through which the petitioner intimated the department regarding the amount having been deposited in the treasury was reproduced in the inquiry report and ultimately, relying on the charge-sheet, the audit report (which was not even tendered in evidence) and the defence evidence led by the petitioner, the inquiry officer proceeded to hold the petitioner guilty of all the charges. The inquiry report was placed before the disciplinary authority. The disciplinary authority issued a show cause notice dated 27.5.1998 accompanied with a copy of the inquiry report to the petitioner. The petitioner submitted a reply to the show cause notice and claimed that no irregularity was committed by him and he was not guilty of any misconduct or embezzlement whatsoever. He also complained that there was flagrant breach of principles of natural justice in the manner of conducting the inquiry in as much as, the same was not conducted in accordance with the Rules etc.

6. The disciplinary authority, however, was not satisfied with the reply submitted on behalf of the petitioner to the show cause notice and passed the order Annex.5 dated 18.8.1998 holding the petitioner guilty of misconduct and imposed upon him the penalty of dismissal from service by order dated 18.8.1998 (Annex.5).

7. The petitioner preferred an appeal against the order of termination Annex.5, specifically pleading in the appeal that the inquiry was not conducted in accordance with the mandatory procedure of conducting inquiry as prescribed under Rule 16 of the CCA Rules and, therefore, the inquiry officer's report was vitiated. A specific ground was raised in the appeal that it was the bounden duty of the presenting officer to have produced and exhibited not only the relevant documents but also to examine the departmental witnesses including the concerned auditors on whose evidence, the charges were based. A statutory duty was cast upon the Inquiry Officer to examine all the witnesses relied upon by the department in support of the charges and the statement of allegations. Reference to certain documents as made in the inquiry report proved only the existence of those documents but the documents could not be taken into account unless the same were tendered and proved in evidence which was not done. The petitioner pleaded that the decision to punish him was taken relying upon unproved and unexhibited documents and without there being any oral evidence of the departmental witnesses and had no sanctity in law. It was also mentioned in the appeal that though the department was permitted to appoint a Presenting Officer but the petitioner was not permitted to appoint a defence assistant.

8. The appellate authority dismissed the petitioner's appeal by order Annex.7 dated 22.11.1999 without referring to the grounds raised in the memorandum of appeal.

9. Being aggrieved of the rejection of his appeal by order Annex.7 dated 22.11.1999, the petitioner preferred a review petition before the Governor of Rajasthan, on numerous grounds. The review petition preferred by the petitioner was also dismissed vide order Annex.9 dated 2.5.2002 and communication of rejection of the review petition was intimated to the petitioner by order dated 22.7.2002 (Annex.10). Hence, this writ petition.

10. Learned counsel for the petitioner challenged the validity and legality of the impugned orders on a solitary ground that the inquiry officer's report is vitiated in as much as, neither any witness was examined by the department nor any document was tendered and proved in evidence before the inquiry officer and the inquiry was conducted in total disregard to the mandatory provisions of Rule 16 of the CCA Rules. Relevant paras No. 7 and 8 of the writ petition setting out these facts and the ground (b) of the writ petition are reproduced herein below for the sake of convenience:-

"7. That the inquiry was not at all conducted in accordance with the procedure as prescribed for under Rule 16 of the Rules of 1958. As per the procedure

prescribed for under Rule 16 of the Rules of 1958, it is the duty of the prosecution to first of all give a list of documents, and list of witnesses by which the charges are sought to be proved against the petitioner, but no such lists were made available to the petitioner.

8. That not only this, even during the course of inquiry also, no person was produced in the witness box, nor any document was tendered and proved. However, it is submitted that the inquiry officer called upon the petitioner to appear before him from time to time, and petitioner accordingly fully participated cooperated in the inquiry. But nonetheless the fact remains that no inquiry as contemplated under Rule 16 of the Rules of 1958 was conducted and concluded against him, as no witness was produced, no document was proved, and the inquiry officer in a fanciful manner recorded his finding.

In this regard, the petitioner may be permitted to make a reference of the inquiry report which was made available to him along with the show cause notice dated 27.5.98, and it is just and proper to make submissions with regard to inquiry report.

That for holding an inquiry, Executive Engineer PHED (Construction Division)-I, Bikaner was appointed as Presenting Officer, and the task of inquiry was entrusted to Superintending Engineer, Bikaner Circle Bikaner. The inquiry officer has made a reference of the report prepared by the Audit Party in between 7.2.90 to 6.11.1990, during which period the petitioner was posted as UDC, and also with regard to period from 1.3.72 to 23.1.1990. From the inquiry report it appears that the said audit report runs into 276 pages, and in the said report, it was held that the petitioner is guilty of committing embezzlement.

It is also pertinent to mention here that the said report of the Audit Party was never made available to the petitioner, nor this report was tendered in evidence, nor it was proved.

It is not less than surprising that the inquiry officer without applying his mind and without anything having been proved before him, has just extracted the finding of the Audit Party, and has recorded his finding while copying the findings from the Audit Party Report.

Ground:-

(b) That as a matter of fact, there was no inquiry in the eyes of law, because no person has been tendered in the witness box, therefore, there is no evidence, since no person has appeared, therefore, no document has been proved, therefore, there is no documentary evidence. Thus, it is a case of no evidence, nothing has been proved against the petitioner, yet the inquiry officer in a fanciful manner has wrongly recorded that charges are proved against the petitioner and unfortunately the disciplinary authority has mechanically endorsed the same and has penalized the petitioner. Thus, the impugned orders deserves to be quashed and set aside."

11. Learned counsel for the petitioner relying upon the decision of the Hon''ble Supreme Court in the case of State of U.P. and Others Vs. Saroj Kumar Sinha, , submitted that the impugned orders cannot be sustained for the simple reason that the inquiry officer''s report is vitiated as being based on no material whatsoever and as having been passed in total contravention of the mandatory procedure prescribed under Rule 16 of the CCA Rules for holding such inquiry. He contended that there did not exist any admissible piece of evidence in the record of inquiry upon which, the disciplinary authority could have based his conclusions and urged that the impugned orders being based on no evidence whatsoever are liable to be quashed and the writ petition deserves to be accepted in the terms prayed for.

12. Per contra, learned counsel for the respondents tried to defend the orders under challenge raising an objection that the inquiry officer rightly relied upon the audit report and held the petitioner guilty of the charges because he was responsible for embezzling a huge sum of money from the department''s coffers. However, he candidly conceded that the inquiry officer did not record any evidence during the course of inquiry nor was any document exhibited. The relevant portion of the reply being paragraphs No. 7, 8 and 9 and reply to ground (b) are reproduced herein below for the sake of ready reference:-

"7/- That the averments contained in this para of the writ petition are not admitted in the manner it has been stated. It is incorrect to state that the inquiry was not at all conducted in accordance with the procedure as prescribed for under Rule 16 of the Rules of 1958. It is most respectfully submitted that the petitioner was availed all the concerned documents and he was also allowed to go through the entire record. Still the petitioner states that he was not allowed all the documents and he was not allowed to go through the record is ex-facie malafide on his part and as such, it can be said that the petitioner has not come with the clean hand before this Hon''ble Court.

8/- That the averments contained in this para of the writ petition are not admitted in the manner is has been stated. It is most respectfully submitted that the inquiry officer conducted the inquiry in accordance with the Rule 16 of the Rules of 1958 and as per the principles of natural justice and the petitioner himself marked his note that no record is left for him to be seen. A copy of the note is being submitted herewith for ready reference and marked as ANNEXURE-R/3.

Rest of the averments contained in this para are not admitted in the manner it has been stated. It is incorrect to state that audit report was never made available to the petitioner. As a matter of fact, the petitioner himself gone through the audit report and after going through the audit report, he himself gave a note in this regard. Copy thereof has been already submitted as Annex. R/3. It is also incorrect to state that the inquiry officer without applying his mind and without anything having been proved before him has just extracted the findings of the Audit party and has recorded his finding while copying the findings

from the audit party report.

9/- That the averments contained in this para of the writ petition are not admitted in the manner it has been stated. It is incorrect to state that inquiry conducted was contrary to the provisions of Rule 16 of the Rules of 1958. It is most respectfully submitted that the inquiry of the petitioner was conducted in accordance with the rules and as per the principles of natural justice.

Reply to Grounds:-

(b) That the averments contained in this para of grounds of the writ petition are not admitted in the manner it has been stated. It is incorrect to state that there was no inquiry in the eyes of law. It cannot be said that it is a case of no evidence. As a matter of fact, the appeal as well as review petition filed by the petitioner has also been dismissed by the appellate authority as well as his Excellency Governor. It is also incorrect to state that the disciplinary authority has acted in mechanical manner and as such it cannot be said that the impugned orders deserves to be quashed and set-aside."

On the strength of these averments, the learned Addl. Government counsel attempted to defend the impugned orders. However, after referring to the record, he was left with no option but to concede that neither any witness was examined by the department during the inquiry nor was any document tendered and proved in evidence.

13. Heard and considered the arguments advanced at the bar and perused the material available on record.

14. I have myself minutely examined the inquiry officer's report placed on record along with communication Annex.3 dated 27.5.1998 and upon examination thereof, it is evident that neither did the inquiry officer record evidence of even a single departmental witness in support of the charges and nor any document was exhibited during the course of inquiry. It appears that even the list of documents and witnesses were not prepared before proceeding with the inquiry. The inquiry officer placed heavy reliance on the so-called admission of guilt made by the petitioner in the letter dated 3.2.1997 submitted by him to the Executive Engineer. On going through the said letter, it is evident that the petitioner nowhere admitted the guilt but deposited some amount in the department by way of abandon caution and precautionary measure and nothing beyond that.

15. The Hon''ble Supreme Court in the case of Saroj Kumar Sinha (supra) held that the examination of witnesses and exhibiting of documents is essential even in an ex-parte inquiry, if the department intends to bring home the charges against the delinquent employee. Failure to lead evidence will be viewed as the inquiry report being based on no material whatsoever.

16. Learned counsel for the respondents has placed on record, with an additional affidavit, copies of certain judgments to portray that after the penalty of

dismissal was inflicted by the order Annex.5 upon the petitioner, he was convicted in numerous cases involving embezzlement of Government funds on charges identical to the ones served upon him in the disciplinary inquiry. No doubt, the disciplinary authority is empowered to terminate an employee from service as per Rule 19 of the CCA Rules in the event of the employee being convicted for grave offences but it cannot be gainsaid that mere conviction of the employee for a grave offence would be inconsequential as regards the service conditions of the employee unless the disciplinary authority exercises powers under Rule 19 and passes an order of termination. Mere fact that the employee was subsequently convicted for a grave offence cannot persuade the Court to take a view that the conviction could lead to a deemed termination. As a matter of fact, no sooner the petitioner was convicted in the aforesaid bunch of criminal cases, the departmental officials should have been prudent enough to withdraw the termination order passed on the basis of the defective inquiry proceedings and to pass a fresh order of termination on the strength of the petitioner's conviction in the criminal cases. Admittedly and evidently, no such timely action was taken. No such action is permissible or possible in view of the fact that the petitioner has passed away long back.

17. When the matter was taken up by this Court on 16.12.2014, the argument regarding the dismissal order being vitiated on the ground of non-recording of evidence in the inquiry was advanced by the petitioner's counsel and the learned Addl. Government advocate was directed to seek instructions on the offer made by the petitioner's counsel that the petitioner's legal representatives were ready to forego the back wages if the consequential benefits were paid to them. However, the Addl. Government counsel informed this Court that the offer was not acceptable to the Government.

18. As a result of the aforesaid discussion, this Court has no hesitation in holding that the whole proceedings of inquiry conducted against the petitioner are vitiated because neither any evidence was led nor was any document proved and tendered in evidence to bring home the charges. Thus, the conclusions as recorded by the inquiry officer in his inquiry report, finding the charges proved against the petitioner, are vitiated as the same are based on no evidence whatsoever. The ratio of the Supreme Court judgment rendered in the case of Saroj Kumar Sinha (*supra*) squarely covers the controversy involved in the case at hand and the impugned orders deserve to be quashed in the light of the aforesaid pronouncement.

19. Resultantly, the instant writ petition deserves to be and is hereby allowed. The orders dated 18.8.1998 (Annex.5), 22.11.1999 (Annex.7), 2.5.2002 (Annex.9) and 22.7.2002 (Annex.10) are quashed and set aside. The petitioner's legal representatives shall be entitled to all consequential benefits flowing from the impugned orders being quashed.

20. No order as to costs.